

data reporting requirements for non-commercial fishing have been established, it is expected that the non-commercial information will not be developed enough to generate meaningful projected estimates of 2008–09 non-commercial harvest.

#### Ceasing of Business Operations

The decision to cease fishing for bottomfish would depend on the ability of vessel owners to cover variable costs of operations in the short run. If costs of fuel and food remain at higher than normal levels, more vessels than normal would be expected to exit the fishery, especially in years when the TAC was low. In addition, as is pointed out in Amendment 14, low TACs could propel the fishery toward a “race for the fish,” putting downward pressure on prices and upward pressure on fuel and food costs, resulting in earlier than expected closures and larger number of vessels exiting the fishery prematurely.

This action is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

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

Dated: December 4, 2008.

**James W. Balsiger,**

*Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0810141351–81451–01]

RIN 0648–XL28

#### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Proposed 2009 and 2010 Harvest Specifications for Groundfish

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

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

**SUMMARY:** NMFS proposes 2009 and 2010 harvest specifications and prohibited species catch allowances for the groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the 2009 and 2010 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands management area.

The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson–Stevens Fishery Conservation and Management Act.

**DATES:** Comments must be received by January 9, 2009.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XL28, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.

- **Mail:** P. O. Box 21668, Juneau, AK 99802.

- **Fax:** (907) 586–7557.

- **Hand delivery to the Federal Building:** 709 West 9th Street, Room 420A, Juneau, AK.

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

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (Final EIS), Record of Decision (ROD), and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available from NMFS at the mailing address above or from the Alaska Region website at <http://www.alaskafisheries.noaa.gov>. Copies of the final 2008 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the Bering Sea and Aleutian Islands (BSAI), dated November 2007, are available from the North Pacific Fishery Management Council (Council), 605 West 4th Avenue, Suite 306, Anchorage, AK 99510–2252, 907–271–2809, or from its website at <http://www.alaskafisheries.noaa.gov/npfmc/default.htm>.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7269.

**SUPPLEMENTARY INFORMATION:** Federal regulations at 50 CFR part 679

implement the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and govern the groundfish fisheries in the BSAI. The Council prepared the FMP and NMFS approved it under the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act). General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and the “other species” category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (see § 679.20(a)(1)(i)). Section 679.20(c)(1) further requires NMFS to publish proposed harvest specifications in the **Federal Register** and solicit public comments on proposed annual TACs and apportionments thereof, prohibited species catch (PSC) allowances, and prohibited species quota (PSQ) reserves established by § 679.21, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC, Amendment 80 allocations, and Community Development Quota (CDQ) reserve amounts established by § 679.20(b)(1)(ii). The proposed harvest specifications set forth in Tables 1 through 12 of this action satisfy these requirements.

Under § 679.20(c)(3), NMFS will publish the final harvest specifications for 2009 and 2010 after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2008 meeting, and (3) considering new information presented in the Final EIS and the final 2008 SAFE reports prepared for the 2009 and 2010 groundfish fisheries.

#### Other Actions Potentially Affecting the 2009 and 2010 Harvest Specifications

The Council submitted Amendment 73 to the FMP. NMFS published a proposed rule in the **Federal Register** on September 24, 2008 (73 FR 55010). This amendment would remove dark rockfish (*Sebastes ciliatus*) from the “other rockfish” category and from the FMP. The State of Alaska would assume management of dark rockfish, and the TAC of the “other rockfish” category would be slightly smaller than in previous years. The Council is considering a proposal that would allocate the Pacific cod TAC by Bering Sea subarea and Aleutian Islands (AI) subarea instead of a combined BSAI TAC, although associated fishery

management implications would require more time to assess and resolve. As a result, a Pacific cod split is unlikely for 2009. Additional proposals being developed by the Plan Team for Council consideration would separate some species from the "other species" category so that individual overfishing levels (OFLs), acceptable biological catches (ABCs), and TACs may be established for these species. Another would allocate the ABC for rougheye rockfish by Bering Sea subarea and Aleutian Islands (AI) subarea instead of a combined BSAI ABC. These latter two proposals could change the final 2009 and 2010 harvest specifications. Additionally, the existing 2009 harvest specifications will be updated in early 2009 when final harvest specifications for 2009 and new harvest specifications for 2010 are implemented.

### Proposed ABC and TAC Harvest Specifications

The proposed ABC levels are based on the best available biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and OFLs involves sophisticated statistical analyses of fish populations. The FMP specifies a series of six tiers based on the level of reliable information available to fishery scientists. Tier one represents the highest level of

information quality available while tier six represents the lowest level of information quality available.

Appendix A to the final SAFE report for the 2008 BSAI groundfish fisheries dated November 2007 (see **ADDRESSES**) sets forth the best information currently available. Information on the status of stocks, including the 2008 survey results, will be updated and considered by the Council's Groundfish Plan Team in November 2008 for the 2008 SAFE report. The final 2009 and 2010 harvest specifications will be based on the 2008 SAFE report.

In October 2008, the Scientific and Statistical Committee (SSC), Advisory Panel, and the Council reviewed the Plan Team's recommended proposed 2009 and 2010 OFL and ABC amounts. The SSC concurred in the Plan Team's recommendations. The recommendations are based on rollovers of the current 2009 amounts. This uses the best information available from the 2007 stock assessments.

The Council adopted the OFL and ABC amounts recommended by the SSC (Table 1). The Council recommended that all the proposed 2009 and 2010 TAC amounts be set equal to the 2008 TAC amounts except for reduced TAC amounts for sablefish, Atka mackerel, Pacific ocean perch (POP), northern rockfish, and the "other rockfish" group. The adjustments from the 2008 TAC amounts account for the lower 2009 ABC amounts for these species. As in previous years, the Plan Team, Advisory Panel, SSC, and Council

recommended that total removals of Pacific cod from the BSAI not exceed ABC recommendations. Accordingly, the Council recommended that the proposed 2009 and 2010 Pacific cod TACs be adjusted downward from the ABCs by amounts equal to 3 percent of the ABC. This adjustment is necessary to account for the guideline harvest level (GHL) established for Pacific cod by the State of Alaska (State) for a State-managed fishery that occurs in State waters in the AI subarea. Finally, the Council recommended using the 2008 and 2009 PSC allowances for the proposed 2009 and 2010 PSC allowances. The Council will reconsider the OFL, ABC, TAC, and PSC amounts in December 2008 after the Plan Team incorporates new status of groundfish stocks information into a final 2008 SAFE report for the 2009 and 2010 BSAI groundfish fishery. None of the Council's recommended proposed TACs for 2009 or 2010 exceeds the recommended 2009 or 2010 proposed ABC for any species category. NMFS finds the Council's recommended proposed 2009 and 2010 OFL, ABC, and TAC amounts consistent with the best available information on the biological condition of the groundfish stocks.

Table 1 lists the proposed 2009 and 2010 OFL, ABC, TAC, initial TAC (ITAC), and CDQ amounts for groundfish for the BSAI. The proposed apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1—PROPOSED 2009 AND 2010 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUND FISH IN THE BSAI<sup>1</sup>

[Amounts are in metric tons]

Species	Area	Proposed 2009 and 2010				
		OFL	ABC	TAC	ITAC <sup>2</sup>	CDQ <sup>3,4,5</sup>
Pollock <sup>3</sup>	BS	1,320,000	1,000,000	1,000,000	900,000	100,000
	AI	26,100	22,700	19,000	17,100	1,900
	Bogoslof	58,400	7,970	10	10	0
Pacific cod <sup>4</sup>	BSAI	207,000	176,000	170,720	152,453	18,267
Sablefish <sup>5</sup>	BS	2,910	2,610	2,610	1,109	98
	AI	2,510	2,230	2,230	474	41
Atka mackerel	BSAI	50,600	47,500	47,500	42,418	5,083
	EAI/BS	n/a	15,300	15,300	13,663	1,637
	CAI	n/a	19,000	19,000	16,967	2,033
	WAI	n/a	13,200	13,200	11,788	1,412
Yellowfin sole	BSAI	296,000	296,000	225,000	200,925	24,075
Rock sole	BSAI	379,000	375,000	75,000	66,975	8,025
Greenland turbot	BSAI	16,000	2,540	2,540	2,159	n/a
	BS	n/a	1,750	1,750	1,488	187
	AI	n/a	790	790	672	0

TABLE 1—PROPOSED 2009 AND 2010 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUND FISH IN THE BSAI<sup>1</sup>—Continued

[Amounts are in metric tons]

