

§ 679.21 *Prohibited species bycatch management.*

(a) *Applicability.*

(1) This section applies to all vessels required to have a Federal fisheries permit under § 679.4.

(2) Except as otherwise provided, this section also applies to all motherships, shoreside processors, and SFPs that receive groundfish from vessels required to have a Federal fisheries permit under § 679.4.

(b) *General.*

(1) See § 679.2 and Table 2b to this part for definition of prohibited species.

(2) Prohibited species catch restrictions.

The operator of each vessel engaged in directed fishing for groundfish in the GOA or BSAI must:

(i) Minimize its catch of prohibited species.

(ii) After allowing for sampling by an observer, if an observer is aboard, 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. The following exceptions are made:

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

(B) Salmon PSQ caught by catcher vessels using trawl gear in the CDQ fisheries under subpart C of this part.

(3) Rebuttable presumption.

Except as provided under paragraph (c) of this section, § 679.26, or for salmon PSQ 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.

(4) Prohibited species taken seaward of the EEZ off Alaska.

No vessel fishing for groundfish in the GOA or BSAI may have on board any species listed in this paragraph (b) that was taken in waters seaward of these management areas, regardless of whether retention of such species was authorized by other applicable laws.

(5) Sablefish as a prohibited species.
(See § 679.24(c)(2)(ii).)

(c) *Salmon taken in BSAI trawl fishery*

(1) Salmon discard.

Except as provided in paragraph (c)(3) of this section, the operator of a vessel and the manager of a shoreside processor must not discard any salmon or transfer or process any salmon under the PSD program at § 679.26, if the salmon were taken incidental to a directed fishery for BSAI groundfish by vessels using trawl gear until the number of salmon has been determined by an observer and the collection of any scientific data or biological samples from the salmon has been completed.

(2) Salmon retention and storage.

(i) Operators of vessels carrying observers aboard and whose fishing operations allow for sorting of BSAI groundfish catch for salmon must retain all salmon bycatch from each haul in a separate bin or other location that allows an observer free and unobstructed physical access to the salmon to count each fish and collect any scientific data or biological samples. Salmon from different hauls must be retained separately in a manner that identifies the haul from which the salmon were taken.

(ii) Operators of vessels not carrying observers aboard or whose fishing operations do not allow for sorting of BSAI groundfish catch for salmon must ice, freeze, or store in a refrigerated saltwater tank all salmon taken as bycatch in trawl operations for delivery to the processor receiving the vessel's BSAI groundfish catch.

(iii) Processors receiving BSAI groundfish harvested in a directed fishery for groundfish using trawl gear must retain all salmon delivered by each trawl vessel during a weekly reporting period in separate bins marked with the vessel's name and ADF&G fish ticket number(s) for each delivery until a NMFS- certified observer has counted each salmon and collected any scientific data or biological samples from the salmon delivered to the processor by that vessel. Processors without an observer present must store whole salmon in an iced or frozen state until an observer is available to count each fish. Salmon must be stored at a location that allows an observer free and unobstructed physical access to each salmon.

(3) Exemption.

Motherships and shoreside processors that are not required to obtain observer coverage during a month

under § 679.50(c) and (d) are not required to retain salmon.

(4) Assignment of crew to assist observer.

Operators of vessels and managers of shoreside processors that are required to retain salmon under paragraph (c)(1) of this section must designate and identify to the NMFS-certified observer aboard the vessel or at the shoreside processor a crew person or employee to be responsible for sorting, retention, and storage of salmon. Upon request of the NMFS-certified observer, the designated crew person or employee also is responsible for counting salmon and taking biological samples from retained salmon under the direction of the observer.

(5) Release of salmon.

Salmon must be returned to Federal waters as soon as is practicable, with a minimum of injury, regardless of condition, following notification by a NMFS-certified observer that the number of salmon has been determined and the collection of any scientific data or biological samples has been completed.

(d) *GOA halibut PSC limits.*

This section is applicable for vessels engaged in directed fishing for groundfish in the GOA.

(1) Notification.

(i) Proposed and final limits and apportionments. NMFS will publish in the *Federal Register* proposed and final halibut PSC limits, and apportionments thereof, in the notification required under § 679.20.

(ii) Modification of limits. NMFS, by notification in the *Federal Register*, may change the halibut PSC limits during the year for which they were specified, based on new information of the types set forth in this paragraph (d)(1).

(2) Public comment.

NMFS will accept public comment on the proposed halibut PSC limits, and apportionments thereof, for a period specified in the notice of proposed halibut PSC limits published in the *Federal Register*. NMFS will consider comments received on proposed halibut PSC limits and, after consultation with the Council, will publish notification in the *Federal Register* specifying the final halibut PSC limits and apportionments thereof.

(3) Trawl gear proposed halibut limit.

