

**FOR FURTHER INFORMATION CONTACT:**

Bridget Mansfield, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

On November 9, 2022, the National Marine Fisheries Service published a Notice of Availability (NOA) and request for comments on Amendment 123 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) (87 FR 67665, November 9, 2022). After inquiries from the public, NMFS realized that a supporting document containing the revised BSAI FMP text was not made available for public review with the November 9, 2022 publication of the NOA. The BSAI FMP revised text was posted to [regulations.gov](https://www.regulations.gov) on December 2, 2022. With this notification, NMFS is extending the comment period on the FMP Amendment to provide 60 days from the date of publication of this notification in the **Federal Register**.

NMFS is soliciting public comments on proposed Amendment 123 through the end of the comment period (see **DATES**). NMFS is separately seeking public comment on a proposed rule that would implement Amendment 123.

Respondents do not need to submit the same comments on Amendment 123 and the proposed rule. All relevant written comments received by the end of the applicable comment period, whether specifically directed to the BSAI FMP amendment or the proposed rule will be considered by NMFS in the approval/disapproval decision for Amendments 123 and addressed in the response to comments in the final rule. Comments received after the end of the applicable comment period will not be considered in the approval/disapproval decision on Amendment 123. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period (see **DATES**).

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

Dated: December 6, 2022.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 221128-0250]

RIN 0648-BL42

**Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Halibut Abundance-Based Management of Amendment 80 Prohibited Species Catch Limit**

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

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

**SUMMARY:** NMFS proposes regulations to implement Amendment 123 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). If approved, the proposed rule would amend regulations governing limits on Pacific halibut (*Hippoglossus stenolepis*) (halibut) prohibited species catch (PSC), or bycatch, in the BSAI. Namely, the proposed amendment would link the halibut PSC limit to halibut abundance for the Amendment 80 commercial groundfish trawl fleet in the BSAI groundfish fisheries. This action responds to the obligation in section 303(a)(11) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to minimize bycatch to the extent practicable, and is consistent with the Magnuson-Stevens Act national standards. This action: minimizes halibut PSC to the extent practicable under National Standard 9; ensures that the FMP will continue to achieve optimum yield in the BSAI groundfish fisheries on a continuing basis under National Standard 1; is based upon the best scientific information available under National Standard 2; to the extent it involves an allocation of fishing privileges, is fair and equitable, reasonably promotes conservation by reducing incidental halibut mortality caused by the Amendment 80 trawl fleet, and does not result in any excessive shares of fishing privileges under National Standard 4; and takes into account the importance of fishery resources to fishing communities under National Standard 8. The action is expected to provide incentives for the Amendment 80 fleet to minimize halibut mortality at all times and conserve and improve bycatch

management of the halibut resource, and it may result in additional harvest opportunities in the commercial halibut fishery. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, other applicable laws, and Amendment 123 to the BSAI FMP.

**DATES:** Submit comments on or before January 23, 2023.

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2022-0088, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0088 in the Search box. Click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Josh Keaton, Acting Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](https://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 123 may be obtained from <https://www.regulations.gov>. The final Environmental Impact Statement/Regulatory/Impact Review (collectively referred to as the "Analysis") prepared for this proposed rule may be found on the Alaska Regional Office website at: <https://www.fisheries.noaa.gov/resource/document/final-environmental-impact-statement-bering-sea-and-aleutian-islands-bsai-halibut>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted by mail to NMFS at the above address; emailed to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); or faxed to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** Bridget Mansfield, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

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### I. Authority for Action

NMFS manages the United States (U.S.) groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI under the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, the BSAI FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the BSAI FMP appear at 50 CFR parts 600 and 679. The Council is authorized to prepare and recommend an FMP amendment for the conservation and management of a fishery managed under the FMP. NMFS conducts rulemaking to implement FMP amendments and related regulatory amendments. FMP amendments and regulations developed by the Council may be implemented by NMFS only after approval by the Secretary.

A notice of availability (NOA) for Amendment 123 was published in the **Federal Register** on November 9, 2022, with comments invited through January 9, 2023. Comments submitted on this proposed rule by the end of the comment period (See **DATES**) will be

considered by NMFS and addressed in the response to comments in the final rule. Comments submitted on this proposed rule may address Amendment 123 or this proposed rule. However, all comments addressing Amendment 123 must be received by January 9, 2023, to be considered in the approval/disapproval decision on Amendment 123. Commenters do not need to submit the same comments on both the NOA and this proposed rule. All relevant written comments received by January 9, 2023, whether specifically directed to Amendment 123, this proposed rule, or both will be considered by NMFS in the approval/disapproval decision for Amendment 123 and addressed in the response to comments in the final rule.

### II. Background

In December 2021, the Council voted to recommend Amendment 123 to link the halibut PSC limit to halibut abundance for the Amendment 80 (*i.e.*, non-pollock) commercial groundfish trawl fleet in the BSAI groundfish fisheries. In recommending Amendment 123, the Council intended to minimize halibut PSC to the extent practicable as required by section 303(a)(11) and National Standard 9 of the Magnuson-Stevens Act and to continue achieving optimum yield in the BSAI groundfish fisheries on a continuing basis under National Standard 1. The Council weighed and balanced the Magnuson-Stevens Act's legal requirements, including the ten national standards. Based on public comment, the analysis prepared pursuant to the National Environmental Policy Act (NEPA), and analyses under Executive orders and related laws that were included in the NEPA documentation, the Council selected to recommend Amendment 123 to NMFS.

This action would provide incentives for the Amendment 80 fleet to minimize halibut mortality at all times. Achievement of these objectives would conserve the halibut resource by improving bycatch management and could result in additional harvest opportunities in the directed commercial and subsistence halibut fisheries. To implement Amendment 123, in this action, NMFS proposes regulations that would link the halibut PSC limit to halibut abundance for the Amendment 80 commercial groundfish trawl fleet in the BSAI groundfish fisheries.

Pacific halibut is fully utilized in Alaska as a target species in subsistence, personal use, recreational (sport), and commercial halibut fisheries. Halibut has significant social, cultural, and economic importance to fishery

participants and fishing communities throughout the geographical range of the resource. Halibut is also incidentally taken as bycatch in commercial groundfish fisheries. The Magnuson-Stevens Act defines bycatch as fish that are harvested in a fishery, but are not sold or kept for personal use, and includes economic and regulatory discards. 16 U.S.C. 1802(2). The term does not include fish released alive under a recreational catch and release fishery management program.

The International Pacific Halibut Commission (IPHC) adopts regulations governing the target fishery for Pacific halibut under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). As provided by the Northern Pacific Halibut Act of 1982 (Halibut Act) (16 U.S.C. 773–773k), the Secretary of State, with the concurrence of the Secretary of Commerce, may accept or reject, on behalf of the United States, regulations recommended by the IPHC in accordance with the Convention. The Halibut Act provides the Secretary of Commerce with the authority and general responsibility to carry out the requirements of the Convention and the Halibut Act. After acceptance by the Secretary of State and concurrence by the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62.

Section 773c(c) of the Halibut Act also provides the Council with authority to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. The Council has exercised this authority in the development of Federal regulations for the halibut fishery such as (1) subsistence halibut fishery management measures, codified at 50 CFR 300.65; (2) the limited access program for charter vessels in the guided recreational fishery, codified at 50 CFR 300.67; and (3) the Individual Fishing Quota (IFQ) Program for commercial halibut fisheries, codified at 50 CFR 679.40 through 679.45.

In recent years, catch limits for the commercial halibut fishery in the BSAI have generally declined in response to decreasing halibut spawning biomass (though the catch limits increased slightly in 2021), while limits on the maximum amount of halibut bycatch allowed in the groundfish fisheries have remained the same since 2016, when they were reduced under BSAI FMP

Amendment 111. The proposed rule would set annual halibut bycatch limits, also referred to as halibut PSC limits, in the BSAI Amendment 80 sector groundfish fisheries based on halibut abundance. This proposed approach for setting halibut PSC limits is consistent with the requirements of the Magnuson-Stevens Act to minimize bycatch to the extent practicable while achieving, on a continuing basis, optimum yield from the groundfish fisheries. This section of the preamble provides background on the halibut resource, halibut management, the halibut fisheries, and halibut bycatch in the groundfish fisheries in the BSAI. Sections III and IV describe the rationale and impacts of Amendment 123 and this proposed rule.

This preamble relies on the best data available consistent with the final Environmental Impact Statement/Regulatory Impact Review (collectively referred to as the "Analysis") prepared to support this action.

#### A. *The Halibut Resource*

Section 4.0 of the Analysis describes the stock assessment process and IPHC management framework for halibut in Alaska. A brief summary of section 4.0 follows.

##### 1. Status of the Halibut Stock and Management Framework

The IPHC assesses the status of the Pacific halibut stock at a coastwide level from California through the Bering Sea. The IPHC assesses female spawning biomass as one important indicator of the status of the halibut stock, including the long-term reproductive health of the halibut resource. Female spawning biomass is composed of female halibut of reproductive size. Generally, this includes female halibut that are 26 inches (66.04 centimeters) in length or greater (O26), and a small proportion of the female spawning biomass includes female halibut less than 26 inches in length (U26).

The IPHC conducts an annual stock assessment for the coastwide halibut stock. Currently, the stock assessment for halibut uses four integrated age-structured models in an ensemble resulting in a single value for the entire coast (U.S. and Canada). Migration between the halibut management areas is not modeled. The IPHC's data indicate that the Pacific halibut stock declined continuously from the late 1990s to around 2012, largely as a result of decreasing size at a given age (size-at-age), higher harvest rates in the early 2000s, and weaker recruitment (the process by which new fish are incorporated into the stock) than observed during the 1980s. From about

2013 to 2016, there was a slight increasing trend in the spawning biomass, followed by a slight decline continuing into the current assessment. In recent years, the spawning biomass projections continue to indicate slight decreases, even at low fishing levels, due to recent below-average recruitment. The stock assessment models used by the IPHC in 2020 project a decreasing female spawning biomass over the next few years assuming continued current removal rates from all sources (see Figure 4–3 in section 4.2 of the Analysis).

Notably, halibut is not a groundfish species under the BSAI FMP and is instead managed under an international agreement; therefore, halibut is not subject to provisions of the Magnuson-Stevens Act that require the establishment of an annual overfishing limit (OFL), an acceptable biological catch level (ABC), or a total allowable catch (TAC) limit.

