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**Part IV**

**Department of  
Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**50 CFR Part 679**

**Fisheries of the Exclusive Economic  
Zone Off Alaska; License Limitation  
Program; Community Development Quota  
Program; Proposed Rule**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

[Docket No. 970703166-7166-01; I.D. 060997A]

RIN 0648-AH65

**Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program; Community Development Quota Program**

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

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

**SUMMARY:** NMFS issues a proposed rule that would implement Amendment 39 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), Amendment 41 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA), and Amendment 5 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (BS/AI). These amendments submitted by the North Pacific Fishery Management Council (Council) would establish a License Limitation Program (LLP) and expand the Community Development Quota (CDQ) Program. The LLP would limit the number, size, and specific operation of vessels that may be used in fisheries for groundfish, other than demersal shelf rockfish east of 140° W. long. and sablefish managed under the Individual Fishing Quota (IFQ) program for Pacific halibut and sablefish, in the exclusive economic zone (EEZ) off Alaska. The LLP also would limit the number, size, and specific operation of vessels that may be used in fisheries for crab species managed pursuant to the Fishery Management Plan (FMP) for Commercial King and Tanner Crab Fisheries of BS/AI. The CDQ program would be expanded by including in CDQ allocations a percentage of the total allowable catch (TAC) of groundfish in the BSAI and crab species in the BS/AI that is not currently included in the existing CDQ programs for pollock, halibut, and sablefish.

**DATES:** Comments must be received by September 29, 1997.

**ADDRESSES:** Comments must be sent to Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or

P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) for this action may be obtained from the above address.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The U.S. groundfish fisheries of the GOA and the BSAI in the EEZ are managed by NMFS pursuant to the FMPs for groundfish in the respective management areas. The commercial king crab and Tanner crab fisheries in the BS/AI are managed by the State of Alaska with Federal oversight, pursuant to the FMP for those fisheries. The FMPs were prepared by the Council, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.*, and are implemented by regulations for U.S. fisheries at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

**License Limitation Program—Background Information**

The LLP is the first stage in fulfilling the Council's commitment to develop a comprehensive and rational management program for the fisheries in and off Alaska. The Council first considered the comprehensive rationalization plan (CRP) at its meeting in November 1992. Experts on limited-entry programs were invited to testify at that meeting, and the Council reviewed initial CRP proposals from the fishing industry. In December 1992, the Council approved a problem statement describing the need for and purpose of the CRP.

The problem statement articulated the Council's concern that the domestic harvesting fleet had expanded beyond the size necessary to harvest efficiently the optimum yield (OY) of the fisheries within the EEZ off Alaska. Further, it confirmed the Council's commitment to the long-term health and productivity of the fisheries and other living marine resources in the North Pacific and Bering Sea ecosystem. To fulfill that commitment, the Council intended to design a program that would efficiently manage the resources under its authority, reduce bycatch, minimize waste, and improve utilization so that the maximum benefit of these resources would be provided to present and future generations of fishermen, associated fishing industry sectors, fishing communities, consumers, and the Nation as a whole. The Council also committed itself to support the stability, economic well-being, and diversity of

the seafood industry and provide for the economic and social needs of communities dependent on that industry.

The problem statement also contained the following 14 issues identified by the Council as areas to be addressed by the CRP:

- (1) Harvesting capacity in excess of that required to harvest the resource.
  - (2) Allocation and preemption conflicts between and within industry sectors, such as with inshore and offshore components.
  - (3) Preemption conflicts between gear types.
  - (4) Gear conflicts within fisheries where overcrowding of fishing gear exists due to excessive participation and surplus fishing effort on limited grounds.
  - (5) Dead-loss such as "ghost fishing" by lost or discarded gear.
  - (6) Bycatch loss of groundfish, crab, herring, salmon, and other non-target species, including bycatch that is not landed for regulatory reasons.
  - (7) Economic loss and waste associated with discard mortality of target species harvested but not retained for economic reasons.
  - (8) Concerns regarding vessel and crew safety that are often compromised in the race for fish.
  - (9) Economic instability within various sectors of the fishing industry, and in fishing communities caused by short and unpredictable fishing seasons, or preemption that denies access to fisheries resources.
  - (10) Inability to provide for a long-term stable fisheries-based economy in small economically disadvantaged adjacent coastal communities.
  - (11) Reduction in ability to provide a quality product to consumers at a competitive price, and thus maintain the competitiveness of seafood products from the EEZ off Alaska on the world market.
  - (12) Possible impacts on marine mammals and seabirds, and marine habitat.
  - (13) Inability to achieve long-term sustainable economic benefits to the Nation.
  - (14) A complex enforcement regimen for fishermen and management alike that inhibits the achievement of the Council's comprehensive goal.
- At its meeting in January 1993, the Council began evaluating the effectiveness of different alternatives to determine which ones would best meet the objectives of the CRP. These alternatives included: (1) Exclusive area registration; (2) seasonal allocations; (3) license limitation; (4) gear allocations; (5) inshore/offshore allocations; (6) CDQ

allocations; (7) trip limits; (8) IFQ for prohibited species catch; (9) non-transferable IFQ; (10) transferable IFQ; and (11) harvest privilege auctions. All the alternatives had qualities that would have helped achieve some of the objectives of the CRP; however, after comparing the strengths and weaknesses of the alternatives, the Council identified license limitation and transferable IFQ as the most viable alternatives.

Although transferable IFQ was identified as the alternative with the greatest potential for solving the most issues in the problem statement for the CRP, several problems prevented the Council from choosing this alternative as the first step in the CRP process. For example, determinations about who should be found eligible to receive an initial allocation of quota or how much initial quota should be issued to each eligible applicant would have been exceedingly difficult. Also, the IFQ program for halibut and sablefish had not yet been implemented; therefore, any information or experience that would have been gained from the operation of that program was not then available. For these reasons, the Council, at its meeting in September 1993, raised LLP to equal consideration with transferable IFQ as a management regime designed to meet the objectives of the CRP.

In January 1994, the Council adopted its Advisory Panel's recommendations to expedite the LLP alternative. This decision was made because the industry lacked a consensus on the specific form of a transferable IFQ alternative and a concern about the amount of time that would be necessary to produce an analysis and implement a transferable IFQ program. The transferable IFQ alternative was not dropped completely; rather, it was considered by the Council as a potential second step in the overall CRP process. Advocates for the LLP argued that it was a necessary first step in the CRP process, because it could be implemented more expeditiously and it would provide stability in the fishing industry while a transferable IFQ system was analyzed and implemented.

At its meeting in April 1994, the Council received an LLP/IFQ proposal from its State of Alaska representative. This proposal contained an integrated, step-wise approach consisting of an LLP followed by an IFQ program. This proposal became the basis for subsequent Council actions that culminated in June 1995 with the Council's adoption of the LLP which, if approved by NMFS, would be implemented by this proposed rule.

By providing stability in the fishing industry and by identifying the field of participants in the groundfish and crab fisheries, the Council recommended the LLP as an interim step toward a more comprehensive solution to the conservation and management problems of an open access fishery. Although the LLP is an interim step, it addresses some of the important issues in the problem statement developed for the CRP. The LLP, through the limits it places on the number of vessels that could be deployed in the affected fisheries, would place an upper limit on the amount of capitalization that could occur in those fisheries. This upper limit would prevent overcapitalization in those fisheries at levels that could occur in the future if such a constraint were not present.

#### **License Limitation Program—Operational Aspects**

##### *1. General*

The LLP would limit access to the commercial groundfish fisheries in the EEZ off Alaska, except for demersal shelf rockfish east of 140° W. long. and sablefish managed under the IFQ program (license limitation groundfish). Demersal shelf rockfish east of 140° W. long. would be excluded from the LLP because an alternative management program for that species currently is under consideration. Sablefish would be excluded because that species is managed under the IFQ program. The LLP also would limit access to the commercial crab fisheries in the BS/AI, managed pursuant to the FMP for the Commercial King and Tanner Crab Fisheries in the BS/AI.

##### *2. Nature of Licenses and Qualification Periods*

Licenses for license limitation groundfish would be issued to eligible applicants based on fishing that occurred from an eligible applicant's qualifying vessel in management areas (i.e., BSAI, GOA, or BSAI/GOA, or state waters shoreward of those management areas) during the general qualification period (GQP), and in endorsement areas defined by these regulations (i.e., Aleutian Islands, Bering Sea, Central Gulf, Southeast Outside, and Western Gulf, or state waters shoreward of those endorsement areas) during the endorsement qualification period (EQP). These licenses would authorize holders to conduct directed fishing for license limitation groundfish species in the endorsement areas designated on each license and would be transferrable. The GQP for license limitation groundfish would be January 1, 1988, through June

27, 1992, except for vessels under 60 ft (18.3 m) which made a legal landing of license limitation groundfish with pot or jig gear prior to January 1, 1995. For those vessels, the GQP would be extended through December 31, 1994. The Council recommended this extension so that vessels that entered the fishery after June 27, 1992, but that used gear that minimized bycatch loss and waste due to discard mortality, could be used for qualification. Qualification under this extension would be limited to one endorsement area to ensure that capacity would not be unduly increased. Minimizing bycatch loss and waste due to discard mortality are important objectives of the CRP (see issues (6) and (7) of the problem statement above). Additionally, an eligible applicant whose qualifying vessel "crossed-over" to groundfish from crab under the provisions of the moratorium on entry by June 17, 1995, also would qualify under the GQP for license limitation groundfish.

The EQP for license limitation groundfish would be January 1, 1992, through June 17, 1995. The area endorsement(s) designated on a groundfish license would authorize the holder to conduct directed fishing in the following areas: (1) Bering Sea Subarea; (2) Aleutian Islands Subarea; (3) Western Area of the Gulf of Alaska; (4) Central Area of the Gulf of Alaska and the West Yakutat District; and (5) Southeast Outside District.

The Council designed the dual qualification periods (i.e., the GQP and the EQP) to account for past and recent participation in the affected fisheries. The GQP, which includes the qualification period for the moratorium on entry, would account for past fishing participation, and the EQP would account for the recent fishing participation that occurred up to the Council's final action on the LLP (June 17, 1995). The Council felt that it was critical that a qualifying vessel have fishing history in both periods, thereby showing past dependence and recent participation, to qualify its owner on June 17, 1995, for a license. The Council recommended dual qualification periods for crab species licenses for the same reason.

Licenses for crab species would be issued to eligible applicants based on fishing that occurred from the qualifying vessel in the BS/AI during the GQP, and for a specific species in an endorsement area (i.e., Adak brown king, Adak red king, Bristol Bay red king, *C. opilio* and *C. bairdi*, Dutch Harbor brown king, Norton Sound red king and Norton Sound blue king, Pribilof red king and Pribilof blue king, and St. Matthew blue

king) during the EQP. These licenses would authorize holders to conduct directed fishing for specific crab species in Federal waters of the specific areas designated on each license and would be transferrable. The GQP for crab species would be January 1, 1988, through June 27, 1992. Vessels that participated in the Norton Sound king crab fisheries and the Pribilof king crab fisheries would be exempt from the landing requirements of the GQP because: (1) The Norton Sound king crab fisheries began to be managed by the State of Alaska under a system of super-exclusive registration in 1993, and (2) the Pribilof king crab fisheries were closed from 1988 through 1992. Eligibility for those fisheries would be based exclusively on participation during a separate EQP. Additionally, an eligible applicant whose qualifying vessel "crossed-over" to crab from groundfish under the provisions of the moratorium on entry by December 31, 1994, also would qualify under the GQP for crab species.

The EQP for crab species would vary among eight area/species endorsements. The EQP for (1) Pribilof red and Pribilof blue king and (2) Norton Sound red and Norton Sound blue king would be January 1, 1993, through December 31, 1994. The EQP for (3) *C. opilio* and *C. bairdi* (Tanner crab), (4) St. Matthew blue king, (5) Adak brown king, (6) Adak red king, and (7) Dutch Harbor brown king would be January 1, 1992, through December 31, 1994. The EQP for (8) Bristol Bay red king would be January 1, 1991, through December 31, 1994. These endorsement periods were designed to accommodate the different patterns of season openings and closures for specific crab species. For example, the Bristol Bay red king crab fishery was not open in 1994; therefore, a 3-year participation window is provided by using a January 1, 1991, start date. The variations in the EQP for the Norton Sound king crab fisheries and the Pribilof king crab fisheries are explained in the GQP discussion above.

### 3. License Designations and Vessel Length Categories

All licenses for license limitation groundfish and crab species would be designated for use by either catcher vessels or catcher/processor vessels. This designation would prescribe the authorized behavior of the license holder on the vessel on which the license would be used. A catcher vessel designation on a groundfish license would authorize a license holder to conduct directed fishing for license limitation groundfish species and a catcher designation on a crab species

license would authorize a license holder to conduct directed fishing for crab species. A license with a catcher vessel designation would not authorize a license holder to process license limitation groundfish or crab species. A catcher/processor vessel designation on a groundfish license would authorize a license holder to conduct directed fishing for, and process, license limitation groundfish. Similarly, a catcher/processor designation on a crab species license would authorize a license holder to conduct directed fishing for, and process, crab species. A license with a catcher/processor designation also would authorize a license holder to conduct directed fishing for but not process license limitation groundfish or crab species (i.e., the license holder is not required to process his or her catch).

The Council also provided that persons could change the vessel designation on their licenses from a catcher/processor to a catcher vessel. This change in designation would be permanent; that is, once a vessel designation was changed from a catcher/processor vessel to a catcher vessel, the license holder would no longer be able to process license limitation groundfish or crab species using that license.

The length overall (LOA) of a vessel is defined at § 679.2 as the horizontal distance between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments, measured in linear feet and rounded to the nearest foot. The size categories were selected in order to be consistent with size categories in other programs; in addition, some observer requirements vary with vessel size, and these categories are consistent with those observer requirements. The following convention would be used when rounding the LOA to the nearest foot.

(1) When the amount exceeding a whole foot measurement is less than 6 inches (15.2 cm), the LOA would be equal to that whole foot measurement. For example, if the horizontal distance of a vessel is 124 ft, 5¾ inches (37.9 m), the LOA of the vessel would be 124 ft (37.8 m).

(2) When the amount exceeding a whole foot measurement is greater than 6 inches (15.2 cm), the LOA would be equal to the next whole foot measurement. For example, if the horizontal distance of a vessel is 124 ft, 6½ inches (38.0 m), the LOA of the vessel would be 125 ft (38.1 m).

(3) When the amount exceeding a whole foot measurement is exactly 6

inches (15.2 cm), the LOA would be equal to that whole foot measurement if the number is even; however, if the number is odd, the LOA would be equal to the next whole foot measurement. For example, if the horizontal distance of a vessel is 124 ft, 6 inches (37.9 m), the LOA of the vessel would be 124 ft (37.8 m), but, if the horizontal distance of the vessel is 59 ft, 6 inches (18.1 m), the LOA of the vessel would be 60 ft (18.3 m).

All licenses for license limitation groundfish and crab species would be issued with a specific vessel length category designated on the license. These categories are: (1) Category "A", which is comprised of vessels with an LOA of 125 ft (37.8 m) or greater; (2) category "B", which is comprised of vessels with an LOA from 60 ft (18.3 m) to 124 ft (37.5 m); and (3) category "C", which are vessels with an LOA of 59 ft (18 m) or less. A license would be issued with the appropriate specific vessel length category, based on the qualifying vessel's LOA on June 17, 1995.

Vessels participating under the moratorium on entry may be lengthened to their maximum length overall (MLOA). A vessel's MLOA would be 1.2 times its LOA on June 24, 1992, except: (1) For a vessel that was under reconstruction on June 24, 1992, its MLOA would be 1.2 times its LOA on the date reconstruction was completed; or (2) for a vessel that was 125 ft (37.8 m) or greater and that was under reconstruction on June 24, 1992, its MLOA would be its LOA on June 24, 1992, or its LOA on the date reconstruction was completed.

The vessel lengthening provisions of the moratorium on entry explained above provide some permissible flexibility to lengthen a vessel under the LLP. Specifically, a vessel may be lengthened to its MLOA under the moratorium on entry provided it was lengthened before June 17, 1995, or, if not, provided the lengthening does not cause the vessel to exceed the vessel's length category under the LLP. For example, a vessel that was 58 ft (17.7 m) on June 24, 1992, could be lengthened to 70 ft (21.4 m) under the provisions of the moratorium on entry. If the vessel had been lengthened before June 17, 1995, then the license issued would have a category "B" vessel length designation, which could be used on a vessel with an LOA from 60 ft (18.3 m) to 124 ft (37.5 m). However, if the vessel had been lengthened after June 17, 1995, then the license issued would have a category "C" vessel length designation (based on its LOA on June 17, 1995), which could be used on a vessel with

an LOA of 59 ft (18 m) or less. Therefore, although vessels may be lengthened under the provisions of the moratorium on entry, vessels may not be lengthened after June 17, 1995, beyond their length categories and still be eligible for LLP fishing with the license issued based on that vessel's LOA on June 17, 1995. For vessels that were lengthened under the provisions in the moratorium on entry, NMFS will require evidence of the date the vessel was lengthened, and the LOA of the vessel before and after that date. In addition, NMFS will require evidence of the vessel's LOA on June 17, 1995. In such circumstances, evidence bearing upon the vessel's LOA on the relevant dates could consist of a past marine survey, an original builder's certificate and any admeasurement documents submitted to the U.S. Coast Guard National Vessel Documentation Center, a certificate of registration that states the vessel's length, or other credible evidence. For the convenience of initial issues and future transferees, LLP licenses issued for a vessel will state its MLOA.

Difficulties have been reported with at-sea monitoring for compliance with vessel length categories based on the current definition of LOA at § 679.2. In order to obtain an accurate measurement of LOA, a vessel must be moored to a wharf or dock upon which the distance between the foremost part of the stem and the aftermost part of the stern can be carefully marked and measured. Such careful marking and measurement is not possible while the vessel is at sea. Consequently, at-sea enforcement of fishery regulations incorporating the LOA definition is impaired. Moreover, vessel owners and operators could be inconvenienced in some situations while enforcement officers arrange to have a vessel's LOA measured in port.

For these reasons, NMFS specifically requests public comments on alternative methods of determining or verifying LOA while a vessel is at sea. In particular, NMFS requests comments on the efficacy of redefining LOA as follows: for a vessel documented by the U.S. Coast Guard, the Coast Guard documented length; for an undocumented vessel that has been issued a certificate of registration, the length that appears on the vessel's certificate of registration; and for a vessel that is neither documented nor registered, the length as determined by the current definition of LOA at § 679.2. If the LLP portions of the amendments are approved, the final rule may make these or other changes to the definition of LOA depending in large part upon

the comments received during the public comment period.

#### 4. Landing Requirements

The landings that owners of vessels would need to qualify for a particular area endorsement for a groundfish license would vary according to vessel length category, the area, and vessel designation. These differing requirements are intended by the Council to account for differences in the operational characteristics of the fisheries, differences in the geographical areas in which the fisheries are prosecuted, and differences in the social and economic conditions that affect participants in the fisheries from various coastal areas. For instance, the dependence of fishing communities around the Gulf of Alaska on small vessel fleets would be accounted for by requiring only a single landing during the appropriate time periods for vessels less than 60 ft (18.3 m) LOA to qualify for an endorsement. The single landing requirement would be extended to catcher vessels less than 125 ft (37.8 m) LOA in the Western Gulf because public testimony during Council consideration of the LLP indicated that local fleets did not participate in that area during the earlier portion of the EQP. Consequently, the Council concluded that excluding those fleets from adjacent fishing grounds through more stringent landing requirements would significantly harm local communities dependent on those fisheries. Catcher/processor vessels in the Western Gulf area that were 60 ft (18.3 m) to less than 125 ft (37.8 m) LOA, would have the same landing requirements as all vessels of similar length in the Central Gulf area and Southeast Outside district because of their fishing capacity. Also, based on information in the LLP analysis that multiple landing requirements in the Bering Sea subarea and Aleutian Islands subarea would unduly burden small vessels, but would not affect larger vessels, which contributed to the largest portion of capacity in the fleet in those areas, the Council determined that a single landing requirement would best reflect the operational characteristics of the fisheries in those areas. Finally, the Council received public testimony during consideration of the LLP that some vessels that qualified under the moratorium on entry entered into the fishery during the latter portion of the EQP. The Council recommended that a four-landing provision be added to the EQP landing requirements in certain areas to account for participation of these vessels. The Council felt that four landings would be sufficient to show that a person intended to remain in the

fishery and that his or her participation was not merely speculative and opportunistic. Based on these considerations, the Council recommended the following landing requirements:

For vessels in all three length categories ("A," "B," and "C"), one landing of a license limitation groundfish species harvested in the appropriate area during the EQP to qualify their owner(s) for an Aleutian Islands area endorsement or a Bering Sea area endorsement; for vessels in length category C, one landing of license limitation groundfish species harvested in the appropriate area during the EQP to qualify their owner(s) for a Western Gulf area endorsement, a Central Gulf area endorsement, and a Southeast Outside area endorsement; for vessels in length category B designated as catcher vessels, one landing of license limitation groundfish species harvested in the appropriate area during the EQP to qualify their owner(s) for a Western Gulf area endorsement. Vessel length category "B" vessels would require one landing of license limitation groundfish species harvested in the appropriate area in each of any 2 calendar years from January 1, 1992, through June 17, 1995, or four landings of license limitation groundfish species harvested in the appropriate area between January 1, 1995, through June 17, 1995, for a Central Gulf area endorsement or a Southeast Outside area endorsement. This landing requirement also would apply to vessels designated as catcher/processor vessels and in vessel length category "B" for a Western Gulf area endorsement. Vessel length category "A" vessels would require one landing of license limitation groundfish species harvested in the appropriate area in each of any 2 calendar years from January 1, 1992, through June 17, 1995, for a Central Gulf area endorsement, a Southeast Outside area endorsement, and a Western Gulf area endorsement.

The landings owners of vessels would need to qualify for a particular area/species endorsement for a crab species license would vary according to the crab species. The Council recommended differing requirements to ensure that incidental catches would not qualify a person for a license (e.g., incidentally caught Tanner crab with red or blue king) but allow for participation in some fisheries where a single landing may have indicated that a person intended to remain in a fishery (e.g., the Pribilof red and blue king crab fishery that was closed from 1988 through 1992). The following requirements were recommended by the Council: For a red and blue king crab license, one landing

of the appropriate crab species harvested in the appropriate fishery during the EQP; for a brown king and Tanner crab license, three landings of the appropriate crab species harvested in the appropriate fishery during the EQP.

The appropriate fishery is the area, as defined in the proposed regulations, that corresponds to the area/species endorsement for which the person is seeking qualification. Only legal landings would qualify. As defined in the proposed regulations, a legal landing is a landing in compliance with Federal and state commercial fishing regulations in effect at the time of landing.