Species	Area	Proposed 2009 and 2010				
		OFL	ABC	TAC	ITAC <sup>2</sup>	CDQ <sup>3,4,5</sup>
Arrowtooth flounder	BSAI	300,000	246,000	75,000	63,750	8,025
Flathead sole	BSAI	83,700	69,700	50,000	44,650	5,350
Other flatfish <sup>6</sup>	BSAI	28,800	21,600	21,600	18,360	0
Alaska plaice	BSAI	277,000	217,000	50,000	42,500	0
Pacific ocean perch	BSAI	25,400	21,300	21,300	18,845	n/a
	BS	n/a	4,100	4,100	3,485	0
	EAI	n/a	4,810	4,810	4,295	515
	CAI	n/a	4,900	4,900	4,376	524
	WAI	n/a	7,490	7,490	6,689	801
Northern rockfish	BSAI	9,680	8,130	8,130	6,911	0
Shortraker rockfish	BSAI	564	424	424	360	0
Rougheye rockfish	BSAI	269	202	202	172	0
Other rockfish <sup>7</sup>	BSAI	1,290	968	968	823	0
	BS	n/a	414	414	352	0
	AI	n/a	554	554	471	0
Squid	BSAI	2,620	1,970	1,970	1,675	0
Other species <sup>8</sup>	BSAI	104,000	78,100	50,000	42,500	0
TOTAL		3,191,843	2,577,944	1,824,204	1,624,168	172,891

<sup>1</sup> These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

<sup>2</sup> Except for pollock, the portion of the sablefish TAC allocated to hook and line and pot gear, and Amendment 80 species, 15 percent of each TAC is put into a reserve. The ITAC for these species is the remainder of the TAC after the subtraction of these reserves.

<sup>3</sup> Under § 679.20(a)(5)(i)(A)(1), the annual Bering Sea subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (3.5 percent), is further allocated by sector for a directed pollock fishery as follows: inshore 50 percent; catcher/processor 40 percent; and motherships 10 percent. Under § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery.

<sup>4</sup> The Pacific cod TAC is reduced by three percent from the ABC to account for the State of Alaska's guideline harvest level in State waters of the Aleutian Islands subarea.

<sup>5</sup> For the Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod), 10.7 percent of the TAC is reserved for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31). Twenty percent of the sablefish TAC allocated to hook and line gear or pot gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for Bering Sea Greenland turbot and arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). Aleutian Islands Greenland turbot, "other flatfish", Alaska plaice, Bering Sea Pacific ocean perch, northern rockfish, shortraker rockfish, rougheye rockfish, "other rockfish", squid, and "other species" are not allocated to the CDQ program.

<sup>6</sup> "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder, and Alaska plaice.

<sup>7</sup> "Other rockfish" includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

<sup>8</sup> "Other species" includes sculpins, sharks, skates, and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

### Reserves and the Incidental Catch Allowance (ICA) for Pollock, Atka Mackerel, Flathead Sole, Rock Sole, Yellowfin Sole, and Aleutian Islands Pacific Ocean Perch

Section 679.20(b)(1)(i) requires the placement of 15 percent of the TAC for each target species or "other species" category, except for pollock, the hook-and-line and pot gear allocation of sablefish, and the Amendment 80 species, in a non-specified reserve.

Section 679.20(b)(1)(ii)(B) requires that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Section 679.20(b)(1)(ii)(D) requires that 7.5 percent of the trawl gear allocations of sablefish and 10.7 percent of Bering Sea Greenland turbot and arrowtooth flounder be allocated to the respective CDQ reserves. Section 679.20(b)(1)(ii)(C) requires that 10.7 percent of the TACs for Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock

sole, flathead sole, and Pacific cod be allocated to the CDQ reserves. Sections 679.20(a)(5)(i)(A) and 679.31(a) also require the allocation of 10 percent of the BSAI pollock TACs to the pollock CDQ directed fishing allowance (DFA). The entire Bogoslof District pollock TAC is allocated as an incidental catch allowance (ICA) (see § 679.20(a)(5)(ii)). With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear. Section

679.21(e)(3)(i)(A) requires withholding 7.5 percent of the Chinook salmon PSC limit, 10.7 percent of the crab and non-Chinook salmon PSC limits, and 343 mt of halibut PSC as PSQ reserves for the CDQ fisheries. Sections 679.30 and 679.31 set forth regulations governing the management of the CDQ and PSQ reserves.

Pursuant to § 679.20(a)(5)(i)(A)(1), NMFS proposes a pollock ICA of 3.5 percent of the Bering Sea subarea pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance is based on NMFS's examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 1999 through 2008. During this 10-year period, the pollock incidental catch ranged from a low of 2.4 percent in 2006 to a high of 5 percent in 1999, with a 9-year average of 3 percent. Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) and (ii), NMFS proposes a pollock ICA of 1,600 mt for AI subarea after subtraction of the 10 percent CDQ directed fishing allowance (DFA). This allowance is based on NMFS's examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2003 through 2008. During this 6-year period, the incidental catch of pollock ranged from a low of 5 percent in 2006 to a high of 10 percent in 2003, with a 5-year average of 6 percent.

Pursuant to § 679.20(a)(8) and (10), NMFS proposes ICAs of 4,500 mt of flathead sole, 5,000 mt of rock sole, 2,000 mt of yellowfin sole, 10 mt each of Western and Central Aleutian District for both Pacific ocean perch and Atka mackerel, 100 mt of Eastern Aleutian District Pacific ocean perch, and 200 mt of Eastern Aleutian District and Bering Sea subarea Atka mackerel after subtraction of the 10.7 percent CDQ reserve. These allowances are based on NMFS's examination of the incidental catch in other target fisheries from 2003 through 2008.

The regulations do not designate the remainder of the non-specified reserve by species or species group. Any amount of the reserve may be apportioned to a target species that contributed to the non-specified reserve and the "other species" category during the year, provided that such apportionments do not result in overfishing (see § 679.20(b)(1)(i)).

#### Allocations of Pollock TAC Under the American Fisheries Act (AFA)

Section 679.20(a)(5)(i)(A) requires that the pollock TAC apportioned to the Bering Sea subarea, after subtraction of 10 percent for the CDQ program and 3.5 percent for the ICA, be allocated as a DFA as follows: 50 percent to the inshore sector, 40 percent to the catcher/processor sector, and 10 percent to the mothership sector. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). The AI directed pollock fishery allocation to the Aleut Corporation is the amount of pollock remaining in the AI subarea after subtracting 1,900 mt for the CDQ DFA (10 percent) and 1,600 mt for the ICA. In the AI subarea, 40 percent of the ABC is allocated to the A season and the remainder of the directed pollock fishery is allocated to the B season. Table 2 lists these proposed 2009 and 2010 amounts.

Section 679.20(a)(5)(i)(A)(4) also includes several specific requirements regarding Bering Sea subarea pollock allocations. First, 8.5 percent of the pollock allocated to the catcher/processor sector will be available for harvest by AFA catcher vessels with catcher/processor sector endorsements, unless the Regional Administrator receives a cooperative contract that provides for the distribution of harvest among AFA catcher/processors and AFA catcher vessels in a manner agreed to by all members. Second, AFA

catcher/processors not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the catcher/processor sector. Table 2 lists the proposed 2009 and 2010 allocations of pollock TAC. Tables 9 through 12 list the AFA catcher/processor and catcher vessel harvesting sideboard limits. In past years, the proposed harvest specifications included text and tables describing pollock allocations to the Bering Sea subarea inshore pollock cooperatives and open access sector. These allocations are based on the submission of AFA inshore cooperative applications due to NMFS on December 1 of each calendar year. Because AFA inshore cooperative applications for 2009 have not yet been submitted to NMFS, thereby preventing NMFS from calculating 2009 allocations, NMFS has not included inshore cooperative text and tables in these proposed harvest specifications. NMFS will post AFA inshore cooperative allocations on the Alaska Region website at <http://www.alaskafisheries.noaa.gov> when they become available in December 2008.

Table 2 also lists proposed seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest of pollock within the SCA, as defined at § 679.22(a)(7)(vii), is limited to 28 percent of the DFA until April 1. The remaining 12 percent of the 40 percent annual DFA allocated to the A season may be taken outside the SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each sector in proportion to each sector's allocated percentage of the DFA. Table 2 lists by sector these proposed 2009 and 2010 amounts.