Although halibut is not managed under an OFL, ABC, or TAC, the IPHC has developed a harvest policy to control removals based on stock abundance. In 2017, the IPHC implemented an interim spawning potential ratio (SPR)-based harvest strategy policy while a management strategy evaluation (MSE) process is underway. An SPR-based harvest policy defines a default or reference level of fishing intensity to determine mortality limits. The reference level of fishing intensity is the level of fishing that would reduce the lifetime spawning output per recruit to some percentage of the unfished level. That percent of the unfished level is also dependent on current biology, fishery characteristics, and demographics. Lower values of spawning output per recruit indicate higher fishing intensity (see section 4.4 of the Analysis). The IPHC MSE simulations found that a level of fishing intensity corresponding to an SPR of 43%, in conjunction with a control rule where the fishing intensity is reduced when the stock status is estimated to be below 30 percent and set to zero when stock status is estimated to be below 20 percent, would successfully meet the coastwide conservation and fishery objective outlined by the IPHC. Additional information on the anticipated impacts of the proposed rule on the status of halibut stock is provided in section 5.2 of the Analysis.

The IPHC's harvest control rule reduces fishing intensity linearly if the stock is estimated to have fallen below the 30 percent threshold. As described in the preceding paragraph, this harvest control rule would severely curtail removals during times of particularly

poor stock conditions. To date, the harvest control rule has not been triggered, even during the most recent years of relatively low exploitable biomass (see section 3.1.1.1 and section 3.1.2.1 of the Analysis). While the harvest control rule has not been triggered, the total mortality limits established by the IPHC have decreased substantially, with the exception of 2021 (see Table 4–3 in the Analysis), corresponding to the low halibut abundance conditions.

Each year, the most recent stock assessment ensemble is presented to the IPHC as a risk-based decision matrix that combines different catch levels and various performance metrics. The IPHC uses the interim SPR-based approach to recommend to the Commission a coastwide commercial catch limit, also known as a mortality limit, considering mortality from all sources, and then distributes the mortality limit across regulatory areas using estimates of stock distribution from the IPHC fishery independent setline survey, relative harvest rates, and other pertinent information. The Commission can set total mortality limits that do not follow the harvest policy, such as to address socioeconomic considerations.

The IPHC evaluates halibut mortalities using a combination of two metrics: (1) the Total Constant Exploitation Yield (TCEY), which includes harvests and incidental discard mortalities from directed commercial fisheries, plus mortality estimates from sport, subsistence, personal use, and estimates of non-directed discard mortality of halibut over 26 inches; and, (2) Total Mortality, which includes all the above sources of mortality, plus estimates of non-directed discard mortality of halibut less than 26 inches (U26). Although U26 halibut mortality is factored into the stock assessment and harvest strategy calculations, the IPHC delineates U26 and O26 differently for the following reasons: (1) U26 Pacific halibut are highly mobile and much less likely to occur in the same regulatory area in the upcoming year in which PSC limits would apply, (2) the setline survey captures almost exclusively O26 Pacific halibut, (3) there is currently no reliable tool for describing the annual distribution of U26 halibut across the entire convention area, and (4) the mortality of U26 Pacific halibut has a differing effect on the SPR than O26 fish (they are not entirely exchangeable).

The IPHC considers the TCEY distribution among regulatory areas based on estimates of biomass from the setline survey and relative harvest rates, then considers recommendations from the IPHC's advisory boards, public

input, and social and economic factors to potentially adjust the TCEYs among regulatory areas. Unlike the Magnuson-Stevens Act, the Halibut Act does not include specific provisions that require the IPHC to allocate quotas within, for example, an overfishing threshold; the IPHC's broad mandate is the conservation of the halibut stock.

Due to a combination of changing IPHC harvest policies and decisions that depart from harvest policy recommendations, the IPHC has adopted coastwide catch limits of varying fishing intensities in recent years. The IPHC has adopted TCEYs above those recommended by the harvest policy in three of the last five years (Table 4–1 of the Analysis). Estimates of fishing intensity are uncertain and may change in subsequent years based on actual mortality and new stock assessments. Further, the specific formula used by the IPHC Commissioners to distribute catch limits among regulatory areas has been different for each of the past three years.

The Fishery Constant Exploitation Yield (FCEY) represents the directed fishery limits that result from the IPHC's adopted TCEYs. To calculate the FCEYs from the TCEYs, all sources of O26 halibut mortality are considered, such as unguided recreational fisheries, subsistence/personal use fisheries, and directed and non-directed commercial fishing discard mortalities. The default projection for U26 and O26 discards is to use the three-year average of recent discard mortality to minimize the effect of interannual variability of annual discard estimates. (IPHC AM096). Section 4.4.1 of the Analysis contains additional information on the process the IPHC uses to set catch limits.

## 2. Allocation of Halibut Among Fisheries

Pacific halibut is allocated among fisheries by a combination of management actions taken by the IPHC, the Council, and NMFS. The IPHC annually completes a halibut stock assessment and makes recommendations for annual management measures for the halibut fishery within Convention waters. These annual management measures include specific regulations governing the commercial halibut fishery, including area-specific catch limits, authorized gear, and fishing season dates. In the United States, the IPHC recommendations are subject to acceptance by the Secretary of State with the concurrence of the Secretary of Commerce, as described above in the "Authority for Action" section of this

preamble. (See sections 1.1 and 4.4.1 of the Analysis and the 2022 annual management measures for additional information on the process for establishing commercial halibut fishery catch limits (87 FR 11626, March 02, 2022).)

Although the halibut stock is assessed at a coastwide level, commercial catch limits are established for each of the IPHC regulatory areas: 2A (Washington, Oregon, and California), 2B (British Columbia), 2C (Southeast Alaska), 3A (Central Gulf of Alaska), 3B (Western Gulf of Alaska), and 4A, 4B, 4C, 4D and 4E (BSAI). The IPHC combines Areas 4C, 4D, and 4E into Area 4CDE for purposes of establishing a commercial fishery catch limit. Areas 4A, 4C, 4D, and 4E roughly correspond to the Bering Sea Subarea defined in the FMP, with Area 4CDE encompassing most of the Bering Sea Subarea in the FMP. Area 4B roughly corresponds to the Aleutian Islands Subarea in the FMP. See Figure 15 in part 679 and Table 1–3 in section 1.5 of the Analysis for Area maps and additional information on halibut and groundfish management areas in the BSAI.

### B. Halibut Fisheries in the BSAI

In the BSAI (Area 4) halibut is harvested primarily in directed commercial fisheries and secondarily in subsistence, personal use, and recreational fisheries. Based on harvest data from 2016 through 2019, the recreational fishery operating out of ports in the BSAI harvests approximately 12,000 lb (5.44 metric tons (mt)) in Area 4 compared to approximately 50,000 lb (22.68 mt) of subsistence and personal use harvest from Area 4, and more than 5,000,000 lb (2287.96 mt) in the Area 4 commercial fishery. This action is not likely to impact the recreational fishery. BSAI recreational effort and removals are both very limited. Therefore, this preamble does not address the recreational fishery in additional detail. (See sections 4.5, 5.4, and 5.5 of the Analysis for additional detail on subsistence, personal use, recreational, and commercial halibut harvests in Area 4.)

Subsistence halibut is caught by rural residents and members of Alaska Native tribes for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade. Pursuant to section 773c(c) of the Halibut Act, the Council developed, and NMFS implemented, the Subsistence Halibut Program to manage subsistence harvests in Alaska. Persons fishing for subsistence halibut must obtain a Subsistence Halibut

Registration Certificate. Special permits for community harvest, ceremonial, and educational purposes also are available to qualified Alaska communities and federally-recognized Alaska Native tribes. A complete description of the Subsistence Halibut Program is provided in the final rule implementing the Program (68 FR 18145, April 15, 2003).

In addition to subsistence harvest, IPHC annual management measures allow halibut caught in the commercial halibut fishery that are less than the legal size limit of 32 inches (81.28 centimeters) to be retained for personal use in the Area 4D and Area 4E Community Development Quota (CDQ) halibut fishery as long as the fish are not sold or bartered. The CDQ groups are required to report the amount of personal use halibut retained during the CDQ halibut fishery to the IPHC. Sections 4.5.1.2 and 5.4 of the Analysis contain descriptions of the personal use fishery.

The commercial halibut fishery in the BSAI is managed by NMFS under the Individual Fishing Quota (IFQ) and CDQ Programs that allocate exclusive harvest privileges. The IFQ Program was implemented in 1995 (58 FR 59375, November 9, 1993). The Council and NMFS designed the IFQ Program to end a wasteful and unsafe "race for fish" and to maintain the social and economic character of the fixed-gear fisheries and the coastal fishing communities where many of these fisheries are based. Access to the halibut and sablefish fisheries is limited to those persons holding quota share (QS). Quota shares equate to exclusive harvesting privileges that are given effect on an annual basis through the issuance of IFQ permits. An annual IFQ permit authorizes the permit holder to harvest a specified amount of IFQ halibut or sablefish in a NMFS regulatory area.

The CDQ Program was established in 1992 (57 FR 54936, November 23, 1992) and amended substantially by the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109–241 § 416; 120 Stat. 541). Under section 305(i)(1)(D) of the Magnuson-Stevens Act, a total of 65 villages are authorized to participate in the CDQ Program. Six CDQ groups represent these villages. CDQ groups manage and administer allocations of crab, groundfish, and halibut to commercial fisheries and use the revenue derived from the harvest of these CDQ allocations to fund economic development activities and provide employment opportunities on behalf of the villages they represent. See sections 3.3.4 and 4.5.1.2 of the Analysis for

additional information on the CDQ Program.

Section 305(i)(1)(B) of the Magnuson-Stevens Act specifies the proportion of crab, groundfish, and halibut in the BSAI allocated to the CDQ Program. Section 305(i)(1)(C) of the Magnuson-Stevens Act specifies the proportion of the overall CDQ Program allocations assigned to each CDQ group. Each year, NMFS publishes the specific annual allocations to each CDQ group on the NMFS Alaska Region website at: <https://www.fisheries.noaa.gov/alaska/commercial-fishing/fisheries-catch-and-landings-reports-alaska>. The amount of halibut for commercial harvest allocated to the CDQ Program varies by Area and ranges from 20 to 100 percent of the commercial catch limits assigned to Areas 4B, 4C, 4D, and 4E.

The combined CDQ and IFQ halibut fisheries in Area 4 were harvested by, on average, approximately 120 vessels from 2015 through 2019 (see Table 4–7 in section 4.5.1 of the Analysis). The CDQ and IFQ halibut fisheries provide revenue to vessel owners and crew members who harvest halibut. These fisheries also provide economic benefits to shore-based processors and socioeconomic benefits to BSAI fishing communities that provide support services to the halibut harvesting and processing sectors. The Analysis estimates that halibut harvests in the Area 4 CDQ and IFQ fisheries averaged 5.1 million lb (2,313.32 mt) annually and generated an average of \$21 million in ex-vessel revenues annually from 2015 through 2019.