##### 5. License Recipients

Licenses would be issued to eligible applicants. Eligible applicants must have been eligible, on June 17, 1995 (the date of final Council action on the LLP), to document a fishing vessel under Chapter 121 of Title 46, U.S.C. An eligible applicant would be the owner, on June 17, 1995, of a qualified vessel or, if the fishing history of that qualified vessel has been transferred to another person by the express terms of a written contract that clearly and unambiguously provides that the qualification for a license under the LLP has been transferred, the person to which the qualification was transferred by the express terms of a written contract. The Council recommended that NMFS recognize written contracts to the extent practicable; however, in the event of a dispute concerning the disposition of the license qualification by written contract, NMFS would not issue a license until the dispute was resolved by the parties involved. For determining the qualification for a license in the absence of a written contract the Council recommended the following: (1) If the vessel were sold on or before June 17, 1995, the vessel's fishing history and license qualification transfers with the vessel; (2) if the vessel were sold after June 17, 1995, the vessel's fishing history and license qualification remain with the seller; (3) only one license be issued based on the landings of any qualified vessel. For instance, a vessel's fishing history could not be divided so that multiple licenses could be issued based on separate qualifications created by that division. Also, if there had been multiple owners of a qualified vessel on June 17, 1995, then one license would be issued in the name of the multiple owners. A qualified vessel is one from which legal landings were made during the appropriate qualifying periods in § 679.4(i) (4) and (5) of this proposed rule.

A successor-in-interest would be eligible to apply for a license in the place of eligible applicant if the eligible applicant, because of death or dissolution, could not apply for the license.

NMFS will assemble a comprehensive database containing relevant data on landings, vessels, and ownership. That database will be the "Official Record" regarding eligibility for a license. Persons that appear to be eligible, premised on the information contained in the Official Record, would be notified of their status and invited to request an application from NMFS. Other persons, who may not initially appear eligible to NMFS, could also request an application from NMFS. On receipt of the request for application, NMFS would prepare an application premised on information in the Official Record and send it to the applicant. Applicants would then have an opportunity to review the information provided, make changes if appropriate, and return the completed application to NMFS. No license would be issued unless the application were returned to NMFS, and NMFS determined the applicant to be eligible for a license.

Applicants who disagreed with the information in the Official Record (i.e., applicants who contended that the information was incomplete or incorrect, or both) would have an opportunity to demonstrate the validity of their contentions. For example, if the official record did not contain records of landings for a vessel during the GQP, a person could provide State of Alaska fish tickets to demonstrate those landings. Similarly, if an application were submitted based on a claim of unavoidable circumstances, the person submitting the application would need to provide sufficient evidence to verify the claim. Further information on the requirements for a claim of unavoidable circumstances is provided in Section 8, Other Provisions, below.

Applicants would be notified of the disposition of their applications (i.e., whether the application was approved, partially approved, or disapproved). If the application were approved, then a license would be issued to the applicant. If the application were partially approved, or disapproved, the applicant would be provided an opportunity to submit evidence to support any claim that NMFS could not verify. Evidence submitted in a timely matter would be reviewed and used as the basis for reconsideration. NMFS' initial determination on an application would stand if an applicant fails to submit corroborating evidence within the time period provided.

The disapproval of an application would be an initial administrative determination that could be appealed under 50 CFR 679.43. For applications for which NMFS considers additional evidence to support previously unsupported claims, NMFS's determination on the validity of the claims would be an initial administrative determination that could be appealed.

If an appeal were filed and accepted, the applicant would receive a non-transferable license authorizing that person to conduct directed fishing for license limitation groundfish or crab species based on any approved portion of the application. Further, the non-transferable license would [could also] authorize directed fishing for license limitation groundfish or crab species based upon the denied claims accepted for appeal, until the appeal was resolved. If an applicant's appeal were denied, then that applicant would only receive a license to conduct directed fishing for license limitation groundfish or crab species based on the approved portion of the application.

##### 6. Transfer and Reissuance of Licenses

A license holder may request NMFS, on a form available from NMFS, to transfer the license to a recipient designated by the license holder on the request form. The designated recipient may not conduct directed fishing for license limitation groundfish or crab species until NMFS reissues the license in the name of the recipient. NMFS will not reissue a license unless the license holder submits a completed, signed, and dated request form to NMFS and NMFS determines that the designated recipient is a person able to document a fishing vessel under Chapter 121, Title 46, U.S.C., that no party to the transfer has any fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations involving any party to the transfer, and that the transfer will not cause the recipient to exceed the license caps in proposed § 679.7(i).

When reissued, the recipient may use the license for any vessel designation and vessel length category originally assigned to the license, or on any vessel equal to, or shorter than, the MLOA set forth on the license, regardless of vessel length category. For example, a license with a MLOA of 145 ft (44.2 m) could be used on a vessel 145 ft (44.2 m) or shorter, regardless of whether the vessel is in category "A", "B", or "C", as long as the vessel conforms with all other requirements, such as vessel designation and area endorsement. The Council

included this provision to allow for increased transfer flexibility.

#### 7. License Severability and Ownership Caps

Area endorsements for groundfish licenses or area/species endorsements for crab species licenses would not be severable from the license. For example, a person transferring a groundfish license with a Southeast Outside area endorsement and a Central Gulf area endorsement would necessarily transfer both area endorsements with the license and could not keep one area endorsement while transferring the other. Similarly, vessel designations and vessel length categories would not be severable from the license. The non-severability of licenses was recommended by the Council to prevent increased capacity in the affected fisheries.

Also, for at least 3 years after implementation, a groundfish license and crab species license initially issued to a person would not be severable if those licenses resulted from the landings of the same qualifying vessel. The Council intends to review the issue of severability 3 years after implementation of the LLP. After that review, if the Council decides that the reason for non-severability (i.e., excess effort in the fisheries) has been ameliorated, then the Council may remove the prohibition on severing initially issued groundfish and crab species licenses. Groundfish licenses and crab species licenses obtained by transfer could not be combined with any other licenses held by a person and would remain separate licenses.

A person would be limited to a maximum of ten groundfish licenses and five crab species licenses, unless that person is initially issued more than those numbers of licenses, in which case the person could hold more licenses than specified by the license limit. However, a person above the limit could not receive a new groundfish license or a crab species license by transfer until the number of licenses held by that person is below the maximum number for the respective limits. After obtaining transfer eligibility by dropping below the license limit, a person could not exceed that limit, notwithstanding the earlier status of being allowed to exceed that limit on initial issuance. These limits were recommended by the Council to prevent any person from obtaining an excessive share of harvest privileges in the affected fisheries.

#### 8. Other Provisions

The Council included several other provisions in the proposed LLP. First, the Council recommended that persons targeting species not included in the groundfish portion of the LLP and who are currently allowed to land incidentally taken license limitation groundfish species be authorized under the LLP to continue landing bycatch amounts of license limitation groundfish species without a groundfish license. This provision is intended to avoid the waste that occurs when bycatch is required to be discarded. This is especially true for programs like the IFQ program for sablefish and halibut, where the targeted species and license limitation groundfish species may be found in the same habitat area.

Second, the Council recommended that the owner of a vessel who qualifies for a license under the LLP but whose vessel was lost or destroyed be eligible for the license and accompanying endorsements, designation, and vessel length category. This license could not be used for harvesting applicable species unless the vessel on which the license is used conforms with all the requirements of the LLP.

Third, the Council recommended that an "unavoidable circumstances" provision be included in the LLP. This provision would allow the owner of a vessel on June 17, 1995, to receive a license, even though the vessel on which the application would be based did not meet all of the landing requirements necessary to qualify that owner for a license. That owner, hereafter applicant, would need to provide evidence during the application process that the vessel made a legal landing of license limitation groundfish species, or crab species if applicable, between January 1, 1988, and February 9, 1992. The applicant would also need to provide evidence that, due to factors beyond the control of the owner of the vessel at that time, the vessel was subsequently lost, damaged, or unable to qualify the applicant for a license under the criteria in § 679.4(i) (4) or (5). Furthermore, the applicant must demonstrate:

(1) That the owner of the vessel at that time held a specific intent to conduct directed fishing for license limitation groundfish (crab species) with that vessel during a specific time period in a specific area.

(2) That the specific intent to conduct directed fishing for license limitation groundfish (crab species) with that vessel was thwarted by a circumstance that was:

(a) Unavoidable.

(b) Unique to the owner of that vessel, or unique to that vessel.

(c) Unforeseen and reasonably unforeseeable to the owner of the vessel.

(3) That the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish (crab species) actually occurred.

(4) That, under the circumstances, the owner of the vessel took all reasonable steps to overcome the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish (crab species).

(5) That license limitation groundfish (appropriate crab species) were harvested on the vessel in the specific area that corresponds to the area endorsement (area/species endorsement) for which the claimant is applying and the harvested license limitation groundfish (crab) was legally landed after the vessel was prevented from participating by the unavoidable circumstance but before June 17, 1995.

If all these criteria are met to the satisfaction of NMFS, a license may be issued for the appropriate fishery and endorsement area. This provision is not designed to be a "loop hole" through which owners of vessels that have not met the qualification requirements could be issued licenses. If an applicant failed to demonstrate that an unavoidable circumstance prevented the vessel from meeting the qualifications in § 679.4(i) (4) or (5), NMFS would not issue a license.

Fourth, the Council recommended that licenses be issued to owners of vessels that made a legal landing of license limitation groundfish species harvested during the GQP in one management area and a legal landing of license limitation groundfish species harvested during the EQP in another management area. For example, suppose a vessel in length category "C" made only two legal landings of license limitation groundfish species. The first legal landing was of license limitation groundfish species harvested in the BSAI on December 31, 1991, and the second legal landing was of license limitation groundfish species harvested in the Central Gulf endorsement area on June 16, 1995. Although the owner of the vessel would not qualify for a license under the standard eligibility criteria (i.e., making a landing during the GQP and the EQP of license limitation groundfish species harvested in the same management area), this owner would qualify for a license under the alternative method of eligibility. Section 679.4(i)(4) (iv) and (v) provide that if a vessel makes a legal landing during the GQP (and not the EQP) of

license limitation groundfish species harvested in one management area and a legal landing during the EQP (and not the GQP) of license limitation groundfish species harvested in another management area, then the owner of the vessel would qualify for a license for the management area in which the vessel harvested license limitation groundfish species during the EQP. The owner of the vessel in the example above would receive a license for the Gulf of Alaska with a Central Gulf area endorsement.

Fifth, the Council recommended a no-trawl zone east of 140° W. long. (Southeast Outside District). Owners of vessels that qualify for a groundfish license for the Gulf of Alaska with a Southeast Outside area endorsement would not be able to use trawl gear in that area regardless of whether trawl gear were used to harvest license limitation groundfish species during the EQP. The proposed no-trawl zone is designed to prevent preemption conflicts between gear types, prevent fixed gear loss, and to provide for the socio-economic needs of communities dependent on the local fisheries in the Southeast Outside District.

Three types of preemption can occur among competing gear types. Direct preemption occurs when competing gear types target the same species. Rockfish species such as rougheye, other slope, and thornyhead rockfish are examples of species that would be targeted by trawl gear and fixed gear fisheries in the Southeast Outside District. Establishing a no-trawl zone would eliminate direct preemption by trawl gear. Indirect preemption occurs when one gear type impacts or precludes a target fishery by another gear type by incidentally catching the target species. Incidental catches of species made by trawl gear could preclude fixed gear target fisheries that are critical to the socio-economic viability of small communities in Southeast Alaska. Indirect preemption by trawl gear also would be eliminated by restricting the Southeast Outside Regulatory District to fixed gear only. Grounds preemption occurs when the operator of a vessel using one type of fishing gear chooses not to fish in an area because of the gear type being used by the operator of another vessel in the same area. For example, an operator of a vessel using longline gear may be hesitant to deploy gear in an area in which trawl gear will be used because of the possibility of the longline gear being lost or damaged by the trawl gear. This third type of preemption also would be eliminated by the establishment of a no-trawl zone. Fixed gear loss occurs when trawl gear is

towed over a fixed gear set. This loss can lead to higher fishing mortality due to "ghost fishing" (i.e., fishing that occurs when fish are caught on unretrieved gear).

### **Western Alaska Community Development Quota Program**

#### *Background Information*

The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fishery activities that will result in ongoing, regionally based, commercial fishery or related businesses. The CDQ program began in 1992 with the pollock CDQ fishery, which was developed by the Council as part of Amendment 18 to the BSAI FMP. The approved portion of Amendment 18 and the final rule implementing Amendment 18 (57 FR 23321, June 3, 1992) allocated pollock for the CDQ program only for a temporary period from 1992 through 1995. The amendment allocated to a pollock CDQ reserve, one-half of the 15 percent of the pollock TAC that is placed in the non-specific reserve for each subarea or district of the BSAI.

Eligible CDQ communities could apply for a CDQ allocation from the CDQ reserve by submitting a Community Development Plan (CDP). Regulations implementing the CDQ program for 1992 and 1993 (57 FR 54936, November 23, 1992) specified the process for applying for the CDQ program and the required contents of CDPs. A subsequent regulatory amendment (58 FR 32874, June 14, 1993) implemented the CDQ program for 1994 and 1995.

The Council recommended reauthorizing the pollock CDQ program for an additional 3 years as part of Amendment 38 to the BSAI FMP, and NMFS approved this amendment on November 28, 1995. Regulations implementing the pollock CDQ program for 1996 through 1998 were published on December 12, 1995 (60 FR 63654, corrected 61 FR 20, January 2, 1996).

The Council recommended adding the halibut and fixed gear sablefish (H/S) fisheries to the CDQ program beginning in 1995, as part of the IFQ program. The final rule implementing the IFQ program (58 FR 59375, November 9, 1993) implemented the H/S CDQ program with no expiration date. More background and explanation of the pollock and H/S CDQ programs can be found in the preambles to the above final rules.

Regulations implementing the pollock CDQ program were codified at 50 CFR

part 675, and regulations implementing the H/S CDQ program were codified at 50 CFR part 676. NMFS subsequently consolidated both sets of CDQ regulations into one set of regulations at 50 CFR part 679, subpart C (61 FR 31228, June 19, 1996).

At its meeting in June 1995, the Council recommended a further expansion of the CDQ program. The Council recommended that 7.5 percent of all BSAI groundfish TACs not already covered by a CDQ program along with a pro-rata share of the prohibited species catch (PSC) limit, and 7.5 percent of the BS/AI crab be allocated to CDQ communities as defined in the regulations implementing the current CDQ program. The Council recommended that the expanded program be designed similarly to the current pollock CDQ program. Further, the Council did not recommend a termination date as currently exists for the pollock CDQ program.

Based on the Council's recommendation to expand the CDQ program to include groundfish in the BSAI and crab in the BS/AI, NMFS prepared a CDQ Program Design. The CDQ Program Design was an outline for implementing the groundfish and crab CDQ programs and for combining them with the existing pollock and H/S CDQ programs. NMFS submitted the CDQ Program Design to the Council for review at its meeting in April 1996 and requested clarification on several CDQ policy issues. This proposed rule is based on that CDQ Program Design and the clarification provided by the Council.

### **Expectations for Monitoring the CDQ Fisheries**

The level of accountability for catch under the multispecies CDQ program determines the complexity of the monitoring program and the resulting cost to the CDQ groups, their industry partners, and the public. This proposed rule is based on NMFS' description and the Council's approval of a CDQ program design in which individual CDQ groups would be eligible to receive allocations of all groundfish TAC species or species groups, and prohibited species to support their groundfish, halibut, and crab CDQ.

Under the proposed multispecies CDQ program, NMFS would be responsible for monitoring and enforcing the groundfish and halibut CDQs. The State of Alaska (State) would be responsible for monitoring and enforcing the crab CDQs under authority contained in the FMP for the Commercial King and Tanner Crab Fisheries in the BS/AI.



In the CDQ fisheries managed by NMFS, all groundfish, prohibited species, and halibut catch and bycatch in CDQ fisheries, including the existing pollock, sablefish, and halibut CDQ fisheries, would accrue to CDQ or prohibited species quotas (PSQ) allocated to the CDQ group. Catch of groundfish or halibut in excess of a CDQ or PSQ would be prohibited under § 679.7(d)(6). Catch of the salmon, herring, and crab PSQ would result in the same time and area closures that exist for these prohibited species in the open access groundfish fisheries. Failure to account for all allocated bycatch species in the groundfish or halibut CDQ fisheries would result in the CDQ program exceeding groundfish and halibut PSQ allocations recommended by the Council. The groundfish CDQ program would not have a "prohibited species status" that would allow for continued fishing for one groundfish species once the quota of another groundfish species has been reached. No provision would be included to allow overages from the CDQ fisheries to accrue to TACs and PSC limits in the non-CDQ fisheries.

Based on this program design, the multispecies groundfish and halibut CDQ program would require a higher level of accountability than any fishery NMFS is currently managing off Alaska. The existing pollock, sablefish, and halibut CDQ fisheries and the fixed gear halibut and sablefish IFQ fisheries are target fishery-based quota programs that do not require accounting for all TAC and PSC species in the catch.

### Combining Existing and Proposed CDQ Programs

NMFS proposes to combine the existing pollock and fixed gear halibut and sablefish CDQ programs with the proposed groundfish and crab CDQ programs into a single multispecies CDQ program. A combined CDQ program would simplify the CDP process, provide for full accounting of all CDQ and PSQ in the groundfish and halibut CDQ programs, apply NMFS' monitoring requirements equitably, and decrease the administrative burden on the CDQ groups, the State, and NMFS.

Under the proposed multispecies CDQ program, each CDQ group would submit one CDP for all species, and CDQ allocations for all species would be made every 3 years. Requirements for recordkeeping and reporting, observer coverage, and equipment for improved catch estimates would be applied equally to all participants in the groundfish and halibut CDQ fisheries based on vessel or processor type, not on target fishery. For example,

requirements for a longline vessel harvesting sablefish CDQ would be the same as the requirements for that vessel harvesting Pacific cod CDQ.

At its April 1996, meeting, the Council recommended that full integration of the catch monitoring and equipment requirements for the groundfish and halibut CDQ fisheries be delayed until 1999. Therefore, 1998 would be a transition year from the existing separate CDQ programs by target species to an integrated CDQ program in which all participants in the groundfish and halibut CDQ fisheries would follow the same catch monitoring and reporting requirements specified by vessel and processor type rather than by CDQ target fishery. In 1998, CDQ vessels and processors participating in the pollock and H/S CDQ programs would be exempt from the groundfish CDQ program catch monitoring regulations.

The Council's recommendation would result in four categories of CDQ fisheries in 1998 and two categories in 1999 and future years. The four categories for 1998 would be: (1) The pollock CDQ fisheries; (2) the fixed gear halibut and sablefish CDQ fisheries; (3) the groundfish CDQ fisheries, which would exclude pollock and fixed gear sablefish; and (4) the crab CDQ fisheries. The multispecies CDQ fisheries would be divided into two categories for 1999 and future years: (1) The groundfish and halibut CDQ fisheries managed by NMFS; and (2) the crab CDQ fisheries managed by the State.

### Description of CDQ Species

The multispecies CDQ program would include the existing CDQ species of pollock, fixed-gear sablefish and halibut; and the proposed CDQ groundfish, crab, and PSQ species. The proposed CDQ groundfish species include all other BSAI groundfish species or species groups that have an annually specified TAC and are not part of the current CDQ program. The proposed PSQ species are defined at § 679.21(b)(1) and include any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Oncorhynchus mykiss*), halibut, Pacific herring (*Clupea harengus pallasii*), king crab, and Tanner crab. The proposed crab CDQ species include all king and Tanner crab species in the BS/AI that have a guideline harvest level (GHL) specified by the State.

### CDQ Reserves, Allocations, and Quotas

The multispecies CDQ program would assign a portion of each CDQ species and PSQ species to a separate CDQ reserve. The following would be the amount assigned to each CDQ reserve

for the exclusive use of the CDQ program:

(1) *Pollock CDQ reserve*. One-half of the pollock TAC that is placed in the non-specific reserve for each subarea or district of the BSAI would be assigned to the pollock CDQ reserve.

(2) *Halibut CDQ reserve*. A separate halibut CDQ reserve would be implemented for the following International Pacific Halibut Commission (IPHC) management areas:

(A) *Area 4B*. In IPHC regulatory area 4B, 20 percent of the annual halibut quota would be made available for the halibut CDQ program to eligible communities physically located in or proximate to this regulatory area.

(B) *Area 4C*. In IPHC regulatory area 4C, 50 percent of the halibut quota would be made available for the halibut CDQ program to eligible communities physically located in this regulatory area.

(C) *Area 4D*. In IPHC regulatory area 4D, 30 percent of the halibut quota would be made available for the halibut CDQ program to eligible communities located in or proximate to IPHC regulatory areas 4D and 4E.

(D) *Area 4E*. In IPHC regulatory area 4E, 100 percent of the halibut quota would be made available for the halibut CDQ program to communities located in or proximate to this regulatory area.

(3) *Sablefish CDQ reserves*. Two sablefish CDQ reserves would be established:

(A) *Fixed gear sablefish CDQ reserve*. NMFS would assign 20 percent of the fixed gear allocation of sablefish in each subarea or district of the BSAI as a fixed-gear sablefish CDQ reserve. Sablefish in this reserve could be harvested only by vessels using fixed gear as required by the FMP amendment establishing the H/S CDQ program.

(B) *Sablefish CDQ reserve*. NMFS would assign 7.5 percent of the trawl gear allocation of sablefish in each subarea or district of the BSAI as a sablefish CDQ reserve. Sablefish in this reserve could be harvested by vessels using any authorized gear because no gear restrictions were recommended by the Council for the multispecies CDQ program.

(4) *Groundfish CDQ reserves*. NMFS would assign one-half of the amount of each groundfish TAC that is placed in the reserve for each subarea or district of the BSAI to a separate CDQ reserve for each subarea or district of the BSAI. The groundfish CDQ reserves do not include sablefish.

(5) *PSQ reserves*. NMFS would assign seven and one-half percent of each of the PSC species defined at § 679.21(b)(1) to a separate PSQ reserve.

(6) *Crab CDQ reserves.* The Council's recommendation on crab CDQs in June 1995, stated that 7.5 percent of the crab GHs in the BS/AI would be made available to the CDQ program at the beginning of the multispecies CDQ program's implementation. However, the reauthorization of the Magnuson-Stevens Act, which became effective in October 1996, requires that the crab CDQ program be phased-in according to the following percentages: 3.5 percent for 1998, 5.0 percent for 1999, and 7.5 percent for the year 2000 and thereafter. These proposed regulations reflect the requirements of the Magnuson-Stevens Act.

A CDQ allocation is a percentage of a CDQ reserve that is assigned to a CDQ group when NMFS approves a proposed CDP. A CDQ means the annual amount of a particular CDQ species that a CDQ group is permitted to catch based on a CDQ allocation that has been requested in a proposed CDP and approved by NMFS. A PSQ allocation means a percentage of a PSQ reserve that is assigned to a CDQ group. PSQ means the annual amount of a prohibited species that is allocated to a CDQ group based on a PSQ allocation.

#### **CDQ Program Responsibilities**

The proposed multispecies CDQ program would be a Federal program in which the fishing privileges for CDQ are temporarily allocated by NMFS to the CDQ groups. In return, the CDQ groups would be responsible for managing the CDQ harvesting and the CDQ projects as outlined in the CDPs on behalf of the member communities. NMFS would have no obligation to allocate future CDQ or PSQ based on past allocations, and CDQ and PSQ fishing privileges would expire with the expiration of a CDP. NMFS would base its awards of CDQ and PSQ allocations to the CDQ groups on the merits of the proposed CDPs.

The proposed CDPs, developed by the CDQ groups, would be the means for requesting CDQ and PSQ allocations from NMFS. Although NMFS would award the CDQ allocations to the CDQ groups, the CDQ groups would make the allocation requests on behalf of the eligible community(ies) that is (are) participating in the CDQ group. Therefore, a CDQ group would have a fiduciary responsibility to manage its CDQ allocations, CDQ projects, and assets in the best interests of the participating CDQ community(ies).