TABLE 2—PROPOSED 2009 AND 2010 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)<sup>1</sup>

[Amounts are in metric tons]

Area and sector	2009 and 2010 allocations	2009 and 2010 A season <sup>1</sup>		2009 and 2010 B season <sup>1</sup>
		A season DFA	SCA harvest limit <sup>2</sup>	B season DFA
Bering Sea subarea TAC	1,000,000	n/a	n/a	n/a
CDQ DFA	100,000	40,000	28,000	60,000
ICA <sup>1</sup>	31,500	n/a	n/a	n/a
AFA Inshore	434,250	173,700	121,590	260,550
AFA Catcher/Processors <sup>3</sup>	347,400	138,960	97,272	208,440
Catch by C/Ps	317,871	127,148	n/a	190,723
Catch by CVs <sup>3</sup>	29,529	11,812	n/a	17,717
Unlisted C/P Limit <sup>4</sup>	1,737	695	n/a	1,042

TABLE 2—PROPOSED 2009 AND 2010 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)<sup>1</sup>—Continued

[Amounts are in metric tons]

Area and sector	2009 and 2010 allocations	2009 and 2010 A season <sup>1</sup>		2009 and 2010 B season <sup>1</sup>
		A season DFA	SCA harvest limit <sup>2</sup>	B season DFA
AFA Motherships	86,850	34,740	24,318	52,110
Excessive Harvesting Limit <sup>5</sup>	151,988	n/a	n/a	n/a
Excessive Processing Limit <sup>6</sup>	260,550	n/a	n/a	n/a
Total Bering Sea DFA (non-CDQ)	868,501	347,400	243,180	521,100
Aleutian Islands subarea <sup>1</sup>	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800
Aleut Corporation	15,500	10,200	n/a	5,300
Bogoslof District ICA <sup>7</sup>	10	n/a	n/a	n/a

<sup>1</sup> Pursuant to § 679.20(a)(5)(i)(A), the annual Bering Sea subarea pollock TAC, after subtraction for the CDQ DFA (10 percent) and the ICA (3.5 percent), is allocated as a DFA as follows: inshore sector 50 percent, catcher/processor sector 40 percent, and mothership sector 10 percent. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20 June 10) and 60 percent of the DFA is allocated to the B season (June 10 November 1). Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual AI pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

<sup>2</sup> In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the sealion conservation area (SCA) before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

<sup>3</sup> Pursuant to § 679.20(a)(5)(i)(A)(4), not less than 8.5 percent of the DFA allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors.

<sup>4</sup> Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

<sup>5</sup> Pursuant to § 679.20(a)(5)(i)(A)(6), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs not including CDQ.

<sup>6</sup> Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs not including CDQ.

<sup>7</sup> The Regional Administrator proposes closing the Bogoslof pollock fishery for directed fishing under the final 2009 and 2010 harvest specifications for the BSAI. The amounts specified are for incidental catch only and are not apportioned by season or sector.

### Allocation of the Atka Mackerel TACs

Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtraction of the CDQ reserves, jig gear allocation, and ICAs for the BSAI trawl limited access sector and non-trawl gear, to the Amendment 80 and BSAI trawl limited access sectors (Table 3). The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91.

Pursuant to § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and Bering Sea subarea Atka mackerel ITAC may be allocated to jig gear. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended and NMFS proposes a 0.5 percent allocation of the Atka mackerel ITAC in the Eastern Aleutian District and Bering Sea subarea to jig gear in 2009 and 2010. Based on the proposed 2009 and 2010 TAC of 15,300 mt after subtractions of the CDQ reserve and ICA, the jig gear allocation would be 67 mt for 2009 and 2010.

Section 679.20(a)(8)(ii)(A) apportions the Atka mackerel ITAC into two equal seasonal allowances. The first seasonal allowance is made available for directed fishing from January 1 (January 20 for trawl gear) to April 15 (A season), and the second seasonal allowance is made available from September 1 to November 1 (B season). The jig gear allocation is not apportioned by season.

Pursuant to § 679.20(a)(8)(ii)(C)(I), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian Districts.

NMFS will establish HLA limits for the CDQ reserve and each of the three non-CDQ fishery categories: the BSAI trawl limited access sector; the Amendment 80 limited access fishery; and an aggregate HLA limit applicable to all Amendment 80 cooperatives. NMFS will assign vessels in each of the three non-CDQ fishery categories that apply to fish for Atka mackerel in the HLA to an HLA fishery based on a random lottery of the vessels that apply (see § 679.20(a)(8)(iii)). There is no allocation of Atka mackerel to the BSAI

trawl limited access sector in the Western Aleutian District. Therefore, no vessels in the BSAI trawl limited access sector will be assigned to the Western Aleutian District HLA fishery.

Each trawl sector will have a separate lottery. A maximum of two HLA fisheries will be established in Area 542 for the BSAI trawl limited access sector. A maximum of four HLA fisheries will be established for vessels assigned to Amendment 80 cooperatives: a first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543. A maximum of four HLA fisheries will be established for vessels assigned to the Amendment 80 limited access fishery: a first and second HLA fishery in Area 542, and a first and second HLA fishery in Area 543. NMFS will initially open fishing for the first HLA fishery in all three fishery categories at the same time. The initial opening of fishing in the HLA will be based on the first directed fishing closure of Atka mackerel for the Eastern Aleutian District and Bering Sea subarea allocation for any one of the three non-CDQ fishery categories allocated Atka mackerel TAC.

TABLE 3—PROPOSED 2009 AND 2010 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector <sup>2</sup>	Season <sup>1,3,4</sup>	2009 allocation by area			2010 allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District	Western Aleutian District	Eastern Aleutian District/Bering Sea	Central Aleutian District	Western Aleutian District
TAC	n/a	15,300	19,000	13,200	15,300	19,000	13,200
CDQ reserve	Total HLA <sup>5</sup>	1,637 n/a	2,033 1,220	1,412 847	1,637 n/a	2,033 1,220	1,412 847
ICA	Total	200	20	20	200	20	20
Jig <sup>6</sup>	Total	67	0	0	67	0	0
BSAI trawl limited access	Total	536	678	0	804	1,017	0
	A HLA	268 n/a	339 203	0 0	402 n/a	508 305	0 0
	B HLA	268 n/a	339 203	0 0	402 n/a	508 305	0 0
Amendment 80 limited access	Total	6,835	9,796	7,254	6,683	9,590	7,255
	A HLA	3,418 n/a	4,898 2,939	3,627 2,176	3,342 n/a	4,795 2,877	3,628 2,177
	B HLA	3,418 n/a	4,898 2,939	3,627 2,176	3,342 n/a	4,795 2,877	3,628 2,177
Amendment 80 cooperatives	Total	6,025	6,473	4,514	5,909	6,340	4,513
	A HLA	3,013 n/a	3,237 1,942	2,257 1,354	2,955 n/a	3,170 1,902	2,257 1,354
	B HLA	3,013 n/a	3,237 1,942	2,257 1,354	2,955 n/a	3,170 1,902	2,257 1,354

<sup>1</sup> Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

<sup>2</sup> Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtraction of the CDQ reserves, ICAs, and the jig gear allocation, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

<sup>3</sup> The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

<sup>4</sup> The A season is January 1 (January 20 for trawl gear) to April 15, and the B season is September 1 to November 1.

<sup>5</sup> Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2009 and 2010, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

<sup>6</sup> Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and Bering Sea subarea TAC be allocated to jig gear after subtraction of the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

### Allocation of the Pacific Cod TAC

Section 679.20(a)(7)(i) and (ii) requires that the Pacific cod TAC in the BSAI, after subtraction of 10.7 percent for the CDQ program, be allocated as follows: 1.4 percent to vessels using jig gear, 2.0 percent to hook-and-line and pot catcher vessels less than 60 ft (18.3 m) length overall (LOA), 0.2 percent to hook-and-line catcher vessels greater than or equal to 60 ft (18.3 m) LOA, 48.7 percent to hook-and-line catcher/processors, 8.4 percent to pot catcher vessels greater than or equal to 60 ft (18.3 m) LOA, 1.5 percent to pot

catcher/processors, 2.3 percent to AFA trawl catcher/processors, 13.4 percent to non-AFA trawl catcher/processors, and 22.1 percent to trawl catcher vessels. The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator proposes an ICA of 500 mt for 2009 and 2010 based on anticipated incidental catch in these fisheries. The allocation of the ITAC for Pacific cod to the Amendment 80 sector is established in Table 33 to part 679 and § 679.91.