However, Area 4 halibut ex-vessel revenues declined over this period, resulting in negative economic impacts for fishery participants and affected fishing communities. Since 2015, the Area 4 ex-vessel value has declined by 32 percent from the peak value of \$24.9 million in 2016 to a low of \$16.9 million in 2018 due to changing market conditions, while catch levels of halibut in Area 4 have remained relatively constant. The declines in ex-vessel value of commercial halibut were greatest in Areas 4A and 4B. See section 4.5.1 of the Analysis for a more detailed description of the Area 4 commercial halibut catch, revenue, and fishery participants.

### C. Comparing Commercial Halibut Catch and PSC in the BSAI Groundfish Fisheries

In Area 4, the specific proportion of halibut removals that are taken as catch in the commercial halibut fishery or as PSC in the groundfish fisheries has shifted over time. From 1990 to 1996 (the period prior to the recent peak and

decline in removals in the halibut fishery), the commercial halibut fisheries averaged 37 percent, and PSC averaged 60 percent of total halibut removals in Area 4. From 1997 to 2011 (the period of both the greatest increase and subsequent decline in the total removals of halibut), the commercial halibut fishery removals increased as a portion of total removals; the commercial halibut fisheries averaged 57 percent and PSC averaged 41 percent of total halibut removals. From 2012 through 2014, the commercial halibut fishery removals decreased as a portion of total removals; the commercial halibut fishery averaged 41 percent and PSC averaged 55 percent of total removals. Halibut PSC limits were reduced in 2016, but since 2016 the proportion of halibut removals from the commercial halibut fishery has increased. From 2016 through 2019, the commercial halibut fishery averaged 52 percent and bycatch averaged 47 percent of total removals. See sections 3.4.1, 4.5.1 and 5.4.1 of the Analysis for additional detail.

### D. Halibut PSC Management in the BSAI Groundfish Fisheries

The Magnuson-Stevens Act authorizes the Council and NMFS to manage groundfish fisheries in the Alaska EEZ that take halibut as PSC, or bycatch. Every FMP must minimize bycatch to the extent practicable, 16 U.S.C. 1853(a)(11), and be consistent with the Act's ten national standards, 16 U.S.C. 1851(a)(1)–(10). The groundfish fisheries cannot be prosecuted without some level of halibut bycatch because groundfish and halibut occur in the same areas at the same times and no fishing gear or technique has been developed that can harvest commercial quantities of groundfish while avoiding all halibut bycatch. The Council has designated Pacific halibut and several other species (herring, salmon and steelhead, king crab, and Tanner crab) as “prohibited species” (section 3.6.1 of the FMP). Regulations implement the Act's requirements and require that the operator of any vessel fishing for groundfish in the BSAI minimize the catch of prohibited species (50 CFR 679.21(a)(2)(i)).

Halibut incidental catch rates are based on NMFS-certified fisheries observers' estimates of halibut incidental catch in the groundfish fishery. Discard mortality rates (DMR) are estimates of the proportion of incidentally caught halibut that do not survive after being returned to the sea. The cumulative halibut mortality that accrues to a particular halibut PSC limit is the product of a DMR multiplied by

the estimated halibut PSC. DMRs are estimated using the best scientific information available in conjunction with the annual BSAI stock assessment process. The DMR methodology and findings are included as an appendix to the annual BSAI groundfish SAFE report beginning in 2022.

Although halibut PSC results from all types of gear (trawl, hook-and-line, pot, and jig gear), halibut PSC primarily occurs in the trawl and hook-and-line groundfish fisheries. NMFS minimizes halibut bycatch to the extent practicable in the BSAI by (1) establishing halibut PSC limits for trawl and non-trawl fisheries; (2) apportioning those halibut PSC limits to groundfish sectors, fishery categories, and seasons; and (3) managing groundfish fisheries to prevent PSC from exceeding the established limits. The following sections provide additional information on the process NMFS uses to establish, apportion, and manage halibut PSC limits in the BSAI.

Halibut PSC limits in the groundfish fisheries provide a constraint on halibut PSC mortality and promote conservation of the halibut resource. With one limited exception for Atka mackerel at 50 CFR 679.21(b)(4)(i)(A), groundfish fishing is prohibited once a halibut PSC limit has been reached for a particular sector or season. Therefore, halibut PSC limits are set to balance conservation of the halibut resource with the needs of fishermen, fishing communities, and U.S. consumers who depend on both halibut and groundfish resources.

#### 1. Annual Halibut PSC Limits and the Amendment 80 Sector

The Council and NMFS have taken a number of management actions to minimize halibut bycatch to the extent practicable in the BSAI groundfish fisheries. Most recently, the Council adopted, and NMFS approved, Amendment 111 to the FMP for Groundfish of the BSAI management area in 2016 (81 FR 24714, April 27, 2016). That amendment established the current halibut PSC limits for BSAI groundfish fisheries, which were considered to be an effective means to minimize bycatch to the extent practicable at that time. The current total annual halibut PSC limit for BSAI groundfish fisheries is 3,515 mt. From that total, 1,745 mt are apportioned to the Amendment 80 sector, which is comprised of non-pollock trawl vessels (see the next sections for more detail on the Amendment 80 sector). The BSAI trawl limited access sector, which is comprised of all other trawl catcher/processor and trawl catcher vessels, is apportioned 745 mt. The BSAI non-

trawl sector, which includes primarily hook-and-line catcher/processors, is apportioned 710 mt. The remaining 315 mt are apportioned to the CDQ program, which is comprised of vessels fishing for CDQ groups.

Of those four BSAI groundfish fishery sectors, the Amendment 80 sector receives the largest proportion of halibut PSC limits in the BSAI (roughly 50 percent). Therefore, the Council recommended, and NMFS agrees, that this proposed action should focus on the halibut PSC limit for the Amendment 80 sector. Several reasons drove this decision, as discussed below.

When it took final action on Amendment 111 in December 2015 to reduce the PSC limits for all fishing sectors in the BSAI, the Council considered the methods available to the fisheries and the practicability of reducing halibut bycatch and mortality at that time. The preamble to the proposed rule to implement Amendment 111 noted that the Council and NMFS believed that more stringent PSC limit reductions than those proposed were not practicable for the groundfish sectors at that time. However, at the same meeting, the Council noted that additional halibut bycatch reduction would be needed in the future and initiated analysis of means to link halibut PSC limits to halibut abundance, thereby indicating that additional efforts would be required beyond those established by Amendment 111 and utilized by the fisheries to reduce halibut bycatch and mortality. From 2015 (when the Council requested the Amendment 80 sector to proactively reduce halibut mortality ahead of Amendment 111's regulatory PSC limit reductions expected to be implemented in 2016) through 2020, the Amendment 80 sector reduced its halibut mortality to levels well below the PSC limit of 1,745 mt established under Amendment 111. Those reductions resulted in halibut mortality levels close to or below the PSC limit that would be implemented by this proposed rule based on halibut abundance estimates derived from current survey indices described below (see section 3.4.1 of the Analysis).

Notably, the ratio of estimated halibut PSC mortality (halibut bycatch with the DMR applied) to actual halibut bycatch (described in section 3.4.4 of the analysis as effective mortality) declined from 2015 through 2019. A slight uptick in effective mortality in 2020 was an artifact of greatly reduced halibut bycatch; that is, the reduced bycatch resulted in a slight increase in the ratio of mortality to bycatch. While many variables may have contributed to that

relative decline, section 3.4.1 of the Analysis provides a compelling correlation between effective mortality and halibut deck sorting effort, which allows halibut to be returned to the sea more quickly thereby reducing mortality. Deck sorting efforts were increasingly employed by the Amendment 80 sector beginning in 2015. Thus, the Council and NMFS's concerns in 2015 over a potential lack of effective tools to reduce mortality and the practicability of meeting more stringent PSC limit reductions at that time have significantly been alleviated, at least with respect to the Amendment 80 sector, as evidenced by successful halibut mortality reductions. This proposed rule and BSAI FMP Amendment 123 represent the continuation of the Council's and NMFS's intent, as envisaged at the time of adoption of Amendment 111, to further reduce halibut bycatch and mortality and link halibut PSC limits to halibut abundance.

At its February 2020 meeting, the Council elected to focus its next step in halibut bycatch reduction on the Amendment 80 fleet. The Council's rationale was based on several factors: (1) the Amendment 80 fleet halibut bycatch and mortality comprised the largest proportion of the BSAI halibut PSC; (2) halibut bycatch in some other sectors had been or was being addressed under separate actions, *e.g.*, the trawl limited access (TLAS) halibut PSC, the second largest portion of halibut PSC, is mainly taken in the directed Pacific cod and yellowfin sole fisheries, and halibut bycatch in the BSAI TLAS yellowfin sole fishery was addressed under BSAI FMP Amendment 116 (83 FR 49994, October 4, 2018), and the Council has recommended to NMFS a Pacific Cod Trawl Cooperative Program (PCTC) which will address halibut bycatch in the directed Pacific cod fishery; (3) other sectors were removed from this action (*e.g.* freezer longline, catcher vessel hook-and-line, CDQ) because they are apportioned a relatively small proportion of the annual halibut PSC limit compared to the first two sectors; and (4) a step-wise approach by sector allowed for a simplified and more efficient approach. Because this proposed action directly impacts only the Amendment 80 sector's halibut PSC, no further discussion of the other sectors is provided in this preamble. That said, the Council has indicated that it may consider additional action to reduce other sectors' halibut PSC in addition to the past and present actions noted above.

Fishing under the Amendment 80 Program began in 2008 (72 FR 52668,

September 14, 2007). The Amendment 80 sector comprises trawl vessels in the BSAI active in groundfish fisheries other than Bering Sea pollock. The Amendment 80 species are identified in regulation (50 CFR 679.2) as the following six species: BSAI Atka mackerel, Aleutian Islands Pacific ocean perch, BSAI flathead sole, BSAI Pacific cod, BSAI rock sole, and BSAI yellowfin sole. The Amendment 80 Program allocates a portion of the TACs of these species between the Amendment 80 fleet and other fishery participants. The Amendment 80 Program also allocates crab and halibut PSC limits to constrain bycatch of these species while Amendment 80 vessels harvest groundfish.

At its inception, the Amendment 80 Program allocated QS for the six specified species based on the historical catch of these species by Amendment 80 vessels. The Amendment 80 Program allows and facilitates the formation of Amendment 80 cooperatives among QS holders who receive an exclusive harvest privilege. This exclusive harvest privilege allows Amendment 80 cooperative participants to collaboratively manage their fishing operations and more efficiently harvest groundfish allocations and PSC limits.

The Amendment 80 sector includes vessels that focus primarily on flatfish (*i.e.*, flathead sole, rock sole, and yellowfin sole) and vessels that focus on Atka mackerel. In 2020, 22 fishing permits were issued to vessels in the Amendment 80 sector. Overall, 56 percent of the Amendment 80 sector's QS units were for flatfish (*i.e.*, flathead sole, rock sole, and yellowfin sole), 29 percent were for Aleutian Island Pacific ocean perch or Atka mackerel, and 15 percent were for Pacific cod. Section 3.3 of the Analysis provides more detailed information on Amendment 80 sector participants, harvests, and revenues in the BSAI groundfish fisheries.

