

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

[Docket Number: 231114–0267]

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:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 123 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands (BSAI) Management Area (BSAI FMP). This final rule amends the regulations governing limits on Pacific halibut (*Hippoglossus stenolepis*) (halibut) prohibited species catch (PSC) to link the halibut PSC limit for the Amendment 80 commercial groundfish trawl fleet in the BSAI groundfish fisheries to halibut abundance. This final rule is necessary to comply with the obligation in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that FMPs minimize bycatch to the extent practicable. It is also consistent with the Magnuson-Stevens Act's National Standards. This final rule is expected to minimize halibut mortality, and it may result in additional harvest opportunities in the commercial halibut fishery, as well as to the subsistence and recreational fisheries. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Act, other applicable laws, and Amendment 123 to the BSAI FMP.

**DATES:** This rule is effective January 1, 2024.

**ADDRESSES:** Electronic copies of the Environmental Impact Statement (EIS) and the Social Impact Assessment (SIA) (collectively referred to as the "Analysis") and the Record of Decision (ROD) prepared for this final rule may be obtained from <https://www.regulations.gov> or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

Electronic copies of Tribal consultation and listening summaries prepared for this action may be obtained from the NMFS Alaska Region website

at: <https://www.fisheries.noaa.gov/alaska/consultations/alaska-fisheries-tribal-consultation-documents-and-workgroup>.

Electronic copies of North Pacific Fishery Management Council (Council) documents referenced in this final rule are available on the Council website at <https://npfmc.org>.

Electronic copies of International Pacific Halibut Commission (IPHC) documents referenced in this final rule are available on the IPHC website at <https://iphc.int>.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS published a Notice of Availability (NOA) for Amendment 123 in the **Federal Register** on November 9, 2022 (87 FR 67665), with public comments invited through January 9, 2023. On December 9, 2022, upon realization that supporting documents were not publicly available, NMFS extended the comment period on the NOA for the FMP amendment to February 7, 2023, with a document (87 FR 75569, December 9, 2022) to allow a 60-day public comment period on the proposed action with all supporting documents available. NMFS published a proposed rule to implement Amendment 123 in the **Federal Register** on December 9, 2022 (87 FR 75570) with public comment invited through January 23, 2023. NMFS received 69 comment letters on the proposed Amendment 123 and the proposed rule. Amendment 123 was approved on March 7, 2023. A summary of the comments and NMFS's responses are provided under the heading "Comments and Responses" below. Regulations governing U.S. fisheries and implementing the Magnuson-Stevens Act are located at 50 CFR parts 600 and 679.

**Background**

The following background sections describe the Amendment 80 Sector and associated fisheries, halibut PSC management in the BSAI groundfish fisheries, BSAI Amendment 123, and the halibut abundance indices used to set halibut PSC limits for the Amendment 80 sector and this final rule. A detailed review of the provisions of Amendments 123, the proposed regulations to implement Amendment 123, and the rationale for this action is provided in the preamble to the proposed rule and is briefly summarized in this final rule. This preamble uses specific terms (e.g., Amendment 80 sector, directed fishing) that are described in regulation and in the preamble to the proposed rule.

Additional information is provided in the preamble of the proposed rule, the Analysis, and the ROD, and we refer the reader to those documents for additional detail.

**Halibut PSC Management in the BSAI Groundfish Fisheries**

Halibut is an iconic, highly valued fish among commercial, recreational, charter, and subsistence fishermen. For the commercial fisheries that do not directly target halibut, NMFS regulates their PSC or bycatch of halibut. Every FMP must minimize bycatch (16 U.S.C. 1853(a)(11)), to the extent practicable. The groundfish fisheries cannot be prosecuted without some level of halibut bycatch because of spatiotemporal overlap of groundfish and halibut. Regulations require the operator of any vessel fishing for groundfish in the BSAI to minimize the catch of prohibited species (§ 679.21(a)(2)(i)).

Although halibut PSC results from all types of gear (i.e., 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. Groundfish fishing is prohibited once a halibut PSC limit has been reached for a particular sector or season.

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 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 metric tons (mt); from that total, 1,745 mt are apportioned to the Amendment 80 sector, which is composed of non-pollock trawl vessels.

The BSAI trawl limited access sector, which is composed 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 Community Development Quota (CDQ) program, which is composed of vessels fishing for CDQ groups.

#### *The Amendment 80 Sector and Associated Fisheries*

Fishing under the Amendment 80 Program began in 2008 (72 FR 52668, September 14, 2007). The Amendment 80 sector is comprised of trawl vessels, mostly owned by entities in the Seattle, Washington area, that participate in the BSAI groundfish fisheries other than the Bering Sea pollock fishery. The Amendment 80 species are identified in regulation (§ 679.2) as the following 6 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 total allowable catch (TAC) limits of these species between the Amendment 80 sector and other fishery participants. The Amendment 80 Program also apportions 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 quota share (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 while staying under PSC limits.

As specified in Section 3.7.5.2 of the FMP and at § 679.21, 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 § 679.91. Amendment 80 cooperatives are responsible for coordinating members' fishing activities to ensure the halibut PSC limit apportioned to the cooperative is not exceeded. Federal regulations at § 679.91(h)(3)(xvi) prohibit each Amendment 80 cooperative from exceeding the halibut

PSC limit specified on its annual Amendment 80 Cooperative Quota (CQ) permit.

Of the 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 Amendment 123 and this final rule should focus on the halibut PSC limit for the Amendment 80 sector. Several reasons drove this decision, as discussed below.

When the Council 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 as part of Amendment 111 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 an analysis of the 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 limits that are implemented by this rule based on halibut abundance estimates derived from current survey indices described below (see Section 3.4.1 of the Analysis).

#### *Amendment 123*

The Council recommended Amendment 123 in December 2021 to link the halibut PSC limit for the Amendment 80 sector to halibut abundance. 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 then weighed and balanced the Magnuson-Stevens Act's legal requirements and considerations, including the ten National Standards. Based on public comment, the EIS prepared pursuant to the National Environmental Policy Act (NEPA), and analyses under E.O.s and related laws, the Council recommended Amendment 123 to NMFS.

This final rule implements Amendment 123 and requires the Amendment 80 sector to reduce halibut mortality at times of low halibut abundance. Achievement of these objectives will conserve the halibut resource by improving bycatch management and could result in additional harvest opportunities in the directed commercial, subsistence, and recreational halibut fisheries. The implementation of Amendment 123 and this final rule changes the annual process to determine the halibut PSC limit for the Amendment 80 sector to a PSC limit based on two indices of halibut abundance. An index of abundance is a relative measure of the abundance of the halibut population (or subpopulation—*e.g.*, size) calculated using an accepted scientific data collection method (*e.g.*, survey with standardized stations and bait) and calculation method for the indices.

This action specifies halibut PSC limits for the Amendment 80 sector based on fishery-independent indices of halibut abundance derived from scientific survey data. The two survey indices recommended by the Council and implemented in this final rule are the International Pacific Halibut Commission (IPHC) setline survey index in Area 4ABCDE and the NMFS Alaska Fisheries Science Center (AFSC) Eastern Bering Sea (EBS) shelf trawl survey index. Throughout this preamble, the IPHC setline survey index in Area 4ABCDE is referred to as the IPHC index, and the NMFS EBS shelf trawl survey index is referred to as the NMFS EBS index. The Council, its Scientific and Statistical Committee (SSC), and NMFS reviewed and recommended use of the IPHC index and the NMFS EBS index for this action, taking into account and noting limitations, assumptions, collection methods, and uncertainties in the Analysis. All information on the data and analysis is available to the public through meetings of the IPHC, the Council, or online (see **ADDRESSES**).

Each year, the IPHC will calculate an index of halibut biomass in Area 4ABCDE, which it will provide to NMFS. NMFS will categorize the resulting index into one of four

abundance index ranges: very low, low, medium, or high. Similarly, the AFSC will use the most recent results from the EBS shelf trawl survey to calculate an index of halibut biomass and NMFS will categorize the resulting index into one of two ranges: low or high. The value at the intercept of those separate indices in table 58 to part 679 will be the Amendment 80 sector's halibut PSC limit for the following calendar year. NMFS has requested that the IPHC and AFSC provide the most recent annual index of halibut abundance, including a summary of the methods, data, and analysis used to calculate the index, to the Regional Administrator by December 1 (for the IPHC index), and October 1 (for the NMFS EBS index) of each year. NMFS will provide this information to the Council and the public at the Council's regularly scheduled meetings.

The Council and NMFS also considered that there has been relative stability of the halibut abundance indices in recent years and concluded that if there were sampling changes, or that no sampling occurred in a given year, the abundance value produced by the IPHC model would still be robust and could be used for abundance-based management of halibut prohibited species catch limits. As indicated in Section 2.7 of the Analysis, the Council clarified that the most recent survey data available should be used to set annual PSC limits in the absence of one or more years of survey data.

#### NMFS EBS Index

Annually, NMFS uses data from the EBS shelf bottom trawl survey (EBS survey) to estimate halibut biomass (mt) in the EBS (NMFS EBS index). The NMFS EBS index is calculated from halibut catch at the EBS survey stations and accounts for the total survey area. The EBS survey is conducted during the summer (May through August), and the processed data are made available during the fall, at which time the NMFS EBS index can be calculated. Results of the EBS 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. The EBS survey has been conducted annually since 1982 (with one exception in 2020) and has included the current number of stations (376) since 1987. Results from this survey are used to calculate a relative abundance (catch per unit effort) and size and/or age composition for halibut and many groundfish and crab 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. In absence of a survey, NMFS will use the halibut abundance index calculated from the most recent EBS survey.