A CDQ community would be represented in a CDQ group in two ways. First, each CDQ group's Board of Directors (Board) would be required to have one voting member elected by his

or her community for each community in the CDQ group. Second, the managing organization (either the Board or a managing group contracted by the Board) would have to have a letter of support from each participating community before NMFS could award a CDQ allocation to the CDQ group.

To assure that the CDQ group's business decisions represent the interests of the CDQ community, the community-elected board member would vote on the Board in a way that reflects the community's wishes. During the election of a Board member, the CDQ community would have the opportunity to review the activities of its board member and its CDQ group, and evaluate the board member's performance. Further, a CDQ community could refuse to issue a letter of support for the CDQ managing organization for a proposed CDP and join another CDQ group or form a new CDQ group.

A CDQ group could manage the day-to-day business affairs of its CDP itself through its Board or could choose to contract with a managing organization. If a CDQ group were to contract with a managing organization, the CDQ group would be responsible for overseeing the managing organization's activities and would be held accountable by NMFS for all the managing organization's actions related to CDP management.

#### **CDQ Application Process**

Under the proposed multispecies CDQ program, the State would announce a CDQ application period, during which the CDQ groups would submit proposed CDPs to the State. The State would then hold a public hearing at which the CDQ groups would present their proposed CDPs and give the affected public an opportunity to comment. After the public hearing, the State would develop recommendations for the approval of proposed CDPs, consult with the Council, and submit the State's recommendations to NMFS for review and approval or disapproval.

The CDP would be submitted to NMFS by October 7 to provide sufficient time for NMFS to review the CDPs and to approve final CDPs and their CDQ allocations by December 31 of the application year.

#### **The Community Development Plan**

The CDP would provide information to the State and NMFS about the eligible communities, the managing organization, the CDQ projects, the requested allocation of CDQ and PSQ species, the harvesting and processing partners, and how the CDQ group would

account for CDQ and PSQ catches by these partners.

For each allocation request, § 679.30(a)(4) would require that the CDP identify the primary target fisheries by species and gear type, percentage of the target species requested, and the percentage of CDQ and PSQ species needed as bycatch in these fisheries.

The fishing plan (part of the CDP) described at § 679.30(a)(5) would be used to obtain information about the harvesting and processing partners in the groundfish and halibut CDQ fisheries. Specifically, the fishing plan would be required to contain a list of vessels and processors that the CDQ group proposed to authorize to participate in its groundfish and halibut CDQ fisheries and information about how the catch of CDQ and PSQ by these vessels and processors would be determined. The U.S. Coast Guard and NMFS Enforcement would use the list of eligible vessels and processors to determine whether vessels or processors were legally participating in the CDQ fisheries.

A vessel or processor would be required to be listed as an eligible vessel in an approved CDP in order to harvest or process groundfish or halibut CDQ for a particular CDQ group. In addition to this requirement, any vessel or processor with special equipment requirements such as certified scales to weigh catch or an observer sampling station also would be required to undergo a vessel or plant inspection and be permitted by NMFS to participate in the CDQ fisheries. Vessels or processors with no additional equipment requirements would not be required to be permitted by NMFS. They would be eligible to participate in the CDQ fisheries upon approval of a CDP in which they were listed. More information about vessel and processor categories, equipment requirements, vessel and plant inspections, and permitting requirements are contained in a later section.

The fishing plan also would specify how the CDQ group intended to make the estimates of CDQ and PSQ catch required to be reported to NMFS on the CDQ Catch Report. NMFS proposes to require each CDQ group to commit to a specific source of data and method for determining the weight or numbers of CDQ and PSQ catch by vessels fishing under its CDP, to identify the method in its CDP, and to amend the CDP before changing the source of data or method. CDQ groups would be prohibited from using any source or method other than that specified in the CDP and approved by NMFS to report CDQ and PSQ catch on the CDQ Catch Report.

Section 679.32(e)(3) sets forth NMFS' standard data sources for verifying catch estimates. If a CDQ group designates in its CDQ application, in accordance with the requirements of § 679.30(a)(5), the standard data sources set forth at § 679.32(e)(3) (and, if a catcher vessel using non-trawl gear, specifies whether it will be discarding CDQ species at sea), no specific approval by NMFS of the use of the data sources or method would be necessary. However, if the CDQ group desires to use an alternative procedure such as sorting and weighing all catch by species on processor vessels or using larger sample sizes than would be required under § 679.32(e)(3), it must, in accordance with the requirements of § 679.30(a)(5), propose the use of the specific alternatives it wishes to use. The CDQ group would have to demonstrate that space is available on the processor vessel to store, sort, and weigh the proposed sample sizes and that additional observers would be provided to accomplish the increased sampling or monitoring of sorting and weighing by species. The group would also have to demonstrate, and NMFS so find, that the alternative will produce equivalent or better estimates, that each haul, set or pot on an observed vessel can be sampled by an observer for species composition, that, if catch is to be sorted before it is weighed, the sorting and weighing process will be monitored by an observer, the observer will be required to be on duty no more than 12 hours in each 24-hour period and will be required to sample no more than 9 hours in each 24-hour period, and if the vessel uses trawl gear, the observer will be required to sample no more than 3 hauls in each 24-hour period. NMFS will review any proposed alternative and approve it in writing upon making the requisite determinations. An alternative can not be used unless specifically approved by NMFS. Alternatives to the requirement for a certified scale or for an observer sampling station will not be approved.

NMFS would require the CDQ groups to commit to the source of information and the procedures that would be used to estimate CDQ and PSQ catch for several reasons. First, discussion of the specific catch accounting requirements and the differences among the various vessel and processor types would help to identify and resolve conflicts prior to the start of CDQ fishing. NMFS wants to minimize the conflicts and decisions that have to be addressed between the harvesting and processing partners and the CDQ observers after fish have been harvested. Second, NMFS wants to

provide a means for vessels and processors to suggest alternative catch accounting methods that could improve catch estimates or work better for a particular vessel or plant. However, if different methods would be used, NMFS would need time to examine the proposals and specify conditions necessary to assure accurate CDQ catch estimates and reasonable working conditions for the CDQ observers. Finally, determining how catch estimates would be made in advance of the fishery would improve observer training.

#### **Management of the Groundfish and Halibut CDQ Fisheries**

##### *Closures*

All closures for the BSAI listed in § 679.22(a) would apply to the CDQ fisheries. As that section provides, the CDQ fisheries are specifically exempted from closure of the Catcher Vessel Operational Area to catcher/processors.

##### *Seasons*

The provision for closure of all trawl fisheries in the BSAI between January 1 and January 20 at § 679.23(c) would remain in effect for the CDQ fisheries.

#### **Transfers of CDQ Allocations or CDQ**

Once a proposed CDP is approved by NMFS and becomes effective, the proposed multispecies CDQ program would allow CDQ groups to transfer CDQ allocations, CDQ, PSQ allocations, and/or PSQ, from one to another, with certain restrictions.

*CDQ Allocation.* Any amount of a CDQ allocation could be transferred by both groups filing substantial amendments to their respective CDPs. The proposed requirements for a substantial amendment to a CDP appear at § 679.30(g)(4). The transfer would become valid on January 1 of the calendar year following the approval of the amendments, and the transfer would be valid for the duration of the CDPs.

*CDQ.* CDQ could be transferred in two different ways, and the transfer would be effective only for the calendar year in which the transfer occurs. First, 10 percent or less of a CDQ could be transferred in a calendar year by a CDQ group to another by using the technical amendment process. The proposed requirements for a technical amendment to a CDP appear at § 679.30(g)(5). Second, more than 10 percent of a CDQ could be transferred through the substantial amendment process.

*PSQ allocations.* A PSQ allocation could be transferred by substantial amendment, but the transfer would have to be accompanied by a transfer of a

CDQ allocation. NMFS would accept substantial amendments for the transfer of PSQ allocations only during the month of January. The transfer of a PSQ allocation would be effective for the duration of the CDPs.

*PSQ.* A PSQ allocation could be transferred by substantial amendment, but the transfer would have to be accompanied by a transfer of a CDQ allocation. NMFS would accept substantial amendments for the transfer of PSQ allocations only during the month of January. The transfer of PSQ would be effective only for the remainder of the calendar year in which the PSQ transfer occurs.

#### **CDQ Non-Specific Reserve**

Bycatch of some species is expected to constrain the groundfish CDQ fisheries and may even result in a CDQ group reaching the CDQ or PSQ for a bycatch species before it has harvested all of its target species CDQ. Therefore, NMFS proposes to create a non-specific reserve within the CDQ program to reduce the potential for the catch of some groundfish species to limit overall CDQ catch. CDQ species eligible to be placed in the non-specific reserve are low-valued species for which no target fishery currently exists but for which there is a sufficient buffer between the TAC and ABC. A buffer between TAC and ABC is required because use of the non-specific reserve may result in overall CDQ catches for a particular species in excess of the 7.5 percent allocation to the CDQ program. Only squid, arrowtooth flounder, and "other groundfish" meet the criteria for the CDQ non-specific reserve.

Each year, 15 percent of each CDQ group's arrowtooth flounder, squid, and "other groundfish" CDQ would be placed into a non-specific reserve for each CDQ group. A CDQ group would apply for a release from its CDQ non-specific reserve to its squid, arrowtooth flounder, or "other species" CDQ through the technical amendment process.

#### **Prohibited Species Catch Management**

The management of prohibited species catch in the groundfish CDQ fisheries would be modeled after the requirements of the non-CDQ groundfish fisheries. One exception would be that halibut PSQ would not be allocated between trawl and non-trawl gear. This would give CDQ groups more flexibility in their use of halibut PSQ. Catches of herring, salmon, or crab PSQ by vessels fishing with non-trawl gear and catch of halibut PSQ by vessels using pot gear would not accrue to the respective PSQs. The only catch

to accrue against the non-chinook salmon PSQ would be catch of non-chinook salmon by vessels using trawl gear from August 15 through October 14 in the Catcher Vessel Operational Area as defined in existing § 679.2. The only catch to accrue against the chinook salmon PSQ would be catch of chinook salmon by vessels using trawl gear from January 1 through April 15.

Attainment of the herring, salmon, and crab PSQs by a CDQ group would result in the same time and area closures required for the open access fisheries in § 679.21. Specifically, vessels fishing under a CDP would be prohibited from:

1. Using trawl gear to harvest groundfish CDQ in Zone 1 once the PSQ for red king crab or *C. bairdi* Tanner crab in Zone 1 is reached.

2. Using trawl gear to harvest groundfish CDQ in Zone 2 once the PSQ for *C. bairdi* Tanner crab in Zone 2 is reached.

3. Using trawl gear to harvest groundfish CDQ in Herring Savings Areas (HSA) once the herring PSQ is reached.

4. Using trawl gear to harvest groundfish CDQ in the Chinook Salmon Savings Area from January 1 through April 15 once the chinook salmon PSQ is reached.

5. Using trawl gear to harvest groundfish CDQ in the Chum Salmon Savings Area between September 1 and October 14 once the non-chinook salmon PSQ is reached.

The CDQ representative would be responsible for monitoring the catch of prohibited species by vessels fishing under its CDP and for assuring that vessels using trawl gear stop fishing in the closed areas once the PSQ has been reached.

Attainment of the halibut PSC limit in the non-CDQ groundfish fisheries triggers closure of groundfish fishery categories to directed fishing. However, no fishery categories or gear allocations are proposed for halibut PSQ. Therefore, the halibut PSQ would be treated the same as groundfish or halibut CDQ. The CDQ groups would be prohibited from exceeding their halibut PSQ.

NMFS is proposing that catcher vessels using trawl gear be required to retain all salmon and herring PSQ and deliver them to a processor where they would be sorted and weighed on a certified scale. Retention of salmon and herring PSQ would eliminate the need for the vessel operator or the CDQ observer to estimate the weight or numbers of at-sea discards, thereby improving accounting for these PSQ species. Unlike halibut and crab, salmon and herring are believed to have 100

percent mortality when harvested with trawl gear, so NMFS anticipates that no additional mortality of these species would result from the retention requirement.

Section 679.21 would be amended to allow the retention of herring and salmon PSQ by catcher vessels using trawl gear in the CDQ fisheries until the PSQ is sorted and weighed on a certified scale by a processor. The State would have to change its regulations to allow the retention and delivery of these species to shoreside processing plants.

In order for the multispecies CDQ regulations to reflect the State of Alaska's administration of the CDQ program, all references to the Governor of the State have been removed and the "State of Alaska" inserted in their places.

In § 679.2, the definition of "Governor" is removed and a definition of "State" is added.

#### **Improved Retention/Improved Utilization**

Regulations governing the retention or utilization of groundfish species in the non-CDQ fisheries also would apply to the groundfish CDQ fisheries.

#### **Vessel Incentive Program**

NMFS proposes that catch in the groundfish CDQ program not be subject to the Vessel Incentive Program (VIP) regulations in § 679.21(f). CDQ groups would receive individual allocations of prohibited species catch allowances and would be responsible for managing their fisheries within these limits.

#### **Recordkeeping and Reporting Requirements for CDQ Groups**

Each CDQ group would be responsible for collecting and reporting catch data for all vessels and processors participating in its CDQ fisheries. This would enable each group to directly manage its CDQ fisheries and to be held accountable for staying within CDQ and PSQ allocations.

All vessels and processors participating in the CDQ fisheries would be required to continue to comply with all other recordkeeping and reporting requirements in § 679.5, such as maintaining logbooks and preparing weekly production reports. Among other requirements, CDQ catch would have to be reported separately from other catch on these reports, along with the CDQ group number.

#### **The CDQ Check-In/Check-Out Report**

The CDQ representative would be required to submit a CDQ check-in/check-out report to notify NMFS when vessels participating in the CDQ

fisheries begin and stop CDQ fishing throughout the year. The notification also would help NMFS track whether the appropriate CDQ catch reports were being submitted.

A check-in report would be required prior to the first CDQ fishing of the year and any time during the year CDQ fishing started again after a CDQ check-out report had been submitted. A CDQ check-out report would be required when any vessel switched between CDQ and non-CDQ fishing, stopped CDQ fishing for the remainder of the year, or was removed as an eligible vessel from a CDQ. The CDQ check-in/check-out report is described at § 679.5(m).

#### **The CDQ Catch Report**

The CDQ group would submit a weekly CDQ catch report for each vessel fishing CDQ. NMFS would maintain a record of the cumulative CDQ and PSQ catch based on the information submitted in the CDQ catch report. The CDQ catch report is described at § 679.5(n). NMFS would monitor the accuracy and completeness of the CDQ catch reports by using information from the CDQ check-in/check-out reports, vessel and processor reports, and observer data. NMFS would make an independent estimate of CDQ and PSQ catch for each CDQ group using the catch accounting procedures agreed upon in the CDP.

#### **Attaining or Exceeding a CDQ or PSQ**

CDQ and PSQ allocations would be made to CDQ groups, not to individual vessels or processors. Each CDQ group would be responsible for preventing the exceeding of CDQs and halibut PSQ and for complying with time and area closures triggered by attainment of the salmon, herring, and crab PSQs. Therefore, the CDQ group would be primarily responsible for monitoring its harvesting and processing partners to account for all CDQ and PSQ and for taking actions necessary to prevent exceeding CDQs or halibut PSQs. Although NMFS would monitor CDQ fishing in season and provide information to the CDQ groups, NMFS would not prescribe specific actions to avoid exceeding CDQ or PSQ.

Inseason monitoring of CDQ catches would be based on the weekly CDQ catch report submitted by the CDQ representative. Also, NMFS would estimate the CDQ and PSQ catches from reports submitted by vessels and processors, such as the ADF&G fish tickets and processor's weekly production reports and by observers. The official estimates of CDQ and PSQ catch would be made once all observer

data was verified by NMFS and the CDQ catch reports reviewed.

### **CDQ Catch Accounting Requirements for Vessels and Processors**

Proposed catch accounting requirements including equipment, observer coverage, and procedures for estimating catch are discussed below by vessel and processor type. Additional information about the specific requirements for certified scales to weigh catch at sea, certified bins for volumetric estimates, the observer sampling station, and certified CDQ observers are discussed in later sections.

### **Unobserved Catcher Vessels**

Catcher vessels in the groundfish and halibut CDQ fisheries that are less than 60 ft (18.3 m) LOA would not be required to carry a CDQ observer. The majority of unobserved vessels participating in the current CDQ fisheries are catcher vessels harvesting halibut CDQ that are 32 ft (9.8 m) or less LOA. In an analysis prepared for the April, 1996 Council meeting, NMFS estimated that, of the 127 catcher vessels harvesting halibut CDQ in 1995, 120 were 32 ft (9.8 m) or less LOA, one was between 33 ft (10.1 m) and 59 ft (18.0 m) LOA, and six were between 60 ft (18.3 m) and 124 ft (37.8 m) LOA. In the 1995 sablefish CDQ fisheries, one catcher vessel was less than 60 ft (18.3 m) LOA and two were between 60 ft (18.3 m) and 120 ft (36.6 m) LOA.

The catch accounting expectations of the multispecies CDQ fishery would require that the catch of all CDQ and PSQ species by unobserved vessels be counted against a CDQ or PSQ allocation. However, it is difficult to obtain accurate and reliable estimates of the catch of species discarded at sea by unobserved vessels.

NMFS proposes to require unobserved vessels to retain all CDQ species and deliver them to a processor where they would be sorted and weighed on a certified scale. Catcher vessels using trawl gear would be required to retain all salmon and herring PSQ and deliver it to the processor. All catcher vessels would be required to carefully release halibut PSQ, record the estimated weight of the halibut PSQ, and report this on the ADF&G fish ticket and to the CDQ representative.

NMFS considered requiring the use of bycatch rate assumptions developed from observer data on vessels in the same target fishery and gear type as the unobserved vessels. However, NMFS decided not to propose this approach because it would require estimation of bycatch rates with very little observer data, particularly for the halibut CDQ

fisheries, which make up the majority of the unobserved vessels at this time. NMFS also decided against proposing that the CDQ groups provide for some level of observer coverage on the unobserved vessels because of safety and cost concerns about deploying observers on such small vessels and out of remote communities.

Unobserved catcher vessels would not have additional equipment requirements that would necessitate a vessel inspection. Therefore, they would not require a CDQ permit. They would be eligible to participate in the CDQ fisheries as long as they were listed as eligible vessels in an approved CDP.

### **Observed Catcher Vessels**

All catcher vessels 60 ft (18.3 m) and greater LOA would be required to have at least one certified lead CDQ observer (described in a later section) for all groundfish and halibut CDQ fishing.

### **Observed Catcher Vessels Using Trawl Gear**

Operators of observed catcher vessels using trawl gear would be required to retain all groundfish CDQ and salmon and herring PSQ and deliver it to a processor where it would be sorted and weighed on a certified scale. All halibut and crab PSQ would be required to be discarded at sea after the observer had counted the halibut and crab PSQ and taken length measurement of the halibut.

NMFS is proposing that all groundfish CDQ and salmon and herring PSQ be retained and weighed at a processing plant to eliminate the need for an observer to estimate the weight or numbers of at-sea discards. Without a means to weigh a large quantity of catch on the vessel, observers on board catcher vessels using trawl gear cannot make accurate estimates of at-sea discards.

NMFS' proposed standard sources for estimating catch are the observer's estimate of halibut PSQ weight and crab PSQ numbers and on ADF&G fish tickets for the weight or numbers of CDQ and PSQ species.

Vessel owners would be required to provide space on the deck of the vessel for the observer to sort and store catch samples and a place from which to hang the observer sampling scale. Catcher vessels using trawl gear and retaining all groundfish CDQ and salmon and herring PSQ would not have additional equipment requirements that would necessitate a vessel inspection. Therefore, they would not require a CDQ permit. They would be eligible to participate in the CDQ fisheries as long

as they were listed as eligible vessels in an approved CDP.

### **Observed Catcher Vessels Using Non-Trawl Gear**

Observed catcher vessels using longline, pot, and jig gear (non-trawl gear) could select one of two options for estimating groundfish and halibut CDQ. The first option would be to retain all groundfish and halibut CDQ (as is required for observed catcher vessels using trawl gear) and deliver it to a processor with a certified scale. Catcher vessels using this option would not be required to have a CDQ permit. The second option would allow groundfish CDQ to be discarded at sea under the same requirements applicable to processor vessels using non-trawl gear under this option. In this case, the catcher vessel operator would have to provide sufficient observer coverage to sample all CDQ sets for species composition and average weight. In addition, the vessel would be required to have an observer sampling station with a motion-compensated sampling scale so that observers could obtain accurate average weight data on each species in the catch (see discussion below). Under this option, catcher vessels using this option would be required to have a CDQ permit and a vessel inspection to check the sampling station and scale.

In both cases, careful release of halibut PSQ would be required and the observer would estimate the weight of halibut PSQ.

NMFS' proposed standard sources and procedures for verifying the catch for vessels retaining all groundfish CDQ are or would use the observer's estimate of halibut PSQ weight and the vessel operators' and processors' reports of weight or numbers of CDQ and PSQ catch reported on ADF&G fish tickets.

NMFS' proposed standard procedures for estimating catch for vessels discarding groundfish CDQ at sea would use the observer's estimate of the weight of both groundfish CDQ and halibut PSQ.

### **Catcher/Processors and Motherships**

Regardless of their length, all catcher/processors and motherships would be required to have at least two certified CDQ observers, one of whom must meet the requirements of a lead CDQ observer (see discussion below).

All catcher/processors and motherships would be required to provide special equipment for estimating CDQ and PSQ catch. Any vessel required to have a certified scale, certified bins, or an observer sampling station would have to be inspected and

receive a special permit prior to being permitted to participate in the CDQ fisheries. Therefore, being listed as an eligible vessel in an approved CDP would not be sufficient for a catcher/processor or mothership to fish CDQ. The proposed inspection and the CDQ permit requirements are described in a later section.

#### **Catcher/Processors Using Trawl Gear and Motherships**

Catcher/processers using trawl gear and motherships would be required to weigh all catch in the CDQ fisheries on a scale certified by NMFS and to have an observer sampling station. Proposed regulations governing the certified scales and the observer sampling station are described in a later section.

NMFS' proposed standard sources and procedures for estimating catch for these vessels are or would use the observer's report of total catch weight from the certified scale and the observer's species composition sample data.

#### **Catcher/Processors Using Non-Trawl Gear**

Catcher/processers using longline, pot, or jig gear would be required to have an observer sampling station, including a motion-compensated platform scale. CDQ observers would sample each set and determine species composition and average weight for all CDQ and PSQ species.

NMFS' proposed standard sources for estimating catch for these vessels are the observer's report of species composition and average weight.

#### **Shoreside Processors**

Shoreside processors would be required to sort all CDQ deliveries by species or species group and weigh them on a scale certified by the State. PSQ species monitored by number would be required to be counted. The sorting and weighing of all CDQ and PSQ would be required to be monitored by a CDQ observer.

Shoreside processors would be required to be listed in the CDP and to have a valid CDQ permit to accept deliveries of CDQ catch. The permit would not be issued until NMFS had determined that the CDQ catch could be weighed on a certified scale and that an observer could monitor the sorting and weighing of all CDQ species.