The Pacific cod ITAC is apportioned into seasonal allowances to disperse the Pacific cod fisheries over the fishing year (see §§ 679.20(a)(7) and 679.23(e)(5)). In accordance with § 679.20(a)(7)(iv)(B) and (C), any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

Pursuant to §§ 679.20(a)(7)(i)(B) and 679.23(e)(5), the CDQ season allowances by gear are as follows: for most hook-and-line catcher/processors and hook-and-line catcher vessels greater than or equal to 60 ft (18.3 m) LOA, the first

seasonal allowance of 60 percent of the ITAC is made available for directed fishing from January 1 to June 10, and the second seasonal allowance of 40 percent of the ITAC is made available from June 10 to December 31. No seasonal harvest constraints are imposed on the Pacific cod fishery for pot gear or catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line gear. For trawl gear, the first season is January 20 to April 1 and is allocated 60 percent of the ITAC. The second season, April 1 to June 10, and the third season, June 10 to November 1, are each allocated 20 percent of the ITAC. The trawl catcher vessel allocation is further allocated as 70 percent in the first season, 10 percent in the second season, and 20 percent in the third season. The trawl catcher/processor allocation is allocated 50 percent in the first season,

30 percent in the second season, and 20 percent in the third season. For jig gear, the first and third seasonal allowances are each allocated 40 percent of the ITAC, and the second seasonal allowance is allocated 20 percent of the ITAC.

Pursuant to §§ 679.20(a)(7)(iv)(A) and 679.23(e)(5), the non-CDQ season allowances by gear are as follows. For hook-and-line and pot catcher/processors and hook-and-line and pot vessels greater than or equal to 60 ft (18.3 m) LOA, the first seasonal allowance of 51 percent of the ITAC is made available for directed fishing from January 1 to June 10, and the second seasonal allowance of 49 percent of the ITAC is made available from June 10 (September 1 for pot gear) to December 31. No seasonal harvest constraints are imposed on the Pacific cod fishery for

catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is January 20 to April 1, the second season is April 1 to June 10, and the third season is June 10 to November 1. The trawl catcher vessel allocation is further allocated as 74 percent in the first season, 11 percent in the second season, and 15 percent in the third season. The trawl catcher/processor allocation is allocated 75 percent in the first season, 25 percent in the second season, and zero percent in the third season. For jig gear, the first seasonal allowance is allocated 60 percent of the ITAC, and the second and third seasonal allowances are each allocated 20 percent of the ITAC. Table 4 lists the proposed 2009 and 2010 allocations and seasonal apportionments of the Pacific cod TAC.

TABLE 4—PROPOSED 2009 AND 2010 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Gear sector	Percent	2009 and 2010 share of gear sector total	2009 and 2010 share of sector total	2009 and 2010 seasonal apportionment	
				Season	Amount
Total TAC	100	170,720	n/a	n/a	n/a
CDQ	10.7	18,267	n/a	see § 679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	92,691	n/a	n/a	n/a
Hook-and-line/pot ICA <sup>1</sup>	n/a	n/a	500	n/a	n/a
Hook-and-line/pot sub-total	n/a	92,191	n/a	n/a	n/a
Hook-and-line catcher/processors	48.7	n/a	73,844	Jan 1-Jun 10	37,660
				Jun 10-Dec 31	36,184
Hook-and-line catcher vessels ≥ 60 ft LOA	0.2	n/a	303	Jan 1-Jun 10	155
				Jun 10-Dec 31	149
Pot catcher/processors	1.5	n/a	2,274	Jan 1-Jun 10	1,160
				Sept 1-Dec 31	1,114
Pot catcher vessels ≥ 60 ft LOA	8.4	n/a	12,737	Jan 1-Jun 10	6,496
				Sept 1-Dec 31	6,241
Catcher vessels < 60 ft LOA using hook-and-line or pot gear	2.0	n/a	3,033	n/a	n/a
Trawl catcher vessels	22.1	33,692	n/a	Jan 20-Apr 1	24,932
				Apr 1-Jun 10	3,706
				Jun 10-Nov 1	5,054
AFA trawl catcher processors	2.3	3,506	n/a	Jan 20-Apr 1	2,630
				Apr 1- Jun 10	877
				Jun 10-Nov 1	0
Amendment 80	13.4	20,429	n/a	Jan 20-Apr 1	15,322

TABLE 4—PROPOSED 2009 AND 2010 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued

[Amounts are in metric tons]

Gear sector	Percent	2009 and 2010 share of gear sector total	2009 and 2010 share of sector total	2009 and 2010 seasonal apportionment	
				Season	Amount
				Apr 1- Jun 10	5,107
				Jun 10-Nov 1	0
Amendment 80 limited access	n/a	3,357	n/a	Jan 20-Apr 1	2,518
				Apr 1- Jun 10	839
				Jun 10-Nov 1	0
Amendment 80 cooperative	n/a	17,072	n/a	Jan 20-Apr 1	12,804
				Apr 1- Jun 10	4,268
				Jun 10-Nov 1	0
Jig	1.4	2,134	n/a	Jan 1-Apr 30	1,281
				Apr 30-Aug 31	427
				Aug 31-Dec 31	427

<sup>1</sup> The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator proposes an ICA of 500 mt for 2009 and 2010 based on anticipated incidental catch in these fisheries.

#### Sablefish Gear Allocation

Sections 679.20(a)(4)(iii) and (iv) require the allocation of sablefish TACs for the Bering Sea and AI subareas between trawl gear and hook-and-line or pot gear. Gear allocations of the TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear and for the AI subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Section 679.20(b)(1)(ii)(B) requires apportionment of 20 percent of the

hook-and-line and pot gear allocation of sablefish to the CDQ reserve. Additionally, § 679.20(b)(1)(ii)(D) requires apportionment of 7.5 percent of the trawl gear allocation of sablefish to the CDQ reserve. The Council recommended that only trawl sablefish TAC be established biennially. The harvest specifications for the hook-and-line gear and pot gear sablefish Individual Fishing Quota (IFQ) fisheries will be limited to the 2009 fishing year to ensure those fisheries are conducted

concurrently with the halibut IFQ fishery. Concurrent sablefish and halibut IFQ fisheries would reduce the potential for discards of halibut and sablefish in those fisheries. The sablefish IFQ fisheries would remain closed at the beginning of each fishing year until the final harvest specifications for the sablefish IFQ fisheries are in effect. Table 5 lists the proposed 2009 and 2010 gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 5—PROPOSED 2009 AND 2010 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in metric tons]

Subarea and gear	Percent of TAC	2009 Share of TAC	2009 ITAC <sup>1</sup>	2009 CDQ reserve	2010 ITAC	2010 ITAC	2010 CDQ reserve
Bering Sea							
Trawl	50	1,305	1,109	98	1,305	1,109	98
Hook-and-line gear <sup>2</sup>	50	1,305	n/a	261	n/a	n/a	n/a
TOTAL	100	2,610	1,109	359	2,610	1,109	98
Aleutian Islands							
Trawl	25	558	474	42	558	474	42
Hook-and-line gear <sup>2</sup>	75	1,673	n/a	335	n/a	n/a	n/a
TOTAL	100	2,230	474	376	2,230	474	42

<sup>1</sup> Except for the sablefish hook-and-line or pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

<sup>2</sup> For the portion of the sablefish TAC allocated to vessels using hook and line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Section 679.20(b)(1) does not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.



**Allocation of the Aleutian Islands Pacific Ocean Perch, Flathead Sole, Rock Sole, and Yellowfin Sole TACs**

Sections 679.20(a)(10)(i) and (ii) require the allocation between the Amendment 80 sector and BSAI trawl limited access for Aleutian Islands

Pacific ocean perch, flathead sole, rock sole, and yellowfin sole TACs in the BSAI, after subtraction of 10.7 percent for the CDQ reserve and an ICA for the BSAI trawl limited access sector and vessels using non-trawl gear. The allocation of the ITAC for Aleutian Islands Pacific ocean perch, flathead

sole, rock sole, and yellowfin sole to the Amendment 80 sector is established in Tables 33 and 34 to part 679 and § 679.91. Table 6 lists the proposed 2009 and 2010 allocations and seasonal apportionments of the Aleutian Islands Pacific ocean perch, flathead sole, rock sole, and yellowfin sole TACs.