(i) Notification. After consultation with the Council, NMFS will publish notification in the *Federal*

Register specifying the proposed halibut PSC limit for vessels using trawl gear.

(ii) Bycatch allowance. The halibut PSC limit specified for vessels using trawl gear may be further apportioned as bycatch allowances to the fishery categories listed in paragraph (d)(3)(iii) of this section, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The sum of all bycatch allowances will equal the halibut PSC limit established under this paragraph (d).

(iii) Trawl fishery categories. For purposes of apportioning the trawl halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those GOA groundfish species for which a TAC has been specified under § 679.20:

(A) Shallow-water species fishery. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate catch of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species" that is greater than the retained aggregate amount of other GOA groundfish species or species group.

(B) Deep-water species fishery. Fishing with trawl gear during any weekly reporting period that results in a retained catch of groundfish and is not a shallow-water species fishery as defined under paragraph (d)(3)(iii)(A) of this section.

(4) Hook-and-line and pot gear fisheries.

(i) Notification. After consultation with the Council, NMFS will publish notification in the *Federal Register* specifying the proposed and final halibut PSC limits for vessels using hook-and-line gear. The notification also may specify a halibut PSC limit for the pot gear fisheries.

(ii) Halibut bycatch allowance. The halibut PSC limit specified for vessels using hook-and-line gear may be further apportioned, as bycatch allowances, to the fishery categories listed in paragraph (d)(4)(iii) of this section, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The sum of all bycatch allowances will equal the halibut PSC limit established under this paragraph (d).

(iii) Hook-and-line fishery categories. For purposes of apportioning the hook-and-line halibut

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PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those GOA groundfish species for which a TAC has been specified under § 679.20.

(A) Demersal shelf rockfish in the Southeast Outside District. Fishing with hook-and-line gear in the Southeast Outside District of the Eastern GOA regulatory area (SEEO) during any weekly reporting period that results in a retained catch of demersal shelf rockfish that is greater than the retained amount of any other fishery category defined under this paragraph (d)(4)(iii).

(B) Sablefish fishery. Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of sablefish that is greater than the retained amount of any other fishery category defined under this paragraph (d)(4)(iii).

(C) Other hook-and-line fishery. Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of groundfish and is not a demersal shelf rockfish fishery or a sablefish fishery defined under paragraphs (d)(4)(iii)(A) and (B) of this section.

(5) Seasonal apportionments.

(i) General. NMFS, after consultation with the Council, may apportion each halibut PSC limit or bycatch allowance specified under this paragraph (d) on a seasonal basis.

(ii) Factors to be considered. NMFS will base any seasonal apportionment of a halibut PSC limit or bycatch allowance on the following types of information:

(A) Seasonal distribution of halibut.

(B) Seasonal distribution of target groundfish species relative to halibut distribution.

(C) Expected halibut bycatch needs, on a seasonal basis, relative to changes in halibut biomass and expected catches of target groundfish species.

(D) Expected variations in bycatch rates throughout the fishing year.

(E) Expected changes in directed groundfish fishing seasons.

(F) Expected start of fishing effort.

(G) Economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

(iii) Unused seasonal apportionments.

(A) Unused seasonal apportionments of halibut PSC limits specified for trawl, hook-and-line, or pot gear will be added to the respective seasonal apportionment for the next season during a current fishing year; and

(B) Unused halibut PSC that had been allocated as CQ that has not been used by a rockfish cooperative will be added to the last seasonal apportionment for trawl gear during the current fishing year:

(1) After November 15; or

(2) After the effective date of a declaration to terminate fishing.

(iv) Seasonal apportionment exceeded. If a seasonal apportionment of a halibut PSC limit specified for trawl, hook-and-line, or pot gear is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the respective apportionment for the next season during a current fishing year.

(6) Apportionment among regulatory areas and districts.

Each halibut PSC limit specified under this paragraph (d) also may be apportioned among the GOA regulatory areas and districts.

(7) Halibut PSC closures.

(i) Trawl gear fisheries. If, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in either of the trawl fishery categories listed in paragraph (d)(3)(iii)(A) or (B) of this section will catch the halibut bycatch allowance, or apportionments thereof, specified for that fishery category under paragraph (d)(1) of this section, NMFS will publish notification in the *Federal Register* closing the entire GOA or the applicable regulatory area or district to directed fishing with trawl gear for each species and/or species group that comprises that fishing category; provided, however, that when the halibut bycatch allowance, or seasonal apportionment thereof, specified for the shallow-water species fishery is reached, fishing for pollock by vessels using pelagic trawl gear may continue, consistent with other provisions of this part.

(ii) Hook-and-line fisheries. If, during the fishing year, the Regional Administrator determines that U.S.