#### **Observer Sampling To Determine CDQ and PSQ Catch Weight**

Methods proposed by NMFS that would be based on observer sampling to estimate species composition of the catch would use sample sizes and

procedures that NMFS believes an observer could reasonably accomplish in the time available to him or her under the fishing and processing conditions on a vessel. Observers would obtain the largest sample sizes they can, given time, equipment, available space, and catch composition. NMFS is not proposing to specify minimum sample sizes necessary to obtain catch weight estimates with specific statistical qualities. The staff resources and data necessary to develop sampling plans appropriate for specific target fisheries or specific vessels are not available at this time. In addition, NMFS expects that the minimum sample sizes required to estimate the weight of infrequently occurring species on a haul-by-haul basis with a high level of confidence would be too large to accommodate in the space available on many vessels and would require more than two observers to sort and weigh. If NMFS develops sampling plans or minimum sample sizes for the groundfish fisheries as a whole in the future, this information could be added to the CDQ fishery requirements at that time.

#### **Separation of CDQ and Non-CDQ Catch**

The need to account for all halibut, groundfish TAC species, and prohibited species under the groundfish and halibut CDQ program necessitates the separation of CDQ catch, IFQ catch, and non-CDQ catch. NMFS must be able to distinguish between CDQ and non-CDQ fishing in order to know whether catch accrues to a CDQ/PSQ or to IFQs or non-CDQ TACs and PSC limits. Therefore, catcher vessels could land and deliver CDQ and IFQ species together, but they would be prohibited from catching and delivering CDQ and non-CDQ catch together. Catcher/processers would be prohibited from mixing CDQ and non-CDQ catch in the same haul or set. In addition, observed catcher vessels and catcher/processers could not harvest fish for more than one CDQ group or from CDQ and IFQ in the same haul or set. Observed catcher vessels could harvest CDQ and IFQ fish in different sets on the same trip if they had sufficient quota to cover their catch of all species.

On catcher/processers allowed to retain both CDQ and non-CDQ catch during the same trip, no CDQ catch or processed product from CDQ catch could be used as a basis species to determine maximum retainable bycatch amounts in the non-CDQ fisheries.

#### **Equipment Requirements for Vessels**

A new § 679.28 entitled "Equipment and Operational Requirements for Catch Weight Measurement" proposed in a

separate rulemaking would set forth the requirements for certified scales to weigh catch at sea and certified scales in shoreside processing plants (62 FR 32564, June 16, 1997). This proposed rule would modify that proposed rule by adding requirements for observer sampling stations to § 679.28 and moving the requirements for certified holding bins from subpart C to § 679.28. Although these equipment and operational requirements are proposed only as part of the CDQ monitoring program at this time, they may be applied more widely in the future.

#### **Certified Scales**

All CDQ catch harvested by trawl catcher/processers or delivered to processor vessels or shoreside processing plants would be required to be weighed on a certified scale to obtain the most accurate estimate of the weight of each CDQ and PSQ species. Catch by observed vessels using non-trawl gear could be estimated by counting individual species and applying an average weight. Scales in shoreside processing plants would be required to be certified by the State of Alaska, as they currently are required to be under State law. Scales on catcher/processers using trawl gear and motherships would be certified under NMFS' at-sea scale certification program. More discussion on the background and requirements of the at-sea scale certification program may be found in the preamble to the at-sea scale certification proposed rule (62 FR 32564, June 16, 1997).

All trawl catcher/processers and motherships would be required to install a scale and have the scale certified by a weights and measures inspector authorized by the Administrator, Alaska Region, NMFS (Regional Administrator). All of the catch would be required to be weighed on the certified scale before it is sorted. The weight of each species would be determined by the observer's species composition sampling unless some other method is approved by NMFS in the CDP.

Purchase of a scale appropriate for trawl processor vessels may cost between \$30,000 (hopper scales) and \$50,000 (belt-conveyor scales). Installation costs will vary depending on the type of scale selected, the modifications necessary to accommodate the scale, and changes in the sorting and discarding operations. In 1994, the Council recommended that NMFS require at-sea scales on processor vessels in the BSAI pollock fisheries. A draft EA/RIR/IRFA prepared for that recommendation analyzed an alternative to requiring certified scales

on all trawl processor vessels. NMFS estimated that installation of an at-sea scale could cost from \$5,000 to \$250,000 per vessel. A copy of this EA/RIR/IRFA may be obtained from the Regional Administrator (see ADDRESSES). The installation of a scale also may reduce the efficiency of the fish processing factory, particularly if processing equipment has to be relocated. Although NMFS cannot estimate what these costs may be, processor vessels that would have to undergo significant modifications to their vessels or forego substantial processing efficiencies to accommodate a scale probably would choose not to participate in the CDQ fisheries rather than incur these costs.

### Observer Sampling Station

All processor vessels would be required to have an observer sampling station that includes a motion-compensated scale to improve the accuracy of sample weights, a table, a hose that supplies fresh or salt water, and a specified minimum amount of work space. Current observer sampling scales do not compensate for vessel motion and, therefore, are not providing as accurate sample weights as could be obtained with a motion-compensated scale. In addition, many processor vessels currently do not provide working and storage space necessary for observers to carry out their duties. The observer sampling station is estimated to cost between \$8,000 and \$14,000 per vessel, the majority of which is due to the motion-compensated platform scale which could cost between \$8,000 and \$12,000 each.

### Certified Bins for Volumetric Estimates

The regulations governing the use of certified holding bins for volumetric estimates of total catch weight on catcher/processors and motherships are proposed to be moved from subpart C to the new § 679.28(e). Although processor vessels in the CDQ fisheries would be allowed to use certified bins for volumetric estimates of pollock CDQ catch in 1998 only, requirements for certified bins must remain in regulation because NMFS allows processor vessels in the non-CDQ pollock fisheries with certified bins and two observers to use only observer estimates, rather than the NMFS blend system, to determine pollock catch weight.

NMFS implemented regulations in a final rule published on May 16, 1994 (59 FR 25346) requiring processor vessels participating in the pollock CDQ fisheries to have certified bins for volumetric estimates. A more complete description of how certified bins are used by observers to make volumetric

estimates of total catch weight is included in the preamble to the proposed rule referenced above and in the preamble to the then-proposed rule for certified bins (58 FR 68386, December 27, 1993).

The current certified bins regulations include equipment and operational requirements. The operator is required to have each holding bin that would be used for volumetric estimates measured, marked, and certified by an independent marine engineer or other authorized individual. The operator also is required to provide "visual access" to the bins so that the observer can see the level of fish throughout the bin from outside the bin. In addition to the certification requirements, operators also must comply with operational requirements such as notifying the observer when fish would be added to or removed from the bin, or not filling the bin above the viewing port.

The following changes are proposed for the new paragraph at § 679.28(e) on certified bins:

- (1) The paragraph would be reorganized to separate specifications and certification requirements from operational requirements.
- (2) Certification documents would be required to be submitted to the Regional Administrator (as would all equipment certification requirements in § 679.28) rather than to the NMFS Observer Program Office as required under current regulations.
- (3) A new requirement that numerals identifying the level of fish in the bins be at least 4 cm high would be added for bin certification documents dated 30 days after the effective date of the final rule. Because the bin certification requirements would be effective only for 1998 in the CDQ fisheries, NMFS does not believe that vessel owners should be required to modify numerals on previously certified bins. However, any bins certified for the first time or recertified after the effective date of this proposed rule would be required to comply with this requirement.
- (4) Clarification that marked increments would not be required on the wall in which the viewing port is located unless they are needed to determine the level of fish from another viewing port.
- (5) A specific list of information that must be included in bin certification documents submitted after the effective date of this proposed rule would be added. In the current regulations, the bin certification documents must include a description of the location of bin marks, tables indicating bin volume in cubic meters for each marked increment and must be dated and signed

by the person preparing the documents. This proposed rule would add the vessel name, the date the bins were measured and the marked increments and numerals were witnessed, a diagram of the location of the marked increments, the location and dimensions of each viewing port, and instructions for determining the volume of fish in each bin from the diagrams and tables.

(6) A new requirement that refrigerated seawater tanks could be used for volumetric estimates only if all other requirements of the paragraph were met and no water had been added to the bins before the observer made a volumetric estimate.

(7) The requirement for a viewing port or ports, through which the level of fish inside the bin can be seen from outside the bin, would be more clearly stated.

(8) The provision allowing bins to be certified by "a qualified organization that has been designated by the USCG Commandant, or an authorized representative thereof, for the purpose of classing or examining commercial fishing industry vessels under the provisions of 46 CFR 28.76 would be removed. NMFS believes that it is sufficient to require that a registered engineer perform bin certifications.

### Equipment That Biases Observer Samples

Estimates of the catch of CDQ and PSQ would be based either on processors' reports of sorted and weighed or counted catch or on the observer's species composition sample data applied to total catch weight. In either case, the use of equipment that would remove or destroy fish before they are counted, weighed, or sampled would result in an inaccurate estimate of CDQ or PSQ catch. In the shoreside plants, these fish would not be sorted and weighed or counted. On a vessel, removal of these fish would bias the observer's sample. NMFS regulations currently contain a prohibition at § 679.7(g)(2) against interfering with or biasing the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of catch before sampling. Although no additional specificity is being proposed at this time, NMFS believes that the following equipment biases observer samples if used to transport fish prior to the time the fish reaches the location where the observer samples: Pumps that grind fish; grates, small pipes, and hatches that prevent larger fish from flowing through; and incline belts operated at certain angles or speeds so that some fish do not get transported up the belt. NMFS may

consider adding specific prohibitions against the use of such equipment in the future.

#### **Permits for Vessels and Processors in the CDQ Fisheries**

The catch accounting requirements for the groundfish and halibut CDQ programs are different from those for the non-CDQ fisheries because they require the use of new equipment on vessels and observer monitoring of sorting and weighing of CDQ catch in shoreside plants.

All shoreside processors and all vessels required to have equipment such as a certified scale to weigh catch or an observer sampling station would be required to obtain a permit from NMFS to participate in the groundfish or halibut CDQ fisheries. Prior to issuing the CDQ permit, NMFS would inspect each vessel and processing plant to verify that the equipment required to account for CDQ catch was present and operational on the vessel and that specific requirements for observer sampling or sorting and weighing of catch could be met.

NMFS' experience with the certified bin requirement in the pollock CDQ fisheries is an important factor in NMFS' recommendation for pre-fishing inspections. Problems with the certified bins include improperly certified bins, inability of observers to see into the bins, unsafe access to the bins, and lack of understanding about how to use the bin certification documents. These problems have caused conflicts between vessel operators and the observers. Communication difficulties and the fact that many of the problems are only identified once fish have been harvested and the observer is unable to make a volumetric estimate of total catch weight have made it difficult to resolve the problems quickly. Some of these problems could have been identified and resolved by a vessel inspection and improved communication between the CDQ participants and NMFS before CDQ fishing started. Other problems are operational in nature and cannot be identified until a vessel is fishing. The CDQ permit would be used only to identify compliance with specific equipment requirements prior to the start of the CDQ fisheries. NMFS would still have to rely on reports by observers or authorized officers to enforce operational violations.

Trawl catcher/processors and motherships would be inspected to verify that the observer sampling station meets the requirements of § 679.28(d), that the motion-compensated observer sampling scale is operating properly, and that observers can sample unsorted

catch after it has been weighed on a certified scale.

Longline and pot catcher/processors and catcher vessels would be inspected to verify that the observer sampling station meets the requirements of § 679.28(d) and that the motion-compensated observer sampling scale is operating properly.

Shoreside processors would be inspected to verify that an observer can monitor the sorting and weighing of all CDQ and PSQ catch on a scale certified by the State of Alaska.

Vessel owners or processors would be required to submit a permit application to NMFS. Trawl catcher/processors and mothership owners and shoreside processors would be required to submit a diagram and description of the vessel or processing plant showing where CDQ catch would be sorted and weighed on a certified scale and the location of the observer sampling station on vessels. Trawl catcher/processors and mothership owners also would be required to submit a copy of the at-sea scale inspection certificate. Longline or pot catcher/processors or catcher vessels would not be required to submit supplemental information with the permit application.

Upon receipt of the permit application, NMFS would schedule a vessel or plant inspection. NMFS would not issue the permit until the vessel or plant inspection had been conducted and NMFS verified compliance with specific equipment and catch accounting requirements.

Permits would have to be renewed each year. However, after the initial inspection of a vessel or plant has been conducted, NMFS could waive requirements for inspections in future years if the observers report no problems with equipment or operational requirements and if the annual scale certification documents required for vessels are received by NMFS.

Once permitted, a vessel or processor could harvest or process CDQ fish for any CDQ group during the year for which it is permitted as long as it is listed as an eligible vessel or processor on the approved CDP for that CDQ group.

#### **Certified CDQ Observer**

The multispecies groundfish CDQ program would rely heavily on information collected by observers to determine the catch of CDQ and PSQ species, thereby increasing the need for accurate and timely observer data. Observers would need additional training and briefing to provide more in-depth information about the additional monitoring, equipment, and operational

requirements of the CDQ fisheries; how to collect and transmit CDQ data; and how to communicate questions or problems to NMFS. Therefore, NMFS proposes to create a new category of observer called a NMFS-certified CDQ observer, the requirements for which would be added at § 679.50(h)(1)(i) (D) and (E).

Two levels of CDQ observer are proposed. The first level would be called a "CDQ observer" and the second level a "lead CDQ observer." A person would be required to have experience observing in the CDQ fisheries in order to be certified as a lead CDQ observer. The CDQ observer level, with no requirements for CDQ observing experience, is necessary in order to provide the experience in the CDQ fisheries that is required to become a lead CDQ observer.

Both the CDQ observer and the lead CDQ observer would be required to have the following qualifications to be certified:

1. Receive the rating of 1 for "exceptional" or 2 for "meets expectations" by NMFS for their most recent deployment,
2. Have completed at least 60 days of observer data collection as a certified North Pacific groundfish observer on a vessel using the same gear type as the CDQ vessel that they will be deployed on. In other words, CDQ observers would be certified for specific gear types.
3. Successfully complete a NMFS-approved CDQ observer training and/or briefing. The additional training is expected to take approximately 5 days.

In addition to these requirements, a person certified as a "lead" CDQ observer would be required to have successfully completed at least 20 days of observer data collection on a vessel of any gear type participating in a CDQ fishery.

At least one of the observers on each catcher/processor, mothership, or catcher vessel and in the onshore processing plant would be required to be a certified "lead" CDQ observer. All CDQ observers on vessels would be required to have at least 60 days of experience collecting data on a vessel of the same gear type as the CDQ vessel they are deployed on.

#### **Observer Coverage Requirements**

Observer coverage requirements for vessels and processors participating in the groundfish and halibut CDQ fisheries would be moved from subpart C to subpart E with all other observer coverage requirements. Catcher vessels less than 60 ft (18.3 m) LOA would not be required to carry an observer. All



catcher vessels 60 ft (18.3 m) LOA or longer, including those catcher vessels fishing halibut CDQ with groundfish CDQ bycatch, would be required to carry at least one certified lead CDQ observer. Shoreside processing plants would be required to have at least one certified lead CDQ observer to monitor the sorting and weighing of all CDQ deliveries. Catcher/processors and motherships would be required to have two certified CDQ observers on board during the CDQ fisheries, at least one of whom would be required to be a certified lead CDQ observer. Processors purchasing halibut CDQ and no other groundfish are not required by NMFS to have Federal Processor permits and, therefore, are not required to be monitored by NMFS-certified observers. Observer coverage requirements include vessels fishing for halibut CDQ because of the need to monitor the catch of all CDQ and PSQ species in the catch.

This proposed rule also would amend § 679.50(a) to clarify that CDQ observer coverage days for "30 percent coverage" vessels would not count towards the required distribution of observer coverage throughout the year in the non-CDQ fisheries as described in § 679.50(c)(1)(v) and (c)(1)(vii).

#### **Catch Accounting During the Transition Year**

In 1998, processors in the pollock, sablefish, and halibut CDQ fisheries would continue to follow the catch accounting regulations currently used, although these regulations would be moved to § 679.32(f). Processor vessels in the pollock CDQ fishery would continue to use volumetrics to estimate pollock catch weight, however, pollock CDQ catches would be required to be reported to NMFS on the CDQ catch report.

Fixed gear vessel operators in the halibut and sablefish CDQ fisheries would be allowed to continue to use processed product weight and product recovery rates to estimate the round weight of retained catch and to report their catch to the RAM Division under the same regulations used for the halibut and sablefish IFQ program. The halibut and sablefish CDQ regulations would be moved to § 679.32(g). Halibut and fixed gear sablefish CDQ landings would not be reported on the CDQ catch report until 1999.

The Council recommended that bycatch from the pollock, fixed gear sablefish, or fixed gear halibut CDQ fisheries not accrue against the CDQ groups' CDQ or PSQs in the transition

year. The only species that would accrue to a CDQ in the pollock CDQ fisheries would be pollock. Similarly, only sablefish and halibut catch in the fixed gear sablefish and halibut CDQ fisheries would accrue against a CDQ. Catch of all other species in these CDQ fisheries would accrue to the respective non-CDQ TACs and PSC limits.

Different requirements for the various CDQ fisheries in 1998 require definitions to distinguish among them. In 1998, the multispecies CDQ fisheries would not include pollock, fixed gear sablefish, or halibut. Different CDQ numbers would be assigned to each CDQ group's allocations of pollock, sablefish, halibut, and multispecies groundfish. Under the current regulations, each vessel and processor is required to maintain separate catch and production records for fish harvested under each CDQ number. In addition, the CDQ representative would be required to identify vessels fishing in the pollock CDQ fisheries on the check-in and check-out reports. Check-in/check-out reports are not proposed to be required for the fixed gear halibut and sablefish CDQ fisheries in 1998, because they would still be operating under the IFQ regulations.

The allowable amount of groundfish bycatch that could be retained in the pollock, fixed gear sablefish, and fixed gear halibut CDQ fisheries would have to comply with maximum retainable bycatch amounts and fishery closures for the non-CDQ TACs against which this bycatch is accruing.

Equipment and operational requirements proposed for the multispecies CDQ program would not apply to the pollock and fixed gear sablefish and halibut CDQ fisheries in 1998. However, starting on January 1, 1999, the equipment and operational requirements discussed in previous sections would apply to all vessels and processors in the multi-species groundfish and halibut CDQ fisheries.

#### **Classification**

At this time, NMFS has not determined that the amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. Section 304(a)(3) of the Magnuson-Stevens Act requires NMFS to approve, disapprove, or partially approve an amendment submitted by the Council within 30 days of the end of the comment period for that amendment. NMFS, in making that determination, will take into account

the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

An EA/RIR was prepared for this rule that describes the management background, the purpose and need for action, the management action alternatives, and the socio-economic impacts of the alternatives. The EA/RIR estimates the total number of small entities affected by this action, and analyzes the economic impact on those small entities. Based on the economic analysis in the EA/RIR, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Although most fishing operations affected by these regulations (1,896 fishing operations—based on the total number of moratorium qualifications issued to date) are considered small entities, a substantial number of these small entities would not experience impacts of the type contemplated by the RFA as "significant." In fact, it is estimated that 2,962 fishing operations would qualify under the LLP, 1,066 more fishing operations than are currently licensed to operate. This number of fishing operations also exceeds the average number of fishing operations from 1988–1995 (1,956 fishing operations) and the fishing operations in the year of the highest participation (1992—2,285 fishing operations). Some vessels that are currently participating under the moratorium on entry might not qualify under the LLP because of insufficient participation during the endorsement qualification period (1992–1995). However, given the relatively easy qualification requirements (i.e., one landing in each of any 2 calendar years 1/1/92–6/17/95 at most, in some cases only a single landing during that period), this number is anticipated to be below the 20 percent threshold. Furthermore, most vessels that would not qualify for a license under the LLP would be small vessels that are either exempt from the LLP because of their size (i.e., equal to or less than 32 ft in the Bering Sea and Aleutian Islands Area or equal to or less than 26 ft in the Gulf of Alaska), or vessels that primarily participated in state waters and only had minimal participation in the EEZ off Alaska (i.e., landings that amounted to less than 5 percent of their gross catch). In the case of the former, there would be no impact, significant or otherwise, because these vessels would be able to continue their participation through the exemption provided in the

LLP. In the case of the latter, the impact would not rise to significance under the RFA because the vessels primarily participated in state waters, which would be unaffected by the LLP.

While the CDQ allocations certainly provide significant benefits to the recipient groups and communities, and at the same time impose additional reporting and administrative requirements, the six CDQ organizations likely would not be classified as "small entities" under the auspices of the RFA, nor would they, in total, comprise a "substantial" number of entities (large or small) operating in the fisheries off Alaska.

The associated 7.5 percent reduction in overall quota available to the remaining fishing fleet (which includes a substantial number of small entities) is not expected to result in a direct 7.5 percent reduction in catch, for example, by any individual small fishing operation. As noted previously, the 7.5 percent allocation is far less than the percentage of fish currently discarded in the collective groundfish fisheries. Council programs, which mandate retention and utilization of groundfish species beginning in 1998, are estimated to more than make up for the 7.5 percent quota reduction, in terms of overall fish available for both small and large fishing operations. It is also true that the gross income for individual, small fishing operations is less dependent on overall quotas available than it is on other factors such as, relative fish prices across species, unpredictable weather patterns, timing and magnitude of alternative fishing opportunities such as salmon, and other business decisions made independent of the overall TAC levels for groundfish.

As a result, a regulatory flexibility analysis was not prepared. Copies of the EA/RIR can be obtained from NMFS (see ADDRESSES).

This proposed rule contains new collection-of-information requirements subject to the Paperwork Reduction Act (PRA). These collection of information has been submitted to OMB for approval. The new information requirements consist of: Preparation of 5,000 initial applications over the life of the LLP requiring an estimated time of 2 hours each to complete for a total of 10,000 hours; preparation of 500 transfer applications per year requiring an estimated time of 1 hour each to complete for a total of 500 hours per year; preparation of six proposed CDPs requiring an estimated time of 500 hours to complete for an average of 1,000 hours per year; preparation of six annual reports requiring an estimated time of 40 hours to complete for a total of 240 hours per year; preparation of six annual budget reports requiring an estimated time of 20 hours to complete for a total of 120 hours per year; preparation of six annual budget reconciliation reports requiring an

estimated time of 8 hours to complete for a total of 48 hours per year; preparation of 48 substantial amendments requiring an estimated time of 8 hours to complete for a total of 384 hours per year; preparation of 60 technical amendments requiring an estimated time of 4 hours to complete for a total of 240 hours per year; preparation of 56 CDQ permit applications requiring an estimated time of 2 hours to complete for a total of 112 hours; preparation of 1,560 CDQ check-in/check-out reports requiring an estimated time of 10 minutes to complete for a total of 260 hours; preparation of 144 CDQ catch reports requiring an estimated time of 2 hours to complete for a total of 288 hours per year, preparation of 75 prior notices of offloading requiring an estimated 2 minutes to complete for a total of 2.5 hours per year; and printing and retention of 725 scale printouts by shoreside processors requiring an estimated time of 10 minutes to complete for a total of 121 hours per year, and reporting of at-sea discards on 650 ADF&G fish tickets by unobserved catcher vessels requiring an estimated time of 20 minutes to complete for a total of 217 hours per year. For 1998 only, information requirements consist of bin certifications requiring an estimated time of 8 hours to complete for a total of 0 hours for 1998; changes to the list of CDQ halibut/sablefish cardholders requiring an estimated time of 0.5 hours to complete for a total of 3.5 hours for 1998; and changes to CDP lists of vessels for halibut/sablefish requiring an estimated time of 1 hour for a total of 14 hours for 1998.

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.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding burden estimates or any other aspect of the data requirements, including

suggestions for reducing burdens, to NMFS (see ADDRESSES) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 6, 1997.