#### IPHC Index

The IPHC has collected and analyzed data through a robust scientific process (*i.e.*, performed stock assessments) to determine the abundance of halibut coastwide from California to the Bering Sea. Each proposed survey undergoes scientific review and public inspection through a variety of channels.

The IPHC analyzes and combines data from the IPHC's Fishery-Independent Setline Survey (FISS), NMFS Eastern and Northern Bering Sea trawl survey, and Alaska Department of Fish and Game (ADF&G) Norton Sound trawl survey using a space-time model to create relative indices of halibut abundance and biomass in different units (*e.g.*, numbers or weight) for use in the annual halibut stock assessment. The EBS shelf survey has different size-selectivity than setline gear. To address this, the EBS shelf trawl survey is calibrated to the setline survey selectivity before it is incorporated into the calculation of the setline survey indices. Therefore, the setline survey does not index smaller halibut (mostly under 26 inches (66 cm) in fish length, called U26). Three important indices created annually include (1) a relative index of halibut abundance expressed as a number of fish that is used in the halibut stock assessment; (2) a relative index of halibut biomass for all sizes of fish expressed as weight per unit effort (WPUE) in each IPHC Regulatory Area, including areas 4A, 4B, and 4CDE, which is also referred to as the IPHC index that is used in table 58 to part 679 for the purpose of annually establishing Amendment 80 halibut PSC limits; and (3) a relative index of halibut biomass in each IPHC Regulatory Area for fish over 32 inches (O32) in length overall that is used by the IPHC in the annual process to establish halibut mortality limits in each IPHC Regulatory Area.

The IPHC uses a scientific approach to survey data analysis in the space-time model that has been peer reviewed by the IPHC's Scientific Review Board (SRB). Similar space-time models are used to create the indices of abundance from NMFS Bering Sea trawl survey for the Pacific cod and Walleye pollock stock assessments. The IPHC index was selected by the Council as one dimension of table 58 to part 679.

The space-time modeling approach incorporates information from nearby observations in space and time to improve the prediction of WPUE at a particular sampling station. Such an approach allows the IPHC to annually generate an index of halibut abundance and estimate biomass (with associated variance estimates) even when FISS sampling coverage is not complete in all geographic areas. This means that for areas which are not sampled directly by the FISS in a given year, a statistically valid index of abundance is available, although the quantified uncertainty around the index would likely increase.

When assessing the robustness of the IPHC index during the development of Amendment 123, NMFS, the Council, and its SSC examined what would happen if there were changes in the surveys, including in a situation if no survey was to occur. They noted that the optimized use of the information from the sampled data reduces uncertainty and allows for the estimation of a consistent time-series over all years, even for areas that were not sampled in a particular year, with appropriate estimated uncertainty. Those estimates are the best scientific information available.

The survey coverage has varied over time and has been adjusted for both scientific reasons (*e.g.*, to enhance accuracy and precision) as well as to adjust for cost and logistical reasons. Annually, the FISS survey design represents a subset of the full survey design of 1890 stations coastwide. Station allocation among IPHC Areas, station density within Areas, and sampling effort (number of skates) per station in a given year are adjusted to meet the stated objectives to: (1) sample halibut for stock assessment and stock distribution estimation, (2) achieve long-term revenue neutrality, and (3) minimize removals, and assist others where feasible on a cost-recovery basis. The IPHC relies on its SRB to provide independent scientific peer review of the IPHC science process, including the annual FISS design development and refinement. The annual FISS design is routinely reviewed by the Commission and the public during the IPHC annual process.

#### Regulatory Changes Implemented by This Action

This final rule establishes a process to set the annual halibut PSC limit for the Amendment 80 sector. This rule specifies the following:

- The halibut PSC limit for the Amendment 80 sector is determined annually;

- Halibut biomass estimates derived from the most recent IPHC index and the NMFS EBS index are applied to a specified set of ranges for each index to establish the halibut PSC limit for the Amendment 80 sector for the following year;

- The halibut PSC limits range from 1,745 mt when abundance is characterized as “high” for the IPHC index, down to 1,134 mt (35 percent reduction) when abundance is characterized as “very low” for the IPHC index; and

- Each year the Amendment 80 sector halibut PSC limit is included in the annual harvest specifications for the BSAI.

This rule revises § 679.21(b)(1), which establishes halibut PSC limits for the Amendment 80 sector. This rule adds § 679.21(b)(1)(i)(A) through (C) to establish the process for determining the annual halibut PSC limits for the Amendment 80 sector, including Amendment 80 cooperatives and the Amendment 80 limited access fishery. This rule specifies that halibut indices derived from the most recent IPHC index and the NMFS EBS index be applied to a specified table of index ranges (table 58 to part 679). The value at the intercept of those indices within the table will be the halibut PSC limit for the Amendment 80 sector for the following year.

This rule also revises § 679.91, which establishes Amendment 80 Program annual harvester privileges and the process for assigning halibut PSC limits to the Amendment 80 sector, cooperatives, and limited access fishery. This rule revises § 679.91(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) by replacing the references to table 35 to part 679 in those paragraphs to this part that stipulates the annual fixed amount of 1,745 mt for the Amendment 80 sector as a whole.

This rule revises 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 limit will be determined annually, rather than set at a fixed amount.

This rule adds table 58 to part 679 (Amendment 80 Sector Annual BSAI Pacific Halibut PSC Limits) to establish the IPHC index and the NMFS EBS index ranges in a table with the corresponding PSC limit at the intercepts of each index range.

### Comments and Responses

NMFS received 69 comment letters on the Amendment 123 Notice of Availability and proposed rule. NMFS responds to 91 substantive comments below.

NMFS received comment letters from 12 individuals, 3 fishermen, 1 guide service, 2 CDQ groups, 36 industry support businesses, 4 Amendment 80 companies, 7 industry associations, 2 non-governmental organizations (NGO), and 1 anonymous submission. Of the seven industry associations, one represents the Amendment 80 sector, one represents Bering Sea crabbers, three represent halibut and sablefish fishermen, one represents fishermen in the Homer, Alaska area, and one represents Prince William Sound and Central Gulf of Alaska fishermen. Of the 69 comment letters, 43 were opposed to the action and 26 were in support. Commenters who opposed the action were from the Amendment 80 sector, their industry association, members of the business community who provide support services to the Amendment 80 sector, and one CDQ group. Comment letters that voiced support for the action came from individuals, fishermen in halibut fisheries, an industry association representing crabbers, those who represent a wide range of fishermen in the Cordova area, a charter company, two NGOs, and the anonymous submission.

In responding to these comments, when NMFS refers to Amendment 123, unless otherwise noted, NMFS is referring to Amendment 123 and this final rule implementing Amendment 123. There were no public comments asserting that the proposed rule is not consistent with Amendment 123. Numerous comments address information included in the draft Analysis prepared for this action. Throughout the responses below, when NMFS refers to the “Analysis,” NMFS is referencing the EIS including the SIA prepared for this action. NMFS refers to the Draft Environmental Impact Statement as the “draft Analysis.”

#### Halibut Abundance Indices

*Comment 1:* The current fixed halibut PSC limit fails to respond to varying abundances of halibut. The Council recommended Amendment 123 to the Secretary of Commerce as a responsive process to establish annual halibut PSC limits for the Amendment 80 sector based on halibut abundance. A PSC limit that responds to halibut abundance will allow halibut PSC limits to rise and fall based on abundance indices calculated with inputs from the

IPHC fishery-independent setline survey and the annual NMFS trawl surveys in the BSAI area. We support NMFS implementing this action to reduce waste of the important halibut and bring the years-long process of crafting an equitable and scientifically supported abundance-based management plan to conclusion.

*Response:* NMFS acknowledges this comment. The need for an abundance-based management system is laid out in the preamble to the proposed rule.

*Comment 2:* In recommending the abundance indices included in Amendment 123, the Council contradicted recommendations from its own scientific peer-review body (*i.e.*, SSC) that specifically cautioned against the use of the recommended metrics in April 2021.

*Response:* In April 2021, the SSC expressed concern with the potential impact of year-to-year changes to survey or abundance estimation methods; however, the SSC did not call into question whether the indices were the best scientific information available. Instead, the SSC provided important insight into the various factors affecting, and affected by, use of the indices as proposed. The Council and NMFS considered the SSC’s recommendation of standardizing the indices of abundance as relative values rather than the absolute values included in this final rule as described in Section 2.8 of the Analysis. As with every scientific process, survey and abundance estimation methods are continuously reviewed and improved. Occasionally changes to survey and abundance estimation methods may affect the scale of an absolute value, whereas relative calculations (trends) are scaled such that changes are relative to the period being evaluated (*e.g.*, percent change).

The Council and NMFS acknowledged that there are tradeoffs with using absolute values versus using standardized relative values. We chose to use absolute values to improve transparency and public understanding because the alternative (standardized relative 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. The absolute values for the abundance indices are dependent on the assumptions of the survey design and analysis, whereas a standardized relative index could show less year-to-year variability. The Council and NMFS recognized that, with absolute values, historical index values could change in the future because of potential improvements to index calculation

methods. For example, if there are improvements to understanding specific parameters used in calculating the index and those parameter values change (e.g., increased precision in quantifying area sampled results in an overall increase in area sampled, or improvements to the length to weight ratio) could change the calculation method and historical index values. But by using easily understood absolute values, this approach creates greater transparency to the public and meets the objectives for the program set by the Council, recognizing that survey values could change in the future. This is similar to how other PSC limits are set in the BSAI.

*Comment 3:* NMFS ignored the SSC advice regarding the use of absolute or relative indices of halibut abundance. The SSC stated that any change to the survey methods, area to which the survey applies, or methods and models used to convert the survey data into abundance values could result in changes in the Amendment 80 bycatch limits that result not from actual changes in halibut abundance but from changes in the survey design and methods used to calculate halibut abundance.