TABLE 6—PROPOSED 2009 AND 2010 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAs), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch						Flathead sole	Rock sole	Yellowfin sole	
	Eastern Aleutian District		Central Aleutian District		Western Aleutian District		BSAI	BSAI	BSAI	
	2009	2010	2009	2010	2009	2010	2009 and 2010	2009 and 2010	2009	2010
TAC	4,810	4,810	4,900	4,900	7,490	7,490	50,000	75,000	225,000	225,000
CDQ	515	515	524	524	801	801	5,350	8,025	24,075	24,075
ICA	100	100	10	10	10	10	4,500	5,000	2,000	2,000
BSAI trawl limited access	420	420	437	437	134	134	0	0	44,512	44,512
Amendment 80	3,776	3,776	3,929	3,929	6,545	6,545	40,150	61,975	154,413	154,413
Amendment 80 limited access <sup>1</sup>	2,002	2,002	2,083	2,083	3,470	3,470	4,686	15,260	61,595	61,595
Amendment 80 cooperatives <sup>1</sup>	1,774	1,774	1,846	1,846	3,075	3,075	35,464	46,715	92,818	92,818

<sup>1</sup>The 2010 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2009.

**Allocation of PSC Limits for Halibut, Salmon, Crab, and Herring**

Section 679.21(e) sets forth the BSAI PSC limits. Pursuant to § 679.21(e)(1)(iv) and (e)(2), the 2009 and 2010 BSAI halibut mortality limits are 3,675 mt for trawl fisheries and 900 mt for the non-trawl fisheries. Section 679.21(e)(3)(i)(A)(2) and (e)(4)(i)(A) allocates 276 mt in 2009 and 326 mt in 2010 of the trawl halibut mortality limit and allocates 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the prohibited species quota (PSQ) reserve for use by the groundfish CDQ program. Section 679.21(e)(1)(vii) specifies 29,000 fish as the 2009 and 2010 Chinook salmon PSC limit for the Bering Sea subarea pollock fishery. Section 679.21(e)(3)(i)(A)(3)(i) allocates 7.5 percent, or 2,175 Chinook salmon, as the PSQ reserve for the CDQ program and allocates the remaining 26,825 Chinook salmon to the non-CDQ fisheries. Section 679.21(e)(1)(ix) specifies 700 fish as the 2009 and 2010 Chinook salmon PSC limit for the AI subarea pollock fishery. Section 679.21(e)(3)(i)(A)(3)(i) allocates 7.5

percent, or 53 Chinook salmon, as the AI subarea PSQ for the CDQ program and allocates the remaining 647 Chinook salmon to the non-CDQ fisheries. Section 679.21(e)(1)(viii) specifies 42,000 fish as the 2009 and 2010 non-Chinook salmon PSC limit. Section 679.21(e)(3)(i)(A)(3)(ii) allocates 10.7 percent, or 4,494 non-Chinook salmon, as the PSQ for the CDQ program and allocates the remaining 37,506 non-Chinook salmon to the non-CDQ fisheries.

PSC limits for crab and herring are specified annually based on abundance and spawning biomass. Due to the lack of new information as of October 2008 regarding PSC limits and apportionments, the Council recommended and NMFS proposes using the crab and herring 2008 and 2009 PSC limits and apportionments for the proposed 2009 and 2010 limits and apportionments. The Council will reconsider these amounts in December 2008, based on recommendations by the Plan Team and the SSC. Pursuant to § 679.21(e)(3)(i)(A)(1), 10.7 percent of each PSC limit specified for crab is

allocated as a PSQ reserve for use by the groundfish CDQ program.

The red king crab mature female abundance is estimated from the 2007 survey data at 33.4 million red king crabs, and the effective spawning biomass is estimated at 73 million lb (33,113 mt). Based on the criteria set out at § 679.21(e)(1)(ii), the proposed 2009 and 2010 PSC limit of red king crab in Zone 1 for trawl gear is 197,000 animals. This limit derives from the mature female abundance estimate of more than 84 million king crab and the effective spawning biomass estimate of more than 55 million lbs (24,948 mt).

Section 679.21(e)(3)(ii)(B)(2) establishes criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS to up to 25 percent of the red king crab PSC allowance based on the need to optimize the groundfish harvest relative to red king crab bycatch. NMFS proposes the Council's recommendation that the red king crab bycatch limit be equal to 25 percent of the red king crab

PSC allowance within the RKCSS (Table 7b).

Based on 2007 survey data, Tanner crab (*Chionoecetes bairdi*) abundance is estimated at 787 million animals. Given the criteria set out at § 679.21(e)(1)(iii), the calculated 2009 and 2010 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2. These limits are derived from the *C. bairdi* crab abundance estimate being in excess of the 400 million animal threshold specified in § 679.21(e)(1)(ii).

Pursuant to § 679.21(e)(1)(iv), the PSC limit for snow crab (*C. opilio*) is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2007 survey estimate of 3.33 billion animals, the calculated limit is 4,350,000 animals.

Pursuant to § 679.21(e)(1)(vi), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern Bering Sea herring biomass. The best estimate of 2009 and 2010 herring biomass is 172,644 mt. This amount was derived using 2007 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit proposed for 2009 and 2010 is 1,726 mt for all trawl gear as presented in Tables 7a and b.

Section 679.21(e)(3) requires, after subtraction of PSQ reserves, that crab and halibut trawl PSC be apportioned between the BSAI trawl limited access and Amendment 80 sectors as presented in Table 7a. The amount of the 2009 PSC limits assigned to the Amendment

80 sector is specified in Table 35 to part 679. Pursuant to § 679.21(e)(1)(iv) and § 679.91(d) through (f), crab and halibut trawl PSC assigned to the Amendment 80 sector is then sub-allocated to Amendment 80 cooperatives as PSC cooperative quota (CQ) and to the Amendment 80 limited access fishery as presented in Tables 7d and e. PSC CQ assigned to Amendment 80 cooperatives is not allocated to specific fishery categories. The 2010 PSC allocations between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2009. Section 679.21(e)(3)(i)(B) requires the apportionment of each trawl PSC limit not assigned to Amendment 80 cooperatives into PSC bycatch allowances for seven specified fishery categories.

Section 679.21(e)(4) authorizes the apportionment of the non-trawl halibut PSC limits into PSC bycatch allowances among six fishery categories. Table 7c lists the fishery bycatch allowances for the BSAI trawl limited access and non-trawl fisheries.

As in past years after consultation with the Council, NMFS proposes to exempt pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because 1) the pot gear fisheries have low halibut bycatch mortality, 2) halibut mortality for the jig gear fleet is assumed to be negligible, and 3) the sablefish and halibut IFQ fisheries have low halibut bycatch mortality because the IFQ program requires legal-size halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or a hired

master is aboard and is holding unused halibut IFQ (subpart D of 50 CFR part 679). In 2008, total groundfish catch for the pot gear fishery in the BSAI was approximately 22,000 mt, with an associated halibut bycatch mortality of about 1 mt. The 2008 jig gear fishery harvested about 176 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and thus are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of jig gear and the low mortality rate of halibut caught with jig gear and released.

Section 679.21(e)(5) authorizes NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts for the BSAI trawl limited access and Amendment 80 limited access sectors in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors to be considered are 1) seasonal distribution of prohibited species, 2) seasonal distribution of target groundfish species, 3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass, 4) expected variations in bycatch rates throughout the year, 5) expected start of fishing effort, and 6) economic effects of seasonal PSC apportionments on industry sectors. NMFS proposes the Council's recommendation of the seasonal PSC apportionments in Tables 7c and 7e to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based on the above criteria.

TABLE 7A—PROPOSED 2009 AND 2010 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

PSC species	Total non-trawl PSC	Non-trawl PSC remaining after CDQ PSQ <sup>1</sup>	Total trawl PSC	Trawl PSC remaining after CDQ PSQ <sup>1</sup>	CDQ PSQ reserve <sup>1</sup>	Amendment 80 sector		BSAI trawl limited access fishery
						2009	2010	
Halibut mortality (mt) BSAI	900	832	3,675	3,400 mt in 2009 and 3,282 mt in 2010	343 in 2009 and 393 in 2010	2,475	2,425	875
Herring (mt) BSAI	n/a	n/a	1,726	n/a	n/a	n/a	n/a	n/a
Red king crab (animals) Zone 1 <sup>1</sup>	n/a	n/a	197,000	175,921	21,079	104,427	98,920	53,797
<i>C. opilio</i> (animals) COBLZ <sup>2</sup>	n/a	n/a	4,350,000	3,884,550	465,450	2,267,412	2,148,156	1,248,494

TABLE 7A—PROPOSED 2009 AND 2010 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS—Continued

PSC species	Total non-trawl PSC	Non-trawl PSC remaining after CDQ PSQ <sup>1</sup>	Total trawl PSC	Trawl PSC remaining after CDQ PSQ <sup>1</sup>	CDQ PSQ reserve <sup>1</sup>	Amendment 80 sector		BSAI trawl limited access fishery
						2009	2010	
<i>C. bairdi</i> crab (animals) Zone 1 <sup>2</sup>	n/a	n/a	980,000	875,140	104,860	437,658	414,641	411,228
<i>C. bairdi</i> crab (animals) Zone 2 <sup>2</sup>	n/a	n/a	2,970,000	2,652,210	317,790	745,536	706,284	1,241,500

<sup>1</sup>Section 679.21(e)(3)(i)(A)(2) allocates 276 mt in 2009 and 326 mt in 2010 of the trawl halibut mortality limit and section 679.21(e)(4)(i)(A) allocates 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program. The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.