**Rolland A. Schmittin,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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

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

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

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.1, paragraph (e) is revised and paragraph (j) is added to read as follows:

##### § 679.1 Purpose and scope.

\* \* \* \* \*

(e) *Western Alaska CDQ Program.* The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based, fisheries-related economy.

\* \* \* \* \*

(j) *License Limitation Program.* (1) Regulations in this part implement the license limitation program for the commercial groundfish fisheries in the EEZ off Alaska and for the commercial crab fisheries for the Bering Sea and Aleutian Islands in the EEZ off Alaska.

(2) Regulations in this part govern the commercial fishing for license limitation groundfish by vessels of the United States using authorized gear within that portion of the Gulf of Alaska and the Bering Sea and Aleutian Islands management area over which the United States exercises exclusive fishery management authority and the commercial fishing for crab species by vessels of the United States using authorized gear within that portion of the Bering Sea and Aleutian Islands management area over which the United

States exercises exclusive fishery management authority.

3. In § 679.2, the definition for "Governor" is removed; the definitions for "Community Development Plan (CDP)", "Community Development Quota (CDQ)", "Legal Landing", "Maximum LOA", "Person", "Processing or to process", "Qualified Applicant", "Qualified Person", and "Resident Fisherman" are revised; and definitions for "Area Endorsement", "Area/Species Endorsement", "Catcher/Processor Vessel Designation", "Catcher Vessel Designation", "CDQ Allocation", "CDQ Fishing", "CDQ Group", "CDQ Number", "CDQ Project", "CDQ Representative", "CDQ Species", "Crab Species", "Crab Species License", paragraph (3) for "Directed Fishing", "Eligible Applicant", "Eligible Community", "Groundfish License", "License Holder", "License Limitation Groundfish", "Managing Organization", "Prohibited Species Quota", "PSQ Allocation", "PSQ Species", "State", and "Vessel Length Category" are added in alphabetical order to read as follows:

#### § 679.2 Definitions.

*Area endorsement* means the designation(s) on a license that authorizes a license holder to conduct directed fishing for license limitation groundfish in the designated area(s), subarea(s), or district(s). Area endorsements, which are inclusive of, but not necessarily the same as, management areas, subareas, or districts defined in this part, are as follows:

- (1) Aleutian Islands area endorsement. Authorizes the license holder to conduct directed fishing for license limitation groundfish in the Aleutian Islands Subarea;
- (2) Bering Sea area endorsement. Authorizes the license holder to conduct directed fishing for license limitation groundfish in the Bering Sea Subarea;
- (3) Central Gulf area endorsement. Authorizes the license holder to conduct directed fishing for license limitation groundfish in the Central Area of the Gulf of Alaska and the West Yakutat District;
- (4) Southeast Outside area endorsement. Authorizes the license holder to conduct directed fishing for license limitation groundfish in the Southeast Outside District; and
- (5) Western Gulf area endorsement. Authorizes the license holder to conduct directed fishing for license limitation groundfish in the Western Area of the Gulf of Alaska.

*Area/species endorsement* means the designation(s) on a license that authorizes a license holder to conduct directed fishing for the designated crab

species in Federal waters in the designated area(s). Area/species endorsements for crab species licenses are as follows:

- (1) Adak brown king in waters with an eastern boundary of 171° W. long., a western boundary of the U.S.-Russian Convention Line of 1867, and a northern boundary of 55°30' N. lat.
- (2) Adak red king in waters with an eastern boundary of 171° W. long., a western boundary of the U.S.-Russian Convention Line of 1867, and a northern boundary of 55°30' N. lat.
- (3) Bristol Bay red king in waters with a northern boundary of 58° 39' N. lat., a southern boundary of 54° 36' N. lat., and a western boundary of 168° W. long. and including all waters of Bristol Bay.
- (4) BS/AI *C. opilio* and *C. bairdi* in Pacific Ocean waters with a northern boundary of 58° 52' N. lat., and an eastern boundary of 148° 50' W. long. and all Bering Sea and Pacific Ocean waters east of the U.S.-Russian Convention Line of 1867, excluding:
  - (i) Pacific Ocean waters with a northern boundary of 58° 52' N. lat., an eastern boundary of 148° 50' W. long., and a western boundary of 157° 27' W. long.
  - (ii) Pacific Ocean waters with an eastern boundary line from the southernmost tip of Kupreanof Point to the easternmost tip of Castle Rock and extending southeast (135°) from that easternmost point, and a western boundary line extending south (180°) from Scotch Cap Light.
  - (iii) Pacific Ocean waters with a western boundary line from the southernmost tip of Kupreanof Point to the easternmost tip of Castle Rock and extending southeast (135°) from that easternmost point, and an eastern boundary line of the longitude of the easternmost tip of Cape Kumlik.
- (5) Dutch Harbor brown king in waters with a northern boundary of 54° 36' N. lat., an eastern boundary of the longitude of Scotch Cap Light, and a western boundary of 171° W. long., excluding the waters with a southern boundary line from 54° 36' N. lat., 168° W. long., to 54° 36' N. lat., 171° W. long., to 55° 30' N. lat., 171° W. long., to 55° 30' N. lat., 173° 30' E. lat., a northern boundary of 68° 21' N. lat., an eastern boundary line from 54° 36' N. lat., 168° W. long., to 58° 39' N. lat., 168° W. long., to 59° 39' N. lat., and a western boundary of the U.S.-Russian Convention line of 1867.
- (6) Norton Sound red king and Norton Sound blue king in waters with a western boundary of 168° W. long., a southern boundary of 61° 49' N. lat., and a northern boundary of 65° 36' N. lat.
- (7) Pribilof red king and Pribilof blue king in waters with a northern boundary

of 58° 39' N. lat., an eastern boundary of 168° W. long., a southern boundary line from 54° 36' N. lat., 168° W. long., to 54° 36' N. lat., 171° W. long., to 55° 30' N. lat., 171° W. long., to 55° 30' N. lat., 173° 30' E. lat., and a western boundary of the U.S.-Russian Convention line of 1867.

(8) St. Matthew blue king in waters with a northern boundary of 61° 49' N. lat., a southern boundary of 58° 39' N. lat., and a western boundary of the U.S.-Russian Convention line of 1867.

*Catcher/processor vessel designation* means a license designation that authorizes a license holder:

- (1) To conduct directed fishing for license limitation groundfish and/or process license limitation groundfish on a vessel; or
- (2) To conduct directed fishing for crab species and/or process crab species on a vessel.

*Catcher vessel designation* means a license designation that authorizes a license holder:

- (1) To conduct directed fishing for, but not process, license limitation groundfish on a vessel; or
- (2) To conduct directed fishing for, but not process, crab species on a vessel.

*Community Development Plan (CDP)* means a business plan for the economic and social development of a specific Western Alaska community or group of communities under the CDQ program at § 679.30.

*Community Development Quota (CDQ)* means the annual amount of a particular CDQ species, in metric tons or numbers of animals, that a CDQ group is permitted to catch based on a CDQ allocation that has been requested in a proposed CDP and approved by NMFS.

*CDQ allocation* means a percentage of a CDQ reserve, defined at § 679.31, which is assigned to a CDQ group when NMFS approves a proposed CDP.

*CDQ fishing* means fishing for any CDQ or PSQ species.

*CDQ group* means a qualified applicant with an effective CDP.

*CDQ number* means a number assigned to the CDQ group by NMFS that is to be used on all reports submitted by the CDQ group.

*CDQ project* means any program that is funded by a CDQ group's assets for the economic or social development of a community or group of communities that are participating in a CDQ group, including but not limited to, infrastructure development, CDQ investments, employment and training programs, and CDP administration.

*CDQ representative* means the individual who is the official contact for

NMFS regarding all matters relating to a CDQ group's activities.

*CDQ species* means any species or species group that has been assigned to a CDQ reserve as specified at § 679.31(b)–(f).

*Crab species* means all crab species covered by the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands, including, but not limited to, red king crab (*Paralithodes camtschatica*), blue king crab (*Paralithodes platypus*), brown or golden king crab (*Lithodes aequispina*), scarlet or deep sea king crab (*Lithodes couesi*), Tanner or bairdi crab (*Chionoecetes bairdi*), opilio or snow crab (*Chionoecetes opilio*), grooved Tanner crab (*Chionoecetes tanneri*), and triangle Tanner crab (*Chionoecetes angulatus*).

*Crab species license* means a license issued by NMFS that authorizes the vessel designated on the license to conduct directed fishing for crab species.

*Directed fishing* means:

\* \* \* \* \*

(3) With respect to license limitation groundfish species, directed fishing as defined in paragraph (1) of this definition, or, with respect to license limitation crab species, the catching and retaining of any license limitation crab species.

*Eligible applicant* means:

(1) A qualified person who owned a vessel on June 17, 1995, that made legal landings of license limitation groundfish or crab species in the appropriate areas during the qualifying periods specified in § 679.4(i) (4) and (5), unless the fishing history of that vessel was transferred in conformance with the provisions in paragraph (2) of this definition; or

(2) A qualified person to whom the fishing history of a vessel that made legal landings of license limitation groundfish or crab species in the appropriate areas during the qualifying periods specified in § 679.4(i) (4) and (5) has been transferred by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this definition, for purposes of eligibility for an area/species endorsement specified at § 679.4(i)(5)(ii)(H), an eligible applicant also includes (i) an individual who held a State of Alaska permit for the Norton Sound king crab summer fishery in 1993 and 1994, and who made at least one landing of red or blue king crab in the

appropriate area during the period specified in § 679.4(i)(5)(ii)(H), or (ii) a corporation that owned or leased a vessel on June 17, 1995, that made at least one landing of red or blue king crab in the appropriate area during the period in § 679.4(i)(5)(ii)(H), and that was operated by an individual who was an employee or a temporary contractor;

*Eligible community* means a community:

(1) That is located within 50 nm from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the most western of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the GOA coast of the North Pacific Ocean, even if it is within 50 nm of the baseline of the Bering Sea.

(2) That is certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92–203) to be a native village.

(3) Whose residents conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI.

(4) That has not previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, unless the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The community of Unalaska is excluded under this provision.

*Groundfish license* means a license issued by NMFS that authorizes a vessel to conduct directed fishing for license limitation groundfish.

*Legal landing* means a landing in compliance with Federal and state commercial fishing regulations in effect at the time of landing.

*License holder* means the person who received a groundfish or crab species license by initial issuance or transfer, or the individual designated to use that license to conduct directed fishing for license limitation groundfish or crab species by the person who received a groundfish or crab species license by initial issuance or transfer.

*License limitation groundfish* means target species and the "other species" category, specified annually pursuant to § 679.20(a)(2), except that demersal shelf rockfish east of 140° W. longitude and sablefish managed under the IFQ program are not considered license limitation groundfish.

*Managing organization* means the organization responsible for managing all or part of a CDP.

*Maximum LOA (MLOA)* means:

(1) (Applicable through December 31, 1998) with respect to a vessel's eligibility for a moratorium permit:

(i) Except for a vessel under reconstruction on June 24, 1992, if the original qualifying LOA is less than 125 ft (38.1 m) LOA, 1.2 times the original qualifying LOA or 125 ft (38.1 m), whichever is less.

(ii) Except for a vessel under reconstruction on June 24, 1992, if the original qualifying LOA is equal to or greater than 125 ft (38.1 m), the original qualifying LOA.

(iii) For an original qualifying vessel under reconstruction on June 24, 1992, the LOA on the date reconstruction was completed, provided that maximum LOA is certified under § 679.4(c)(9).

(2) With respect to the license limitation program, 1.2 times the LOA of the vessel on June 24, 1992, or if the vessel was under reconstruction on June 24, 1992, 1.2 times the LOA of the vessel on the date reconstruction was completed, except that the maximum LOA of a vessel cannot exceed:

(i) 59 ft (18.0 m) LOA, if the LOA of the vessel on June 17, 1995, or on the date reconstruction was completed, was less than 60 ft (18.3 m);

(ii) 124 ft (37.8 m) LOA, if the LOA of the vessel on June 17, 1995, or on the date reconstruction was completed, was less than 125 ft (38.1 m); or

(iii) The LOA of the vessel on June 17, 1995, or on the date reconstruction was completed, if that LOA was 125 ft (38.1 m) or greater.

*Person* means:

(1) For purposes of IFQ species and the CDQ program, any individual who is a citizen of the United States or any corporation, partnership, association, or other entity (or its successor-in-interest), regardless of whether organized or existing under the laws of any state, who is a U.S. citizen.

(2) (Applicable through December 31, 1998). For the purposes of the moratorium, any individual who is a citizen of the United States or any U.S. corporation, partnership, association, or other entity (or their successor-in-interest), whether or not organized or existing under the laws of any state.

*Processing, or to process*, means the preparation of, or to prepare, fish or crab to render it suitable for human consumption, industrial uses, or long-term storage, including but limited to cooking, canning, smoking, salting, drying, freezing, or rendering into meal or oil, but does not mean icing, bleeding, heading, or gutting.

*Prohibited species quota (PSQ)* means the annual amount of a prohibited species listed in § 679.21(b)(1), in metric tons or numbers, that a CDQ group is

permitted to catch based on an allocation of that species which has been approved by NMFS.

*PSQ allocation* means a percentage of a PSQ reserve specified pursuant to § 679.31(g) that is assigned to a CDQ group when NMFS approves a proposed CDP.

*PSQ species* means any species that has been assigned to a PSQ reserve as specified at § 679.31(g) for purposes of the CDQ program.

*Qualified applicant* means, for the purposes of the CDQ program:

(1) A local fishermen's organization that represents an eligible community, or group of eligible communities, that is incorporated under the laws of the State of Alaska, or under Federal law, and whose board of directors is composed of at least 75 percent resident fishermen of the community (or group of communities); or

(2) A local economic development organization that represents an eligible community or group of communities, and that is incorporated under the laws of the State of Alaska, or under Federal law, specifically for the purpose of designing and implementing a CDP, and that has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities).

*Qualified person* means:

(1) With respect to the IFQ program, see IFQ Management Measures at § 679.40(a)(2).

(2) With respect to the license limitation program, a person who was eligible on June 17, 1995, to document a fishing vessel under Chapter 121, Title 46, U.S.C.

*Resident fisherman* means an individual with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in the community and is eligible to receive an Alaska Permanent Fund dividend at that address.

*State* means the State of Alaska.

*Vessel length category* means the length category designated on a license based on the MLOA of the vessel.

4. In § 679.4, paragraph (e) is revised and paragraphs (a)(6) and (i) are added to read as follows:

#### § 679.4 Permits.

(a) \* \* \*

(6) *Harvesting privilege*. Quota shares, permits, or licenses issued pursuant to this part are neither an absolute right to the resource nor any interest that is subject to the "takings" provision of the Fifth Amendment to the U.S. Constitution. Rather, such quota shares, permits, or licenses represent only a

harvesting privilege that may be revoked or amended subject to the requirements of the Magnuson-Stevens Act and other applicable law.

\* \* \* \* \*

(e) *CDQ permit*—(1) *Applicability*. This paragraph applies to vessels or processors required in § 679.32 to obtain a CDQ permit prior to harvesting or taking deliveries of CDQ catch.

(2) *Application for a permit*. A complete application for a CDQ permit must include the following:

(i) The name and signature of the person submitting the application and the date the application was signed.

(ii) The year for which the CDQ permit is requested.

(iii) Whether the vessel or processor has received a CDQ permit before and, if so, the most recent year.

(iv) The vessel or processor name.

(v) The Federal fishery or processor permit number.

(vi) The street address, mailing address, telephone number, and fax number of the person submitting the application.

(vii) And for the following types of vessels or processors:

(A) *Trawl catcher/processors and motherships*.

(1) A diagram drawn to scale showing the location(s) where all CDQ and PSQ will be weighed on a certified scale, the location where observers will sample unsorted catch, and the location of the observer sampling station as described at § 679.28(d), including the observer sampling scale.

(2) The name of the manufacturer and model of the motion-compensated observer sampling scale.

(3) A copy of the most recent at-sea scale inspection certificate.

(B) *Shoreside processing plants*. A diagram drawn to scale showing the location(s) where all CDQ and PSQ will be sorted and weighed on a scale certified by the State of Alaska.

(C) *Longline and pot catcher/processors and catcher vessels*. The name of manufacturer and model of the motion-compensated observer sampling scale.

(3) *Issuance of permit*. A CDQ permit will be issued to the applicant when the following requirements are met:

(i) The Regional Administrator receives a completed CDQ permit application.

(ii) NMFS completes an inspection of the vessel or processor and verifies that the following requirements are met.

(A) The scale(s) on trawl catcher/processors or motherships to weigh CDQ catch have been certified by an authorized weights and measures

agency within twelve months of the date of inspection.

(B) The scale on a trawl catcher/processor or mothership is located so that an observer can sample unsorted catch after it has been weighed on the scale.

(C) The observer sampling station on a vessel meets the requirements of § 679.28(d).

(D) The scale or scales in a shoreside processing plant meet the requirements of § 679.28(c) and the CDQ observer can monitor the sorting and weighing of all CDQ species.

(4) *Duration*. CDQ permits are effective the calendar year requested by the applicant. Issuance of a CDQ permit means that the vessel or processor complied with the requirements in paragraph (e)(3) of this section on the date the vessel or processor was inspected. Once permitted, vessel and processor owners and operators also are responsible for complying with all equipment and operational requirements in § 679.28 and § 679.32.

\* \* \* \* \*

(i) *Licenses for license limitation groundfish or crab species*—(1) *General requirements*. (i) In addition to the permit and licensing requirements prescribed in this part, and except as provided in paragraph (i)(2) of this section, each vessel within that portion of the Gulf of Alaska and the Bering Sea and Aleutian Islands management area over which the United States exercises exclusive fishery management authority must have a groundfish license on board at all times it is engaged in fishing activities defined in § 679.2 as directed fishing for license limitation groundfish. This groundfish license, issued by NMFS to a qualified person, authorizes a license holder to conduct directed fishing for license limitation groundfish only in the specific area(s) designated on the license and may only be used on a vessel that complies with the vessel designation and vessel length category specified on the license.

(ii) In addition to the permit and licensing requirements prescribed in this part, and except as provided in paragraph (i)(2) of this section, each vessel within that portion of the Bering Sea and Aleutian Islands area over which the United States exercises exclusive fishery management authority must have a crab species license on board at all times it is engaged in fishing activities defined in § 679.2 as directed fishing for crab species. This crab species license, issued by NMFS to a qualified person, authorizes a license holder to conduct directed fishing for crab species only for the specific species

and in the specific area(s) designated on the license, and may only be used on a vessel that complies with the vessel designation and vessel length category specified on the license.

(2) *Exempt vessels.* Notwithstanding the requirements of paragraph (i)(1) of this section,

(i) A catcher vessel or catcher/processor vessel that does not exceed 26 ft (7.9 m) LOA may conduct directed fishing for license limitation groundfish in the Gulf of Alaska without a groundfish license;

(ii) A catcher vessel or catcher/processor vessel that does not exceed 32 ft (9.8 m) LOA may conduct directed fishing for crab species in the Bering Sea and Aleutian Islands management area and also may conduct directed fishing for license limitation groundfish in the Bering Sea and Aleutian Islands management area without a groundfish or crab species license;

(iii) A catcher vessel or catcher/processor vessel that does not exceed 60 ft (18.3 m) LOA may use a maximum of 5 jig machines, one line per jig machine, and a maximum of 15 hooks per line, to conduct directed fishing for license limitation groundfish in the Bering Sea and Aleutian Islands management area without a groundfish license; or

(iv) A catcher vessel or catcher/processor vessel that does not exceed 125 ft (38.1 m) LOA, and that was, after November 18, 1992, specifically constructed for and used exclusively in accordance with a CDQ approved by the Secretary of Commerce under subpart C of this part, and is designed and equipped to meet specific needs that are described in the CDQ.

(3) *Vessel designations and vessel length categories*—(i) *General.* A license can be used only on a vessel that complies with the vessel designation specified on the license and that has an LOA less than or equal to the MLOA specified on the license.

(ii) *Vessel designations*—(A) *Catcher vessel.* A license will be assigned the vessel designation of catcher vessel if:

(1) For license limitation groundfish, no license limitation groundfish were processed on the vessel that qualified for the groundfish license under paragraph (i)(4) of this section during the period January 1, 1994, through June 17, 1995, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (i)(4)(ii) of this section; or

(2) For crab species, no crab species were processed on the vessel that qualified for the crab species license under paragraph (i)(5) of this section during the period January 1, 1994, through December 31, 1994, or in the

most recent calendar year of participation during the area/species endorsement qualifying period specified in paragraph (i)(5)(ii) of this section.

(B) *Catcher/processor vessel.* A license will be assigned the vessel designation of catcher/processor vessel if:

(1) For license limitation groundfish, license limitation groundfish were processed on the vessel that qualified for the groundfish license under paragraph (i)(4) of this section during the period January 1, 1994, through June 17, 1995, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (i)(4)(ii) of this section; or

(2) For crab species, crab species were processed on the vessel that qualified for the crab species license under paragraph (i)(5) of this section during the period January 1, 1994, through December 31, 1994, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (i)(5)(ii) of this section.

(C) *Changing a vessel designation.* A person who holds a groundfish license or a crab species license with a catcher/processor vessel designation may, upon request to the Regional Administrator, have the license reissued with a catcher vessel designation. The vessel designation change to a catcher vessel will be permanent and that license will be valid for only those activities specified in the definition of catcher vessel designation at § 679.2.

(iii) *Vessel length categories.* A license will be assigned one of the following three vessel length categories based on its LOA on June 17, 1995:

(A) Vessel length category "A" if the LOA of the qualifying vessel on June 17, 1995, was equal to or greater than 125 ft (38.1 m) LOA.

(B) Vessel length category "B" if the LOA of the qualifying vessel on June 17, 1995, was equal to or greater than 60 ft (18.3 m) but less than 125 ft (38.1 m) LOA.

(C) Vessel length category "C" if the LOA of the qualifying vessel on June 17, 1995, was less than 60 ft (18.3 m) LOA.

(4) *Qualifications for a groundfish license.* A groundfish license will be issued to an eligible applicant who owned a vessel that meets the criteria in paragraphs (i)(4)(i) and (i)(4)(ii) of this section.

(i) *General qualification periods (GQP).* (A) To qualify for one or more of the area endorsements in paragraphs (i)(4)(ii)(A) and (i)(4)(ii)(B) of this section, a vessel must have made at least one legal landing of any amount of license limitation groundfish species

harvested in the Bering Sea and Aleutian Islands management area or in State waters shoreward of that management area from:

(1) January 1, 1988, through June 27, 1992;

(2) January 1, 1988, through December 31, 1994, provided that the landing was of license limitation groundfish harvested using pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or

(3) January 1, 1988, through June 17, 1995, provided that the vessel qualified for a crab fisheries endorsement under the Moratorium on Entry.

(B) To qualify for one or more of the area endorsements in paragraphs (i)(4)(ii)(C) through (i)(4)(ii)(E) of this section, a vessel must have made at least one legal landing of any amount of license limitation groundfish species harvested in the Gulf of Alaska or in State waters shoreward of the Gulf of Alaska from:

(1) January 1, 1988, through June 27, 1992;

(2) January 1, 1988, through December 31, 1994, provided that the landing was of license limitation groundfish harvested using pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or

(3) January 1, 1988, through June 17, 1995, provided that the vessel qualified for a crab fisheries endorsement under the Moratorium on Entry.

(ii) *Endorsement qualification periods (EQP).* A groundfish license will be assigned one or more area endorsements based on the criteria in paragraphs (i)(4)(ii)(A) through (i)(4)(ii)(E) of this section.