*Response:* Model methods and surveys are expected to change over time and rely on scientifically accepted and statistically robust methods that consider changes in bias and precision in estimates to provide the best scientific information available for estimating halibut abundance indices. The Council and NMFS considered the SSC advice and selected the absolute index values because the combination of those two values adequately met the purpose and need for the action, is based on sound scientific survey methodology, and is transparent to regulated entities and the public. Year-to-year changes in indices of abundance due to methodology changes would have to be substantial enough to cross the breakpoints specified in table 58 to part 679 to influence the PSC limit set for the Amendment 80 sector each year, and this is a possibility in the future as the indices adjust due to changes in halibut abundance. This method accomplishes the purpose and need for the action by tying PSC limits to halibut abundance using the best scientific information available provided by the survey indices. Should issues arise in the future, the Council and NMFS will review the PSC limits established by this action during the periodic Amendment 80 program review or at any time that the Council wishes to initiate an action to consider an alternative approach as part of its normal process.

*Comment 4:* NMFS's determination of the breakpoints in the lookup table to establish the halibut PSC limits that apply to the Amendment 80 sector is arbitrary, unexplained, and lacks a rational basis. The Analysis states that the breakpoints employed in these lookup tables were determined by visual inspection of relative trends in the survey indices historically.

*Response:* The breakpoints identifying the different abundance states for the two indices of halibut abundance included in table 58 to part 679 reflect the cumulative input and decisions made throughout the 8 years of development of this action. The purpose of this action is to link the halibut PSC limit for the Amendment 80 sector to halibut abundance. As explained in the Analysis and the proposed rule, the breakpoints in the lookup table span recent trends in indices of halibut abundances, and the PSC limits in table 58 to part 679 reflect the Council's decision to establish a PSC limit from 0 to 35 percent below the existing limit, depending upon abundance.

The Council recommended, and NMFS agrees, that the chosen breakpoints reasonably represent the desired abundance states (high, medium, low, very low) in light of observed past survey trends. Based on IPHC survey data, the period of 1997 through 2002 is categorized as high abundance; 2003 through 2016 as medium abundance; and 2017 to present as low abundance. The very low abundance state captures the potential situation where abundance indices drop below historical levels.

The breakpoints and accompanying PSC limits established by Amendment 123 were selected to balance the goals of linking halibut PSC to abundance, reducing bycatch, and avoiding burdens that would make the rule impracticable. Any impacts that might arise from setting the abundance breakpoints at the selected levels were also addressed in consideration of the PSC limits set under the different alternatives. A greater impact from setting a breakpoint at a higher or lower level would affect the practicability of a given PSC limit. For example, if the breakpoints were set even lower at the "very low" state, such that this state would only occur when halibut abundances were catastrophically low, a much higher reduction to the PSC limit might be appropriate.

The Council recommended, and NMFS agrees, that the breakpoints included in this action are appropriate to accomplish the action's objectives. These conclusions are the result of the extensive analysis, public input, and

consideration by the Council and NMFS that occurred during the development of this action.

*Comment 5:* NMFS's use of the IPHC index in this action would impermissibly delegate to the IPHC the critical responsibilities of (1) conducting a survey for determining the abundance of halibut and (2) establishing the IPHC index for the abundance of that halibut, which is then used directly, by regulation, to determine the annual halibut PSC limit for the Amendment 80 sector. NMFS has directly linked its halibut PSC management for the Amendment 80 sector to actions and decisions of the IPHC that cannot be reviewed or otherwise second-guessed by NMFS. NMFS therefore proposes to delegate to the IPHC its authority to undertake the discretionary non-ministerial function of assessing, analyzing, and determining the abundance of halibut in a manner that requires the exercise of judgment.

*Response:* The Council designed, and this final rule implements, an annual process for NMFS to determine Amendment 80 halibut PSC limits using halibut abundance indices provided by the IPHC and the AFSC. Each year, NMFS will rely on the IPHC index and the NMFS EBS index as the best available scientific information on halibut abundance.

In this action, NMFS relies on the IPHC to produce the IPHC index because the IPHC collects and analyzes scientific data necessary to estimate halibut abundance throughout its range. That is the IPHC's responsibility under Article III of the Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). NMFS participates in the IPHC annual process; the Regional Administrator of NMFS's Alaska Region serves as one of three U.S. Commissioners to the IPHC and is a voting member of the North Pacific Fishery Management Council. Both indices used in this action were reviewed by the Council's SSC and recommended by the Council. By relying on the IPHC to provide this type of scientific information, NMFS is not delegating management authority for any aspect of the groundfish fisheries to the IPHC. NMFS manages, and will continue to manage, the BSAI groundfish fisheries. In furtherance of that effort, NMFS will use information analyzed by the IPHC. Specifically, NMFS will use the IPHC index for halibut abundance, in conjunction with the NMFS EBS index, to apply the appropriate PSC limit. The Council and NMFS determined the halibut PSC limits established by this action are

necessary to achieve the program goals. NMFS will publish the PSC limit in the annual harvest specifications. That is clearly a management action undertaken by NMFS, and not the IPHC.

The IPHC independently conducts halibut surveys, collects data, and carefully models halibut abundance. The IPHC would continue these activities to estimate halibut abundance, whether or not NMFS implements Amendment 123. This action relies on two indices of halibut abundance derived from fishery-independent surveys which NMFS will use to determine the annual halibut PSC limit for the Amendment 80 sector. The IPHC index and the NMFS EBS index are described above in the preamble to this final rule. The two abundance indices are in table 58 to part 679, which will be used by NMFS to determine the Amendment 80 sector's halibut PSC limit each year. This process incorporates the best available scientific information available from both IPHC and AFSC each year.

The Magnuson-Stevens Act's mandate is to base decision-making on the best scientific information available, not on scientific information generated only by NMFS. NMFS commonly relies on and incorporates data, derived products, and modeling output from other entities. For instance, NMFS uses the annual Chinook salmon abundance estimate from the State of Alaska, which uses an established 3-System Index of Chinook salmon abundance in western Alaska, to determine the Chinook salmon PSC limit and performance standard applicable to vessels participating in the Bering Sea pollock fishery.

*Comment 6:* The IPHC's annual abundance determinations will do the following: (1) bypass all U.S. laws that would otherwise be applicable if NMFS were making these determinations and any form of oversight by NMFS (or any other U.S. Government agency); and (2) not be subject to any of the standards for scientific integrity, such as peer review or a process for data review that would otherwise apply to the actions of U.S. agencies.

*Response:* NMFS disagrees. The IPHC promulgates regulations governing the halibut fishery under the Convention. The IPHC's regulations applicable to the United States are subject to approval by the Secretary of State with the concurrence of the Secretary of Commerce. The North Pacific Halibut Act (Halibut Act), 16 U.S.C. 773c(a)-(b), provides the Secretary of Commerce with general responsibility for carrying out the Convention and the Halibut Act, including the authority to adopt regulations necessary to carry out the

purposes and objectives of the Convention. The Halibut Act, 16 U.S.C. 773c(c), also provides the Council with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, IPHC regulations. Regulations the Council recommends may be implemented by NMFS only after approval by the Secretary of Commerce and in compliance with all applicable laws.

The IPHC's scientists produce halibut abundance indices through a robust process that involves the public and NMFS. IPHC scientists are highly-trained, independent specialists. Their work is regularly reviewed by the IPHC Scientific Review Board, and an external scientific review is periodically conducted. All findings of peer reviews are openly discussed in public meetings and published online (see **ADDRESSES**). Their models and abundance indices have been subject to peer review and will continue to be subject to peer review that is similar or identical to the peer review of data and models produced by NMFS staff or from other Federal agencies.

Based on advice from the SSC, the Council and NMFS concluded that the IPHC's annual setline indices are the best scientific information available to estimate the abundance of Pacific halibut. As with any Federal action, the best scientific information available might not stem from the work of a single agency or organization. Through the processes that have led to the development of Amendment 123 and this action, the public has had an opportunity to examine and assess the scientific underpinnings of the Federal action, and NMFS has fully considered associated public comments.

*Comment 7:* It is arbitrary and capricious to base halibut PSC limits on an abundance index that does not reflect or correlate with halibut encounter rates in the Amendment 80 sector. The Amendment 80 sector's halibut encounter rates are not significantly correlated with either of the halibut abundance indices used in the proposed action to set annual halibut PSC limits. The halibut encounter rates are highly variable year-to-year. The likelihood of the Amendment 80 sector foregoing considerable groundfish catch based on the PSC limits established in the proposed action is also likely to be highly variable year-to-year. In October 2019, the SSC emphasized that a result of the analysis is that the groundfish fleet's ability to avoid halibut bycatch is poorly related to indices of halibut abundance.

*Response:* The purpose of this action is to link the halibut PSC limit for the Amendment 80 sector to halibut abundance, which will ensure that the Amendment 80 sector's use of halibut PSC does not become a larger proportion of the overall halibut PSC in the BSAI in years of lower halibut abundance. The Council and NMFS considered a wide range of different abundance indices to use in the process for linking halibut abundance to halibut PSC limits during the development of this action. The SSC determined that the most scientifically appropriate indices for linking PSC limits to abundance are the NMFS EBS index and the IPHC index.

The Council and NMFS considered this issue extensively: Section 3.4.4 of the Analysis discusses a comparison of the Amendment 80 halibut encounter rates and mortality with survey trends (see **ADDRESSES**). Early in development of Amendment 123 (in October 2017), the Council reviewed a discussion paper that showed a high correlation between the NMFS EBS index of halibut biomass and the non-pelagic trawl (NPT) sector catch per unit effort (CPUE). However, over time, new information became available that changed our understanding of the correlation between the NMFS EBS index and the Amendment 80 encounter rates. As noted in Section 3.4.4 of the Analysis, there are many reasons why it would not be expected for Amendment 80 halibut PSC encounter rates to be consistently and positively correlated with fishery-independent indices of halibut biomass, including different temporal and spatial coverage, degree of halibut intermingling with target species, variable groundfish aggregation behavior across years, gear selectivity, and fishery behavior such as targeting of different species by the various fleets and companies within the sector.