<sup>2</sup>Refer to 50 CFR 679.2 for definitions of zones.

TABLE 7B—PROPOSED 2009 AND 2010 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS

Fishery Categories	Herring (mt) BSAI	Red king crab (animals) Zone 1
Yellowfin sole	148	n/a
Rock sole/ flathead sole/ other flatfish <sup>1</sup>	26	n/a
Turbot/ arrowtooth/ sablefish <sup>2</sup>	12	n/a
Rockfish	9	n/a
Pacific cod	26	n/a

TABLE 7B—PROPOSED 2009 AND 2010 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS—Continued

Fishery Categories	Herring (mt) BSAI	Red king crab (animals) Zone 1
Midwater trawl pollock	1,318	n/a
Pollock/Atka mackerel/ other species <sup>3</sup>	187	n/a
Red king crab savings subarea	n/a	n/a
Non-pelagic trawl gear <sup>4</sup>	n/a	49,250

TABLE 7B—PROPOSED 2009 AND 2010 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS—Continued

Fishery Categories	Herring (mt) BSAI	Red king crab (animals) Zone 1
Total trawl PSC	1,726	197,000

<sup>1</sup>“Other flatfish” for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

<sup>2</sup>Greenland turbot, arrowtooth flounder, and sablefish fishery category.

<sup>3</sup>Non-pollock, Atka mackerel, and “other species” fishery category.

<sup>4</sup>In October 2008 the Council recommended that the red king crab bycatch limit for non-pelagic trawl fisheries within the RKCSS be limited to 25 percent of the red king crab PSC allowance (see § 679.21(e)(3)(ii)(B)(2)).

TABLE 7c—PROPOSED 2009 AND 2010 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR AND NON-TRAWL FISHERIES

BSAI trawl limited access fisheries	Prohibited species and area <sup>1</sup>				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	<i>C. opilio</i> (animals) COBLZ	<i>C. bairdi</i> (animals)	
				Zone 1	Zone 2
Yellowfin sole	162	47,397	1,176,494	346,228	1,185,500
Rock sole/flathead sole/other flatfish <sup>2</sup>	0	0	0	0	0
Turbot/arrowtooth/sablefish <sup>3</sup>	0	0	0	0	0
Rockfish	3	0	2,000	0	1,000
Pacific cod	585	6,000	50,000	60,000	50,000
Pollock/Atka mackerel/other species	125	400	20,000	5,000	5,000
Total BSAI trawl limited access PSC	875	53,797	1,248,494	411,228	1,241,500
Non-trawl fisheries	Catcher processor	Catcher vessel			
Pacific cod-Total	760	15			
January 1-June 10	314	10			
June 10-August 15	0	3			
August 15-December 31	446	2			
Other non-trawl-Total	58				
May 1-December 31	58				
Groundfish pot and jig	exempt				
Sablefish hook-and-line	exempt				
Total non trawl PSC	833				

<sup>1</sup> Refer to § 679.2 for definitions of areas.

<sup>2</sup> "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

<sup>3</sup> Greenland turbot, arrowtooth flounder, and sablefish fishery category.

TABLE 7D—PROPOSED 2009 PROHIBITED SPECIES BYCATCH ALLOWANCE FOR THE BSAI AMENDMENT 80 COOPERATIVES

Year	Prohibited species and zones <sup>1</sup>				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	<i>C. opilio</i> (animals) COBLZ	<i>C. bairdi</i> (animals)	
				Zone 1	Zone 2
2009	1,793	74,345	1,544,825	321,922	548,443

<sup>1</sup> Refer to § 679.2 for definitions of zones.

TABLE 7E—PROPOSED 2009 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI AMENDMENT 80 LIMITED ACCESS FISHERIES

Amendment 80 trawl limited access fisheries	Prohibited species and zone <sup>1</sup>				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	<i>C. opilio</i> (animals) COBLZ	<i>C. bairdi</i> (animals)	
				Zone 1	Zone 2
Yellowfin sole	359	5,867	632,306	60,832	149,709
Jan 20 - Jul 1	212	5,674	622,726	56,349	120,793
Jul 1 - Dec 31	148	193	9,580	4,483	28,916
Rock sole/other flat/flathead sole <sup>2</sup>	222	24,039	89,476	54,593	46,523
Jan 20 - Apr 1	178	23,687	86,449	48,162	40,637
Apr 1 - Jul 1	20	176	1,590	3,371	2,943
July 1 - Dec 31	24	176	1,437	3,060	2,943

TABLE 7E—PROPOSED 2009 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI AMENDMENT 80 LIMITED ACCESS FISHERIES—Continued

Amendment 80 trawl limited access fisheries	Prohibited species and zone <sup>1</sup>				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	<i>C. opilio</i> (animals) COBLZ	<i>C. bairdi</i> (animals)	
				Zone 1	Zone 2
Turbot/arrowtooth/sablefish <sup>3</sup>	n/a	n/a	n/a	n/a	n/a
Rockfish	50	n/a	n/a	n/a	n/a
Pacific cod	1	176	805	311	861
Pollock/Atka mackerel/other <sup>4</sup>	50	0	0	0	0
Total Amendment 80 trawl limited access PSC	682	30,082	722,587	115,736	197,093

<sup>1</sup>Refer to § 679.2 for definitions of zones.

<sup>2</sup>“Other flatfish” for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

<sup>3</sup>Greenland turbot, arrowtooth flounder, and sablefish fishery category.

<sup>4</sup>Pollock other than pelagic trawl pollock, Atka mackerel, and “other species” fishery category.

**Halibut Discard Mortality Rates**

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut bycatch rates, discard mortality rates (DMR), and estimates of groundfish catch to project when a fishery’s halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information contained in the annual SAFE report.

NMFS proposes the Council’s recommendation that the halibut DMRs developed and recommended by the International Pacific Halibut Commission (IPHC) for the 2009 and 2010 BSAI groundfish fisheries be used for monitoring the proposed 2009 and 2010 halibut bycatch allowances (see Tables 7a–e). The DMRs proposed for the 2009 and 2010 BSAI non-CDQ fisheries are the same as those used in 2008. The IPHC developed the DMRs for the 2009 and 2010 BSAI non-CDQ groundfish fisheries using the 10-year mean DMRs for those fisheries. The

IPHC changed the DMRs for the 2009 and 2010 BSAI CDQ groundfish fisheries using the 1998 to 2006 DMRs for those fisheries. The IPHC will analyze observer data annually and recommend changes to the DMRs when a fishery DMR shows large variation from the mean. A copy of the document justifying these DMRs is available from the Council (see ADDRESSES) and the DMRs are discussed in Appendix A of the final 2007 SAFE report dated November 2007. Table 8 lists the proposed 2009 and 2010 DMRs.