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fishing vessels participating in any of the three hook-and-line gear fishery categories listed under paragraph (d)(4)(iii) of this section will catch the halibut bycatch allowance, or apportionments thereof, specified for that fishery category under paragraph (d)(1) of this section, NMFS will publish notification in the *Federal Register* closing the entire GOA or the applicable regulatory area or district to directed fishing with hook-and-line gear for each species and/or species group that comprises that fishing category.

(iii) Pot gear fisheries. If, during the fishing year, the Regional Administrator determines that the catch of halibut by operators of vessels using pot gear to participate in a directed fishery for groundfish will reach the halibut PSC limit, or seasonal apportionment thereof, NMFS will publish notification in the *Federal Register* prohibiting directed fishing for groundfish by vessels using pot gear for the remainder of the season to which the halibut PSC limit or seasonal apportionment applies.

(iv) Nonpelagic trawl gear fisheries.

(A) Continued fishing under specified conditions. When the vessels to which a halibut PSC limit applies have caught an amount of halibut equal to that PSC, the Regional Administrator may, by notification in the *Federal Register*, allow some or all of those vessels to continue to fish for groundfish using nonpelagic trawl gear under specified conditions, subject to the other provisions of this part.

(B) Factors to be considered. In authorizing and conditioning such continued fishing with bottom-trawl gear, the Regional Administrator will take into account the following considerations, and issue relevant findings:

(1) The risk of biological harm to halibut stocks and of socio-economic harm to authorized halibut users posed by continued bottom trawling by these vessels.

(2) The extent to which these vessels have avoided incidental halibut catches up to that point in the year.

(3) The confidence of the Regional Administrator in the accuracy of the estimates of incidental halibut catches by these vessels up to that point in the year.

(4) Whether observer coverage of these vessels is sufficient to assure adherence to the prescribed conditions and to alert the Regional Administrator to increases in their incidental halibut catches.

(5) The enforcement record of owners and operators of these vessels, and the confidence of the Regional Administrator that adherence to the prescribed conditions can be assured in light of available enforcement resources.

(8) AFA halibut bycatch limitations.

Halibut bycatch limits for AFA catcher vessels will be established according to the procedure and formula set out in § 679.64(b) and managed through directed fishing closures for AFA catcher vessels in the groundfish fisheries to which the halibut bycatch limit applies.

(e) *BSAI PSC limits*

(1) Trawl gear.

(i) Red king crab in Zone 1. The PSC limit of red king crab caught by trawl vessels while engaged in directed fishing for groundfish in Zone 1 during any fishing year will be specified for up to two fishing years by NMFS, after consultation with the Council, based on abundance and spawning biomass of red king crab using the criteria set out under paragraphs (e)(1)(i)(A) through (C) of this section. The following table refers to the PSC limits for red king crab that you must follow in Zone 1:

When the number of mature female red king crab is ...	The zone 1 PSC limit will be ...
(A) At or below the threshold of 8.4 million mature crab or the effective spawning biomass is less than or equal to 14.5 million lb (6,577 mt)	32,000 red king crab
(B) Above the threshold of 8.4 million mature crab and the effective spawning biomass is greater than 14.5 but less than 55 million lb (24,948 mt)	97,000 red king crab
(C) Above the threshold of 8.4 million mature crab and the effective spawning biomass is equal to or greater than 55 million lb	197,000 red king crab

(ii) Tanner crab (*C. bairdi*). The PSC limit of *C. bairdi* crabs caught by trawl vessels while engaged in directed fishing for groundfish in Zones 1 and 2 during any fishing year will be specified for up to two fishing years by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. bairdi* crabs as indicated by the NMFS

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annual bottom trawl survey, using the criteria set out under paragraphs (e)(1)(ii)(A) and (B) of this section.

(A) The following table refers to the PSC limits for *C. bairdi* that you must follow in Zone 1:

When the total abundance of <i>C. bairdi</i> crab is ...	The PSC limit will be ...
(1) 150 million animals or less	0.5 percent of the total abundance minus 20,000 animals
(2) Over 150 million to 270 million animals	730,000 animals
(3) Over 270 million to 400 million animals	830,000 animals
(4) Over 400 million animals	980,000 animals

(B) This table refers to the PSC limits for *C. bairdi* that you must follow in Zone 2.

When the total abundance of <i>C. bairdi</i> crabs is ...	The PSC limit will be ...
(1) 175 million animals or less	1.2 percent of the total abundance minus 30,000 animals
(2) Over 175 million to 290 million animals	2,070,000 animals
(3) Over 290 million to 400 million animals	2,520,000 animals
(4) Over 400 million animals	2,970,000 animals

(iii) *C. Opilio*. The PSC limit of *C. opilio* caught by trawl vessels while engaged in directed fishing for groundfish in the COBLZ will be specified annually by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. opilio* as indicated by the NMFS annual bottom trawl survey using the following criteria:

(A) PSC Limit. The PSC limit will be 0.1133 percent of the total abundance, minus 150,000 *C. opilio* crabs, unless;

(B) Minimum PSC Limit. If 0.1133 percent multiplied by the total abundance is less than 4.5 million, then the minimum PSC limit will be 4.350 million animals; or

(C) Maximum PSC Limit. If 0.1133 percent multiplied by the total abundance is greater than 13 million, then the maximum PSC limit will be 12.850 million animals.