The Analysis also recognizes that it is possible that higher encounter rates are at least partially attributable to environmental conditions (e.g., comingling of species in an ocean environment with less temperature variation that could help separate species and guide time and area targeting of individual species). Section 5.3.2.3.2 of the Analysis discusses potential impacts of changing environmental conditions on the practicability of the Amendment 80 sector to avoid bycatch, particularly as it relates to warmer Bering Sea water temperatures and spatial patterns of target fisheries.

Regardless of these uncertainties, the purpose of this action is to link the halibut PSC limit for the Amendment 80

sector to halibut abundance. The Council and NMFS believe that the use of the NMFS EBS and IPHC indices present the best means to accomplish this objective, taking into account the information described above. The Analysis thoroughly evaluates this dynamic, and this information was considered in the Council's and NMFS's decision-making, including the information raised by the SSC in October 2019 that the groundfish fleet's ability to avoid halibut is poorly related to indices of abundance. In short, the Council and NMFS considered the information in the decision-making process.

#### *Magnuson-Stevens Act Compliance*

*Comment 8:* The proposed action violates section 303(a) of the Magnuson-Stevens Act that requires an amendment be necessary and appropriate for the conservation and management of a fishery because (1) it is arbitrary to base halibut PSC limits for the Amendment 80 sector on a metric of abundance that is negatively correlated to halibut encounter rates in the fishery, and (2) the proposed action will not constrain halibut PSC in other fisheries.

*Response:* NMFS disagrees. The Council recommended and this final rule implements this action to link halibut PSC limits to levels of halibut abundance. The rationale for why it is appropriate to base halibut PSC limits for the Amendment 80 sector on the indices of halibut abundance included in this action is thoroughly discussed in the response to Comment 26. The Council and NMFS chose to focus this action on the Amendment 80 sector due to the high percentage of PSC assigned to this sector, as explained in Comment 13, and because other actions were underway or planned to address halibut bycatch in other fisheries, as explained in response to Comment 16.

*Comment 9:* NMFS has not demonstrated that this action is necessary or appropriate for the conservation and management of the Amendment 80 sector, and this Magnuson-Stevens Act requirement is not reflected in the purpose and need statement for this action.

*Response:* In section 3(5) of the Magnuson-Stevens Act, Congress defined "conservation and management" broadly. Minimizing halibut bycatch by a groundfish fishery to the extent practicable satisfies that definition, and is required and authorized by section 303 (see sections 303(a)(11) and (b)(3)). This action is a modification of an existing conservation and management measure necessary to limit the amount of halibut mortality

caused by the Amendment 80 sector fisheries. The principal purpose of this action is to link the halibut PSC limit for the Amendment 80 sector to halibut abundance to reduce halibut bycatch to the extent practicable under National Standard 9 and improve conservation of the halibut fishery by reducing halibut PSC limits at times of low halibut abundance.

The Amendment 80 sector is managed under the BSAI FMP. The Magnuson-Stevens Act requires NMFS to manage the BSAI groundfish fisheries to minimize all bycatch to the extent practicable. Bycatch minimization is a central policy and mandate of the Magnuson-Stevens Act as specified in section 301(a)(9), and section 303(a)(11)(A) and (b)(14). Through National Standard 9, Congress directed that all FMPs and regulations developed pursuant to such FMPs must be consistent with the requirement to minimize bycatch to the extent practicable.

*Comment 10:* NMFS failed to prepare a legally sufficient Fishery Impact Statement.

*Response:* NMFS disagrees. NMFS prepared a Fishery Impact Statement that addresses all required components as specified in Magnuson-Stevens Act section 303(a)(9) and is included in Section 7.3 of Analysis (see **ADDRESSES**).

*Comment 11:* NMFS and the Council failed to explain how biological constraints and human needs were balanced, or priorities were established, under the Magnuson-Stevens Act implementing regulations.

*Response:* NMFS disagrees. NMFS and the Council explained how biological constraints and human needs are balanced and how priorities were established throughout the preamble to the proposed rule, the Analysis, and ROD (see **ADDRESSES**). See Section 2.4 and Appendix 1 of the Analysis and the ROD for details on how NMFS and the Council explained the biological constraints and human needs were balanced and how priorities were established and evaluated during the decision-making process.

*Comment 12:* The proposed action cannot and will not prevent halibut PSC from becoming a larger proportion of total halibut removals in the BSAI because it does not constrain the PSC limits in any other BSAI groundfish fishery.

*Response:* NMFS agrees that this action does not modify PSC limits for other non-Amendment 80 BSAI groundfish fisheries and does not limit halibut catch or bycatch in the directed halibut fishery or other groundfish fisheries that contribute to the total

halibut removals in the BSAI. Other NMFS actions have done so or may do so in the future. This action is expected to ensure that the Amendment 80 sector's use of halibut PSC does not become a larger proportion of the overall halibut mortality in the BSAI in years of lower levels of halibut abundance. Amendment 80 PSC limits established in future years will be influenced by indices of halibut abundance according to the levels specified in table 58 to part 679. Therein, this action will reduce Amendment 80 halibut PSC in years of low halibut abundance, which is an improvement over the static PSC limit of 1,745 mt. This action focuses on the Amendment 80 fleet because of that sector's relatively large contribution to total halibut PSC in the BSAI management area.

The halibut PSC limits for all fisheries are specified according to regulations at § 679.21(b). Over the time period analyzed, the Amendment 80 sector accounted for 49.6 percent of the total PSC limits in the BSAI. The next closest fleet was the BSAI Trawl Limited Access Sector with 21.2 percent of the total PSC limit. See Table 1–1 of the Analysis. The Council and NMFS chose to focus this action on the Amendment 80 sector, because (1) at lower halibut abundance levels, the Amendment 80 sector's static PSC limit of 1,745 mt becomes a far larger proportion of the overall halibut removals in the BSAI than any other sector's PSC limit, as explained in response to Comment 12 and (2) other actions were underway or planned to address halibut bycatch in other fisheries or, the sectors not included in those actions receive a relatively small proportion of the halibut PSC limit. The current status of those actions is explained in response to Comment 16 below. The existing PSC limits for other fishery sectors will not increase; however, any sector can harvest halibut up to that sector's PSC limit in any given year and actual halibut bycatch can vary from year to year under the respective PSC limits. Accordingly, this action is expected to reduce halibut PSC at lower levels of halibut abundance for the Amendment 80 sector.

*Comment 13:* This action is not consistent with Magnuson-Stevens Act implementing regulations at § 600.305(b)(3) because the action is not expected to positively impact halibut stock conservation or result in an increased allocation to the directed halibut fleet in Area 4. The only stated objective of this action is to impose constraints and associated costs on the Amendment 80 sector by establishing

halibut PSC limits that are expected to constrain the fishery at times of low halibut abundance.

*Response:* NMFS disagrees. The regulatory guidelines for the Magnuson-Stevens Act's National Standards provide that each FMP should identify what the FMP is intended to accomplish. Among other things, those objectives should address the problems of a particular fishery and should be clearly stated, practicably attainable, and framed in understandable terms. The National Standard guidelines refer, at § 600.305(b)(3), to objectives of the FMP, which provide the context within which the Secretary of Commerce will judge the consistency of an FMP's conservation and management measures with the National Standards. The BSAI FMP objectives are found at Section 2.2.1 of the FMP and are not changed by this action.

Further, under the Magnuson-Stevens Act National Standard guidelines, fisheries management objectives should, among other things, be practicably attainable. This action is consistent with the BSAI FMP's objectives. Comments and responses below relating to National Standard 9 further address issues raised with the practicability of the PSC limits established by this action.

This action has clear, understandable, and attainable objectives. The Analysis and the proposed rule clearly state that the purpose of this action is to link the halibut PSC limit for the Amendment 80 sector to halibut abundance. This will change the previously static halibut PSC limit to one that may fluctuate annually in response to indices of halibut abundance. This approach will minimize bycatch to the extent practicable and prevent Amendment 80 PSC from becoming a significantly larger proportion of total halibut removals in the BSAI when halibut abundance decreases to specified thresholds. The achievement of the objective is measurable because the proposed Amendment 80 sector's annual PSC limits will be linked to a range of the halibut abundance levels depicted clearly in table 58 to part 679.

The BSAI FMP promotes conservation of the halibut resource by establishing halibut PSC limits in the groundfish fisheries. Reduction of halibut bycatch is a conservation benefit, as detailed on page 265 of the Analysis. As explained in response to Comment 53, NMFS must consider a range of economic and non-economic impacts including impacts to the halibut stock conservation and potential benefits to users of the halibut resource, including the directed halibut fleet in Area 4. Though NMFS must

consider these factors, it is not a requirement that a bycatch reduction measure result in measurable positive impacts to the overall bycatch stock or to the catch allocations of the directed halibut fishery. In Section 5 of the Analysis, NMFS extensively evaluated the potential impacts on the halibut stock and directed halibut fishery. In light of the numerous variables that affect halibut biomass, this action may contribute to improvements to the halibut biomass, but that is not an expected result. It is expected that the conservation benefits achieved by this measure are more likely to result in greater use by the directed fishery, rather than improvement of the overall stock, but the result may not be binary, and whether this expected result occurs does not affect the analysis for this action.