Annually, each Amendment 80 QS holder elects to participate in either a cooperative or the Amendment 80 limited access fishery. Participants in the Amendment 80 limited access fishery do not receive an exclusive harvest privilege for a portion of the TACs allocated to the Amendment 80 Program. Since 2011, the Amendment 80 sector has been prosecuted exclusively by vessels operating as part of a cooperative, and all QS holders have participated in one of two cooperatives. From 2011 to 2017 there were two cooperatives; since 2017, all active Amendment 80 vessels are part of a single cooperative, the Alaska Seafood Cooperative (AKSC).

As specified in section 3.7.5.2 of the FMP and at 50 CFR 679.91, NMFS annually establishes a halibut PSC limit of 1,745 mt for the Amendment 80 sector. This halibut PSC limit is apportioned between the Amendment 80 cooperative(s) and the Amendment 80 limited access fishery according to the process specified at 50 CFR 679.91. Amendment 80 cooperatives are responsible for coordinating members' fishing activities to ensure the cooperative halibut PSC allocation is not exceeded. 50 CFR 679.91(h)(3)(xvi) prohibits each Amendment 80 cooperative from exceeding the halibut PSC limit specified on its annual Amendment 80 Cooperative Quota (CQ) permit. The regulations further specify that each member of the Amendment 80 cooperative is jointly and severally liable for any violations of the Amendment 80 Program regulations while fishing under the authority of an Amendment 80 CQ permit.

In a year when there are vessels participating in the Amendment 80 trawl limited access fishery, NMFS apportions the halibut PSC limit for that fishery among the following six fishery categories: (1) yellowfin sole, (2) rock sole/flathead sole/"other flatfish," (3) Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish, (4) rockfish, (5) Pacific cod, and (6) pollock/Atka mackerel/"other species," which includes the midwater pollock fishery (see 50 CFR 679.21(e)(3)(i)(B), (e)(3)(ii)(C), and (e)(3)(iv)).

NMFS manages the Amendment 80 trawl limited access fishery halibut PSC allowances, because participants in the Amendment 80 trawl limited access fishery do not have exclusive privileges to use a specific amount of halibut PSC. To manage halibut PSC, NMFS monitors participation and PSC use in the Amendment 80 trawl limited access fishery categories. As noted above, except for the pollock/Atka mackerel/other species fishery, NMFS is authorized to close directed fishing for a trawl fishery category in the Amendment 80 trawl limited access fishery if NMFS concludes that the fishery category will or has exceeded its halibut PSC allowance. NMFS enforces a halibut PSC allowance through the prohibition against conducting any fishing contrary to an inseason action, closure, or adjustment (50 CFR 679.7(a)(2)).

Section 3.3 of the Analysis and the final rule implementing the Amendment 80 Program (72 FR 52668, September 14, 2007) provide more detailed information on the process NMFS uses to assign Amendment 80 species and halibut PSC to each Amendment 80

cooperative and the Amendment 80 limited access fishery. The current allocations of Amendment 80 species TACs and apportionments of halibut PSC to each of the Amendment 80 cooperatives were provided in the final 2022 and 2023 harvest specifications for the BSAI groundfish fisheries (87 FR 11626, March 2, 2022).

The Amendment 80 groundfish fisheries provide revenue to Amendment 80 vessel owners and crew members who harvest and process groundfish. In addition, the fisheries provide socioeconomic benefits to communities that provide support services for Amendment 80 vessel operations. Amendment 80 groundfish harvests in the BSAI averaged 289,000 mt and generated an average of \$334 million in wholesale revenues annually from 2015 through 2020. Catches of yellowfin sole and Atka mackerel provided over 50 percent of the wholesale revenue for the Amendment 80 sector from 2015 through 2020. Pacific cod, rock sole, and Pacific Ocean perch were also major sources of revenue for the Amendment 80 sector during those years. See section 3.3.2 of the Analysis for more detail on Amendment 80 catch and revenue.

The halibut PSC limit established for each BSAI groundfish sector is an upper limit on halibut PSC in that sector for each year. However, the amount of halibut PSC used by a BSAI groundfish sector is almost always less than its halibut PSC limit. Halibut PSC use is less than the halibut PSC limit due to a wide range of operational factors, including the fleet's desire to avoid a closure or an enforcement action if a PSC limit is reached. By regulation (50 CFR 679.21(b)) the current PSC limit of halibut caught while conducting any fishery in the Amendment 80 sector is an amount of halibut equivalent to 1,745 mt of halibut mortality, which includes the application of the DMR. To monitor halibut bycatch mortality, the NMFS Alaska Region uses observed halibut incidental catch rates, halibut DMRs, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance will be and is reached.

Table 3–19 in the Analysis compares Amendment 80 halibut catch and PSC mortality to other BSAI groundfish sectors from 2010 through 2019. In 2020, the Amendment 80 sector recorded 2,031 mt of halibut bycatch and was credited with 1,097 mt of halibut PSC mortality, which was the lower than any annual total during the analyzed period (2010 through 2019) (see section 3.4.1 and Figure 3–25 in the Analysis for more detail). Examining

trends in Amendment 80 halibut PSC and PSC mortality is complicated by the fact that many variables that affect these metrics have changed in recent years. PSC limits, DMR estimation methods, and halibut handling procedures have all changed to varying degrees since 2010. Section 3.4.4 of the Analysis describes methods the Amendment 80 sector has pursued to reduce its halibut PSC mortality. Section 3.3 of the Analysis describes the annual variations in halibut PSC use. Regulations were implemented in 2019 (50 CFR 679.120) to standardize catch handling and monitoring requirements to allow halibut bycatch to be sorted on the deck of trawl catcher processors and motherships participating in the non-pollock groundfish fisheries off Alaska (84 FR 55044, October 15, 2019). Historical information shows that the Amendment 80 sector's PSC use has varied annually in response to a variety of changing conditions. NMFS anticipates that these annual variations in halibut PSC use would continue under this proposed action.

### III. Rationale and Impacts of Amendment 123 and the Proposed Rule

Amendment 123 and the proposed rule reflect requirements that NMFS balance several factors when establishing PSC limits. The Council and NMFS considered the detailed information provided in the Analysis, including the impacts from several action alternatives with different halibut PSC limits, on (1) the halibut stock, (2) directed halibut fishery participants and communities that are engaged in directed halibut fisheries in the BSAI and in other Areas, and (3) BSAI groundfish fishery participants, like the Amendment 80 sector, and communities that are engaged in the BSAI groundfish fisheries. In developing the proposed action, the Council and NMFS aimed to appropriately balance the Magnuson-Stevens Act's requirements and national standards, particularly the requirements to establish conservation and management measures that minimize bycatch to the extent practicable, achieve optimum yield on a continuing basis, and take into account the importance of fishery resources to fishing communities. Section 5.3.2.3.1 of the Analysis provides additional detail on the balancing of the national standards. The Council believes, and NMFS agrees, that the proposed PSC limit reductions are consistent with the national standards and other Magnuson-Stevens Act requirements.

Halibut is fully utilized in the BSAI. Therefore, consistent with the Council's purpose and need statement for this



action to prevent halibut PSC from becoming a larger proportion of total halibut removals in the BSAI, the Council recommended, and NMFS agrees, that PSC limits should decline in proportion to reduced amounts of halibut available for harvest by all users. The proposed action balances the interests of the two largest halibut user groups in the BSAI, the directed commercial halibut fishery and the Amendment 80 sector, by establishing abundance-based halibut PSC limits for the Amendment 80 sector. This abundance-based approach is consistent with the IPHC management approach for the directed commercial halibut fisheries off Alaska, which establishes annual catch limits that vary with halibut abundance as discussed above.

The proposed action would specify halibut PSC limits for the Amendment 80 sector based on the combined results of the most recent annual IPHC setline survey and the NMFS Alaska Fisheries Science Center (AFSC) Eastern Bering Sea (EBS) shelf trawl survey (EBS shelf trawl survey). Results of the EBS shelf trawl survey provide up-to-date estimates of biomass, abundance, distribution, and population structure of groundfish populations in support of stock assessment and ecosystem forecast models that form the basis for groundfish and crab harvest advice. Relative abundance (catch per unit effort) and size and/or age composition data are key results from this survey. The survey covers Pacific halibut in addition to other groundfish and crab target species. Data collected on the survey are also used to improve understanding of life history of the fish and invertebrate species, as well as the ecological and physical factors affecting their distribution and abundance. The EBS shelf trawl survey is generally described in a NOAA Technical Memo (Stauffer, 2004). When used together, the EBS shelf trawl survey and IPHC setline survey indices capture abundance trends for both O26 and U26 halibut.

After considering these factors, the Council recommended, and NMFS proposes, to specify halibut PSC limits for the Amendment 80 sector linked to halibut abundance indices. In any given year, results from the most recent IPHC setline survey index for halibut in Area 4ABCDE would be categorized into one of four ranges: very low, low, medium, or high. Annual results from the EBS shelf trawl survey index for halibut would be categorized into one of two ranges: high or low.

This proposed action would establish an index table that specifies a halibut PSC limit for each of several specified

halibut abundance ranges, or survey index states, that may result from the annual IPHC setline and AFSC EBS shelf trawl surveys. Each year, the intersect of the most recent results from each survey in the proposed index table would establish the annual halibut PSC limit for the Amendment 80 sector. Those limits would range from the current Amendment 80 halibut PSC limit when abundance is high in the IPHC setline survey to 35 percent below the current limit when abundance is very low in the IPHC setline survey. This is within the range of alternative halibut PSC limits analyzed for this action in the Analysis (*i.e.*, between 15 percent above the current limit and 45 percent below it).

To illustrate how linking PSC limits to halibut abundance would work in practice, an example using 2021 data follows. Based on the halibut abundance values from the 2021 setline and EBS shelf trawl survey abundance indices in the proposed index table, a 1,309 mt PSC limit for the Amendment 80 sector would apply. This constitutes a 25 percent reduction from the 1,745 mt limit currently in regulation and is 37 mt under the sector's average halibut PSC levels from 2016 through 2019. Use of the index table to arrive at PSC limits, as in the above example, is appropriate, because it varies the allowable halibut PSC at several intervals roughly in proportion to halibut abundance, while accounting for the inter-annual variability in the Amendment 80 sector's encounters with halibut and resulting halibut PSC mortality.