(iv) Halibut. The PSC limit of halibut caught while conducting any trawl fishery for groundfish in the BSAI during any fishing year is an amount of halibut equivalent to 3,675 mt of halibut mortality.

(v) Pacific herring. The PSC limit of Pacific herring caught while conducting any domestic trawl fishery for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. The PSC limit will be apportioned into annual herring PSC allowances, by target fishery, and will be published along with the annual herring PSC limit in the **Federal Register** with the proposed and final groundfish specifications defined in § 679.20.

(vi) BS Chinook salmon. The trawl closures identified in paragraph (e)(7)(viii) of this section will take effect when the Regional Administrator determines that the PSC limit of 29,000 Chinook salmon caught while harvesting pollock in the BS between January 1 and December 31 is attained.

Year	Chinook Salmon Limit
2001	41,000
2002	37,000
2003	33,000
2004 and after	29,000

(vii) Non-chinook salmon. The PSC limit of non-chinook salmon caught by vessels using trawl gear during August 15 through October 14 in the CVOA is 42,000 fish.

(viii) AI Chinook salmon. The trawl closures identified in paragraph (e)(7)(viii) of this section will take effect when the Regional Administrator determines that the AI PSC limit of 700 Chinook salmon caught while harvesting pollock in the AI between January 1 and December 31 is attained.

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

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(3) PSC apportionment to trawl fisheries.

(i) General.

(A) PSQ reserve. The following allocations of the trawl gear PSC limits are made to the CDQ Program as PSQ reserves. The PSQ reserves are not apportioned by gear or fishery.

(1) Crab PSQ. 10.7 percent of each PSC limit set forth in paragraphs (e)(1)(i) through (iii) of this section.

(2) Halibut PSQ.

(i) 276 mt of the total PSC limit set forth in paragraph (e)(1)(iv) of this section in each year for 2008 and 2009.

(ii) 326 mt of the total PSC limit set forth in paragraph (e)(1)(iv) of this section effective in 2010 and each year thereafter.

(3) Salmon PSQ.

(i) Chinook salmon. 7.5 percent of the PSC limit set forth in paragraph (e)(1)(vi) of this section.

(ii) Non-Chinook salmon. 10.7 percent of the PSC limit set forth in paragraph (e)(1)(vii) of this section.

(B) Fishery categories. NMFS, after consultation with the Council and after subtraction of PSQ reserves and PSC CQ assigned to Amendment 80 cooperatives, will apportion each PSC limit set forth in paragraphs (e)(1)(i) through (vii) of this section into bycatch allowances for fishery categories defined in paragraph (e)(3)(iv) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits.

(ii) Red king crab, *C. bairdi*, *C. opilio*, and halibut.

(A) General. For vessels engaged in directed fishing for groundfish in the BSAI, other than vessels fishing under a CQ permit assigned to an Amendment 80 cooperative, the PSC limits for red king crab, *C. bairdi*, *C. opilio*, and halibut will be apportioned to the trawl fishery categories defined in paragraphs (e)(3)(iv)(B) through (F) of this section.

(B) Red King Crab Savings Subarea (RKCSS).

(1) The RKCSS is the portion of the RKCSA between 56° 00' and 56° 10' N. lat. Notwithstanding other provisions of this part, vessels using non-pelagic

trawl gear in the RKCSS may engage in directed fishing for groundfish in a given year, if the ADF&G had established a guideline harvest level the previous year for the red king crab fishery in the Bristol Bay area.

(2) When the RKCSS is open to vessels fishing for groundfish with nonpelagic trawl gear under paragraph (e)(3)(ii)(B)(1) of this section, NMFS, after consultation with the Council, will specify an amount of the red king crab bycatch limit annually established under paragraph (e)(1)(i) of this section for the RKCSS. The amount of the red king crab bycatch limit specified for the RKCSS will not exceed an amount equivalent to 25 percent of the red king crab PSC allowance and will be based on the need to optimize the groundfish harvest relative to red king crab bycatch.

(C) Incidental catch in midwater pollock fishery. Any amount of red king crab, *C. bairdi*, *C. opilio*, or halibut that is incidentally taken in the midwater pollock fishery as defined in paragraph (e)(3)(iv)(A) of this section will be counted against the bycatch allowances specified for the pollock/Atka mackerel/ "other species" category defined in paragraph (e)(3)(iv)(F) of this section.