Imposing costs is not an objective of this action. NMFS would prefer that bycatch minimization occur with little cost. However, Congress recognized that imposing costs may be necessary and directed NMFS to minimize bycatch to the extent practicable. Practicability determinations are made on a case-by-case basis for each fishery given the circumstances at the time. Additional comments and responses regarding the economic impacts of this action are included under the "Economic Impacts" heading below.

*Comment 14:* To the extent the proposed action has an objective of either allocating halibut to the directed fishery or conserving halibut by reducing bycatch, the objective is not practically attainable. It is not reasonably certain that (1) overall halibut bycatch will be reduced as a result of this action, (2) the IPHC will increase catch limits in Area (4, or 3) any increase in catch limits will result in an increased commercial catch in the directed halibut fishery. To the extent conservation is a goal of the proposed action, NMFS has concluded that the proposed action has little or no conservation benefit to the halibut stock.

*Response:* See the response to Comment 34 for a summary of the conservation benefits of this action. See the response to Comment 12 for a discussion of overall halibut bycatch. Allocation or re-allocation of halibut is not an objective of this action, as described in the responses to comments under the National Standard 4 heading. Management of the directed halibut fishery and expected impacts of this action are addressed in the responses to comments under the Directed Halibut Fishery heading.

*Comment 15:* NMFS premises the proposed action on the supposed need to achieve equity in the specific circumstance when "the IPHC setline survey results fall into the very low abundance state." But this is arbitrary because the proposed action addresses all abundance states and substantially reduces the Amendment 80 sector's halibut PSC limit under the status quo. The halibut stock has never been in a "very low" abundance state, which means the proposed action is chasing a phantom and doing so in an overly broad way by reducing the halibut PSC limit in all abundance states.

*Response:* The proposed action is based on Congress's direction to minimize bycatch to the extent practicable while ensuring that the action is consistent with all ten National Standards and other requirements of the Magnuson-Stevens Act. The result from linking halibut PSC limits to halibut abundance is a more equitable one than the current static PSC limit because, when abundance drops, a static level of halibut PSC represents a greater proportion of all halibut fishing mortality.

The Analysis considered various halibut abundance levels, not just those which have already been known to occur, in order to link Amendment 80 PSC limits to those various abundance levels. If the halibut stock never enters a very low level of abundance, the correlating PSC limit would not be imposed. However, including that limit in the event such a level occurs is reasonable. Including the very low abundance state ensures the Amendment 80 sector will minimize its halibut bycatch at all levels of halibut abundance and, if those abundance levels should drop to the very low state, the PSC limits become lower as well. 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 index 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 consistent with the abundance-based process for establishing directed halibut fishery catch limits. These measures are not overly broad; they apply in very specific conditions that will be known to the Amendment 80 sector before the fishing season begins. When abundance is categorized as high, the PSC limit will not be changed from current limits. See Comment 4 for discussion on the development of the breakpoints. In the period considered in the Analysis, the



annual Amendment 80 sector PSC limit would have been set at the maximum PSC limit of 1,745 mt in the years from 1998 through 2002 and 2008, had this action been in place. In years from 2003 through 2007 and 2009 through 2021, the Amendment 80 sector PSC limit would have been set at levels ranging from 1,309 mt to 1,571 mt representing a 10 percent to 25 percent reduction from the maximum PSC limit established by this action.

*Comment 16:* Unlike the approach taken with BSAI FMP Amendment 111, the proposed action is a fragmentary and not a comprehensive approach to halibut and groundfish management. Halibut is managed on a coastwide basis, and halibut bycatch occurs in multiple fisheries and sectors across that wide range. Yet, the proposed action would myopically regulate the halibut bycatch of just one fishery sector in one area, and any benefit that might result from the proposed action is itself uncertain because any reallocation of halibut to the directed fishery hinges entirely on future unknown actions of the IPHC. This is a fragmentary approach to fisheries management and in violation of § 600.305(b)(3).

*Response:* The BSAI FMP addresses halibut bycatch comprehensively, setting PSC limits for a variety of and sectors, as required by the Magnuson-Stevens Act and National Standard guidelines. This action adjusts the annual process to establish the Amendment 80 sector's PSC limit for halibut. The Council and NMFS recognize that there are ongoing and future plans to take or consider taking similar actions for other sectors, and that does not diminish or fragment the FMP's overall approach to bycatch management.

The Council established a comprehensive approach to halibut bycatch management, and it is routine for the Council to evaluate the scope of proposed adjustments based upon the problem statement and information available at the time. The scope of this action, which is applicable only to the Amendment 80 sector, was selected in February 2020 after considering the issues identified in the problem statement, the amount of halibut bycatch in each fishery sector, input at numerous public meetings, and other proposed actions that would reduce halibut PSC in other fishery sectors.

Other recent actions to reduce halibut bycatch in the BSAI include BSAI FMP Amendment 116 (83 FR 49994, October 4, 2018) and BSAI FMP Amendment 122 (88 FR 53704, August 8, 2023), which reduced halibut bycatch in the non-Amendment 80 trawl fishery

(commonly known as the trawl limited-access, or "TLAS", fishery) and Pacific cod trawl catcher vessel fishery, respectively. The Council decided, and NMFS agrees, that a step-wise approach by sector allows for a simplified and more efficient approach to adjusting halibut PSC management measures in the BSAI.

*Comment 17:* The Analysis reflects a carefully considered balance by the Council of competing considerations under the National Standards. In reaching its conclusion, the Council carefully weighed all the information before it, including the benefits to the directed fishery, the need for conservation of the halibut resource, the practicability of bycatch reductions, and the potential impacts to Amendment 80 if halibut PSC limits implemented by this action were to constrain the fishery in future years. Based on the sum total of that information, the Council struck a middle ground by rejecting alternatives that considered setting PSC limits at levels higher than and lower than the halibut PSC limits included in this action.

*Response:* NMFS acknowledges this comment.

*Comment 18:* NMFS should uphold and approve the careful balance the Council struck. As the proposed rule correctly recognizes, Amendment 123 is consistent with all the National Standards, but most relevantly National Standards 1, 4, 8, and 9. It is also consistent with long-neglected principles of environmental justice, Administration guidance, and other relevant legal and statutory principles.

*Response:* NMFS acknowledges this comment.

*Comment 19:* NMFS must inform the Council of its interpretation of the Magnuson-Stevens Act's National Standards as required by the Magnuson-Stevens Act implementing regulations at § 600.305(a)(2). The proposed action is a novel approach to fishery management and is particularly reliant upon interpretations of terms in the National Standards that are not defined in statute or regulation, such as, but not limited to, the terms "reasonably calculated to promote conservation" and "fair and equitable" in National Standard 4 and "minimize bycatch to the extent practicable" in National Standard 9. NMFS did not provide the Council with the Secretary of Commerce's interpretation of these or any National Standard terms during the deliberations that resulted in the proposed action. In fact, the Council received contrary guidance. Without clear and appropriate required guidance, the Council did not receive the information required to

lawfully develop and propose an action, as required by NMFS's regulations.

*Response:* NMFS disagrees. The Secretary of Commerce published guidelines to the ten National Standards at §§ 600.305 through 600.355. The regulation cited in the comment, § 600.305(a)(2), states the purpose of the guidelines and is satisfied by publication of the guidelines themselves. The phrases cited as undefined by the comment are not specialized terms of art, and separate regulatory action to interpret terms within the guidelines is not necessary prior to implementing this action. NMFS has not applied the National Standards in any novel way in this rulemaking. For more discussion of the National Standards, see Section 7.1 of the Analysis (see ADDRESSES) and the responses to comments under the National Standard headings below.

*Comment 20:* NMFS should disapprove Amendment 123 because: 1) it is not practicable under National Standard 9, consistent with its decision on Amendment 75 to the BSAI FMP (68 FR 52142, September 2, 2003); 2) NMFS did not prepare an adequate analysis, consistent with its decision on Amendment 23 to the Pacific Coast Groundfish FMP (76 FR 27508, May 11, 2011); and 3) the negative economic impacts of Amendment 123 on the Amendment 80 sector consistent with its decision on Amendment 18 (57 FR 23231, June 3, 1992).

*Response:* NMFS disagrees. The Secretary of Commerce reviews each FMP amendment independently for consistency with all applicable law at the time the Council transmits the amendment for review by to the Secretary of Commerce. A decision on a past amendment is not binding in perpetuity, particularly in the context of new circumstances and requirements; therefore, the Secretary of Commerce's decision to disapprove or partially approve Amendments 75, 23, and 18 are not relevant to this action.

#### National Standard 1

*Comment 21:* This action is not consistent with National Standard 1 because achieving optimum yield (OY) is not actually an objective of the proposed action and the action decreases the likelihood of achieving OY because halibut PSC limits included in this action at times of low halibut abundance are likely to constrain Amendment 80 fishing activity.

*Response:* NMFS disagrees. The Council and NMFS determined that Amendment 123 and this final rule are consistent with National Standard 1 because, under all the PSC limits

established by this action, the BSAI groundfish fisheries will achieve OY on a continuing basis as described in Section 5.3.2.3.1 of the Analysis (see ADDRESSES). National Standard 1 states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the U.S. fishing industry. A potential result of this action is that the Amendment 80 sector's harvests of groundfish could be constrained at the low and very low states of halibut abundance; however, this does not materially compromise the ability of the BSAI groundfish fisheries to continue harvesting between 1.4 and 2.0 million mt of groundfish annually. The phrase "achieving, on a continuing basis" is defined in the national standard guidelines at § 600.310(e)(3)(i)(B). Achieving OY does not place a requirement that every individual regulatory action must result in reaching OY. Rather, this standard is applied to the FMP as a whole.