Amendment 80 "halibut encounters" is a term used to describe halibut bycatch before a DMR is applied, meaning both the amount of halibut returned to the sea that is expected to survive and the amount expected to result in mortality (halibut PSC use). Amendment 80 halibut encounters from 2016 through 2020 were between 1,965 mt and 3,067 mt, and PSC mortality was between 1,097 mt and 1,461 mt. The period from 2016 through 2020 considered in the Analysis is appropriate to evaluate halibut PSC use because it reflects Amendment 80 sector operations under the existing Halibut Avoidance Plan (an industry-developed best practices guide to aid in halibut avoidance), deck sorting, and other available tools to avoid halibut and reduce halibut mortality. PSC data for 2021 was not considered in the Analysis because Amendment 80 fishing operations, along with other fisheries in Alaska, were more greatly affected in 2021 by COVID-19 mitigation measures and international supply chain and market disruptions in harvesting,

processing, and shipping than they were in 2020.

The following sections of the preamble further describe the rationale for this action and its impacts on the halibut stock, the directed halibut fishery and fishing communities, and the BSAI groundfish fishery participants and fishing communities. Sections 5.2 and 5.3 of the Analysis provide additional details.

#### A. Methods for Analysis of Impacts

In order to analyze the impact of the proposed rule and other alternatives considered, the Analysis is predicated on two broad ideas. First, the IPHC has a mandate under the Convention to "permit the optimum yield from the fishery and to maintain the stocks at those levels" and the IPHC's management procedures are designed to achieve that. The IPHC is not required to strictly apply its stated management procedures, and marginal, short term adjustments have been made that do not materially affect the long term sustainability of the halibut resource. The Analysis prepared for this proposed rule assumed the IPHC would maintain its stated management procedures; thus, those management procedures were used as the best available method for analyzing the effects of Amendment 123, including the preferred alternative that would be implemented under this proposed rule. That assumption was made because possible changes in those management procedures, or the specific commercial catch limits that will actually be adopted by the IPHC, cannot be known or predicted with certainty. Finally, it is reasonable to conclude that even marginal adjustments similar to the recent past would not significantly change the conclusions of the Analysis.

Second, the estimates from the EBS shelf trawl survey and the IPHC setline survey are relative indices and are not absolute estimates. The relative difference between estimates in each year (*i.e.*, the trend) is the important outcome of the survey estimates. Changed or improved methods in either survey, should any be employed in the future, would likely result in changes to annual estimates for the entire survey time-series. As such, absolute values derived from each survey index are dependent on the assumptions of the survey design and data analysis, whereas a standardized index that indicates the trend could show less year-to-year variability. However, basing an index table on standardized trend values would make it more difficult for stakeholders to read reported survey indices in a given year and map those onto a table to anticipate the resulting



Amendment 80 PSC limit. Therefore, in the interest of greater transparency to the public and in regulation, the Council and NMFS chose to use absolute values derived from the surveys, rather than a standardized index, recognizing that these historical values could change in the future. This is similar to how PSC limits for other PSC species are presently set in the BSAI.

#### *B. Impacts on the Halibut Stock*

The Council and NMFS considered the impacts the proposed rule would have on the halibut stock as detailed in the Analysis. While reducing halibut bycatch mortality is a conservation measure, the Analysis concluded that, under all the alternatives considered, the impact on exploitable, coastwide halibut biomass and the halibut female spawning biomass was not likely to be significant. This is because the halibut resource in the BSAI is fully utilized, and the Council and NMFS assume that, under this proposed action, a dynamic balance between halibut allocated to directed halibut fisheries by the IPHC on one hand and PSC limits assigned to the Amendment 80 fleet (plus fixed halibut PSC limits for other sectors) on the other, would always result in full utilization, but not over-utilization of the halibut resource. According to the Analysis section 5.2, the IPHC's SPR-based management approach is expected to conserve spawning biomass across differing patterns in fishery selectivity and/or allocation among different fisheries. As such, there is likely to be little difference among the average future halibut spawning biomass under levels of PSC anticipated across all of the alternatives considered, including the proposed action.

At the Very Low/Low and Very Low/High index states, the proposed action would reduce the Amendment 80 halibut PSC limit by 35 percent from the current limit. Should the IPHC setline survey results fall into the very low abundance state, the Council and NMFS concluded that this halibut PSC limit reduction would be important to promote conservation and equitable use of the halibut stock and consistency with the abundance-based process for establishing directed halibut fishery catch limits.

#### *C. Impacts on Directed Halibut Fishery Participants and Fishing Communities*

In recommending the proposed rule, the Council and NMFS considered the impacts of reducing halibut PSC limits on fishermen and fishing communities that depend on the halibut resources in the BSAI, as well as in other Areas in

Alaska and the Pacific Northwest, including the commercial, subsistence, personal use, and recreational fisheries (see sections 5.4 and 5.5 of the Analysis).

Near-term benefits of the proposed action to fishermen and communities dependent on the directed fishery in the Bering Sea may include accrual of fewer O26 halibut caught as PSC by the Amendment 80 sector. The current IPHC interim harvest policy subtracts the projected O26 portion of non-directed discard mortality (bycatch) from the TCEY by Area when calculating fishing limits. A portion of these halibut would be available to the commercial halibut fishery participants in the area that the PSC mortality is forgone in subsequent years or when the fish reach the legal size limit for the commercial halibut fishery (greater than or equal to 32 inches (81.28 centimeters) in total length). But, as shown in section 3.4 of the Analysis, the relationship between the PSC limit and PSC use varies; therefore, a reduction in the PSC limit may not always generate an increase in directed fishery catch limits in the short term. Even when it does, the magnitude may vary based on the actual Amendment 80 O26 PSC mortality.

The Analysis indicates that under the assumption of a 0.5 ratio for the Amendment 80 PSC limit to the directed catch limit, which is close to the 2010 through 2019 average proportion of O26 halibut in PSC mortality (~ 45 percent), directed commercial halibut catch limits could increase by approximately 360,000 lb (163.29 mt) under the 1,309 mt Amendment 80 PSC limit that would be established under the proposed action at the low/low state (the current state of the halibut stock survey indices). NMFS assumes that directed commercial halibut catch limits could increase under the 1,134 mt PSC limit that would be established under the proposed action at the very low/low state.

Anticipated benefits to the directed commercial halibut fishery from the proposed Amendment 80 PSC limits also include longer term benefits from reductions in the U26 portion of the bycatch. Reduced mortality of smaller halibut could provide benefits for the directed fishery in the Bering Sea and elsewhere as these halibut migrate and recruit to legal size. The directed halibut fishery in Area 4CDE would have the greatest potential for experiencing any incidental reallocative effects that may occur under the proposed action. The provision of additional opportunities for the directed halibut fishery that may accompany PSC limit reductions would be determined by IPHC management

processes, (see section 5.4 of the Analysis). However, there is no guarantee that this action would translate into increased opportunities for the directed fishery since the IPHC is not obligated to alter, maintain, or implement their current harvest strategies based on the outcome of this action.

Sport halibut harvests, including guided and unguided sport/recreational halibut fisheries, could indirectly benefit from the implementation of the proposed action. That is, if reducing BSAI halibut PSC limits under low abundance conditions were to ultimately result in an overall improvement in availability of halibut for sport harvest, an accompanying decrease in effort and expense in harvesting halibut for sport use, and/or an increase in interest in halibut sport fishing in the region prompted by an increasing abundance of larger halibut. These indirect benefits could occur if the overall Pacific halibut stock benefits from additional promotion of conservation of the stock under the proposed action.

#### *D. Impacts on Amendment 80 Participants and Fishing Communities*

The proposed action would have differing impacts on Amendment 80 companies, and changes to fishing plans and operations would be needed to adjust to the reduction in halibut PSC limits under different survey abundance index states, with more significant changes required at lower abundance states. Efforts already undertaken by the sector have shown that increases in halibut avoidance or reductions in mortality are possible with the tools that are currently available to the fleet. Additional improvements are anticipated to continue to be realized, especially if halibut limits are further reduced, although the Analysis projects that the fleet will forgo some amount of profitability to reduce halibut mortality further. Reductions in halibut mortality are expected to result from changes in fishing operations that cause the sector to increase operating costs and/or reduce efficiency. The amount of mortality reduction cannot be quantified with certainty.

When the halibut PSC limits constrain target catch and Amendment 80 firms are required to implement more measures to reduce halibut mortality, operating costs may increase and revenue may decrease making annual net revenue more volatile. This could result in increased consolidation of the Amendment 80 sector and the Cooperative Quota (CQ). Firms that are less efficient at addressing halibut

bycatch experience less profitability and may sell to firms that are more efficient, derive more revenue from other fisheries to provide revenue during years halibut is a constraint, or have access to more cash reserves than the sellers. Firms that cannot remain viable under the new conditions would eventually exit the fishery. Current Amendment 80 ownership and control limits leave room for one firm to exit the fishery, because a person may not individually or collectively hold or use more than 30 percent of the aggregate Amendment 80 Quota Share units initially assigned to the sector. The number of vessels in the fishery could be reduced to a minimum of five, because an Amendment 80 vessel may not be used to catch an amount of species greater than 20 percent of the aggregate Amendment 80 sector's species initial Total Allowable Catch (ITAC). While the number of vessels could decline, NMFS does not anticipate a decrease to the vessel minimum, because the fleet would still need sufficient capacity to harvest the CQ that can be supported by the available halibut PSC mortality limit. For complete discussion of impacts to the Amendment 80 sector, see section 5.3.2 of the Analysis.

Multiple coastal communities in the BSAI, as well as coastal communities elsewhere in Alaska and the Pacific Northwest, participate in the BSAI groundfish fisheries in one way or another, such as being homeport to participating vessels, the location of processing activities or product transfers, the location of fishery support businesses, the home of employees in the various sectors, or as the base of ownership or operations of various participating entities. An analysis of community engagement in and dependency on the Amendment 80 fishery is provided in appendix 1 (the Social Impact Assessment) of the Analysis. An analysis of the alternatives suggests that reductions in PSC limits could constrain the Amendment 80 sector under some conditions and consequently may impact the communities that depend on those fisheries. It is also important to note that some communities are substantially engaged in or substantially dependent on both the Amendment 80 fishery and the Area 4 directed halibut fishery, and thus may experience both negative and positive effects from this action. Consequently, a simple characterization of potential incidental reallocation effects to halibut dependent communities would not capture the complexity of overall impacts to those

communities, much less the range of potential impacts to individual harvesters, processors, and/or fishery support businesses in those communities which may ultimately result from changes in Amendment 80 PSC limits.

As described in section 5.5 of the Analysis, reduced halibut PSC mortality relative to the status quo may indirectly benefit fishing communities that depend upon commercial and noncommercial halibut harvest, though the magnitude of that effect is likely to be attenuated by multiple biological factors and policy steps that separate bycatch mortality savings from directed harvest opportunities. Conversely, communities engaged in the Amendment 80 sector groundfish fisheries could be adversely impacted on a more direct basis.