(iii) Pacific herring. The PSC limit for Pacific herring will be apportioned to the BSAI trawl fishery categories defined in paragraphs (e)(3)(iv)(A) through (F) of this section.

(iv) Trawl fishery categories. For purposes of apportioning trawl PSC limits among fisheries, other than PSC CQ assigned to an Amendment 80 cooperative, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 679.20.

(A) Midwater pollock fishery. Fishing with trawl gear during any weekly reporting period that results in a catch of pollock that is 95 percent or more of the total amount of groundfish caught during the week.

(B) Flatfish fishery. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of rock sole, "other flatfish," and yellowfin sole that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

(1) Yellowfin sole fishery. Fishing with trawl gear during any weekly reporting period that is defined as a flatfish fishery under this paragraph (e)(3)(iv)(B) and results in a retained amount of yellowfin sole that

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is 70 percent or more of the retained aggregate amount of rock sole, “other flatfish,” and yellowfin sole.

(2) Rock sole/flathead sole/“other flatfish” fishery. Fishing with trawl gear during any weekly reporting period that is defined as a flatfish fishery under this paragraph (e)(3)(iv)(B) and is not a yellowfin sole fishery as defined under paragraph (e)(3)(iv)(B)(1) of this section.

(C) Greenland turbot/arrowtooth flounder/sablefish fishery. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Greenland turbot, arrowtooth flounder, and sablefish that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

(D) Rockfish fishery. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of rockfish species that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

(E) Pacific cod fishery. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Pacific cod that is greater than the retained amount of any other groundfish fishery category defined under this paragraph (e)(3)(iv).

(F) Pollock/Atka mackerel/“other species.” Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of pollock other than pollock harvested in the midwater pollock fishery defined under paragraph (e)(3)(iv)(A) of this section, Atka mackerel, and “other species” that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

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

(vi) Amendment 80 sector bycatch limitations.

(A) Halibut and crab bycatch limits for the Amendment 80 sector in the BSAI will be established according to the procedure and formulae set out in § 679.91(d) through (f); and

(B) Halibut and crab PSC assigned to the Amendment 80 limited access fishery will be managed through directed fishing closures for Amendment 80 vessels to which the halibut and crab bycatch limits apply.

(4) Halibut apportionment to nontrawl fishery categories

(i) General.

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

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

(C) Apportionment of the nontrawl halibut PSC limit among the nontrawl fishery categories will be based on each category’s proportional share of the anticipated bycatch mortality of halibut during a fishing year and the need to optimize the amount of total groundfish harvested under the nontrawl halibut PSC limit.

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

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

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

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

(C) Sablefish hook-and-line fishery. Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of sablefish that is

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greater than the retained amount of any other groundfish species.

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

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

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

(5) Seasonal apportionments of bycatch allowances.

(i) General. NMFS, after consultation with the Council, may apportion fishery bycatch allowances on a seasonal basis.

(ii) Factors to be considered. NMFS will base any seasonal apportionment of a bycatch allowance on the following types of information:

(A) Seasonal distribution of prohibited species;

(B) Seasonal distribution of target groundfish species relative to prohibited species distribution;

(C) Expected prohibited species bycatch needs on a seasonal basis relevant to change in prohibited species biomass and expected catches of target groundfish species;

(D) Expected variations in bycatch rates throughout the fishing year;

(E) Expected changes in directed groundfish fishing seasons;

(F) Expected start of fishing effort; or

(G) Economic effects of establishing seasonal prohibited species apportionments on segments of the target groundfish industry.

(iii) Seasonal trawl fishery bycatch allowances.

(A) Unused seasonal apportionments. Unused seasonal apportionments of trawl fishery bycatch

allowances made under this paragraph (e)(5) **will** be added to its respective fishery bycatch allowance for the next season during a current fishing year.

(B) Seasonal apportionment exceeded. If a seasonal apportionment of a trawl fishery bycatch allowance made under paragraph (d)(5) of this section is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from its respective apportionment for the next season during a current fishing year.

(iv) Seasonal nontrawl fishery bycatch allowances.

(A) Unused seasonal apportionments. Any unused portion of a seasonal nontrawl fishery bycatch allowance made under this paragraph (e)(5) will be reapportioned to the fishery's remaining seasonal bycatch allowances during a current fishing year in a manner determined by NMFS, after consultation with the Council, based on the types of information listed under paragraph (e)(5)(ii) of this section.

(B) Seasonal apportionment exceeded. If a seasonal apportionment of a nontrawl fishery bycatch allowance made under this paragraph (e)(5) is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the fishery's remaining seasonal bycatch allowances during a current fishing year in a manner determined by NMFS, after consultation with the Council, based on the types of information listed under paragraph (e)(5)(ii) of this section.

(6) Notification.