The purpose of this action is to link halibut PSC limit for Amendment 80 sector to halibut abundance to minimize bycatch to the extent practicable. The Council and NMFS recognized in the Purpose and Need statement (see Section 1.2 of the Analysis) that NMFS must ensure the BSAI groundfish fisheries will continue to achieve optimum yield as required by the Magnuson-Stevens Act. The Analysis demonstrates that, after NMFS implements this final rule, those fisheries will do so.

*Comment 22:* This action makes it less likely that the BSAI groundfish fisheries will continue to achieve OY on a continuing basis because there are reasonably foreseeable circumstances that were not considered by NMFS. In 2009 and 2010, the BSAI groundfish fisheries did not achieve OY because the total harvest was 1,335,116 mt and 1,354,662 mt, respectively, which is lower than the low range of OY at 1.4 million mt. The Amendment 80 sector fisheries harvest approximately 12 to 25 percent of the overall BSAI groundfish fisheries annually and generally at a higher percentage in years of low pollock abundance. This action is likely to constrain Amendment 80 sector harvests in years of low halibut abundance, and NMFS failed to consider the combined impacts of this action with the reasonably foreseeable event that pollock stocks could be low again in future years.

*Response:* Under National Standard 1 guidelines, OY is a long-term average amount of desired yield from a stock, stock complex, or fishery. This means that, even if a fishery were to fail to

reach harvest levels within the OY range for a few years over multiple decades of fishing, NMFS's management of that fishery would still be consistent with National Standard 1. The Analysis notes that the annual groundfish harvest can be highly variable across years for a variety of reasons (e.g., changing ocean conditions, variability in recruitment or prey field, fisheries interactions, etc.) and that may result in years where catch is not within the OY range. However, in light of the regulations explaining National Standard 1's terms and purpose, the failure to harvest groundfish within the OY range for two out of several years of fishing does not mean that NMFS's management of the fishery fails to comply with National Standard 1.

The Analysis notes that the Council considered 2016 through 2020 to be the appropriate time period over which to evaluate halibut PSC use because it reflects Amendment 80 sector operations under their Halibut Avoidance Plan and deck sorting along with other available tools to avoid halibut and reduce halibut mortality. The example in the Analysis of a year without Amendment 80 harvest is meant to illustrate the conclusion that possible Amendment 80 harvest reductions due to PSC constraints do not cause an inability to achieve OY on a continuing basis. See Section 5.3.2.3.1 of the Analysis for further discussion on OY.

*Comment 23:* NMFS's novel analytical approach to evaluating OY presumes that the Amendment 80 sector could be eliminated by the proposed action without running afoul of National Standard 1. There is nothing in the history of the development of OY for the BSAI groundfish fisheries that supports the notion that OY should be achieved by eliminating one of the fisheries.

*Response:* NMFS does not expect this action to eliminate the Amendment 80 sector. The hypothetical example of achieving OY without contribution by Amendment 80 was used to illustrate why NMFS expects that, after this action, the BSAI groundfish fisheries will continue to achieve OY. See Comments 21 and 22 above.

NMFS expects that the halibut PSC limits established in table 58 to part 679 may prevent the Amendment 80 sector from fully harvesting TACs in years with low halibut abundance; however, changes in fishing behavior and effective use of available bycatch reduction tools, including halibut excluders, halibut avoidance plans, and deck sorting, could help mitigate potential negative economic impacts.

National Standard 2

*Comment 24:* NMFS fails to consider the best scientific information available (contrary to National Standard 2) to assess reasonably foreseeable future environmental conditions that are likely to constrain harvests for the Amendment 80 sector in a manner that will result in a failure to achieve OY on a consistent basis. Such conditions include, but are not limited to, constraints on salmon bycatch that could limit the pollock fishery (a major contributor of the groundfish harvests), constraints due to low crab stock abundance that will likely result in tighter restrictions on crab PSC limits and/or new closed areas for Amendment 80 trawling, and increasing variability in oceanic and atmospheric conditions that scientists predict will shift flatfish and other Amendment 80 target species and result in more target species moving to areas where the Amendment 80 sector is not allowed to fish (e.g., the Northern Bering Sea Research Area).

*Response:* The Council and NMFS determined that Amendment 123 and this final rule are consistent with National Standard 2, as explained in Section 7.1 of the Analysis. National Standard 2 states that conservation and management measures shall be based upon the best scientific information available. NMFS used the best scientific information available to assess the likely impacts of this action and assessed future environmental conditions in this action. NMFS considered the cumulative effects of this action in the context of other reasonably foreseeable future actions in Section 5.8 of the Analysis. The Council is in the early stages of developing new potential actions to address bycatch of salmon and crab in BSAI groundfish fisheries, including the potential additional actions referenced in this comment; however, the Council has not yet made a recommendation to NMFS. Actions are considered reasonably foreseeable if some concrete step has been taken toward implementation, such as a Council recommendation or NMFS's publication of a proposed rule. Actions only "under consideration" are not generally included because they may change substantially before adoption or may not be adopted at all. They therefore cannot be reasonably described, predicted, or foreseen. See the response to Comment 64 for a discussion of NMFS's consideration of changes in oceanic and atmospheric conditions.

*Comment 25:* NMFS did not use the best available information to evaluate the effects of the action on the halibut

stock because many tables in the Analysis do not include data available from 2020 and 2021. By not including catch and revenue information from these years in the Analysis, NMFS has failed to consider the expanded harvest opportunities available in Area 4 to the directed halibut fleet in 2021 and 2022. In 2022, the Area 4 halibut fishery received the largest catch allocation in 10 years, and catch data, available on NMFS's website, show a trend of decreasing utilization in the Area 4 halibut fishery that is not considered at all in the Analysis or anywhere else in the record. NMFS also inconsistently picks and chooses when it will use certain datasets in both the Analysis and the proposed rule. This inconsistent use of data is arbitrary and represents a failure to use the best scientific information available.

*Response:* NMFS evaluated the data used in the Analysis. Some tables in the Analysis do not include data from 2020 through 2022 because it is likely that such data were significantly affected by the COVID-19 pandemic and, therefore, less illustrative of historical trends and future expectations. For example, allocation and utilization of halibut by the directed fishery may have been significantly affected by the pandemic. See Comments 27, 42, and 60 for further discussion about why these data sets were chosen.

*Comment 26:* The proposed action is arbitrary and capricious because it fails to address the likely redistribution of halibut and use the best available information from both the EBS and the northern Bering Sea trawl surveys to establish its abundance-based bycatch limit.

*Response:* NMFS disagrees. After substantive and lengthy consideration during the public Council process, the Council recommended and this action implements an annual process for determining the Amendment 80 sector halibut PSC limit that links the PSC limit to halibut abundance using two indices of halibut abundance. The two indices selected (IPHC index and the NMFS EBS index) were determined by the Council's SSC to be the best scientific information available. Data from the northern Bering Sea trawl survey is an input into the model used to generate the IPHC index, so the data are incorporated into the process for establishing the Amendment 80 halibut PSC limits implemented under this action; however, it was not selected as a primary index upon which to base the annual PSC limits. A summary of the NMFS EBS index and the IPHC index are provided above in the preamble to this final rule as well as a detailed

description is provided in Section 1.6 of Analysis.

*Comment 27:* By providing an "average" estimate of costs for the entire sector based on a limited set of years, not incorporating estimates of all direct and indirect costs, and not examining the true potential costs of the proposed action, NMFS presents an inaccurate assessment of the impacts that does not consider all of the best scientific information available and is otherwise arbitrary.

*Response:* NMFS disagrees. NMFS recognizes that the impacts of this action on the Amendment 80 sector and their efficiency and profitability will vary by year, depending on environmental conditions, economic conditions, and other variables. This variability is analyzed and accounted for in the development of this action. The Council and NMFS chose to use the 2016 through 2019 dataset because it is more likely to be predictive of potential future costs as explained in Section 5.3.2 of the Analysis.

National Standard 3

*Comment 28:* NMFS provides no rational explanation for how the halibut stock is managed as a unit throughout its range consistent with National Standard 3. National Standard 3 requires that stocks be managed as a unit throughout its range to the extent practicable. National Standard 3 also encourages NMFS to coordinate with other governments, agencies, and councils to develop an FMP for any stock overlapping jurisdictions.

*Response:* Management of the halibut stock is not regulated by the Magnuson-Stevens Act or its National Standards, including National Standard 3. The Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea and the Northern Pacific Halibut Act of 1982 established the governing body (IPHC) and processes for managing halibut throughout its range. Section 5(c) of the Halibut Act provides that the Council may develop regulations within U.S. waters over halibut provided that they are not in conflict with the IPHC's regulations and that they are approved by the Secretary of Commerce.

The IPHC manages Pacific halibut as a single stock between California and the upper reaches of its range in Alaska. This action does not change the direct management of the halibut stock in any way. Rather, this action modifies management of the BSAI groundfish fisheries and links the halibut PSC limit for the Amendment 80 sector to halibut abundance. As explained below, through the BSAI groundfish FMP,

NMFS manages groundfish stocks consistent with National Standard 3.

*Comment 29:* The proposed action would manage groundfish stocks very differently depending on who is fishing them in violation of National Standard 3. The BSAI yellowfin sole fishery would have more restrictive halibut PSC provisions when being fished by trawl vessels in the Amendment 80 sector than in the TLAS fishery.

*Response:* The Council and NMFS determined that Amendment 123 and this final rule are consistent with National Standard 3, as explained in Section 7.1 of the Analysis. National Standard 3 states that, to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination (16 U.S.C. 1851(a)(3)). National Standard 3 guidelines explain how to structure appropriate management units for stocks and stock complexes (§ 600.320). The Guidelines state that the purpose of the standard is to induce a comprehensive approach to fishery management (§ 600.320(b)). The guidelines define "management unit" as "a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives," and state that the choice of a management unit "depends on the focus of the FMP's objectives and may be organized around biological, geographic, economic, technical, social, or ecological perspectives" (§ 600.320(d)). National Standard 3 does not require an FMP to treat different sectors the same because they fish the same stock, and it does not preclude setting bycatch limits that differ by sector.