The Seattle-Tacoma-Bellevue Washington Metropolitan Statistical Area (Seattle MSA) is substantially engaged in the Area 4 directed halibut commercial fishery as measured by ownership address of actively participating catcher vessels, among other indicators of engagement. However, compared to Alaska communities, its engagement in the BSAI halibut fishery is not as dominant as it is in the BSAI groundfish fisheries, which are likely to be most directly affected by the proposed action alternatives. No community level adverse impacts related to the BSAI halibut fishery are anticipated to the Seattle MSA under the proposed action.

#### *E. Rationale for Amendment 123 and the Proposed Rule and Consistency With Magnuson-Stevens Act National Standards*

The Council and NMFS believe that linking Amendment 80 halibut PSC limits to halibut abundance levels as proposed in this rule: (1) will ensure that halibut PSC mortality in Amendment 80 fisheries does not become a greater share of overall halibut removals in the BSAI, particularly in Area 4CDE; (2) will create a more equitable approach between competing users; and (3) may increase halibut harvest opportunities in directed halibut fisheries. In short, the proposed rule is reasonably calculated to promote conservation of the halibut resource, improve its management, and create a more equitable distribution process between the directed and non-directed fisheries.

The Council and NMFS have concluded that Amendment 123 is consistent with the Magnuson-Stevens Act, including the ten national standards, and other applicable law. The Analysis contains a detailed

analysis of those standards. The Council and NMFS considered the proposed action in context of balancing all the national standards. Below, we highlight four of them: National Standards 1, 4, 8, and 9.

*National Standard 1.* The Analysis shows that, consistent with National Standard 1, the groundfish fisheries will continue to achieve optimum yield on a continuing basis under Amendment 123. Congress set, and the BSAI FMP includes, the optimum yield (OY) range for the BSAI groundfish complex as 85 percent of the historical estimate of MSY, which results in an OY range between 1.4 and 2.0 million mt of groundfish. The Analysis indicates that, even if the Amendment 80 sector harvested no fish, overall, the groundfish fisheries would continue to harvest within this OY range in most years. Thus, under National Standard 1, despite the imposition of costs on and potential loss of a portion of harvest by the Amendment 80 sector, this action is not expected to affect the BSAI groundfish fisheries' ability to achieve OY on a continuing basis.

*National Standard 4.* To the extent that this action involves an allocation of fishing privileges contemplated in National Standard 4, the new PSC limits are fair and equitable. An allocation need not preserve the status quo in the fishery to qualify as "fair and equitable" if a restructuring of fishing privileges would maximize overall benefits. The Council and NMFS considered that the potential hardship imposed on the Amendment 80 fleet at low and very low survey indices was, on balance, outweighed by the potential benefits from the reduction in the Amendment 80 fleet's halibut mortality and the potential increase in halibut availability to the directed halibut fisheries. The action is also reasonably calculated to promote conservation through the reduction of halibut bycatch and mortality in the Amendment 80 fleet. Further, as the National Standard Guidelines explain, the action promotes conservation (in the sense of wise use) by optimizing yield in terms of the economic and social benefit of the product. Finally, the action does not result in the acquisition of an excessive share of any fishing privileges.

In developing this proposed action, the Council and NMFS also considered other factors identified in the National Standard 4 guidance, including economic and social consequences, food production (subsistence use), dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to

and impact on other fisheries, opportunity for new or past participants to enter the fishery, and enhancement of opportunities for recreational fishing.

*National Standard 8.* The Magnuson-Stevens Act's National Standard 8 and the associated NMFS Guidelines provide that conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act, take into account the importance of fishery resources to fishing communities by utilizing economic and social data that are based upon the best scientific information available in order to: (1) provide for the sustained participation of such communities and (2) to the extent practicable, minimize adverse economic impacts on such communities.

When the proposed action results in lower halibut PSC mortality by the Amendment 80 fleet than would have occurred under the current limit, the proposed action is expected to have a positive effect on all directed halibut fisheries (commercial, guided and unguided recreational (sport), and subsistence), minimize adverse economic impacts to communities dependent on those directed fisheries and, thus, provide for the sustained participation of such communities. The reduction in the halibut PSC limit and potential for increased opportunities for additional halibut harvest for the directed halibut fisheries are also expected to have positive social and environmental justice impacts on the directed users of the halibut resource and halibut-dependent communities, many of which are predominantly Alaska Native communities. Those impacts are estimated in section 5.5 of the Analysis and appendix 1 to the Analysis.

The social and cultural importance of halibut (as a species) and halibut fishing (as a traditional activity) for Alaska Native tribes and ethnic groups throughout Alaska is well-documented. The cultural significance of halibut for these fishermen and their associated communities exceeds the economic value of the fishery. Minority populations of the seventeen Alaska communities considered BSAI halibut-dependent range from 65 to over 90 percent of those communities' populations. Notably, those communities' low-income populations (residents living below the poverty threshold) comprise 10 percent to over 40 percent of the community.

While the Council does not currently set catch limits in the directed halibut fishery, the economic, social, and cultural benefits to Alaska communities

that may result from halibut PSC reductions is discussed in section 5.5 and appendix 1 of the Analysis. Overall positive social and environmental justice impacts on dependent halibut directed fishery communities would be expected as a result of this proposed rule. In recommending the proposed action to NMFS, the Council considered providing for the sustained participation of fishing communities and minimizing adverse economic impacts on such communities, consistent with National Standard 8.

*National Standard 9.* Section 303(a)(11) of the Magnuson-Stevens Act and National Standard 9 generally require FMPs to include conservation and management measures that minimize bycatch to the extent practicable. The proposed action is intended to minimize halibut PSC in the Amendment 80 sector to the extent practicable. What is practicable will be determined on a case-by-case basis. According to the Merriam-Webster Dictionary, practicable means "capable of being done or carried out." The available technology and the potential costs of carrying out bycatch minimization measures are relevant to the practicability determination. The practicability of the proposed PSC reduction relative to the status quo is discussed in sections 3.4.5 and 5.3.2.3 of the Analysis. Under the high IPHC setline survey index value, the PSC limit remains unchanged. At lower levels of halibut abundance, some of the PSC limits may be more difficult to achieve by the Amendment 80 fleet using currently available tools, forcing the Amendment 80 sector to stop fishing before harvesting their entire groundfish allocations. However, at lower halibut abundance and PSC limits, halibut encounter rates by the Amendment 80 fleet may also be lower. The following additional factors were taken into consideration under National Standard 9:

*Population effects for the bycatch species.* The IPHC's SPR-based management approach is expected to conserve the halibut spawning biomass across differing patterns in fishery selectivity and/or allocation among different fisheries. As such, there is likely to be little difference in the average future halibut spawning biomass coastwide under levels of PSC anticipated through this proposed action. Although the spawning stock biomass is not expected to be affected by this action, since halibut are a fully allocated species, reductions in juvenile halibut mortality may occur as a result of the PSC limits imposed by this action, particularly at low levels of

abundance, allowing greater number of larger fish to recruit into the directed fisheries. However, the degree of change in the BSAI halibut fishery per unit change in PSC cannot be reliably estimated.

*Ecological effects.* To the extent that the proposed action changes effort in the BSAI groundfish fisheries and reduces the bycatch of halibut in the Amendment 80 fleet, those changes are not likely to have ecological effects on other species in the ecosystem or impacts on ecosystem components. Nor are they likely to produce considerations beyond those summarized in the annual Stock Assessment and Fishery Evaluation report for the BSAI groundfish fisheries.

*Effects on marine mammals and birds.* The potential for incidental take, prey availability, and disturbance of marine mammals and seabirds may change from status quo under the proposed rule. If the Amendment 80 fleet reduces fishing effort in specific fisheries to conserve halibut PSC and shifts to target different species, that shift in operations may result in incrementally more or less potential for incidental take, prey availability, and disturbance of marine mammals and/or seabirds. If a groundfish fishery increases the duration of fishing in certain areas, there may be more potential for incidental take, prey availability, and disturbance in those locations if they are used by marine mammals or seabirds. The fisheries are unlikely to increase their take of marine mammals above the Potential Biological Removal (PBR) levels (the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population), since take numbers are currently well below PBR levels in BSAI groundfish fisheries and no PSC limits under the proposed action are expected to result in significant increases in total fishing effort in the BSAI.

*Changes in fishing practices and behavior of fishermen.* Whether PSC limits under the proposed rule will result in changes in fishing practices or fishermen's behavior is unclear. As the annual PSC limit changes in accordance with halibut abundance index states, the proposed rule may yield no change to existing levels of PSC, or a reduced PSC limit may result in the industry changing its fishing patterns to avoid halibut. This could result in reduced fishing effort as the industry chooses not to pursue fisheries associated with higher halibut encounter rates to conserve halibut PSC, or it could result

in greater fishing effort at lower catch per unit effort as vessels change fishing patterns or seasonal changes in the timing of the fishing to increase halibut avoidance. A program that links the Amendment 80 sector PSC limit to halibut abundance may provide incentives for the fleet to minimize halibut mortality at all times. Shifts in the location or timing of fishing may occur as a result of this action. However, there is already considerable inter-annual variability in the patterns of fishing across the Amendment 80 sector as environmental conditions and avoidance of PSC species have caused vessels to adjust their fishing patterns. Implementation of a lower PSC limit will likely result in the fleet stopping fishing before the limit is taken to avoid penalties of exceeding the hard cap. The proposed rule also assumes that the conditions in the Amendment 80 groundfish fishery will result in years when halibut mortality rates are lower, because directed fishery species are more aggregated and avoiding halibut bycatch is easier.

*Changes in research, administration, enforcement costs, and management effectiveness.* By law, NMFS is required to recover the actual costs of management, data collection, and enforcement directly related to any Limited Access Privilege Program and the CDQ program. This action could change halibut PSC limits that could impact the value of fisheries subject to cost recovery. Changes to direct program costs, fishery value, or both, could alter the cost recovery fee percentage due. However, it is not possible to quantitatively estimate the potential impact of this action on cost recovery fee percentages, given the wide variety of factors that affect the direct program costs and the value of a fishery. But it is reasonable to assume that the larger the change in PSC limit from status quo under this proposed action, the greater the potential impact to fishery value and fee percentage due.

When the proposed action results in a reduction to halibut PSC limits, it may increase, among some operators, the economic incentives to attempt to bias halibut PSC data. The Alaska Division of NOAA Office of Law Enforcement (OLE) has identified recent increases in reports of harassment, intimidation, hostile work environment, and other attempts to bias observer samples of PSC in the Amendment 80 sector. The Amendment 80 sector has one of the highest rates of interpersonal issues report by observers (0.49 per assignment). A further reduction of the halibut PSC limit for this sector may result in additional coercive behavior

toward observers and attempts to bias their sampling. NOAA OLE's recent outreach efforts in conjunction with the recent implementation of another recent halibut action, halibut deck sorting, could be used as a model to address these concerns. Specifically, successful outreach from NOAA OLE after the implementation of halibut deck sorting, followed by routine boardings, served as a useful way for vessels to report problems they might be having with new regulations. Those efforts appeared to encourage communication and self-reporting by the vessels, and may be employed by NOAA OLE during implementation of this proposed action.