(i) General. NMFS will publish in the *Federal Register*, for up to two fishing years, the annual red king crab PSC limit, and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final PSQ reserve amounts, the proposed and final bycatch allowances, the seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required by paragraph (e) of this section.

(ii) Public comment. Public comment will be accepted by NMFS on the proposed annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period specified in

the notice of proposed specifications published in the *Federal Register*.

(7) Trawl PSC closures.

(i) Exception. When a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/“other species” fishery category is reached, only directed fishing for pollock is closed to trawl vessels using nonpelagic trawl gear.

(ii) Red king crab or *C. bairdi* Tanner crab, Zone 1, closure.

(A) General. Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the Zone 1 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the *Federal Register* the closure of Zone 1, including the RKCSS, to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(B) RKCSS. If, during the fishing year the Regional Administrator determines that the amount of the red king crab PSC limit that is specified for the RKCSS under § 679.21(e)(3)(ii)(B) of this section will be caught, NMFS will publish in the *Federal Register* the closure of the RKCSS to directed fishing for groundfish with nonpelagic trawl gear for the remainder of the year.

(iii) *C. bairdi* Tanner crab, Zone 2, closure. Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the Zone 2 bycatch allowance, or seasonal apportionment thereof, of *C. bairdi* Tanner crab specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the *Federal Register* the closure of Zone 2 to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(iv) COBLZ. Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (e)(3)(iv)(B) through (F)

of this section will catch the COBLZ bycatch allowance, or seasonal apportionment thereof, of *C. opilio* specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the *Federal Register* the closure of the COBLZ, as defined in Figure 13 to this part, to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(v) Halibut closure. Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section in the BSAI will catch the halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the *Federal Register* the closure of the entire BSAI to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(vi) Pacific herring.

(A) Closure. Except as provided in paragraph (e)(7)(vi)(B) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(A) through (F) of this section in the BSAI will catch the herring bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the *Federal Register* the closure of the Herring Savings Area as defined in Figure 4 to this part to directed fishing for each species and/or species group in that fishery category.

(B) Exceptions.

(1) Midwater pollock. When the midwater pollock fishery category reaches its specified bycatch allowance, or seasonal apportionment thereof, the Herring Savings Areas are closed to directed fishing for pollock with trawl gear.

(2) Pollock/Atka mackerel/“other species”. When the pollock/Atka mackerel/“other species” fishery category reaches its specified bycatch allowance, or seasonal apportionment thereof, the Herring Savings Areas are closed to directed fishing for pollock by trawl vessels using nonpelagic trawl gear.

(vii) Chum salmon. If the Regional Administrator determines that 42,000 non-chinook

salmon have been caught by vessels using trawl gear during the period August 15 through October 14 in the CVOA, defined under § 679.22(a)(5) and in Figure 2 to this part, NMFS will prohibit fishing for pollock for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area as defined in Figure 9 to this part.

(viii) Chinook salmon. If, during the fishing year, the Regional Administrator determines that catch of Chinook salmon, by vessels using trawl gear while directed fishing for pollock in the BSAI, will reach the annual limits, as identified in paragraphs (e)(1)(vi) and (e)(1)(viii) of this section, NMFS, by notification in the *Federal Register* will close the Chinook Salmon Savings Area, as defined in Figure 8 to this part, to directed fishing for pollock with trawl as follows:

(A) For the BS Chinook salmon PSC limit under paragraph (e)(1)(vi) of this section, area 1 and area 2 in Figure 8 to this part will be closed on the following dates:

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

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

(B) For the AI Chinook salmon limit under paragraph (e)(1)(viii) of this section, area 1 in Figure 8 to this part will be closed on the following dates:

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

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

(ix) Exemptions.

(A) Trawl vessels participating in directed fishing for pollock and operating under a salmon bycatch reduction ICA approved by NMFS are exempt from closures in the Chum Salmon Savings Area described at paragraph (e)(7)(vii) of this section. See also § 679.22(a)(10).

(B) Trawl vessels participating in directed fishing for pollock and operating under a salmon bycatch reduction ICA approved by NMFS are exempt from closures in area 2 of the Chinook Salmon Savings Area described at paragraph (e)(7)(viii) of this section.

(8) Nontrawl halibut closures.

If, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the nontrawl fishery categories listed under paragraph (e)(4) of this section will catch the halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (e)(4)(ii) of this section, NMFS will publish in the *Federal Register* the closure of the entire BSAI to directed fishing with the relevant gear type for each species and/or species group in that fishery category.

(f) *[Reserved]*.

(g) *Requirements for vessels participating in a salmon bycatch reduction ICA*.

(1) Who must file the salmon bycatch reduction ICA?

The representative for the salmon bycatch reduction ICA identified at paragraph (g)(5)(v) of this section must file a copy of the initial ICA and any amended salmon bycatch reduction ICA with NMFS.