(A) *Aleutian Islands area endorsement.* A vessel of any length (vessel categories "A" through "C") must have made at least one legal landing of any amount of license limitation groundfish harvested from January 1, 1992, through June 17, 1995, in the Aleutian Islands Subarea or in State waters shoreward of that subarea for an Aleutian Islands area endorsement.

(B) *Bering Sea area endorsement.* A vessel of any length (vessel categories "A" through "C") must have made at least one legal landing of any amount of license limitation groundfish harvested from January 1, 1992, through June 17, 1995, in the Bering Sea Subarea or in State waters shoreward of that subarea for a Bering Sea area endorsement.

(C) *Central Gulf area endorsement.* (1) A vessel assigned to vessel category "A" must have made at least one legal landing of any amount of license limitation groundfish harvested in each of any 2 calendar years from January 1,

1992, through June 17, 1995, in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district, for a Central Gulf area endorsement.

(2) A vessel assigned to vessel category "B" must have made at least one legal landing of any amount of license limitation groundfish harvested in each of any 2 calendar years from January 1, 1992, through June 17, 1995, or at least four legal landings of license limitation groundfish harvested from January 1, 1995, through June 17, 1995, in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in State waters shoreward of that district, for a Central Gulf area endorsement.

(3) A vessel assigned to vessel category "C" must have made at least one legal landing of any amount of license limitation groundfish harvested from January 1, 1992, through June 17, 1995, in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district, for a Central Gulf area endorsement.

(D) *Southeast Outside area endorsement.* (1) A vessel assigned to vessel category "A" must have made at least one legal landing of any amount of license limitation groundfish harvested in each of any 2 calendar years from January 1, 1992, through June 17, 1995, in the Southeast Outside District or in State waters shoreward of that district for a Southeast Outside area endorsement.

(2) A vessel assigned to vessel category "B" must have made at least one legal landing of any amount of license limitation groundfish harvested in each of any 2 calendar years from January 1, 1992, through June 17, 1995, in the Southeast Outside District or in State waters shoreward of that district, or at least four legal landings of license limitation groundfish harvested from January 1, 1995, through June 17, 1995, in the Southeast Outside District or in State waters shoreward of that district for a Southeast Outside area endorsement.

(3) A vessel assigned to vessel category "C" must have made at least one legal landing of any amount of license limitation groundfish harvested from January 1, 1992, through June 17, 1995, in the Southeast Outside District or in State waters shoreward of that district for a Southeast Outside area endorsement.

(E) *Western Gulf area endorsement.* (1) A vessel assigned to vessel category

"A" must have made at least one legal landing of any amount of license limitation groundfish harvested in each of any 2 calendar years from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area for a Western Gulf area endorsement.

(2) A vessel assigned to vessel category "B" and the vessel designation of catcher vessel must have made at least one legal landing of any amount of license limitation groundfish harvested from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area for a Western Gulf area endorsement.

(3) A vessel assigned to vessel category "B" and the vessel designation of catcher/processor vessel must have made at least one legal landing of any amount of license limitation groundfish harvested in each of any 2 calendar years from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area, or at least four legal landings of any amount of license limitation groundfish harvested from January 1, 1995, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area for a Western Gulf area endorsement.

(4) A vessel assigned to vessel category "C" must have made at least one legal landing of any amount of license limitation groundfish harvested from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area for a Western Gulf area endorsement.

(iii) An eligible applicant that is issued a groundfish license based on a vessel's qualifications under paragraph (i)(4)(i)(A)(2) or (i)(4)(i)(B)(2) of this section must choose only one area endorsement for that groundfish license even if the vessel qualifies for more than one area endorsement.

(iv) Notwithstanding the provisions in paragraph (i)(4) of this section, an eligible applicant whose vessel made a legal landing of any amount of license limitation groundfish harvested in the Bering Sea and Aleutian Islands management area or in State waters shoreward of that management area during the GQP defined in paragraph (i)(4)(i)(A) of this section, and made legal landings of any amount of license limitation groundfish harvested in one of the areas of the Gulf of Alaska or in State waters shoreward of one of the areas of the Gulf of Alaska during the EQP defined in paragraphs (i)(4)(ii) (C), (D), and (E) of this section, but did not

make legal landings of any amount of license limitation groundfish harvested in the Gulf of Alaska or in State waters shoreward of the Gulf of Alaska during the GQP defined in paragraph (i)(4)(i)(B) of this section, and did not make legal landings of any amount of license limitation groundfish harvested in one of the areas of the Bering Sea and Aleutian Islands management area or in State waters shoreward of one of the areas of that management area during the EQP defined in paragraphs (i)(4)(ii) (A) and (B) of this section, will be issued a license with area endorsements based on the legal landings of license limitation groundfish harvested during the EQP and meeting the requirements in paragraphs (i)(4)(ii) (C), (D), and (E) of this section.

(v) Notwithstanding the provisions in paragraph (i)(4) of this section, an eligible applicant whose vessel made a legal landing of any amount of license limitation groundfish harvested in the Gulf of Alaska or in State waters shoreward of the Gulf of Alaska during the GQP defined in paragraph (i)(4)(i)(B) of this section, and made legal landings of any amount of license limitation groundfish harvested in one of the areas of the Bering Sea and Aleutian Islands management area or in State waters shoreward of one of the areas of that management area during the EQP defined in paragraphs (i)(4)(ii) (A) and (B) of this section, but did not make legal landings of any amount of license limitation groundfish harvested in the Bering Sea and Aleutian Islands management area or in State waters shoreward of that management area during the GQP defined in paragraph (i)(4)(i)(A) of this section, and did not make legal landings of license limitation groundfish harvested in one of the areas of the Gulf of Alaska or in State waters shoreward of one of the areas of the Gulf of Alaska during the EQP defined in paragraph (i)(4)(ii) (C), (D), and (E) of this section, will be issued a license with area endorsements based on the legal landings of license limitation groundfish harvested during the EQP and meeting the requirements in paragraphs (i)(4)(ii) (A) and (B) of this section.

(5) *Qualifications for a crab species license.* A crab species license will be issued to an eligible applicant who owned a vessel that meets the criteria in paragraphs (i)(5) (i) and (ii) of this section, except that vessels are exempt from the requirements in paragraph (i)(5)(i) of this section for the area/species endorsements in paragraph (i)(5)(ii) (A) and (H) of this section.

(i) *General qualification period (GQP).* To qualify for one or more of the area/

species endorsements in paragraph (i)(5)(ii) of this section, a vessel must have:

(A) Made at least one legal landing of any amount of crab species harvested from January 1, 1988, through June 27, 1992; or

(B) Made at least one legal landing of any amount of crab species harvested from January 1, 1988, through December 31, 1994, providing that the vessel qualified for a groundfish fisheries endorsement under the Moratorium on Entry.

(ii) *Area/Species Endorsements.* A crab species license will be assigned one or more area/species endorsements specified at § 679.2 based on the criteria in paragraphs (i)(5)(ii) (A) through (H) of this section.

(A) *Pribilof red king and Pribilof blue king.* A vessel must have made at least one legal landing of any amount of red king or blue king crab harvested in the area described in the definition for the Pribilof red king and Pribilof blue king area/species endorsement in § 679.2 from January 1, 1993, through December 31, 1994, to qualify for a Pribilof red king and Pribilof blue king area/species endorsement.

(B) *BS/AI C. opilio and C. bairdi.* A vessel must have made at least three legal landings of any amount of *C. opilio* or *C. bairdi* crab harvested in the area described in the definition for the BS/AI *C. opilio* or *C. bairdi* area/species endorsement in § 679.2 from January 1, 1992, through December 31, 1994, to qualify for a *C. opilio* and *C. bairdi* area/species endorsement.

(C) *St. Matthew blue king.* A vessel must have made at least one legal landing of any amount of blue king crab harvested in the area described in the definition for the St. Matthews blue king area/species endorsement in § 679.2 from January 1, 1992, through December 31, 1994, to qualify for a St. Matthew blue king area/species endorsement.

(D) *Adak brown king.* A vessel must have made at least three legal landings of any amount of brown king crab harvested in the area described in the definition for the Adak brown king area/species endorsement in § 679.2 from January 1, 1992, through December 31, 1994, to qualify for an Adak brown king area/species endorsement.

(E) *Adak red king.* A vessel must have made at least one legal landing of any amount of red king crab harvested in the area described in the definition for the Adak red king area/species endorsement in § 679.2 from January 1, 1992, through December 31, 1994, to qualify for an Adak red king area/species endorsement.

(F) *Bristol Bay red king.* A vessel must have made at least one legal landing of any amount of red king crab harvested in the area described in the definition for the Bristol Bay red king area/species endorsement in § 679.2 from January 1, 1991, through December 31, 1994, to qualify for a Bristol Bay red king area/species endorsement.

(G) *Dutch Harbor brown king.* A vessel must have made at least three legal landings of any amount of brown king crab harvested in the area described in the definition for the Dutch Harbor brown king area/species endorsement in § 679.2 from January 1, 1992, through December 31, 1994, to qualify for a Dutch Harbor brown king area/species endorsement.

(H) *Norton Sound red king and Norton Sound blue king.* A vessel must have made at least one legal landing of any amount of red king or blue king crab harvested in the area described in the definition for the Norton Sound red king and Norton Sound blue king area/species endorsement in § 679.2 from January 1, 1993, through December 31, 1994, to qualify for a Norton Sound red king and Norton Sound blue king area/species endorsement.

(6) *Application for a groundfish license or a crab species license.* (i) An eligible applicant must meet all the criteria for eligibility in paragraph (i) of this section and submit a complete application to the Regional Administrator to receive a groundfish license or a crab species license.

(ii) A successor-in-interest may apply in the place of an eligible applicant if the eligible applicant is unable to apply for a license because:

(A) Of death or disability at the time of application, if the eligible applicant is an individual; or

(B) The entity is no longer in existence at the time of application, if the eligible applicant is not an individual.

(iii) An application for a groundfish license or a crab species license may be requested from and submitted to the Restricted Access Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668. An application may be requested also by telephone by calling 907-586-7202 or 800-304-4846 or by facsimile by calling 907-586-7354. To be complete, an application for a groundfish license or a crab species license must be signed by the eligible applicant, or the person who represents the eligible applicant, and include:

(A) The name of the vessel, state registration number of the vessels and, the U.S. Coast Guard documentation number of the vessel, if any.

(B) The name, business address, and telephone and fax number of the owner of the vessel as of June 17, 1995, including all owners if more than one.

(C) The name of the managing company.

(D) Valid documentation of the legal landings that qualify the vessel for a groundfish license or a crab species license if requested by the Regional Administrator due to an absence of landing records for the vessel during the qualifying periods.

(E) Valid documentation of the vessel's LOA on June 17, 1995. For purposes of determining LOA for the License Limitation Program, an eligible applicant must provide evidence showing:

(1) The vessel's length on June 24, 1992, or the vessel's length on the date reconstruction was completed if the vessel was being reconstructed on June 24, 1992;

(2) The vessel's length on June 17, 1995; and

(3) The date the vessel was lengthened and the vessel's length before and after that date, if the vessel was lengthened after June 24, 1992.

(F) Valid documentation to support the vessel's designation of catcher vessel or catcher/processor vessel based on the criteria in § 679.4(i)(3)(i).

(7) *Transfers*—(i) *General.* A license holder may request NMFS, on a transfer request form provided by NMFS, to transfer the license to a transferee designated by the license holder on the transfer request form. The designated transferee may not conduct directed fishing for license limitation groundfish or crab species until NMFS reissues the license in the name of the designated transferee.

(ii) *Reissuance procedures.* A license holder who wishes to transfer the license to another person must request NMFS to reissue the license to that person by submitting a complete transfer request form to NMFS to the address specified in paragraph (i)(6)(ii) of this section. Forms are available from that address.

(A) To be complete, a transfer request form must be signed and dated by the license holder and include:

(1) The name of the license holder (the names of all persons holding the license must be included if more than one person holds the license);

(2) The name of the person who is the designated transferee and to whom the license is to be reissued (the names of all persons who are the designated transferee must be included if more than one person is the designated transferee);

(3) Valid documentation that the designated transferee(s) is or are able to



document a fishing vessel under Chapter 121, Title 46, U.S.C.

(B) The Regional Administrator shall reissue the license to the designated transferee if:

(1) A complete transfer request has been submitted by the transferor.

(2) The designated transferee is a person able to document a fishing vessel under Chapter 121, Title 46, U.S.C..

(3) There are no fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations involving any party to the transfer.

(4) The transfer will not cause the designated transferee to exceed the license caps in § 679.7(i).

(iii) *Severability of licenses.* (A) Area endorsements or area/species endorsements specified on a license are not severable from the license and must be transferred together.

(B) A groundfish license and a crab species license issued based on the legal landings of the same vessel and initially issued to the same qualified person are not severable and must be transferred together.

(8) *Other provisions.* (i) Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson-Stevens Fishery Conservation and Management Act or any regulations issued pursuant thereto, is subject to the civil and criminal penalty provisions and the civil forfeiture provisions of the Magnuson-Stevens Fishery Conservation and Management Act, part 621 of this chapter, 15 CFR part 904 (Civil Procedure), and other applicable law. Penalties include, but are not limited to, permanent or temporary sanctions to licenses.

(ii) Notwithstanding the provisions of the license limitation program in this part, vessels fishing for species other than license limitation groundfish as defined in § 679.2 that were authorized under Federal regulations to incidentally catch license limitation groundfish without a Federal fisheries permit described at § 679.4(b) will continue to be authorized to catch the maximum retainable bycatch amounts of license limitation groundfish as provided in this part without a groundfish license.

(iii) An eligible applicant, who qualifies for a groundfish license or crab species license but whose vessel has been subsequently lost or destroyed, will be issued the license for which the lost or destroyed vessel qualified. This license:

(A) Will have the vessel designation and vessel length category of the lost or destroyed vessel.

(B) Cannot be used to conduct directed fishing for license limitation groundfish or to conduct directed fishing for crab species on a vessel that has an LOA greater than the MLOA designated on the license.

(iv) A qualified person who owned a vessel on June 17, 1995, that made a legal landing of license limitation groundfish, or crab species if applicable, between January 1, 1988, and February 9, 1992, but whose vessel was unable to meet all the criteria in paragraph (i)(4) of this section for a groundfish license or paragraph (i)(5) of this section for a crab species license because of an unavoidable circumstance (i.e., the vessel was lost, damaged, or otherwise unable to participate in the license limitation groundfish or crab fisheries) may receive a license if the qualified person is able to demonstrate:

(A) That the owner of the vessel at the time of the unavoidable circumstance held a specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel during a specific time period in a specific area.

(B) That the specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel was thwarted by a circumstance that was:

(1) Unavoidable.

(2) Unique to the owner of that vessel, or unique to that vessel.

(3) Unforeseen and reasonably unforeseeable to the owner of the vessel.

(C) That the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species actually occurred.

(D) That, under the circumstances, the owner of the vessel took all reasonable steps to overcome the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species.

(E) That any amount of license limitation groundfish or appropriate crab species was harvested on the vessel in the specific area that corresponds to the area endorsement or area/species endorsement for which the qualified person who owned a vessel on June 17, 1995, is applying and the harvested license limitation groundfish or crab species was legally landed after the vessel was prevented from participating by the unavoidable circumstance but before June 17, 1995.

(v) A groundfish license or a crab species license may be used on a vessel that complies with the vessel designation on the license and that does not exceed the MLOA on the license.

5. In § 679.5, new paragraphs (m) and (n) are added to read as follows:

**§ 679.5 Recordkeeping and reporting.**

\* \* \* \* \*

(m) *CDQ check-in/check-out report.*

The CDQ representative must submit a check-in/check-out report for each vessel harvesting groundfish and halibut CDQ under Subpart C of this part.

(1) *Check-in.* The CDQ representative must submit a check-in message by fax to NMFS before the operator of a catcher vessel or catcher/processor begins harvesting groundfish or halibut CDQ. The check-in message must be submitted before the first trip of the year and if CDQ fishing begins again after a check-out message has been sent for the vessel.

(2) *Check-out.* The CDQ representative must submit a check-out message by fax to NMFS after the delivery of CDQ catch by a catcher vessel unless that vessel will be CDQ fishing on its next trip and after the retrieval of a CDQ haul or set by a catcher/processor unless that vessel will be CDQ fishing on its next haul or set. The check-out message must be received by NMFS before the vessel deploys gear in a non-CDQ fishery.

(3) *Information required.* The CDQ representative must include the following in each CDQ check-in/check-out report.

(i) The CDQ number.

(ii) The vessel name.

(iii) The Federal fisheries or processor number or ADF&G number if the vessel is not required to have a Federal fisheries permit.

(iv) *Check-in message—(A) Catcher vessel.* The date the CDQ trip will start.

(B) *Catcher/processor.* The date CDQ fishing will start and the first haul or set number for the CDQ catch.

(v) *Check-out message—(A) Catcher vessel.* The date CDQ catch was delivered and name of processor that received delivery.

(B) *Catcher/processor.* The date CDQ fishing ended and the last haul or set number for the CDQ catch.

(vi) The CDQ representative's printed name and signature, and the date of signature.

(n) *CDQ catch report—(1) Applicability.* The CDQ representative must submit a catch report summarizing the CDQ and PSQ catch for each vessel each week that CDQ fishing occurs.

(2) *Time limits and submittal.* The CDQ representative must submit a CDQ catch report to NMFS no later than 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period.

(3) *Information required.* The CDQ representative must include the following in each CDQ catch report.

- (i) Whether the submission is an original or revised report.
- (ii) The CDQ number.
- (iii) The week ending date.
- (iv) *CDQ and PSQ catch information.* The CDQ representative must report the following CDQ and PSQ catch information for each catcher/processor harvesting and each catcher vessel delivering CDQ or PSQ during the weekly reporting period.

(A) The Federal fisheries or processor number or ADF&G number if the vessel is not required to have a Federal fisheries permit.

(B) The vessel name.

(C) The gear type used to harvest CDQ.

(D) The total weight to the nearest 0.01 mt or the total number of catch of all species in each category of CDQ or PSQ. The catch of nonallocated species from any vessel; the catch of crab, herring, or salmon PSQ from non-trawl vessels; or the catch of halibut PSQ from vessels using pot gear should not be reported on the CDQ catch report.

(v) The CDQ representative's printed name, signature, and date of signature.

6. In § 679.7, paragraph (d) is revised and paragraph (j) is added to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(d) *CDQ.* (1) Participate in a Western Alaska CDQ program in violation of subpart C of this part.

(2) Fail to submit, submit inaccurate information on, or intentionally submit false information on any report, application, or statement required under this part.

(3) Participate as a community in more than one CDP unless the second CDP is for a halibut CDQ fishery only.

(4) Harvest groundfish or halibut CDQ or PSQ on behalf of a CDQ group if the vessel is not listed as an eligible vessel on an approved CDP, before the CDQ representative has submitted a check-in report for the vessel, or after the CDQ representative has submitted a check-out report for the vessel.

(5) For a catcher/processor or shoreside processor, catch or take delivery of CDQ without a valid CDQ permit.

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

(7) Use trawl gear to harvest groundfish CDQ in Zone 1 after the CDQ group's red king crab PSQ or *C. bairdi* Tanner crab PSQ in Zone 1 is attained.

(8) Use trawl gear to harvest groundfish CDQ in Zone 2 after the CDQ

group's PSQ for *C. bairdi* Tanner crab in Zone 2 is attained.

(9) Use trawl gear to harvest groundfish CDQ in Herring Savings Areas (HSA) after the CDQ group's herring PSQ is attained.

(10) Use trawl gear to harvest groundfish CDQ in the Chinook Salmon Savings Area between January 1 and April 15 after the CDQ group's chinook salmon PSQ is attained.

(11) Use trawl gear to harvest groundfish CDQ in the Chum Salmon Savings Area between September 1 and October 14 after the CDQ group's non-chinook salmon PSQ is attained.

(12) For a vessel operator, harvest CDQ fixed gear sablefish or halibut with other than fixed gear.

(13) For a catcher vessel using trawl gear, discard any groundfish CDQ species or salmon or herring PSQ before it is delivered to an eligible processor under a CDP.

(14) For a vessel using trawl gear, release CDQ catch from the codend before it is brought onboard the vessel and weighed on a certified scale. This includes, but is not limited to, "codend dumping" and "codend bleeding."

(15) For a catcher vessel, catch, retain on board, or deliver CDQ groundfish or halibut together with non-CDQ groundfish or halibut, except that IFQ sablefish and halibut may be caught, retained, or delivered together with CDQ groundfish and halibut by vessels using fixed gear.

(16) For a catcher/processor or an observed catcher vessel, combine catch from more than one CDQ group or from CDQ and IFQ in the same haul or set.

(17) Use any CDQ groundfish as a basis species for calculating retainable bycatch amounts under § 679.20.

(18) For a CDQ representative, use methods other than those approved in the CDP to report CDQ and PSQ on the CDQ catch report.

(19) Fail to comply with the requirements of a CDP.

\* \* \* \* \*

(j) *License Limitation Program*—(1) *Number of licenses.* (i) Hold more than ten groundfish licenses in the name of that person at any time, except as provided in paragraph (i)(1)(iii) of this section;

(ii) Hold more than five crab species licenses in the name of that person at any time, except as provided in paragraph (i)(1)(iii) of this section; or

(iii) Hold more licenses than allowed in paragraphs (i)(1) (i) and (ii) of this section unless those licenses were issued to that person in the initial distribution of licenses. Any person who receives in the initial distribution

more licenses than allowed in paragraphs (i)(1) (i) and (ii) of this section shall have no transfer applications for receipt of additional licenses approved until the number of licenses in the name of that person is less than the numbers specified in paragraphs (i)(1) (i) and (ii) of this section; furthermore, when a person becomes eligible to receive licenses by transfer through the provisions of this paragraph, that person is subject to the provisions in paragraphs (i)(1) (i) and (ii) of this section;

(2) Use gear other than fixed gear east of 140° W. long., regardless of the gear used to qualify for the license;

(3) Conduct directed fishing for license limitation groundfish without a groundfish license, except as provided in § 679.4(i)(2);

(4) Conduct directed fishing for crab species without a crab species license, except as provided in § 679.4(i)(2);

(5) Process license limitation groundfish on board a vessel without a groundfish license with a Catcher/processor designation;

(6) Process crab species on board a vessel without a crab species license with a Catcher/processor designation;

(7) Use a license on a vessel that has an LOA that exceeds the MLOA of the vessel that was used to originally qualify for that license;

(8) Lease a groundfish or crab species license.

7. In § 679.20, paragraphs (c)(1)(iii), (c)(2)(ii), and (c)(3)(iii) are revised, and paragraph (e)(3) is added to read as follows:

**§ 679.20 General limitations.**

\* \* \* \* \*

(c) *Annual Specifications*—(1) *Proposed specifications*—\* \* \*

(iii) *BSAI.* The BSAI proposed specifications will specify the annual TAC and initial TAC amounts for each target species and the "other species" category and apportionments thereof established under § 679.20(a)(2), prohibited species catch allowances established under § 679.21, seasonal allowances of pollock TAC (including pollock CDQ), and reserve amounts established under § 679.31 (b), (d), (e), and (g) for pollock CDQ, sablefish CDQ, groundfish CDQ, and PSQ.