The BSAI halibut PSC limit is assigned to three sectors and the CDQ Program. The halibut PSC limit is apportioned to the Amendment 80 sector to execute all their fisheries, not only yellowfin sole. The Amendment 80 cooperative decides how, among the fisheries that are open for directed fishing, to use their PSC limit. In years where there is an Amendment 80 limited access fishery, halibut PSC is assigned to the Amendment 80 limited access fishery, and it is apportioned into PSC allowances for trawl fishery categories according to the procedure in § 679.21(b)(1)(ii)(A)(2) and (3). The BSAI trawl limited access sector's halibut PSC limit is also apportioned into PSC allowances for trawl fishery categories according to the procedure in § 679.21(b)(1)(ii)(A)(2) and (3).

Due to the high PSC use by the Amendment 80 sector, the Council chose to focus this action only on the Amendment 80 sector; see response to

Comment 13 for details. For more information about halibut management and bycatch in the different fishery sectors, see the preamble for the proposed rule (87 FR 75570, December 9, 2022). See the response to Comment 16 for an explanation of other actions to reduce halibut PSC limits in other fisheries.

#### National Standard 4

*Comment 30:* NMFS fails to determine whether the proposed action is an allocation. NMFS's failure to determine whether the proposed action is an allocation as a threshold matter violates the Magnuson-Stevens Act and is arbitrary. NMFS muddles the record with statements suggesting that the proposed action is and is not an allocation.

*Response:* NMFS disagrees. National Standard 4 states that conservation and management measures shall not discriminate between residents of different states and provides guidance regarding fair and equitable distribution of fishing privileges if it becomes necessary. NMFS does not consider this action to be an allocation of fishing privileges under National Standard 4 but has provided analysis to show that, even if it were an allocation, it is consistent with National Standard 4. To be an allocation of fishing privileges, the National Standard 4 guidelines state there must be a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. While management measures can have indirect allocative effects, only those that result in direct distribution of fishing privileges are allocations for purposes of National Standard 4. The Analysis states that, under the set of alternatives considered, there is no direct allocation or assignment of fishing privileges to the directed halibut fishery participants, nor any other allocation under National Standard 4.

At times, the Analysis may refer to a "PSC allocation" e.g., Analysis at page 242 ("When a PSC allocation is reached"). In that context, allocation carries its plain meaning (apportionment or distribution) which is distinct from National Standard 4's usage, i.e., direct and deliberate distribution of fishing privileges. NMFS acknowledges that it might have been able to avoid some confusion had it used the terms "limit" or "apportionment" where appropriate in that context.

*Comment 31:* The proposed action violates National Standard 4 because it allocates or assigns fishing privileges

among various U.S. fishermen, but this allocation is not "[f]air and equitable to all such fishermen." Any allocation of halibut from the Amendment 80 sector to the directed halibut fishery is not fair or equitable because the negative effect on the Amendment 80 sector is extremely disproportionate to any benefit that could be realized by the directed halibut fishery. NMFS also fails to provide any interpretation of the term "fair and equitable," and its application of that term in its analysis is, at best, cursory and conclusory. NMFS's assertion that this proposed action provides a fair and equitable allocation is both baseless and unexplained.

*Response:* As explained above (see response to Comment 30), this action is not an allocation under National Standard 4. But even if it were, it is fair and equitable and consistent with National Standard 4. As explained in the response to Comment 12, the reason for focusing on the Amendment 80 sector is due to the high proportion of the halibut PSC used in that sector. While the action could impose regulatory costs to one sector, the actual cost borne does not determine whether the action is fair, equitable, reasonably calculated to promote conservation, or provides an excessive share to anyone. NMFS determined that the costs were reasonable when balanced with the purpose and need, and the conservation, social, management, and environmental impacts. NMFS also determined that the action is fair and equitable because this action links halibut PSC limit for the Amendment 80 sector to levels of halibut abundance. Allocation of halibut to the directed halibut fishery is not the purpose of this action, and this action makes no such allocation. The Analysis makes clear that under the existing management regulations applicable to the directed halibut fleet, the IPHC establishes the annual catch limits for the directed halibut fishery. Any benefit to the directed halibut fishery is a potential, secondary benefit to the action. See the response to Comments 32 through 38 below for further discussion on the consistency of the alternatives with National Standard 4.

*Comment 32:* Amendment 123 will begin to address conservation and equity issues in halibut management and will provide benefits to coast-wide North Pacific stakeholders and communities in both the short- and long-term. The amendment allows more of the harvesters of BSAI halibut to share in its conservation by establishing abundance-based measures for catch limits. It also provides much needed equity for Alaskans who rely on halibut for not only income but also food

security, cultural traditions, and many other aspects of community well-being that cannot be captured in economic data alone. This is a more equitable mechanism for allocating conservation responsibilities and, therefore, complements the intent of National Standard 2 and National Standard 4.

*Response:* NMFS agrees. The problematic nature of the no-action alternative for directed halibut fishery participants under halibut low abundance conditions is recognized in the Council's purpose and need statement. The action alternatives propose a range of halibut PSC limit reductions under high to low abundance conditions. Amendment 123 includes reductions under all but high IPHC index conditions and, in that case, proposes no change to the halibut PSC limit, thus providing equality for all users at times of reduced halibut abundance. Between 1998 and 2016, the PSC limit for the Amendment 80 sector would have ranged between 1,745 mt and 1396 mt (20% reduction). In years after 2016 the IPHC index shows a decline in overall halibut abundance in Area 4 that has resulted in notable harvest reductions among the direct halibut fishery participants and would have resulted in a 25% reduction in the Amendment 80's PSC limit had this action been in place.

*Comment 33:* The proposed action cannot be reasonably expected to result in any increase in harvest opportunities in Area 4 because the IPHC establishes catch limits in Area 4. If there are any increases in abundance in Area 4, there is no guarantee that the directed halibut users in Area 4 would benefit. By relying on such contingencies over which NMFS has no control, and that are not subject to the Magnuson-Stevens Act, the purpose and need statement is irrational, insufficient, uncertain, and unlawful.

*Response:* This comment mischaracterizes the action's purpose and need. The purpose of this action is to link the halibut PSC limit for the Amendment 80 sector to halibut abundance. This action will ensure that the Amendment 80 sector's use of halibut PSC does not become a larger proportion of the overall halibut PSC in the BSAI in years of lower levels of halibut abundance which will promote conservation of the halibut stock. This action does not allocate halibut harvest opportunities in Area 4. Halibut management is explained in Section 4.4 of the Analysis. The purpose and need statement includes the possible indirect result that the action may provide additional harvest opportunities in the directed halibut fisheries. However, that

would be an ancillary effect if it occurred, not the primary purpose of the action. Though there is much uncertainty about the magnitude and timing of possible benefits to the directed halibut fishery in Area 4, it is reasonable to recognize the possibility of these indirect benefits in the purpose and need statement for this action.

*Comment 34:* NMFS provides no interpretation of the term “reasonably calculated to promote conservation” and otherwise fails to rationally explain why the proposed action is “reasonably calculated to promote conservation.” The Analysis contradicts NMFS’s conclusion that this action will promote conservation, because the proposed action will have no effect on the conservation of the halibut stock. Amendment 123 is not consistent with National Standard 4 because it does not improve conservation of halibut.

*Response:* The National Standard guidelines define the “promotion of conservation” at 50 CFR 600.325(c)(3)(ii), and the definition includes actions that encourage a rational, more easily managed use of the resource. An action may also promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product.

The Council and NMFS determined that Amendment 123 and this final rule are consistent with National Standard 4, as explained in Section 7.1 of the Analysis. NMFS notes that the Analysis indicates that none of the alternatives will affect overall halibut spawning stock biomass, which is measured coastwide from California to Alaska. Each action alternative, however, would set the Amendment 80 sector’s halibut PSC limit at or below the current level depending on indices of halibut abundance. The reduction of halibut bycatch mortality is a conservation measure; by definition, lower halibut PSC limits will result in lower halibut mortality, which is expected to provide benefits to the coastwide halibut stock, the directed halibut fisheries, or both. Given typical past IPHC practice, NMFS expects that much of the biomass conserved by this measure will accrue to the directed commercial halibut fishing limits. Later harvest of conserved halibut does not affect this action’s conservation benefit. The IPHC’s action with regard to halibut conserved under this action is neither necessary nor detrimental to this action or its analysis. Given the economic and cultural value of halibut and the competing interests of the commercial, recreational, sport, and subsistence users, the Council and NMFS’s decision

to create a bycatch management program that restricts bycatch further when halibut abundance is low represents a more rational approach to managing the halibut resource and promotes its wise use.

In addition, the halibut “stock” is distinct from and broader than the “spawning stock biomass” and is defined in the Magnuson-Stevens Act at 16 U.S.C. 1802(42) (“stock of fish”) as a species, subspecies, geographical grouping, or other category of fish capable of management as a unit. Conserved fish may benefit the stock even if they do not immediately increase the spawning stock biomass, including by greater survival of small halibut, *i.e.*, under 26 inches in size, which are expected to have longer-term positive impacts on the stock and directed fishing.

*Comment 35:* It is unfair that under the static PSC limit of 1,745 mt, when BSAI halibut abundance declines PSC in Amendment 80 fisheries can become a larger proportion of total halibut removals in the BSAI, particularly in Area 4CDE, and can reduce the proportion of halibut available for harvest in directed halibut fisheries. This has had disproportionately negative impacts on local participants in the directed halibut fishery.