(2) With whom must the initial salmon bycatch reduction ICA and an amended salmon bycatch reduction ICA be filed?

The ICA representative must send a signed copy of the initial salmon bycatch reduction ICA and any amended salmon bycatch reduction ICA to the NMFS Alaska Region. The mailing address for the Administrator, NMFS Alaska Region is

P.O. Box 21668,
Juneau, AK 99802.

The street address for courier delivery is
709 West 9th St., Suite 401,
Juneau, AK 99801.

(3) What is the deadline for filing?

In order for any ICA participant to be exempt from salmon savings area closures as described at paragraphs (e)(7)(ix)(A) and (B) of this section and at § 679.22(a)(10), the salmon bycatch reduction ICA must be filed in compliance with the requirements of this section, and approved by NMFS. The initial salmon bycatch reduction ICA must be received by NMFS by December 1, 2007, for the 2008 fishing year. Exemptions from salmon savings area closures will

expire upon termination of the initial ICA, expiration of the initial ICA, or if superseded by a NMFS-approved amended salmon bycatch reduction ICA.

(4) How is the initial and an amended salmon bycatch reduction ICA approved by NMFS?

NMFS will approve the initial or an amended salmon bycatch reduction ICA if it meets all the requirements specified in paragraph (g)(5) of this section. If NMFS disapproves a salmon bycatch reduction ICA, the representative identified at (g)(5)(v) of this section may resubmit a revised salmon bycatch reduction ICA or file an administrative appeal as set forth under the administrative appeals procedures described at § 679.43.

(5) What are the minimum information requirements for the salmon bycatch reduction ICA?

The salmon bycatch ICA must include the following provisions:

(i) The names of the AFA cooperatives, CDQ groups, and third party groups that are parties to the ICA. The ICA must identify at least one third party group. Third party groups include any organizations representing western Alaskans who depend on Chinook and chum salmon and have an interest in salmon bycatch reduction but do not directly fish in a groundfish fishery. The ICA must identify one entity retained to facilitate vessel bycatch avoidance behavior and information sharing. Collectively, these groups are known as parties to the ICA. Parties to the ICA must agree to comply with all provisions of the ICA;

(ii) The names, Federal fisheries permit numbers, and USCG vessel identification numbers of vessels subject to the salmon bycatch reduction ICA;

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

(A) “A” season salmon bycatch management.

(1) Initial base rate calculation for Chinook salmon. The initial “A” season Chinook base rate shall be calculated by dividing the total number of Chinook taken incidentally in the “A” season in the prior year by the total number of metric tons of “A” season pollock catch during the prior year, except that if the initial “A” season Chinook base rate for any given year is less than or equal to 0.04 Chinook per metric ton of pollock, the initial base rate shall be 0.04 Chinook per metric ton, and if the initial base rate for any given year is equal to or greater than 0.06 Chinook per metric ton of pollock, the initial base rate shall be 0.06 Chinook per metric ton. Base rate calculations shall include

Chinook salmon and pollock caught in both the CDQ and non-CDQ pollock directed fisheries.

(2) Inseason adjustments to the Chinook salmon base rate calculation. On February 14 of each year, the “A” season Chinook base rate shall be recalculated. The recalculated base rate shall be the Chinook bycatch rate for the current year, calculated by dividing the total number of Chinook salmon taken incidentally in the current “A” season by the total number of metric tons of “A” season pollock catch during the current season. The recalculated base rate shall be used to determine bycatch avoidance areas.

(3) ICA salmon savings area notices. On January 30 of each year and each Thursday and Monday thereafter for the duration of the pollock “A” season, the entity retained to facilitate vessel bycatch avoidance behavior and information sharing identified in paragraph (g)(5)(i) of this section must provide notice to the parties to the salmon bycatch reduction ICA and NMFS identifying one or more areas designated as “ICA Chinook Savings Areas” by a series of latitude and longitude coordinates. The Thursday notice of ICA Chinook savings area designations must be effective from 6 p.m. Alaska local time the following Friday through 6 p.m. Alaska local time the following Tuesday. The Monday notice must be effective from 6 p.m. Alaska local time the following Tuesday through 6 p.m. Alaska local time the following Friday. For any ICA salmon savings area notice, the maximum total area closed must be at least 1,000 square miles.

(4) Fishing restrictions for vessels assigned to Tiers as described at paragraph (g)(5)(iii)(C) of this section. ICA Chinook savings area closures announced on Thursdays must be closed to directed fishing for pollock for seven days, including pollock CDQ, by vessels assigned to Tier 3. ICA Chinook savings area closures announced on Thursdays must be closed to vessels assigned to Tier 2 through 6 p.m. Alaska local time on the following Tuesday. Vessels assigned to Tier 1 may operate in any area designated as an ICA Chinook savings area.