(2) *Interim specifications.* \* \* \*

(ii) *BSAI.* Except for pollock and the hook and line and pot gear allocation of sablefish, one quarter of each proposed initial TAC and apportionment thereof, one quarter of each CDQ reserve established under § 679.31 (b), (d), (e), and (g), and one quarter of the proposed prohibited species catch allowance established under § 679.21.

(A) The interim specifications for pollock will be equal to the first seasonal allowance under paragraph (a)(5)(i)(A) of this section that is published in the proposed specifications under paragraph (c)(1) of this section.

(B) The interim specifications for CDQ pollock will be equal to the first seasonal allowance that is published in the proposed specifications under paragraph (c)(1) of this section.

(3) *Final specifications.* \* \* \*

(iii) The final specifications will specify the annual TAC for each target species and the "other species" category and apportionments thereof, prohibited species catch allowances, seasonal allowances of the pollock TAC (including pollock CDQ), and the reserve amounts established under § 679.31 (b), (d), (e) and (g) for pollock CDQ, sablefish CDQ, groundfish CDQ, and PSQ, respectively.

\* \* \* \* \*

(e) \* \* \*

(3) *CDQ.* Retained CDQ species may not be used as a basis species to calculate maximum retainable bycatch amounts.

\* \* \* \* \*

8. In § 679.21, paragraphs (b)(2)(ii), (b)(3), (e)(1) (v) and (vi) are revised, and paragraphs (e)(3)(iv)(G) and (e)(4)(ii)(F) are added to read as follows:

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) Sort its catch immediately after retrieval of the gear and, except as provided below, return all prohibited species or parts thereof to the sea immediately, with a minimum of injury, regardless of its condition, after allowing for sampling by an observer if an observer is aboard. The following exceptions are made.

(A) Salmon prohibited species catch in the BSAI non-CDQ groundfish fisheries under paragraph (c) of this section and § 679.26.

(B) Catcher vessels using trawl gear in the CDQ fisheries under subpart C of this part must retain all salmon and herring prohibited species catch and deliver it to a processor with a valid CDQ permit.

(3) *Rebuttable presumption.* Except as provided under paragraph (c) of this section, § 679.26, or for salmon and herring retained by catcher vessels using trawl gear in the CDQ fisheries, there will be a rebuttable presumption that any prohibited species retained on board a fishing vessel regulated under

this part was caught and retained in violation of this section.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(v) *Chinook salmon.* The PSC limit of chinook salmon caught while conducting any non-CDQ trawl fishery for groundfish in the BSAI between January 1 and April 15 is 44,400 fish. A chinook salmon prohibited species catch reserve of 3,600 fish is established for the CDQ fisheries under § 679.31.

(vi) *Non-chinook salmon.* The PSC limit of non-chinook salmon caught while conducting any non-CDQ trawl fishery for groundfish in the CVOA between August 15 and October 14 is 38,850 fish. A non-chinook salmon prohibited species catch reserve of 3,150 fish is established for the CDQ fisheries under § 679.31.

(3) \* \* \*

(iv) \* \* \*

(G) *CDQ fisheries.* 7.5 percent of the PSC limits are apportioned to the CDQ fisheries under § 679.31.

(4) \* \* \*

(ii) \* \* \*

(F) *CDQ fisheries.* 7.5 percent of the non trawl halibut PSC limit is apportioned to the CDQ fisheries under § 679.31.

9. In § 679.23, paragraph (e)(3) is amended by revising the headings of paragraphs (e)(3) (i) and (ii) and by adding paragraph (e)(3)(iii) to read as follows:

**§ 679.23 Seasons.**

\* \* \* \* \*

(e) \* \* \* \* \*

(3) \* \* \*

(i) *Halibut CDQ.* \* \* \*

(ii) *Sablefish CDQ.* \* \* \*

(iii) *Groundfish CDQ.* Directed fishing for groundfish species, other than fixed gear sablefish under the Western Alaska CDQ program, pursuant to subpart C of this part is authorized from 0001 hours, A.l.t., January 1, through the end of the fishing year, except as provided in paragraph (c) of this section.

\* \* \* \* \*

10. In subpart B, § 679.28 proposed to be amended at 62 FR 32564, is further proposed to be amended by revising paragraph (a) and adding new paragraphs (c) through (f) as follows:

**§ 679.28 Equipment and Operational Requirements for Catch Weight Measurement.**

(a) *Applicability.* This section contains the requirements for scales certified by NMFS to weigh catch at sea, scales certified by the State of Alaska, observer sampling stations, and certified bins for volumetric estimates of catch

weight. Requirements for specific vessels or processors to use this equipment are made elsewhere in this part.

\* \* \* \* \*

(c) *Scales certified by the State of Alaska.* Scales used to weigh groundfish catch that also are required to be certified by the State of Alaska under Alaska Statutes 45.75 must meet the following requirements.

(1) *Certification.* The scale must display a valid State of Alaska certification sticker indicating that the scale was certified within 12 months of the date of inspection.

(2) The scale and scale display must be visible simultaneously to the observer. Observers, NMFS personnel, or an authorized officer must be allowed to observe the weighing of fish on the scale and be able to read the scale display at all times.

(3) *Printed scale weights.* Printouts of the scale weight of each haul, set, or delivery must be made available to observers, NMFS personnel, or an authorized officer at the time they are printed and anytime thereafter for the duration of the fishing year. Printouts must be retained by the operator or manager as specified in § 679.5(a)(15).

(d) *Observer Sampling Station—(1) Accessibility.* All of the equipment required for an observer sampling station must be [made] available to the observer at all times while a sampling station is required and the observer is on board the vessel.

(2) *Location—(i) Motherships or catcher/processors and catcher vessels using trawl gear.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch.

(ii) *Longline or pot catcher vessels or catcher/processors.* The observer sampling station must be located within 3 m of the location where fish are brought on board the vessel.

(3) *Minimum work space.* The observer must have a working area at least 1.8 m wide by 2.5 m long including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright in the area in front of the table and scale.

(4) *Table.* The observer's sampling table must be at least 0.6 m deep, 1.2 m wide and 0.9 m high and must not be more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area used for the motion-compensated platform scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(5) *Motion-compensated platform scale*—(i) *Specifications*. The electronic motion-compensated platform scale must have a capacity of at least 50 kg. The scale must be mounted within 1 m of the observer's sampling table.

(ii) *Test weights*. At least two 5-kg, two 10-kg, and one 20-kg test weights must be on board the vessel at all times when an observer sampling station is required. Each test weight must have an identifying number or character code stamped or otherwise permanently affixed to it. The identification number and weight of each test standard to the nearest 0.1 kg must be verified in writing annually by the scale manufacturer or a scale inspector authorized by the Regional Administrator. This written verification must be signed and dated and be on board the vessel at all times.

(iii) *Maximum permissible error at sea*. The motion-compensated platform scale must weigh the test weights to within the maximum permissible error specified in Appendix A, section 4, Table 1 when tested at sea by an observer.

(6) *Other requirements*. The sampling station must include floor grating, adequate lighting, and a hose that supplies fresh or sea water to the observer.

(7) *Requirements for sampling catch*. On motherships and catcher/processors using trawl gear, the conveyor belt conveying unsorted catch must have a removable board to allow fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located after the certified scale used to weigh total catch so that the observer can use this scale to weigh large samples.

(e) *Certified bins for volumetric estimates of catch weight*—(1) *Certification*. The information required in this paragraph must be prepared, dated, and signed by a licensed engineer with no financial interest in fishing, fish processing, or fish tender vessels. Complete bin certification documents must be submitted to the Regional Administrator prior to harvesting or receiving groundfish from a fishery in which certified bins are required and must be on board the vessel and must be available to the observer at all times.

(2) *Specifications*—(i) *Measurement and marking*. The volume of each bin must be determined by accurate measurement of the internal dimensions of the bin. The internal walls of the bin must be permanently marked and numbered in 10-cm increments indicating the level of fish in the bin in cm. All marked increments and numerals must be readable from the

outside of the bin through a viewing port or hatch at all times. Marked increments are not required on the wall in which the viewing port is located unless such increments are necessary to determine the level of fish in the bin from another viewing port. Bins must be lighted in a manner that allows marked increments to be read from the outside of the bin by an observer or authorized officer. For bin certification documents dated after [*insert date 30 days after date of publication of the final rule in the Federal Register*], the numerals at the 10-cm increment marks must be at least 4 cm high.

(ii) *Viewing ports*. Each bin must have a viewing port or ports from which the internal bin markings and numerals on all walls of the bin, except the wall in which the viewing port is placed, can be seen from the outside of the bin.

(3) *Information required*. For bin certification documents submitted after [*insert date 30 days after date of publication of the final rule in the Federal Register*], the person certifying the bins must provide:

(i) The vessel name.

(ii) The date the engineer measured the bins and witnessed the location of the marked increments and numerals.

(iii) A diagram, to scale, of each bin showing the location of the marked increments on each internal wall of the bin, the location, and dimensions of each viewing port or hatch, and any additional information needed to estimate the volume of fish in the bin.

(iv) Tables indicating the volume of each certified bin in cubic meters for each 10-cm increment marked on the sides of the bins.

(v) Instructions for determining the volume of fish in each bin from the marked increments and table.

(vi) The person's name and signature and date the completed bin certification documents were signed.

(4) *Recertification*. The bin's volume and marked and numbered increments must be recertified if the bin is modified in a way that changes its size or shape or if marking strips or marked increments are moved or added.

(5) *Operational requirements*—(i) *Placement of catch in certified bins*. All catch must be placed in a bin certified under this paragraph to estimate total catch weight prior to sorting. Refrigerated seawater tanks may be used for volumetric estimates only if the tanks comply with all other requirements of this paragraph, no water is in the tanks before fish are added, and no water is added to the tanks before the observer records the level of fish in the tank. No adjustments of volume will be

made for the presence of water in the bin or tank.

(ii) *Prior notification*. Vessel operators must notify observers prior to any removal or addition of fish from each bin used for volumetric measurements of catch so that an observer may make bin volume estimates prior to fish being removed from or added to the bin. Once a volumetric estimate has been made, additional fish may not be added to the bin until at least half the original volume has been removed. Fish may not be removed from or added to a bin used for volumetric estimates of catch weight until an observer indicates that bin volume estimates have been completed and any samples of catch required by the observer have been taken.

(iii) Fish from separate hauls or deliveries from separate harvesting vessels may not be mixed in any bin used for volumetric measurements of catch.

(iv) The bins must not be filled in a manner that obstructs the viewing ports or prevents the observer from seeing the level of fish throughout the bin.

11. Section 679.30 is revised to read as follows:

#### § 679.30 General CDQ regulations.

(a) *Application procedure*. The CDQ program is a voluntary program. Allocations of CDQ and PSQ are made to CDQ groups and not to vessels or processors fishing under contract with any CDQ group. Any vessel harvesting or processing CDQ or PSQ under a CDP must comply with all other requirements of this part. Allocations of CDQ and PSQ are harvest privileges that expire upon the expiration of the CDP. When a CDP expires, further CDQ allocations are not implied or guaranteed, and a CDQ group must re-apply for further allocations on a competitive basis with other CDQ groups. The CDQ allocations provide the means for CDQ groups to complete their CDQ projects. A CDQ group may apply for CDQ and PSQ allocations by submitting a proposed CDP to the State during the CDQ application period which will be announced by the State. A proposed CDP must be submitted by a qualified applicant and must include:

(1) *Community development information*. Community development information includes:

(i) *Project description*. A detailed description of all proposed CDQ projects, including the short- and long-term benefits to the CDQ group from the proposed CDQ projects. CDQ projects should not be designed with the expectation of CDQ allocations beyond those requested in the proposed CDP.

(ii) *Project schedule.* A schedule for the completion of each CDQ project with measurable milestones for determining the progress of each CDQ project.

(iii) *Employment.* The number of individuals to be employed through the CDP projects, and a description of the nature of the work and the career advancement potential for each type of work.

(iv) *Community eligibility.* A list of the participating communities. Each participating community must be listed in Table 7 of this part or meet the criteria for an eligible community under § 679.2.

(v) *Community support.* A demonstration of each participating community's support for the CDQ group and the managing organization participating through an official letter approved by the governing body of each such community.

(2) *Managing organization information.* A proposed CDP must include the following information about the managing organization:

(i) *Structure and personnel.* A description of the management structure and key personnel, such as resumes and references, including the name, address, fax number, and telephone number of the CDQ representative.

(ii) *Management qualifications.* A description of how the managing organization is qualified to carry out the CDP projects in the proposed CDP, and a demonstration that the managing organization has the management, technical expertise, and ability to manage CDQ allocations and prevent exceeding a CDQ or PSQ.

(iii) *Legal relationship.* Documentation of the legal relationship between the CDQ group and the managing organization (if the managing organization is different from the CDQ group) clearly describing the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement.

(iv) *Board of directors.* The name, address, and telephone number of each member of the board of directors of the CDQ group. If a qualified applicant represents more than one community, the board of directors of the qualified applicant must include at least one member elected in an at-large election by his or her community, for each community in the CDQ group. For the purposes of this paragraph, election-at-large means that all registered voters in the community are eligible to vote.

(3) *Business information.* A proposed CDP must include the following business information:

(i) *Business relationships.* A description of all business relationships between the CDQ group and all individuals who have a financial interest in a CDQ project or subsidiary venture, including but not limited to, any arrangements for management and audit control and any joint venture arrangements, loans, or other partnership arrangements, including the distribution of proceeds among the parties.

(ii) *Profit sharing.* A description of all profit sharing arrangements.

(iii) *Funding.* A description of all funding and financing plans.

(iv) *General budget for implementing the CDP.* A general account of estimated income and expenditures for each CDQ project for the total number of calendar years that the CDP is in effect.

(v) *Financial statement for the CDQ group.* The most recent audited income statement, balance sheet, cash flow statement, management letter, and agreed upon procedures report.

(vi) *Organizational chart.* A visual representation of the CDQ group's entire organizational structure including all divisions, subsidiaries, joint ventures, and partnerships. This chart must include the type of legal entity, state of registration, and percentage of ownership.

(4) *Request for CDQ and PSQ allocations.* A list of the percentage of each CDQ reserve and PSQ reserve, as defined at § 679.31 (b)–(g), that is being requested. The request for allocations of CDQ and PSQ must identify percentage allocations requested for target species and bycatch species for each target fishery. Target fishery designations must include the primary target species of the fishery and gear type of the vessel that will be used to harvest the catch.

(5) *Fishing plan for groundfish and halibut CDQ fisheries.* The following information must be provided for all vessels and processors that will be harvesting groundfish and halibut CDQ.

(i) *List of eligible vessels and processors—(A) Vessels.* A list of the name, Federal fisheries permit number (if applicable), ADF&G vessel number, LOA, gear type, and vessel type (catcher vessel, catcher/processor, or mothership) for each vessel that will be used to catch or process CDQ and PSQ. Any CDQ vessel that is exempt from the License Limitation Program under § 679.4(i)(2)(iv) must be identified as such.

(B) *Shoreside processors or buying stations.* A list of the name, Federal processor permit number, and location of each shoreside processor or buying station that is required to have a Federal processor permit under § 679.4(f) and

will take deliveries of, or process, CDQ catch.

(C) *Buyers of halibut CDQ.* A list of processors of halibut CDQ that are not required to have a Federal Processor Permit under § 679.4(f), including the name of the buyer or processor, mailing address, telephone number, and location where halibut CDQ will be landed.

(ii) *Sources of data or methods for estimating CDQ and PSQ catch.* The sources of data or methods that will be used to estimate catch weight of CDQ and PSQ for each vessel or processor proposed as eligible under the CDP. For each vessel or processor, the CDP must specify whether the NMFS' standard sources of data set forth at § 679.32(e)(3) or some other alternative will be used. For catcher vessels using nontrawl gear, the CDP also must specify whether the vessel will be retaining all groundfish CDQ or will be discarding some CDQ catch at sea. The CDQ group may propose the use of an alternative method such as the sorting and weighing all catch by species on processor vessels or using larger sample sizes than would be required under § 679.32(e)(3). Alternatives to the requirement for a certified scale or an observer sampling station may not be proposed. NMFS will review the proposal for the requirements specified in paragraphs (a)(5)(ii) (A) through (D) of this section:

(A) The alternative proposed will provide equivalent or better estimates than use of the NMFS standard data source.

(B) Each haul, set, or pot on an observed vessel can be sampled by an observer for species composition.

(C) Any proposal to sort catch before it is weighed assures that the sorting and weighing process will be monitored by an observer.

(D) The CDQ observer is required to be on duty no more than 12 hours in each 24-hour period and is required to sample no more than 9 hours in each 24-hour period.

(E) The CDQ observer on a vessel using trawl gear is required to sample no more than 3 hauls in each 24-hour period. NMFS will review the proposal and approve it or notify the CDQ group in writing if the proposed alternative does not meet these requirements. The CDQ group may remove the vessel or processor for which the alternative method is proposed from the proposed CDP to facilitate approval of the CDP and add the vessel or processor to the CDP by amendment at a later date.

(iii) *Amendments to the list of eligible vessels and processors.* The list of eligible vessels and processors may be

amended by submitting the information required in paragraphs (a)(5) (i) and (ii) of this section as a technical amendment to the CDP.

(6) *CDQ planning*—(i) *Transition plan*. A proposed CDP must include an overall plan and schedule for transition from reliance on CDQ allocations to self-sufficiency in fisheries for each CDQ project.

(ii) *Post-allocation plan*. [Reserved]

(b) *Public hearings on CDQ application*. When the CDQ application period has ended, the State must hold a public hearing to obtain comment on the proposed CDPs from all interested persons. The hearing must cover the substance and content of proposed CDPs so that the general public, and particularly the affected parties, have a reasonable opportunity to understand the impact of the proposed CDPs. The State must provide reasonable public notification of hearing date and location. The State must make available for public review, at the time of public notification of the hearing, all State materials pertinent to the hearing.

(c) *Council consultation*. Before the State sends its recommendations for approval of proposed CDPs to NMFS, the State must consult with the Council, and make available, upon request, proposed CDPs that are not part of the State's recommendations.

(d) *Review and approval of proposed CDPs*. The State must transmit the proposed CDPs and its recommendations for approval of each of the proposed CDPs to NMFS along with the findings and the rationale for the recommendations by October 7. The State shall determine in its recommendations for approval of the proposed CDPs that each proposed CDP meets all applicable requirements of this part. Upon receipt by NMFS of the proposed CDPs and the State's recommendations for approval, NMFS will review the proposed CDPs and approve those that it determines meet all applicable requirements. In the event of approval of the CDP, NMFS will notify the State in writing that the proposed CDP is approved by NMFS and is consistent with all requirements for CDPs. If NMFS finds that a proposed CDP does not comply with the requirements of this part, NMFS must so advise the State in writing, including the reasons therefor. The State may submit a revised proposed CDP along with revised recommendations for approval to NMFS.

(e) *Transfer*. CDQ groups may request NMFS to transfer CDQ allocations, CDQ, PSQ allocations, or PSQ from one to another by each group filing an appropriate amendment to its CDP. If

NMFS approves both amendments, NMFS will make the requested transfer(s) by decreasing the account balance of the CDQ group from which the CDQ or PSQ species is transferred by the amount transferred, and by increasing the account balance of the CDQ group receiving the transferred CDQ or PSQ species by the amount transferred.

(1) *CDQ allocation*. CDQ groups may request that NMFS transfer any or all of one group's CDQ allocation to another by each group filing an amendment to its CDP through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. The CDQ allocation will be transferred as of January 1 of the calendar year following the calendar year NMFS approves the amendments of both groups and is effective for the duration of the CDPs.

(2) *CDQ*. CDQ groups may request that NMFS transfer any or all of one group's CDQ for a calendar year to another by each group filing an appropriate amendment to its CDP. If the amount to be transferred is 10 percent or less of a group's CDQ, that group's request may be made through the CDP technical amendment process set forth at paragraph (g)(5) of this section. If the amount to be transferred is greater than 10 percent of a group's CDQ, that group's request must be made through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. The CDQ will be transferred as of the date NMFS approves the amendments of both groups and is effective only for the remainder of the calendar year in which the transfer occurs.

(3) *PSQ allocation*. CDQ groups may request that NMFS transfer any or all of one group's PSQ allocation to another CDQ group through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. Each group's request must be part of a request for the transfer of a CDQ allocation and the requested amount of PSQ allocation must be the amount reasonably required for bycatch needs during the harvesting of the CDQ. Requests for the transfer of a PSQ allocation may be submitted to NMFS only from January 1 through January 31. The PSQ allocation will be transferred as of January 1 of the calendar year following the calendar year NMFS approves the amendments of both groups and is effective for the duration of the CDPs.

(4) *PSQ*. CDQ groups may request that NMFS transfer any or all of one group's PSQ for a calendar year to another by each group filing an amendment to its CDP through the CDP substantial amendment process set forth at

paragraph (g)(4) of this section. Each group's request must be part of a request for the transfer of a PSQ and the requested amount of PSQ must be the amount reasonably required for bycatch needs during the harvesting of the CDQ. Requests for the transfer of PSQ may be submitted to NMFS only from January 1 through January 31. The PSQ will be transferred as of the date NMFS approves the amendments of both groups and is effective only for the remainder of the calendar year in which the transfer occurs.

(f) *CDQ group responsibilities*. A CDQ group must:

- (1) Direct and supervise all activities of the managing organization.
- (2) Maintain the capability to communicate with all vessels harvesting its CDQ and PSQ at all times.
- (3) Monitor the catch of each CDQ or PSQ.
- (4) Submit the CDQ check-in/check-out report and CDQ catch report described at § 679.5 (m) and (n).
- (5) Ensure that no CDQ or halibut PSQ is exceeded.

(6) Ensure that the CDQ group's CDQ harvesting vessels and CDQ processors will:

- (i) Provide observer coverage, equipment, and operational requirements for CDQ catch monitoring.
- (ii) Provide for the communication of observer data from their vessel to NMFS and the CDQ representative.
- (iii) Maintain contact with the CDQ group for which it is harvesting CDQ and PSQ.

(iv) Cease fishing operations when requested by the CDQ group.

(7) Comply with all requirements of this part.

(g) *Monitoring of CDPs*—(1) *Annual progress report*—(i) The State must submit to NMFS, by October 30 of each year, an annual progress report for the previous calendar year for each CDP.

(ii) Annual progress reports must be organized on a project-by-project basis and include information for each CDQ project in the CDP describing how each scheduled milestone in the CDP has been met, and an estimation by the State of whether each of the CDQ projects in the CDP is likely to be successful.

(iii) The annual report must include a description by the State of any problems or issues in the CDP that the State encountered during the annual report year.

(2) *Annual budget report*. (i) Each CDQ group must submit to NMFS an annual budget report by December 15 preceding the year for which the annual budget applies.

(ii) An annual budget report is a detailed estimate of the income from the

CDQ project and of the expenditures for each subsidiary, division, joint venture, partnership, investment activity, or CDQ project as described in paragraph (a)(1)(i) of this section for a calendar year. A CDQ group must identify the administrative costs for each CDQ project. The CDQ group's total administrative costs will be considered a separate CDQ project.

(iii) An annual budget report is approved upon receipt by NMFS, unless disapproved by NMFS in writing by December 31. If disapproved, the annual budget report will be returned to the CDQ group for revision and resubmittal to NMFS.

(3) *Annual budget reconciliation report.* A CDQ group must reconcile its annual budget by May 30 of the year following the year for which the annual budget applied. Reconciliation is an accounting of the annual budget's estimated income and expenditures with the actual income and expenditures, including the variance in dollars and variance in percentage for each CDQ project that is described in paragraph (a)(1)(i) of this section. If a general budget, as submitted in accordance with paragraph (a)(3)(iv) of this section, is no longer accurate due to the reconciliation of an annual budget, then the general budget must also be revised to reflect the annual budget reconciliation. The revised general budget must be included with the annual budget reconciliation report.