TABLE 8—PROPOSED 2009 AND 2010 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI

Gear	Fishery	Halibut discard mortality rate (percent)
Non-CDQ hook-and-line	Greenland turbot .....	13
	Other species .....	11
	Pacific cod .....	11
	Rockfish .....	17
Non-CDQ trawl	Arrowtooth flounder .....	75
	Atka mackerel .....	76
	Flathead sole .....	70
	Greenland turbot .....	70
	Non-pelagic pollock .....	74
	Pelagic pollock .....	88
	Other flatfish .....	74
	Other species .....	70
	Pacific cod .....	70
	Rockfish .....	76
	Rock sole .....	80
	Sablefish .....	75
	Yellowfin sole .....	80
Non-CDQ pot	Other species .....	7
	Pacific cod .....	7
CDQ trawl	Atka mackerel .....	85
	Flathead sole .....	70
	Non-pelagic pollock .....	86
	Pelagic pollock .....	90

TABLE 8—PROPOSED 2009 AND 2010 ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI—Continued

Gear	Fishery	Halibut discard mortality rate (percent)
	Rockfish .....	82
	Rock sole .....	86
	Yellowfin sole .....	86
CDQ hook-and-line	Greenland turbot .....	4
	Pacific cod .....	10
CDQ pot	Pacific cod .....	7
	Sablefish .....	34

**Central Gulf of Alaska Rockfish Pilot Program (Rockfish Program)**

On June 6, 2005, the Council adopted the Rockfish Program to meet the requirements of Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108–199). The basis for the BSAI fishing prohibitions and the catcher vessel BSAI Pacific cod sideboard limits of the Rockfish program are discussed in detail in the final rule for Amendment 68 to the FMP for groundfish of the GOA (71 FR 67210, November 20, 2006). Pursuant to § 679.82(d)(6)(i), the catcher vessel BSAI Pacific cod sideboard limit is 0.0 mt and in the final 2009 and 2010 harvest

specifications this would effectively close directed fishing for BSAI Pacific cod in July for catcher vessels under the Rockfish Program sideboard limitations.

**Listed AFA Catcher/Processor Sideboard Limits**

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of listed AFA catcher/processors to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Table 9 lists the proposed 2009 and 2010 catcher/processor sideboard

limits. The basis for these proposed sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

All harvests of groundfish sideboard species by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the proposed sideboard limits in Table 9. However, groundfish sideboard species that are delivered to listed AFA catcher/processors by catcher vessels will not be deducted from the proposed 2009 and 2010 sideboard limits for the listed AFA catcher/processors.

TABLE 9—PROPOSED 2009 AND 2010 BSAI GROUND FISH SIDEBOARD LIMITS FOR LISTED AMERICAN FISHERIES ACT CATCHER/PROCESSORS (C/P)

[Amounts are in metric tons]

Target species	Area	1995 - 1997			2009 and 2010 ITAC available to all trawl C/Ps <sup>1</sup>	2009 and 2010 AFA C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch to total catch		
Sablefish trawl	BS	8	497	0.016	1,109	18
	AI	0	145	0.000	474	0
Atka mackerel	<i>Central AI</i>					
	A season <sup>2</sup>	n/a	n/a	0.115	8,484	976
	HLA limit <sup>3</sup>	n/a	n/a	n/a	5,090	585
	B season <sup>2</sup>	n/a	n/a	0.115	8,484	976
	HLA limit <sup>3</sup>	n/a	n/a	n/a	5,090	585
	<i>Western AI</i>					
	A season <sup>2</sup>	n/a	n/a	0.200	5,894	1,179
	HLA limit <sup>3</sup>	n/a	n/a	n/a	3,536	707
B season <sup>2</sup>	n/a	n/a	0.200	5,894	1,179	
HLA limit <sup>3</sup>	n/a	n/a	n/a	3,536	707	
Yellowfin sole <sup>4</sup>	BSAI	100,192	435,788	0.230	200,925	n/a
Rock sole	BSAI	6,317	169,362	0.037	66,975	2,478
Greenland turbot	BS	121	17,305	0.007	1,488	10
	AI	23	4,987	0.005	672	3
Arrowtooth flounder	BSAI	76	33,987	0.002	63,750	128
Flathead sole	BSAI	1,925	52,755	0.036	44,650	1,607

TABLE 9—PROPOSED 2009 AND 2010 BSAI GROUND FISH SIDEBOARD LIMITS FOR LISTED AMERICAN FISHERIES ACT CATCHER/PROCESSORS (C/P)—Continued

[Amounts are in metric tons]

Target species	Area	1995 - 1997			2009 and 2010 ITAC available to all trawl C/Ps <sup>1</sup>	2009 and 2010 AFA C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch to total catch		
Alaska plaice	BSAI	14	9,438	0.001	42,500	43
Other flatfish	BSAI	3,058	52,298	0.058	18,360	1,065
Pacific ocean perch	BS	12	4,879	0.002	3,485	7
	Eastern AI	125	6,179	0.020	4,295	86
	Central AI	3	5,698	0.001	4,376	4
	Western AI	54	13,598	0.004	6,689	27
Northern rockfish	BSAI	91	13,040	0.007	6,911	48
Shortraker rockfish	BSAI	50	2,811	0.018	360	6
Rougheye rockfish	BSAI	50	2,811	0.018	172	3
Other rockfish	BS	18	621	0.029	352	10
	AI	22	806	0.027	471	13
Squid	BSAI	73	3,328	0.022	1,675	37
Other species	BSAI	553	68,672	0.008	42,500	340

<sup>1</sup>Aleutians Islands Pacific ocean perch, Atka mackerel, flathead sole, rock sole, and yellowfin sole are multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

<sup>2</sup>The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual ITAC specified for the Western Aleutian District, and 11.5 percent of the annual ITAC specified for the Central Aleutian District.

<sup>3</sup>Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2009 and 2010, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

<sup>4</sup>Section 679.64(a)(1)(v) exempts AFA catcher/processors from a yellowfin sole sideboard limit because the 2009 and 2010 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector (198,9250 mt) is greater than 125,000 mt.

Section 679.64(a)(2) and Tables 40 and 41 to part 679 establish a formula for PSC sideboard limits for listed AFA catcher/processors. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

PSC species listed in Table 10 that are caught by listed AFA catcher/processors

participating in any groundfish fishery other than pollock will accrue against the proposed 2009 and 2010 PSC sideboard limits for the listed AFA catcher/processors. Section 679.21(e)(3)(v) authorizes NMFS to close directed fishing for groundfish other than pollock for listed AFA catcher/processors once a proposed

2009 or 2010 PSC sideboard limit listed in Table 10 is reached.

Crab or halibut PSC caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/"other species" fishery categories according to regulations at § 679.21(e)(3)(iv).

TABLE 10—PROPOSED 2009 AND 2010 BSAI PROHIBITED SPECIES SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR

PSC species	Ratio of PSC catch to total PSC	Proposed 2009 and 2010 PSC available to trawl vessels after subtraction of PSQ <sup>1</sup>	Proposed 2009 and 2010 C/P sideboard limit <sup>1</sup>
Halibut mortality	n/a	n/a	286
Red king crab Zone 1 <sup>2</sup>	0.007	175,921	1,231
<i>C. opilio</i> (COBLZ) <sup>2</sup>	0.153	3,884,550	594,336
<i>C. bairdi</i>	n/a	n/a	n/a
Zone 1 <sup>2</sup>	0.140	875,140	122,520
Zone 2 <sup>2</sup>	0.050	2,652,210	132,611

<sup>1</sup>Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

<sup>2</sup>Refer to 50 CFR 679.2 for definitions of zones.

**AFA Catcher Vessel Sideboard Limits**

Pursuant to § 679.64(b), the Regional Administrator is responsible for restricting the ability of AFA catcher vessels to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery

cooperatives in the directed pollock fishery. Section 679.64(b) establishes formulas for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007).

Tables 11 and 12 list the proposed 2009 and 2010 AFA catcher vessel sideboard limits.

All catch of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or as incidental catch, will be deducted from the proposed 2009 and 2010 sideboard limits listed in Table 11.

**TABLE 11—PROPOSED 2009 AND 2010 BSAI GROUND FISH SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT CATCHER VESSELS (CV)**

[Amounts are in metric tons]

Species	Fishery by area/season/ sector/gear	Ratio of 1995-1997 AFA CV catch to 1995-1997 TAC	2009 and 2010 initial TAC <sup>1</sup>	2009 and 2010 AFA catcher vessel sideboard limits
Pacific cod	BSAI			
	Jig gear	0.0000	2,134	0
	Hook-and-line CV Jan 1 - Jun 10 Jun 10 - Dec 31	0.0006	155	0
		0.0006	149	0
	Pot gear CV Jan 1 - Jun 10 Sept 1 - Dec 31	0.0006	6,496	4
		0.0006	6,241	4
CV < 60 ft LOA using hook-and-line or pot gear	0.0006	3,033	2	
Trawl gear CV Jan 20 - Apr 1 Apr 1 - Jun 10 Jun 10 - Nov 1	0.8609	24,932	21,464	
	0.8609	3,706	3,190	
	0.8609	5,054	4,351	
Sablefish	BS trawl gear	0.0906	1,109	100
	AI trawl gear	0.0645	474	31
Atka mackerel	Eastern AI/BS Jan 1 - Apr 15 Sept 1 - Nov 1	0.0032	6,831	22
		0.0032	6,832	22
	Central AI Jan - Apr 15 HLA limit Sept 1 - Nov 1 HLA limit	0.0001	8,484	1
		0.0001	5,090	1
		0.0001	8,484	1
		0.0001	5,090	1
	Western AI Jan - Apr 15 HLA limit Sept 1 - Nov 1 HLA limit	0.0000	5,894	0
		n/a	3,536	0
		0.0000	5,894	0
		n/a	3,536	0
Yellowfin sole <sup>2</sup>	BSAI	0.0647	200,925	n/a
Rock sole	BSAI	0.0341	66,975	2,284
Greenland turbot	BS	0.0645	1,488	96
	AI	0.0205	672	14
Arrowtooth flounder	BSAI	0.0690	63,750	4,399
Alaska plaice	BSAI	0.0441	42,500	1,874
Other flatfish	BSAI	0.0441	18,360	810
Pacific ocean perch	BS	0.1000	3,485	349
	Eastern AI	0.0077	4,295	33
	Central AI	0.0025	4,376	11
	Western AI	0.0000	6,689	0