(B) “B” season salmon bycatch management.

(1) “B” season Chinook salmon. For the “B” season of the 2008 fishing year, the Chinook salmon base rate shall be 0.05 Chinook salmon per metric ton of pollock. For the “B” season of the 2009 fishing year and each “B” season thereafter, the base rate shall be based on the Chinook salmon bycatch during a representative period of the prior year’s “B” season. The recalculated base rate shall be used to determine bycatch avoidance areas. Base rate calculations shall

include Chinook salmon and pollock caught in both the CDQ and non-CDQ pollock directed fisheries.

(2) Non-Chinook salmon. The initial “B” season non-Chinook salmon base rate shall be 0.19 non-Chinook salmon per metric ton of pollock.

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

(4) ICA salmon savings area notices. On each Thursday and Monday after June 10 of each year for the duration of the pollock “B” season, the entity retained to facilitate vessel bycatch avoidance behavior and information sharing identified in paragraph (g)(5)(i) of this section must provide notice to the parties to the salmon bycatch reduction ICA and NMFS identifying one or more areas designated as “ICA Chinook Savings Areas” and/or “ICA Chum Savings Areas” by a series of latitude and longitude coordinates. The Thursday notice of ICA Chinook savings area designations must be effective from 6 p.m. Alaska local time the following Friday through 6 p.m. Alaska local time the following Tuesday. The Monday notice must be effective from 6 p.m. Alaska local time the following Tuesday through 6 p.m. Alaska local time the following Friday. For any ICA salmon savings area notice, the maximum total area closed must be at least 3,000 square miles for ICA chum savings area closures, and 500 square miles for ICA Chinook savings area closures.

(5) Fishing restrictions for vessels assigned to Tiers as described at paragraph (g)(5)(iii)(C) of this section. ICA chum savings area closures announced on Thursdays must be closed to directed fishing for pollock for seven days, including pollock CDQ, by vessels assigned to Tier 3. ICA chum savings area closures announced on Thursdays must be closed to vessels assigned to Tier 2 through 6 p.m. Alaska local time on the following Tuesday. Vessels assigned to Tier 1 may operate in any area designated as an ICA chum savings area. ICA Chinook savings areas must be closed to fishing by all vessels identified at paragraph (g)(5)(iii)(C) of this section.

(C) Cooperative tier assignments. Initial and subsequent base rate calculations must be based on each cooperative's pollock catch for the prior two weeks and the associated bycatch of Chinook or non-Chinook salmon taken by its members. Base rate

calculations shall include salmon bycatch and pollock caught in both the CDQ and non-CDQ pollock directed fisheries. Cooperatives with salmon bycatch rates of less than 75 percent of the base rate shall be assigned to Tier 1. Cooperatives with salmon bycatch rates of equal to or greater than 75 percent, but less than or equal to 125 percent of the base rate shall be assigned to Tier 2. Cooperatives with salmon bycatch rates of greater than 125 percent of the base rate shall be assigned to Tier 3. Bycatch rates for Chinook salmon must be calculated separately from non-Chinook salmon, and cooperatives must be assigned to tiers separately for Chinook and non-Chinook salmon bycatch.

(iv) Internal monitoring and enforcement provisions to ensure compliance of fishing activities with the provisions of the ICA. The ICA must include provisions allowing any party of the ICA to bring civil suit or initiate a binding arbitration action against another for breach of the ICA. The ICA must include minimum annual uniform assessments for any violation of savings area closures of \$10,000 for the first offense, \$15,000 for the second offense, and \$20,000 for each offense thereafter;

(v) The name, phone number, and business address of the person who will annually file the ICA with NMFS;

(vi) Provisions requiring the parties to conduct an annual compliance audit, and to cooperate fully in such audit, including providing information required by the auditor. The compliance audit must be conducted by a non-party entity, and each party must have an opportunity to participate in selecting the non-party entity. If the non-party entity hired to conduct a compliance audit discovers a previously undiscovered failure to comply with the terms of the ICA, the non-party entity must notify all parties to the ICA of the failure to comply and must simultaneously distribute to all parties of the ICA information used to determine the failure to comply occurred and must include such notice(s) in the compliance report described in § 679.61(f)(2)(vii).

(vii) Provisions requiring data dissemination in certain circumstances. If the entity retained to facilitate vessel bycatch avoidance behavior and information sharing identified at paragraph (g)(5)(i) of this section determines that an apparent violation of an ICA savings area closure has occurred, that entity must promptly notify the Board of Directors of the cooperative to which the vessel involved belongs. If this Board of Directors fails to assess a minimum uniform assessment within 180 days of receiving the notice, the information used by the entity retained to facilitate vessel bycatch avoidance behavior to

determine if an apparent violation was committed must be disseminated to all parties to the ICA.