(4) *Substantial amendments.* A CDP is a working business plan and must be kept up to date.

(i) Substantial amendments to a CDP require written notification by the CDQ group to the State. The State must forward the amendment to NMFS with a recommendation as to whether it should be approved.

(ii) NMFS will notify the State in writing of the approval or disapproval of the amendment within 30 days of receipt of the amendment and the State's recommendation. Except for substantial amendments for the transfer of CDQ and PSQ which are effective only for the remainder of the calendar year in which the transfer occurs (see paragraphs (e) (2) and (4) of this section), once a substantial amendment is approved by NMFS, the amendment will be effective for the duration of the CDP.

(iii) If NMFS determines that the CDP, if changed, would no longer meet the requirements of this subpart, NMFS will notify the State in writing of the reasons why the amendment cannot be approved.

(iv) For the purposes of this section, substantial amendments are defined as

changes in a CDP, including, but not limited to:

(A) Any change in the applicant communities or replacement of the managing organization.

(B) A change in the CDP applicant's harvesting or processing partner.

(C) Funding a CDP project in excess of \$100,000 that is not part of an approved general budget.

(D) More than a 20-percent increase in the annual budget of an approved CDP project.

(E) More than a 20-percent increase in actual expenditures over the approved annual budget for administrative operations.

(F) A change in the contractual agreement(s) between the CDP applicant and its harvesting or processing partner, or a change in a CDP project, if such change is deemed by the Governor or NMFS to be a material change.

(G) Any transfer of a CDQ allocation, PSQ allocation, PSQ, or a transfer of more than ten percent of a CDQ.

(v) Notification of an amendment to a CDP shall include the following information:

(A) The background and justification for the amendment that explains why the proposed amendment is necessary and appropriate.

(B) An explanation of why the proposed change to the CDP is a substantial amendment.

(C) A description of the proposed amendment, explaining all changes to the CDP that result from the proposed amendment.

(D) A comparison of the original CDP text with the text of the proposed changes to the CDP, and the revised pages of the CDP for replacement in the CDP binder. The revised pages must have the revision date noted with the page number on all affected pages. The table of contents may also need to be revised to reflect any changes in pagination.

(E) Identification of any NMFS findings that would need to be modified if the amendment is approved along with the proposed modified text.

(F) A description of how the proposed amendment meets the requirements of this subpart. Only those CDQ regulations that are affected by the proposed amendment need to be discussed.

(5) *Technical amendments.* Any change to a CDP that is not a substantial amendment as defined in paragraph (g)(4)(iv) of this section is a technical amendment.

(i) The CDQ group must notify the State in writing of any technical amendment. Such notification must include a copy of the pages of the CDP

that would be revised by the amendment, with the text highlighted to show the proposed deletions and additions, and a copy of the CDP pages as they would be revised by the proposed amendment for insertion into the CDP binder. All revised CDP pages must include the revision date, amendment identification number, and CDP page number. The table of contents may also need to be revised to reflect any changes in pagination.

(ii) The State must forward the technical amendment to NMFS with its recommendations for approval or disapproval of the amendment. A technical amendment is approved by NMFS and is effective when NMFS notifies the State in writing of the technical amendment's receipt.

12. Section 679.31 is revised to read as follows:

**§ 679.31 CDQ reserves.**

(a) *Non-specific CDQ reserve.* Annually, NMFS will apportion 15 percent of each squid, arrowtooth flounder, and "other species" CDQ for each CDQ group to a non-specific CDQ reserve. A CDQ group's non-specific CDQ reserve must be for the exclusive use of that CDQ group. A release from the non-specific CDQ reserve to its squid, arrowtooth flounder, or "other species" is a technical amendment as described in § 679.30(g)(5). The technical amendment must be approved before harvests relying on CDQ transferred from the non-specific CDQ reserve may be conducted.

(b) *Pollock CDQ reserve* (applicable through December 31, 1998). In the proposed and final harvest specifications required under § 679.20(c), one-half of the pollock TAC placed in the reserve for each subarea or district of the BSAI will be apportioned to a CDQ reserve for each subarea or district.

(c) *Halibut CDQ reserve.* (1) NMFS will annually withhold the proportions of the halibut catch limit that are specified in paragraph (c)(2) of this section for use as a CDQ reserve.

(2) The proportions of the halibut catch limit annually withheld for purposes of the CDQ program, exclusive of issued QS, are as follows for each IPHC regulatory area:

(i) Area 4B. In IPHC regulatory area 4B, 20 percent of the annual halibut quota shall be made available for the halibut CDQ program to eligible communities physically located in or proximate to this regulatory area. For the purposes of this section, "proximate to" an IPHC regulatory area means within 10 nm from the point where the

boundary of the IPHC regulatory area intersects land.

(ii) Area 4C. In IPHC regulatory area 4C, 50 percent of the halibut quota shall be made available for the halibut CDQ program to eligible communities physically located in IPHC regulatory area 4C.

(iii) Area 4D. In IPHC regulatory area 4D, 30 percent of the halibut quota shall be made available for the halibut CDQ program to eligible communities located in or proximate to IPHC regulatory areas 4D and 4E.

(iv) Area 4E. In IPHC regulatory area 4E, 100 percent of the halibut quota shall be made available for the halibut CDQ program to communities located in or proximate to IPHC regulatory area 4E. A fishing trip limit of 6,000 lb (2.7 mt) will apply to halibut CDQ harvesting in IPHC regulatory area 4E.

(d) *Sablefish CDQ reserves*—(1) *Fixed gear sablefish CDQ reserve*. In the proposed and final harvest limit specifications required under § 679.20(c), NMFS will specify 20 percent of the fixed gear allocation of sablefish in each subarea or district of the BSAI as a fixed-gear sablefish CDQ reserve, exclusive of issued QS.

(2) *Sablefish CDQ reserve*. In the proposed and final harvest limit specifications required under § 679.20(c), NMFS will specify 7.5 percent of the trawl gear allocation of sablefish in each subarea or district of the BSAI as a sablefish CDQ reserve.

(e) *Groundfish CDQ reserve*. In the proposed and final harvest specifications required under § 679.20(c), one-half of the amount of each groundfish TAC that is placed in the reserve for each subarea or district of the BSAI will be apportioned to a separate CDQ reserve for each subarea or district. The groundfish CDQ reserve does not include sablefish. If the proposed and final harvest limit specifications required under § 679.20(c) change the groundfish species comprising the “other species” category, then any CDQ allocations of “other species” category groundfish would change according to the changed species mix of the “other species” category.

(f) *Crab CDQ reserve*. The following percentages of the king and Tanner crab in the Bering Sea and Aleutian Islands Area that has a guideline harvest level specified by the State that is available for commercial harvest will be apportioned to a crab CDQ reserve:

(1) For calendar year 2000, and thereafter, 7.5 percent.

(2) For calendar year 1999 (applicable through December 31, 1999), 5 percent.

(3) For calendar year 1998 (applicable through December 31, 1998), 3.5 percent.

(g) *PSQ reserve*. Seven and one-half percent of the PSC limits specified at § 679.21(e) for red king crab in Zone 1, Tanner crab (*C. bairdi*) in Zone 1, Tanner crab in Zone 2, halibut, and Pacific herring will be apportioned to PSQ reserves. 3,600 chinook salmon and 3,150 non-chinook salmon will be apportioned to PSQ reserves.

13. Section 679.32 is revised to read as follows:

**§ 679.32 Groundfish and halibut CDQ catch monitoring.**

(a) *Applicability*. (1) The CDQ representative, the operator or manager of a buying station, the operator of a vessel, and the manager of a shoreside processor fishing in the groundfish or halibut CDQ fisheries must comply with the requirements of this section.

(2) *Pollock, halibut, and fixed-gear sablefish CDQ fishing in 1998* (applicable through December 31, 1998). Regulations governing the catch of pollock, halibut, fixed-gear sablefish CDQ in 1998 are at paragraphs (f) and (g) of this section. Vessels and processors harvesting only these CDQ species are not required to comply with paragraphs (b) through (e) of this section in 1998, unless specifically required to do so in paragraphs (f) and (g). The catch of pollock with any authorized gear and sablefish with fixed gear in the multispecies CDQ fisheries in 1998 will not accrue to the CDQs for these species.

(b) *Prohibited species catch*. Time and area closures required once the CDQ group has reached its salmon, herring, or crab PSQs are listed in § 679.7(d) (7) through (11). The catch of salmon, crab, or herring PSQ by vessels using other than trawl gear and the catch of halibut PSQ by vessels using pot gear does not accrue to the PSQ for these species.

(c) *Gear restrictions*. Fixed gear sablefish and halibut CDQ must be harvested with fixed gear only. Catch of sablefish with fixed gear may accrue to the fixed gear sablefish CDQ reserve or the sablefish CDQ reserve. Catch of sablefish with other than fixed gear will accrue to the sablefish CDQ reserve.

(d) *Requirements for vessels and processors*. Vessels and processors participating in the CDQ fisheries must comply with the following requirements.

(1) *Catcher vessels without observers*. (i) Catcher vessels less than 60 ft (18.3 m) LOA must retain all groundfish and halibut CDQ until it is delivered to a processor with a valid CDQ permit.

(ii) Catcher vessels using trawl gear must discard halibut and crab PSQ at-

sea. The weight of halibut PSQ and numbers of crab PSQ must be reported on the ADF&G fish ticket within 24 hours of the completion of the fishing trip.

(iii) Catcher vessels using non-trawl gear must discard all halibut PSQ at sea and report the weight of halibut discarded on the ADF&G fish ticket within 24 hours of the completion of the fishing trip.

(2) *Catcher vessels with observers*. Catcher vessels equal to or greater than 60 ft (18.3 m) LOA must comply with the following requirements in addition to complying with the minimum observer coverage requirements at § 679.50(c)(4).

(i) If using trawl gear must,

(A) Retain all CDQ species, salmon PSQ, and herring PSQ until it is delivered to a processor with a valid CDQ permit.

(B) Retain all halibut and crab PSQ in a bin or other location until it is counted and sampled by a CDQ observer.

(C) Provide space on the deck of the vessel for the CDQ observer to sort and store catch samples and a place from which to hang the observer sampling scale.

(ii) If using non-trawl gear, either

(A) *Retain all CDQ Species*. Retain all CDQ species until they are delivered to a processor with a valid CDQ permit and have all of the halibut PSQ counted by the CDQ observer and sampled for average weight.

(B) *Discard Some CDQ Species At-Sea*. May discard some CDQ species at sea if the following requirements are met.

(1) *Sampling station*. The vessel owner provides an observer sampling station that complies with § 679.28(d) so that the CDQ observer can accurately determine the average weight of discarded CDQ species.

(2) *CDQ permit*. A valid CDQ permit is on board the vessel at all times while harvesting, processing, or transporting CDQ.

(3) *Species composition*. Each set or pot is sampled for species composition by a CDQ observer.

(4) *Catch weight and numbers*. The CDQ group specifies in the CDP that the CDQ and PSQ catch weight and numbers will be based on the CDQ observer's estimates rather than the processor's report of landed catch weight and numbers.

(3) *Shoreside processors and buying stations*. All shoreside processors and buying stations taking CDQ deliveries in addition to complying with the minimum observer coverage requirements at § 679.50(d)(4) must:



(i) *CDQ permit.* Have a valid CDQ permit on site at the shoreside processor at all times.

(ii) *CDQ and PSQ by weight.* Sort and weigh on a scale certified under § 679.28(c), all groundfish and halibut CDQ or PSQ and any halibut and herring PSQ delivered to a shoreside processor or buying station by CDQ or PSQ species or species group.

(iii) *PSQ by number.* The shoreside processor must count all salmon or crab PSQ.

(iv) *Prior notice of offloading schedule.* The manager of each shoreside processor or buying station must notify the CDQ observer(s) of the offloading schedule of each CDQ groundfish delivery at least 1 hour prior to offloading to provide the CDQ observer an opportunity to monitor the weighing of the entire delivery.

(v) *CDQ and PSQ sorting and weighing.* All sorting and weighing of CDQ and PSQ must be monitored by a CDQ observer.

(4) *Catcher/processers and motherships.* Catcher/processers and motherships in addition to complying with the minimum observer coverage requirements described at § 679.50(c)(4) must:

(i) *CDQ permit.* Have a valid CDQ permit on board the vessel at all times harvesting, processing, or transporting CDQ.

(ii) *Observer sampling station.* Provide an observer sampling station as described at § 679.28(d).

(iii) *Catcher/processers using trawl gear and motherships.* Catcher/processers using trawl gear and motherships must weigh all catch on a scale certified under § 679.28(b) of this part. Catch from each haul must be weighed separately. Catch must not be sorted before it is weighed unless a CDQ provision for doing so is approved by NMFS for the vessel. Each CDQ haul must be sampled by a CDQ observer for species composition and the vessel operator must allow CDQ observers to use the certified scale to weigh partial haul samples.

(iv) *Catcher/processers using non-trawl gear.* Each CDQ set or pot must be sampled by a CDQ observer for species composition and average weight.

(e) *Recordkeeping and reporting—(1) Check-in/check-out report.* The CDQ representative must submit the CDQ check-in/check-out report and the CDQ catch report described at § 679.5 (m) and (n).

(2) *Catch record.* The operator or manager of a buying station, the operator of a vessel, and the manager of a shoreside processor must record all catch in the CDQ fisheries, including all

groundfish species and prohibited species caught, taken, or harvested in each haul or set as required at § 679.5.

(3) *Verification of CDQ and PSQ catch reports.* CDQ groups may specify the sources of data listed below as the sources they will use to report CDQ catch by specifying “NMFS standard sources of data” in their CDP. In the case of a catcher vessel using non-trawl gear, the CDP must specify whether any CDQ species will be discarded at sea. CDQ species may be discarded at sea only if the requirements of paragraph (d)(2)(ii)(A) of this section are met. NMFS will use the following sources to verify the CDQ catch reports unless an alternative catch estimation procedure in the CDP is approved by NMFS under § 679.30(a)(5)(ii).

(i) *Unobserved catcher vessels.* The weight or numbers of all CDQ and PSQ species on ADF&G fish tickets if all CDQ species, salmon PSQ, and herring PSQ are retained on board the vessel, delivered to a processor with a valid CDQ permit, and sorted and weighed in compliance with paragraph (d)(3) of this section.

(ii) *Observed catcher vessels using trawl gear.* The CDQ observer's estimate of halibut and crab PSQ and the weight or numbers of all groundfish CDQ, salmon PSQ, and herring PSQ on ADF&G fish tickets if all CDQ species, salmon PSQ, and herring PSQ are retained on board the vessel, delivered to a processor with a valid CDQ permit, and sorted and weighed in compliance with paragraph (d)(3) of this section.

(iii) *Observed catcher vessels using non-trawl gear.* (A) The CDQ observer's estimates of the weight of halibut PSQ and the weight or numbers of CDQ species on ADF&G fish tickets if all CDQ species are retained on board the vessel, delivered to a processor with a valid CDQ permit, and sorted and weighed in compliance with paragraph (d)(3) of this section; or

(B) The CDQ observer's estimate of the weight of all CDQ and PSQ species if any CDQ species are discarded at sea.

(iv) *Catcher/processers using trawl gear and motherships.* The CDQ observer's estimate of the weight and numbers of CDQ and PSQ species as determined by applying the CDQ observer's species composition sampling data for each haul to the total weight of haul as determined by weighing all catch from each haul on a scale certified under § 679.28(b).

(v) *Catcher/processers using non-trawl gear.* The CDQ observer's estimates of the weight and numbers of CDQ and PSQ species as determined by sampling each set or pot to determine

the number and average weight of each CDQ and PSQ species.

(f) *Pollock CDQ (applicable through December 31, 1998)—(1) Applicability.* Vessels and processors harvesting pollock CDQ in 1998 must comply with the requirements of this paragraph.

(2) *Catch of non-pollock.* The catch of all non-pollock species for which a TAC or PSC limit is specified will accrue against the non-CDQ groundfish fishery TACs and PSC limits. Regulations governing maximum retainable bycatch amounts in the non-CDQ groundfish fisheries must be complied with while harvesting pollock CDQ.

(3) *Recordkeeping and reporting.* (i) The CDQ representative must submit a CDQ catch report that complies with § 679.5(n). Catch from the pollock CDQ fisheries must be identified separately from catch in other CDQ fisheries on the CDQ catch report. Harvest of species other than pollock in the pollock CDQ fisheries must not be reported on the CDQ catch report.

(ii) The CDQ representative must submit a CDQ check-in/check-out report that complies with § 679.5(m) and states that the vessel will be participating in the pollock CDQ fishery.

(iii) The operator or manager of a buying station, the operator of a vessel, and the manager of a shoreside processor must record all catch in the CDQ fisheries, including all groundfish species and prohibited species caught, taken, or harvested in each haul or set as required at § 679.5.

(4) *Observer coverage.* Two observers are required on all catcher/processers and motherships while harvesting, processing, or taking deliveries of pollock CDQ, one observer is required on all catcher vessels harvesting pollock CDQ, and one observer is required in the shoreside processing plant while pollock CDQ is being delivered, sorted, or processed.

(5) *Estimation of the weight of pollock CDQ—(i) Shoreside processors and buying stations.* All pollock CDQ delivered to a shoreside processor or buying station must be weighed on a scale certified under § 679.28(c). The manager of each shoreside processor or buying station must notify the observer(s) of the offloading schedule of each CDQ groundfish delivery at least 1 hour prior to offloading to provide the observer an opportunity to monitor the weighing of the entire delivery.

(ii) *Motherships and catcher/processers.* Operators of mothership and catcher/processers must provide the holding bins and comply with the operational requirements at § 679.28(e) in order for volumetric estimates of total catch weight to be made.

(g) *Sablefish and halibut CDQ fisheries (applicable through December 31, 1998)*—(1) *Applicability.* Vessels and processors harvesting fixed gear sablefish or halibut CDQ in 1998 must comply with the requirements of this paragraph.

(2) *Catch of other groundfish.* All groundfish for which a TAC is specified and all prohibited species caught during the sablefish and halibut CDQ fisheries will accrue to the non-CDQ groundfish TACs and PSC limits. Regulations governing maximum retainable bycatch amounts in the non-CDQ groundfish fisheries must be complied with while harvesting fixed-gear sablefish and halibut CDQ.

(3) *Permits.* The managing organization responsible for carrying out an approved CDQ project must have a halibut and/or sablefish permit issued by the Regional Administrator. A copy of the halibut and/or sablefish CDQ permit must be carried on any fishing vessel operated by, or for, the managing organization and be made available for inspection by an authorized officer. Such halibut and/or sablefish CDQ permit is non-transferable and is effective for the duration of the CDQ project or until revoked, suspended, or modified.

(4) *CDQ cards.* All individuals named on an approved CDP application must have a halibut and/or sablefish CDQ card issued by the Regional Administrator before landing any halibut and/or sablefish. Each halibut and/or sablefish CDQ card will identify a CDQ permit number and the individual authorized by the managing organization to land halibut and/or sablefish for debit against its CDQ allocation.

(5) *Alteration.* No person may alter, erase, or mutilate a halibut and/or sablefish CDQ permit, card, registered buyer permit, or any valid and current permit or document issued under this part. Any such permit, card, or document that has been intentionally altered, erased, or mutilated is invalid.

(6) *Landings.* Halibut and/or sablefish harvested pursuant to a approved CDQ project may be landed only by a person with a valid halibut and/or sablefish CDQ card, and delivered only to a person with a valid registered buyer permit, and reported in compliance with § 679.5(l)(1) and (l)(2).

(7) *Recordkeeping and reporting.* Vessels and processors with Federal fisheries or processor permits under § 679.4(f) must report all catch of groundfish, including sablefish CDQ,

and prohibited species from the fixed gear sablefish and halibut CDQ fisheries on logbooks and weekly production reports required under § 679.5. Catch from the fixed gear sablefish and halibut CDQ fisheries must not be reported on the CDQ catch report in 1998.

14. Sections 679.33 and 679.34 are removed.

15. In § 679.40, existing paragraph (f) is removed and existing paragraph (g) is redesignated as a new paragraph (f).

16. In § 679.43, a new paragraph (p) is added to read as follows:

**§ 679.43 Determinations and appeals.**

\* \* \* \* \*

(p) *Issuance of a non-transferable permit.* A non-transferable permit will be issued to a person upon acceptance of his or her appeal of an initial administrative determination denying an application for a license for license limitation groundfish or crab species under § 679.4(i). This non-transferable permit authorizes a person to conduct directed fishing for groundfish or directed fishing for crab species and will have specific endorsements and designations based on the person's claims in his or her application for a license. This non-transferable permit expires upon the resolution of the appeal.

17. In § 679.50, the last sentence of paragraph (a) is revised and new paragraphs (c)(4), (d)(4), and (h)(1)(i) (D) and (E) are added as follows:

**§ 679.50 Groundfish Observer Program applicable through December 31, 1997.**

(a) \* \* \* Observer coverage for the CDQ fisheries obtained in compliance with paragraphs (c)(4) and (d)(4) of this section may not be used to comply with observer coverage requirements for non-CDQ groundfish fisheries specified in paragraphs (c)(1)(v) and (c)(1)(vii) of this section.

\* \* \* \* \*

(c) *Observer requirements for vessels.*  
\* \* \*

(4) *Groundfish and halibut CDQ fisheries.* Vessels harvesting groundfish or halibut CDQ must comply with the following minimum observer coverage requirements each day that the vessel harvests, transports, processes, delivers, or takes deliveries of groundfish or halibut CDQ or PSQ. No CDQ observer may be required to be on duty more than 12 hours in a 24-hour period, to sample more than 9 hours in a 24-hour period, or to sample more than 3 hauls in a 24-hour period on a vessel using

trawl gear or a processor taking deliveries from vessels using trawl gear.

(i) *Mothership or catcher/processor.* A mothership or catcher/processor of any length must have at least two CDQ observers as described at paragraph (h)(1)(i) (D) and (E) of this section aboard the vessel, at least one of whom must be certified as a lead CDQ observer.

(ii) *Catcher vessel.* A catcher vessel equal to or greater than 60 ft (18.3 m) LOA, except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section aboard the vessel.

(d) \* \* \*

(4) *Groundfish and halibut CDQ fisheries.* Each shoreside processor required to have a federal processor permit under § 679.4(f) and taking deliveries of groundfish or halibut CDQ must have at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section present at all times while CDQ is being received or processed.

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(i) \* \* \*

(D) For purposes of the groundfish and halibut CDQ fisheries a NMFS-certified CDQ observer must meet the following requirements.

(1) Be a prior observer who has completed at least 60 days of observer data collection on a vessel using the same gear type as the CDQ vessel that they will be deployed on.

(2) Receive the rating of 1 for "exceptional" or 2 for "meets expectations" by NMFS for their most recent deployment.

(3) Successfully complete a NMFS-approved CDQ observer training and/or briefing as prescribed by NMFS and available from the Observer Program Office.

(4) Comply with all of the other requirements of this section.

(E) To be certified as a "lead observer" in the groundfish and halibut CDQ fisheries, a NMFS-certified observer must complete at least 20 days of observer data collection on a vessel participating in a CDQ fishery in addition to meeting the requirements of paragraph (h)(1)(i)(D) of this section.

\* \* \* \* \*