This proposed rule would change PSC limits annually for the Amendment 80 sector based on the proposed Table 58 that would be included in regulation. Thus, the use of the table would obviate the need for the Council to take action each October or December to specify the PSC limit for the following year.

Changes in fishing, processing, disposal, and marketing costs; changes in economic, social, or cultural value of fishing activities; and changes in non-consumptive uses of fishery resources, including distribution of costs and benefits. The Analysis notes that the Amendment 80 sector will incur higher costs to avoid halibut to maximize harvest of Amendment 80 species TACs with any reduction in the halibut PSC limit, and such costs are assumed to increase as the survey index states decrease. The precise extent to which these costs would affect groundfish harvests and negatively impact the Amendment 80 sector is unknown. The analysis demonstrates that the lower halibut PSC limits may result in reduced groundfish harvests and revenues for the Amendment 80 sector. The analysis also notes that the impacts of this action on the different Amendment 80 companies are likely to vary given the diversity of their respective quota holdings of different target stocks (See section 3.3 of the Analysis). Positive impacts may occur for some Amendment 80 suppliers (fuel, excluder manufacturers, etc.) and for suppliers to the directed halibut fisheries, if the proposed rule results in increased commercial, charter, unguided sport, or subsistence harvests. Some negative impacts may occur for suppliers to the Amendment 80 fleet (e.g., suppliers of packaging material) that lose business as a result of the action.

Overall, economic producer surplus—that is, the difference between the minimum the producer would be willing to sell for and what the producer actually sells its goods for—is expected

to be negatively affected, depending on future conditions of halibut abundance, which is unknown. This is because the expected reductions in the Amendment 80 producer surpluses would not be expected to be offset by economic increases in producer surpluses due to increased catch in the directed halibut fisheries.

Changes in social, or cultural value of fishing activities, and changes in non-consumptive uses of fishery resources, including distribution of costs and benefits were considered in evaluating the proposed rule's consistency with National Standard 9. These factors are described in other sections of this preamble, including under impacts to directed halibut fisheries and communities and discussion of consistency of the proposed rule with National Standards 4 and 8.

On balance, the Council and NMFS determined that reducing halibut mortality from bycatch in the Amendment 80 fleet is warranted in light of the above factors, the Magnuson-Stevens Act's requirements, and other legal requirements. The Council and NMFS concluded that the total benefits of the halibut PSC reduction outweigh its costs.

#### IV. The Proposed Rule

The Council took final action to base the annual halibut PSC limit for the Amendment 80 sector on halibut abundance under Amendment 123. Here, NMFS proposes regulations to implement that amendment and establish a process to set the annual halibut PSC limit for the Amendment 80 sector, namely, by linking it to annual survey indices. This proposed rule would accomplish the following:

- Specify that BSAI halibut PSC for the Amendment 80 sector be determined annually.
- Specify that halibut biomass estimates derived from results of the most recent IPHC setline survey and the AFSC EBS shelf trawl survey be applied to a specified set of index ranges for each survey to establish the BSAI halibut PSC limit for the Amendment 80 sector for the following year.
- Specify that each year the Amendment 80 sector halibut PSC limit will be included in the proposed and final rules for the annual harvest specifications for the BSAI.

Turning to the affected regulations, 50 CFR 679.21 describes prohibited species bycatch management procedures: paragraph (b)(1) establishes BSAI halibut PSC limits for the Amendment 80 sector. To establish the annual process for determining BSAI halibut PSC limit for the Amendment 80 sector,

this proposed rule would revise 50 CFR 679.21.

The proposed rule would revise paragraph (b)(1) by adding paragraphs (b)(1)(i)(A) through (C) to establish the process for determining the annual BSAI halibut PSC limits for the Amendment 80 sector, including Amendment 80 cooperatives and the Amendment 80 limited access fishery. The proposed rule would specify that halibut biomass estimates derived from results of the most recent IPHC setline and the AFSC EBS shelf trawl surveys be applied to a specified table of index ranges for each survey (proposed Table 58). The value at the intercept of those survey indices within the table would be the BSAI halibut PSC limit for the Amendment 80 sector for the following year. The annual limit would be published in the draft and final harvest specifications each year.

The proposed rule would also revise 50 CFR 679.91, which establishes Amendment 80 Program annual harvester privileges and the process for assigning halibut PSC to the Amendment 80 sector, cooperatives, and limited access fishery. The proposed rule would revise paragraphs (d)(1), (d)(2)(i), and (d)(3) to clarify that the amount of halibut PSC limit for the Amendment 80 sector for each calendar year is specified and determined according to the procedure in § 679.21(b)(1)(i), replacing the references in those paragraphs to Table 35 to this part that stipulates the annual fixed amount of 1,745 mt for the Amendment 80 sector as a whole.

NMFS would modify Table 35 to Part 679 (Apportionment of Crab PSC and Halibut PSC Between the Amendment 80 and BSAI Trawl Limited Access Sectors) to indicate that the Amendment 80 sector halibut PSC would be determined annually, rather than set at a fixed amount. NMFS would add Table 58 to Part 679—Amendment 80 Sector Annual BSAI Pacific Halibut PSC Limits to establish the IPHC setline and the AFSC EBS shelf trawl survey index ranges in a table with the corresponding PSC limit at the intercepts of each survey range.

## V. Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 123, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment period.

This proposed rule has been determined to be not significant for the

purposes of Executive Order (E.O.) 12866.

### A. Regulatory Impact Review (RIR)

An RIR was prepared and incorporated in the final EIS to assess the costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS is recommending Amendment 123 and the regulatory revisions in this proposed rule to minimize potentially adverse economic impacts on benefits to the Nation. Specific aspects of the economic analysis related to the impact of this proposed rule on small entities are discussed below in the Initial Regulatory Flexibility Analysis (IRFA) section.

### B. Initial Regulatory Flexibility Analysis (IRFA)

This IRFA was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is required to describe why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of this proposed rule, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

#### 1. Number and Description of Small Entities Regulated by This Proposed Rule

NMFS has determined that vessels that are members of a fishing cooperative are affiliated when classifying them for the RFA analysis. In making this determination, NMFS considered the Small Business Administration (SBA) “principles of affiliation” at 13 CFR 121.103. Specifically, in 50 CFR 121.103(f), SBA refers to “[a]ffiliation based on identity of interest,” which states that affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family

members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated. If business entities are affiliated, then the threshold for identifying small entities is applied to the group of affiliated entities rather than on an individual entity basis. NMFS has reviewed affiliation information for Amendment 80 cooperative members that are directly regulated by this action and has determined that all directly regulated catcher/processors are large via cooperative affiliation, with one exception discussed below.

This action also affects the six Western Alaska CDQ entities that are non-profit corporations, are not dominant in the BSAI non-pollock fishery, and are specifically identified as “small” entities in the regulations implementing the RFA. The CDQ entities have made direct investments in fishing vessels by creating wholly owned for-profit fishing companies, several of which are directly regulated by this action. However, as for-profit ventures, these companies are not automatically defined as small entities due to CDQ ownership, and this analysis has determined that they are all Amendment 80 cooperative-affiliated. Thus, while this proposed action directly regulates these for-profit CDQ owned companies, they are considered to be large entities for RFA purposes.

The thresholds applied to determine if an entity or group of entities are “small” under the RFA depend on the industry classification for the entity or entities. Businesses classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of \$11.0 million for all affiliated operations worldwide. 50 CFR 200.2. Businesses classified as primarily engaged in fish processing are considered small entities if they employ 750 or fewer persons on a full-time, part-time, temporary, or other basis at all affiliated operations worldwide. Since at least 1993, NMFS Alaska Region has considered catcher/processors to be predominantly engaged in fish harvesting rather than fish processing. Under this classification, the threshold of \$11.0 million in annual gross receipts is appropriate.

One additional vessel, the Golden Fleece, has been identified as a potentially directly regulated small entity based on revenue analysis. The Golden Fleece is Amendment 80-eligible but has chosen not to utilize its right to an Amendment 80 permit. Thus,

it is not Amendment 80 cooperative-affiliated or Amendment 80 ownership-affiliated, as it is an independent company. The Golden Fleece is a member of a marketing cooperative called Golden-Tech International, Inc. This cooperative markets the catch of several Amendment 80 catcher/processors; however, NMFS does not have access to information regarding contractual relationships necessary to determine whether membership in this marketing cooperative also affiliates the Golden Fleece with Amendment 80 vessels. Therefore, the Golden Fleece is considered to be the only small entity directly regulated by this action. However, since the Golden Fleece has not participated in the Amendment 80 fishery, it is not possible to quantify adverse impacts other than to acknowledge that the proposed rule may constrain its halibut PSC limits should it choose to do so in the future. In times of lower halibut abundance, that constraint may mean that there is not adequate PSC quota to allocate to the Amendment 80 limited access fishery to allow a directed fishery to be opened by NMFS in-season management should the Golden Fleece choose to register for that fishery. Were the Golden Fleece to register in the Amendment 80 fishery as a cooperative of one, their ability to fish would be similarly constrained by the potentially lower halibut PSC limit.

In sum, based on the foregoing analysis, NMFS preliminarily determines that there is one catcher/processor entity, the Golden Fleece, that may be considered small and would potentially be directly regulated by this action. NMFS has carefully considered whether a single entity represents a "substantial number" of directly regulated entities. When Amendment 80 was enacted, there were 27 original issuances of License Limitation Permits (LLPs). That is the same number of Amendment 80 LLPs issued currently. The Golden Fleece does not hold one of the 27 original or current LLPs issued, having, having not applied for an Amendment 80 LLP to date. Through consolidation and vessel replacement, all of the LLPs participating in the Amendment 80 fishery are presently owned by five distinct corporations that are all cooperative-affiliated large entities. NMFS acknowledges that the corporation owning the LLPs is the proper consideration for determining whether a substantial number of directly regulated entities is affected. While one of 28 does not appear to represent a substantial number of directly regulated entities, one of six directly regulated entities may give the appearance of a

substantial number. Thus, NMFS has prepared this IRFA, which provides potentially affected small entities an opportunity to provide comments. NMFS will evaluate any comments received regarding the potential for significant economic impact on a substantial number of small entities in the final RFA contained within the final rule.

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

No small entity is subject to reporting requirements that are in addition to or different from the requirements that apply to all directly regulated entities.

Under this proposed rule, requirements for recording and reporting would not be changed. Therefore, this proposed action will not change recordkeeping and reporting costs for fishery participants or impose any additional or new costs on participants.

#### 2. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Action

NMFS has not identified any duplication, overlap, or conflict between this proposed rule and existing Federal rules.