TABLE 11—PROPOSED 2009 AND 2010 BSAI GROUND FISH SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT CATCHER VESSELS (CV)—Continued

[Amounts are in metric tons]

Species	Fishery by area/season/sector/gear	Ratio of 1995-1997 AFA CV catch to 1995-1997 TAC	2009 and 2010 initial TAC <sup>1</sup>	2009 and 2010 AFA catcher vessel sideboard limits
Northern rockfish	BSAI	0.0084	6,911	58
Shortraker rockfish	BSAI	0.0037	360	1
Rougheye rockfish	BSAI	0.0037	172	1
Other rockfish	BS AI	0.0048 0.0095	352 471	2 4
Squid	BSAI	0.3827	1,675	641
Other species	BSAI	0.0541	42,500	2,299
Flathead sole	BS trawl gear	0.0505	44,650	2,255

<sup>1</sup>Aleutians Islands Pacific ocean perch, Atka mackerel, flathead sole, rock sole, and yellowfin sole are multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

<sup>2</sup>Section 679.64(b)(6) exempts AFA catcher vessels from a yellowfin sole sideboard limit because the 2009 and 2010 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector (198,925 mt) is greater than 125,000 mt.

Halibut and crab PSC listed in Table 12 that are caught by AFA catcher vessels participating in any groundfish fishery other than pollock will accrue against the proposed 2009 and 2010 PSC sideboard limits for the AFA catcher vessels. Sections 679.21(d)(8) and

(e)(3)(v) authorize NMFS to close directed fishing for groundfish other than pollock for AFA catcher vessels once a proposed 2009 and 2010 PSC sideboard limit listed in Table 12 is reached. The PSC caught by AFA catcher vessels while fishing for pollock

in the BSAI will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/"other species" fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 12—PROPOSED 2009 AND 2010 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI

[Amounts are in metric tons]

PSC species	Target fishery category <sup>2</sup>	AFA catcher vessel PSC sideboard limit ratio	Proposed 2009 and 2010 PSC limit after subtraction of PSQ reserves <sup>1</sup>	Proposed 2009 and 2010 AFA catcher vessel PSC sideboard limit <sup>1</sup>
Halibut	Pacific cod trawl	n/a	n/a	887
	Pacific cod hook-and-line or pot	n/a	n/a	2
	Yellowfin sole total	n/a	n/a	101
	Rock sole/flathead sole/other flatfish <sup>3</sup>	n/a	n/a	228
	Turbot/arrowtooth/sablefish	n/a	n/a	0
	Rockfish (July 1 - December 31)	n/a	n/a	2
	Pollock/Atka mackerel/other species	n/a	n/a	5
Red king crab Zone 1 <sup>4</sup>	n/a	0.299	175,921	52,600
<i>C. opilio</i> COBLZ <sup>4</sup>	n/a	0.168	3,884,550	652,604
<i>C. bairdi</i> Zone 1 <sup>4</sup>	n/a	0.330	875,140	288,796
<i>C. bairdi</i> Zone 2 <sup>4</sup>	n/a	0.186	2,652,210	493,311

<sup>1</sup>Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

<sup>2</sup>Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).

<sup>3</sup>"Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

<sup>4</sup>Refer to 50 CFR 679.2 for definitions of areas.

### Classification

NMFS has determined that the proposed harvest specifications are consistent with the FMP and preliminarily determined that the proposed harvest specifications are consistent with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared a Final EIS for this action and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the Final EIS. Copies of the Final EIS and ROD for this action are available from NMFS (see **ADDRESSES**). The Final EIS analyzes the environmental consequences of the proposed action and its alternatives on resources in the action area. The Final EIS found no significant environmental consequences from the proposed action or its alternatives.

NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by Section 603 of the Regulatory Flexibility Act. The IRFA evaluated the impacts on small entities of alternative harvest strategies for the groundfish fisheries in the Exclusive Economic Zone (EEZ) off of Alaska. NMFS published a notice of the availability of the IRFA and its summary in the classification section of the proposed harvest specifications for the groundfish fisheries in the BSAI in the **Federal Register** on December 15, 2006 (71 FR 75460). The comment period on the BSAI proposed harvest specifications and IRFA ended on January 16, 2007. NMFS did not receive any comments on the IRFA.

Each year, NMFS promulgates a rule establishing the harvest specifications pursuant to the adopted harvest strategy. While the harvest specification numbers may change from year to year, the harvest strategy for establishing those numbers does not change. Therefore, the impacts discussed in the IRFA are essentially the same. NMFS considers the annual rulemakings

establishing the harvest specification numbers to be a series of closely related rules stemming from the harvest strategy and representing one rule for purposes of the Regulatory Flexibility Act (5 U.S.C. 605(c)).

A copy of the IRFA is available from NMFS (see **ADDRESSES**), and a summary is below.

The action analyzed in the IRFA is the adoption of a harvest strategy to govern the catch of groundfish in the BSAI. The preferred alternative is the status quo harvest strategy in which TACs fall within the range of ABCs recommended by the Council's harvest specification process and TACs recommended by the Council. This action is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act.

The directly regulated small entities include approximately 810 small catcher vessels, fewer than 20 small catcher/processors, and six CDQ groups. The entities directly regulated by this action are those that harvest groundfish in the exclusive economic zone of the BSAI and in parallel fisheries within State of Alaska waters. These include entities operating catcher vessels and catcher/processor vessels within the action area, and entities receiving direct allocations of groundfish. Catcher vessels and catcher/processors were considered to be small entities if their annual gross receipts from all economic activities, including the revenue of their affiliated operations, totaled \$4 million per year or less. Data from 2006 were the most recent available to determine the number of small entities.

Estimates of first wholesale gross revenues for the BSAI non-CDQ and CDQ sectors were used as indices of the potential impacts of the alternative harvest strategies on small entities. Revenues were projected to decline from 2006 levels in 2007 and 2008 under the preferred alternative due to declines in ABCs for economically key groundfish species.

The preferred alternative (Alternative 2) was compared to four other alternatives. These included Alternative

1, which would have set TACs to generate fishing rates equal to the maximum permissible ABC (if the full TAC were harvested), unless the sum of TACs exceeded the BSAI optimum yield, in which case TACs would have been limited to the optimum yield. Alternative 3 would have set TACs to produce fishing rates equal to the most recent five-year average fishing rates. Alternative 4 would have set TACs to equal the lower limit of the BSAI optimum yield range. Alternative 5 would have set TACs equal to zero. Alternative 5 is the "no action" alternative.

Alternatives 3, 4, and 5 produced smaller first wholesale revenue indices for both non-CDQ and CDQ sectors than Alternative 2. Alternative 1 revenues were the same as Alternative 2 revenues in the BSAI for both sectors. Moreover, higher Alternative 1 TACs are associated with maximum permissible ABCs, while Alternative 2 TACs are associated with the ABCs that have been recommended to the Council by the Plan Team and the SSC, and more fully consider other potential biological issues. For these reasons, Alternative 2 is the preferred alternative.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules.

Adverse impacts on marine mammals resulting from fishing activities conducted under these harvest specifications are discussed in the Final EIS (see **ADDRESSES**).

**Authority:** 16 U.S.C. 773 *et seq.*; 16 U.S.C. 1540(f); 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 3631 *et seq.*; Pub. L. 105-277; Pub. L. 106-31; Pub. L. 106-554; Pub. L. 108-199; Pub. L. 108-447; Pub. L. 109-241; Pub. L. 109-479.

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