#### 3. Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

No significant alternatives were identified that would accomplish the stated objectives for implementing a halibut abundance-based management via regulation, be consistent with applicable statutes, would minimize costs to potentially affected small entities more than the proposed rule. The Council considered five alternatives for action in this proposed rule along with three sub-options that could apply to all action alternatives. Alternative 1 is the no action alternative and would continue the static annual halibut PSC limit of 1,745 mt for the Amendment 80 sector.

The Council's recommended Preferred Alternative (Alternative 5) bases the determination of the annual PSC limit on the most recent survey values for the IPHC setline survey and the EBS shelf trawl survey using an index table that links PSC limits to survey abundance index states (see Table 2–8 of the Analysis). The two abundance indices are measures of the survey estimate of halibut either in metric tons (NMFS AFSC EBS shelf trawl survey) or population-density as measured by weight per unit effort (IPHC setline survey). These indices will be used to track halibut abundance

and to guide setting the PSC limit for the Amendment 80 sector. The selected indices are based on the EBS shelf trawl survey and the IPHC setline survey covering IPHC Areas 4ABCDE. Both indices represent the best available scientific information. Alternatives 2 through 4 would use the same style of index table as proposed in the Preferred Alternative but would use different ranges of halibut PSC limits for the survey index levels. Alternative 2 includes a range from the current halibut PSC limit of 1,745 mt to 1,396 mt or 20 percent below the current limit. Alternative 3 includes a range from 2,007 mt or 15 percent above the current limit to 1,222 mt or 30 percent below the current limit. Alternative 4 includes a range from the current limit of 1,745 mt to 960 mt or 45 percent below the current limit.

The Preferred Alternative reflects requirements for the Council, and NMFS, to balance several factors when establishing PSC limits, including the likely impacts on the halibut stock and affected participants in the Amendment 80 and directed halibut fisheries. The Preferred Alternative would specify halibut PSC limits that range from the current Amendment 80 halibut PSC limit to 35 percent below the current limit. This is within the range of halibut PSC limits considered for this action, which range from 15 percent above the current limit to 45 percent below the current limit. The Council has acknowledged that halibut is fully utilized in the BSAI and at the medium to very low survey index states, the Amendment 80 PSC limit should decline as halibut available for harvest for all users also declines. Under those conditions, reduced halibut mortality through lower PSC limits is likely to prevent halibut PSC from becoming a larger proportion of total removals in the BSAI, consistent with the Council's purpose and need statement.

In recommending the Preferred Alternative, the Council appropriately considered the Magnuson-Stevens Act requirements. The Preferred Alternative balances the interests of the two largest halibut user groups in the BSAI, the directed commercial halibut fishery and the Amendment 80 sector, by establishing abundance-based halibut PSC limits for the Amendment 80 sector. This abundance-based approach is similar to the IPHC's management approach for the directed halibut fisheries off Alaska, which establishes annual catch limits that vary with established measures of halibut abundance.

4. Collection of Information Requirements

This proposed rule does not require any collection of information ("recordkeeping and reporting") requirements approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This proposed rule does not amend existing information collections or create new information collections applicable to directly regulated entities. The Amendment 80 sector is subject to a comprehensive information collection in the form of the Economic Data Reporting (EDR) Program enacted in 2008. The Council reviewed the EDR for Amendment 80, and three other sectors, in February of 2022 and kept the Amendment 80 EDR largely intact while adopting some agency recommendations for small changes to the information collection forms to reduce respondent burden.

Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the ADDRESSES above, by email to OIRA\_Submission@omb.eop.gov, or by fax to (202) 395-5806.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at http://www.cio.noaa.gov/services\_programs/prasubs.html.

C. Tribal Consultation

E.O. 13175 of November 6, 2000, the Executive Memorandum of April 29, 1994, the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995), and the Department of Commerce Tribal Consultation and Coordination policy (78 FR 33331, June 4, 2013) outline the responsibilities NMFS has for tribal consultations related to Federal policies that have tribal implications. Further, section 161 of Public Law 108-199 extends the consultation requirements of E.O. 13175 to Alaska Native corporations. Under E.O. 13175 and agency policies, NMFS is required to give the opportunity for meaningful and timely input by tribal officials and representatives of Alaska Native corporations in the development of regulatory policies that have tribal implications. To that end, NMFS will provide a copy of this proposed rule to all potentially impacted federally

recognized tribal governments in Alaska and Alaska Native corporations to notify them of the opportunity to comment or request a consultation on this proposed action.

Section 5(b)(2)(B) of E.O. 13175 requires NMFS to prepare a "tribal summary impact statement" for any regulation that has tribal implications, imposes substantial direct compliance costs on Native tribal governments, and is not required by statute. The tribal summary impact statement must contain (1) a description of the extent of the agency's prior consultation with tribal officials, (2) a summary of the nature of their concerns, (3) the agency's position supporting the need to issue the regulation, and (4) a statement of the extent to which the concerns of tribal officials have been met. If the Secretary of Commerce approves this proposed action, a tribal impact summary statement that addresses the four questions above will be prepared and included in the final rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Halibut, Reporting and recordkeeping requirements.

Dated: November 29, 2022.

Samuel D. Rauch, III,

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

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108-447; Pub. L. 111-281.

■ 2. In § 679.21, revise paragraph (b)(1) introductory text, and add paragraphs (b)(1)(i)(A) through (C) to read as follows:

§ 679.21 Prohibited species bycatch management.

\* \* \* \* \*

(b) \* \* \*

(1) Establishment of BSAI halibut PSC limits. Subject to the provisions in paragraphs (b)(1)(i) through (iv) of this section, the following three BSAI halibut PSC limits are established, which total 1,770 mt: BSAI trawl limited access sector—745 mt; BSAI non-trawl sector—710 mt; and CDQ Program—315 mt (established as a PSQ reserve). An additional amount of BSAI halibut PSC limit for the Amendment 80 sector will be determined for each

calendar year according to the procedure in paragraph (b)(1)(i) of this section.

(i) \* \* \*

(A) General. The Amendment 80 sector BSAI halibut PSC limit applies to Amendment 80 vessels while conducting any fishery in the BSAI and is an amount of halibut determined annually according to the procedure in paragraph (b)(1)(i)(B) of this section.

(B) Annual procedure. By October 1 of each year, the Alaska Fisheries Science Center will provide the Regional Administrator an estimate of halibut biomass derived from the most recent Alaska Fisheries Science Center Eastern Bering Sea shelf trawl survey index. Each year, NMFS will request that the International Pacific Halibut Commission provide to the Regional Administrator, by December 1 of that year, an estimate of halibut biomass derived from the most recent International Pacific Halibut Commission setline survey index. NMFS will apply both halibut biomass estimates to Table 58 of this part, such that the value at the intercept of those survey indices in Table 58 is the Amendment 80 sector halibut PSC limit for the following calendar year. NMFS will publish the new Amendment 80 sector halibut PSC limit in the proposed annual harvest specifications.

(C) Allocation of BSAI halibut PSC to Amendment 80 cooperatives and the Amendment 80 limited access fishery. For Amendment 80 cooperatives and the Amendment 80 limited access fishery, BSAI halibut PSC limits will be allocated according to the procedures and formulas in § 679.91(d) and (f) (not paragraph (b)(1)(i)(B) of this section). If halibut PSC is assigned to the Amendment 80 limited access fishery, it will be apportioned into PSC allowances for trawl fishery categories according to the procedure in paragraphs (b)(1)(ii)(A)(2) and (3) of this section.

\* \* \* \* \*

■ 3. In § 679.91, revise paragraphs (d)(1), (d)(2)(i), and (d)(3) to read as follows:

§ 679.91 Amendment 80 Program annual harvester privileges.

\* \* \* \* \*

(d) \* \* \*

(1) Amount of Amendment 80 halibut PSC for the Amendment 80 sector. The amount of halibut PSC limit for the Amendment 80 sector for each calendar year is determined according to the procedure in § 679.21(b)(1)(i). That halibut PSC limit is then assigned to Amendment 80 cooperatives and the Amendment 80 limited access fishery



pursuant to paragraphs (d)(2) and (3) of this section. If one or more Amendment 80 vessels participate in the Amendment 80 limited access fishery, the halibut PSC limit assigned to the Amendment 80 cooperatives will be reduced pursuant to paragraph (d)(3) of this section.

(2) \* \* \*

(i) Multiply the amount of annual halibut PSC established according to the procedure in § 679.21(b)(1)(i) by the

percentage of the Amendment 80 halibut PSC apportioned to each Amendment 80 species as established in Table 36 to this part. This yields the halibut PSC apportionment for that Amendment 80 species.

\* \* \* \* \*

(3) *Amount of Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery.* The amount of Amendment 80 halibut PSC limit assigned to the Amendment 80 limited

access fishery is equal to the amount of halibut PSC assigned to the Amendment 80 sector, as established according to the procedure in § 679.21(b)(1)(i), less the amount of Amendment 80 halibut PSC assigned as CQ to all Amendment 80 cooperatives as determined in paragraph (d)(2)(iv) of this section, multiplied by 80 percent.

\* \* \* \* \*

■ 4. Revise Table 35 to part 679 to read as follows:

**TABLE 35 TO PART 679—APPORTIONMENT OF CRAB PSC AND HALIBUT PSC BETWEEN THE AMENDMENT 80 AND BSAI TRAWL LIMITED ACCESS SECTORS**

Fishery	Halibut PSC limit in the BSAI is . . . (mt)	Zone 1 Red king crab PSC limit is . . .	<i>C. opilio</i> crab PSC limit (COBLZ) is . . .	Zone 1 <i>C. bairdi</i> crab PSC limit is . . .	Zone 2 <i>C. bairdi</i> crab PSC limit is . . .
		As determined according to § 679.21(b)(1) and the procedures at § 679.21(b)(1)(i).			
Amendment 80 sector .....	Annual Determination <sup>1</sup> .....	49.98	49.15	42.11	23.67
BSAI trawl limited access .....	745 .....	30.58	32.14	46.99	46.81

<sup>1</sup> See paragraph 679.21(b)(1)(i) and Table 58 for the annual determination process for Amendment 80 halibut PSC limits in the BSAI.

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■ 5. Add Table 58 to Part 679 to read as follows:

**TABLE 58 TO PART 679—AMENDMENT 80 SECTOR ANNUAL BSAI PACIFIC HALIBUT PSC LIMITS**

Survey index ranges	Eastern Bering Sea shelf trawl survey index (t)	
	Low <150,000	High ≥150,000
IPHC setline survey index in Area 4ABCDE (WPUE)		
High ≥11,000 .....	1,745 mt .....	1,745 mt.
Medium 8,000–10,999 .....	1,396 mt .....	1,571 mt.
Low 6,000–7,999 .....	1,309 mt .....	1,396 mt.
Very Low <6,000 .....	1,134 mt .....	1,134 mt.