This action would see PSC limits rise and fall based on the abundance of halibut. This is a compromise that establishes a measure of social equity and resource conservation. Bering Sea halibut fishermen will see immediate benefits of increased directed catch limits which will support Bering Sea communities.

*Response:* NMFS acknowledges the support for this action. The purpose and need statement recognizes that when BSAI halibut abundance declines, halibut PSC in Amendment 80 fisheries can become a larger proportion of total halibut removals in the BSAI, particularly in Area 4CDE, and can reduce the proportion of halibut available for harvest in directed halibut fisheries. The full purpose and need statement is available in Section 1.2 of the Analysis (see **ADDRESSES**). NMFS agrees that Bering Sea halibut fishermen may benefit from this action; however, the timing and magnitude of those benefits are uncertain.

*Comment 36:* NMFS fails to explain why it must take action to achieve “equity” or how this action improves equity.

*Response:* The Council recommended, and NMFS is implementing, this action to link Amendment 80 halibut PSC limits to levels of halibut abundance. This action reduces bycatch of halibut

to the extent practicable and also reflects equitable considerations between groundfish fishermen and directed halibut users. This action will reduce Amendment 80 halibut PSC limits when halibut abundance decreases, which is analogous to what typically happens to the harvest limits of the direct halibut fishery when abundance decreases. This action will reduce the disparity between the directed halibut fishery and the Amendment 80 sector by implementing PSC limits for the Amendment 80 sector that fluctuate according to halibut abundance. This will mean that, annually, indices of halibut abundance will be used to establish the Amendment 80 PSC limit. The IPHC will also use indices of halibut abundance to establish the directed halibut fishery catch limits. This action may benefit the stock and it may result in increased opportunities for directed halibut fishing among the recreational, sport, subsistence, and commercial users.

This action minimizes halibut bycatch in the Amendment 80 sector to the extent practicable. There is no specific requirement that a bycatch minimization measure achieve “equity.” Equitable considerations, however, serve varying roles in the development of actions under the Magnuson-Stevens Act. For example, section 303(a)(14) of the Magnuson-Stevens Act requires FMPs to allocate any fishery harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery. Similarly, under National Standard 4 and its guidelines, allocations of fishing privileges must be fair and equitable. Equitable considerations are also relevant to determinations made under E.O. 12866 and E.O. 13563. It was well within the Council’s purview to require lower bycatch levels during times of low abundance given that the directed fishery is expected to have lower harvest levels at times of low abundance. The Council and NMFS view this as a more equitable approach. The term “equitable” in this case has its common meaning and does not carry a particularized statutory or regulatory definition.

*Comment 37:* The purpose and need statement does not mention “equity.” Thus, NMFS’s stated justification for the proposed action (*i.e.*, that it is “equitable”) arbitrarily and unlawfully fails to satisfy or otherwise address the stated purpose and need. It is arbitrary for NMFS to conclusively determine that the proposed action is “fair and equitable” (presumably on National

Standard 4 grounds) without even determining whether its proposed action constitutes an allocation.

*Response:* NMFS does not consider this action to be an allocation as described in response to Comment 30. The Council's purpose and need statement for this action is included in Section 1.2 of the Analysis. This action links the halibut PSC limit for the Amendment 80 sector to levels of halibut abundance. Section 5 of the Analysis addresses how this action achieves such conservation through the minimization of the Amendment 80 sector's halibut bycatch to the extent practicable and improves consistency with the IPHC's management of halibut.

This final action also achieves an equitable outcome because, at decreasing levels of halibut abundance, NMFS expects the IPHC to reduce total halibut mortality limits which will directly influence the directed halibut catch limits and under this action the Amendment 80 sector's PSC limit will also be reduced. This is in contrast to the previous static PSC limit of 1,745 mt, which meant that the Amendment 80 sector's PSC constituted a greater proportion of overall halibut mortality in the BSAI when halibut abundance decreased. This was exemplified in 2018 when the Amendment 80 halibut PSC limit accounted for 49 percent of the IPHC's 3,559 mt halibut mortality limit for Area 4. By diminishing that effect, this action conserves halibut and also achieves a more fair and equitable outcome.

*Comment 38:* This proposed action violates National Standard 4 because it discriminates against residents of different states by establishing a regulation that would limit the harvesting activities of only one sector, and effectively one "person" (the Amendment 80 cooperative), which is incorporated in only one state. Amendment 80 would be the only sector or fishery subject to an abundance-based PSC limit.

*Response:* NMFS disagrees. While the Amendment 80 cooperative may be incorporated in Washington, the residency of the Amendment 80 cooperative or any of its members, employees, or associated people is not the basis of this action. This action is a conservation and management measure, applicable to the entire Amendment 80 sector without regard to state of incorporation or residency. The Analysis on pages 17 and 85 and the response to Comment 16 explain the rationale behind focusing this action on the Amendment 80 sector.

National Standard 5

*Comment 39:* NMFS did not consider efficiency in the utilization of fishery resources, as National Standard 5 requires. The Analysis describes the various ways in which the proposed action would reduce efficiency. The proposed action increases inefficiency and cost and results in a negative net benefit to the Nation.

*Response:* NMFS disagrees. The Council and NMFS determined that Amendment 123 and this final rule are consistent with National Standard 5, as explained in Section 7.1 of the Analysis. National Standard 5 states that conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose. Efficiency under National Standard 5 is a broad concept that considers efficiency not just in one sector or solely in costs but includes utilization of fishery resources (§ 600.330(b)). This means that, in terms of aggregate costs, efficiency becomes a conservation objective, where conservation constitutes wise use of all resources involved in the fishery, not just the directed fishery stocks. While a perfectly efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel, these economic concerns are not the only aspects to consider when analyzing the potential impacts of a management action. National Standard 5 says the measures must consider efficiency but does not mandate the most efficient structure. Efficiency may be reduced to reach the BSAI FMP's social or biological objectives, which includes the reduction of bycatch and waste.

National Standard 6

*Comment 40:* NMFS fails to explain how the proposed action is consistent with National Standard 6 because the proposed action would create highly restrictive PSC limits for only the Amendment 80 sector and would hinder the ability of the Amendment 80 sector to adapt to the uncertain effects of climate change on fish stocks in the region.

*Response:* NMFS disagrees. National Standard 6 states that conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. Amendment 123 and this final rule take into account the variability in and contingencies for Amendment 80 sector fishery operations. The Analysis discusses

these at length, including the creation of table 58 to part 679, which provides for yearly flexibility, takes into account changes in environmental and other factors, and provides for variability. Changes in methods used by fishermen to avoid halibut PSC are noted as a possibility for improving halibut avoidance by the Amendment 80 sector, in that new developments may help make PSC limits less constraining. Changes in the environment and economics are discussed to the extent practicable in the Analysis. Section 3.3 of the Analysis gives evidence that the Amendment 80 sector has been in a near-constant state of change during the analyzed period and that the way in which historical fishery data were used for the impact analysis in Section 5.3.2 should be carefully considered, which they were.

*Comment 41:* Amendment 123 is highly likely to cause the consolidation of the majority of Amendment 80 harvest opportunities into fewer vessels, because many vessels will not have adequate halibut PSC limits to harvest their allocations and may lead to even greater consolidation in the fishery, and this important factor is ignored by NMFS.

*Response:* In Section 5.3.2.3 of the Analysis, NMFS analyzed the practicability of meeting the PSC limits considered, including the possibility that this action may cause consolidation of harvest opportunities into fewer vessels in the fishery. In Section 5.3.2.5 of the Analysis, NMFS recognizes that this is a possible outcome and did not overlook it.

*Comment 42:* The proposed action is not consistent with National Standard 6 because NMFS relies on the "average" impact of the proposed action, and this does not comply with requirements at § 600.335(b). NMFS fails to consider the variations that occur in the fishery and the highly variable impacts on the Amendment 80 sector. Using average PSC use from the years 2016 through 2019 does not capture the full range of inter-annual variability in halibut PSC use by the Amendment 80 sector as well as the full range of reasons why this variability occurs.

*Response:* The Council and NMFS determined that Amendment 123 and this final rule are consistent with National Standard 6, as explained in Section 7.1 of the Analysis. Here, NMFS did not rely on the average impacts in its decision-making but considered the range of impacts. To account for variability and in consideration of a range of impacts, NMFS and the Council use a matrix of various abundance levels derived from two indices and they

generate a range of halibut PSC limits. Table 58 to part 679 was specifically designed to be flexible in response to the abundance of the halibut stock.

The Analysis includes the most recent data available at the time of publication, and notes that the Council considered 2016 through 2019 to be the appropriate time period to evaluate halibut PSC use because it reflects Amendment 80 sector operations under their Halibut Avoidance Plan and deck sorting, along with other available tools to avoid halibut and reduce halibut mortality. In Section 5.3.2.2.3 of the Analysis, NMFS acknowledges that halibut PSC use is variable due to a wide range of factors, including ocean conditions. Section 5.3.2.3.2 of the Analysis discusses potential impacts of changing environmental conditions on the practicability of the Amendment 80 sector to avoid bycatch, particularly as it relates to warmer Bering Sea water temperatures and spatial patterns of target fisheries. Further, Section 5.3.2.5 of the Analysis notes that external factors, such as climate change, are also anticipated to have an impact on Amendment 80 halibut mortality rates. Table 2–5 in Section 2.1 of the Analysis describes the variation of PSC use found in those years.

*Comment 43:* NMFS's disapproval of Amendment 22 to the Mackerel, Squid, and Butterfish Fishery Management Plan is instructive when analyzing consistency with National Standard 6. This action is inconsistent with National Standard 6 for similar reasons: it will result in reduced fishing opportunities and inefficiencies without conservation need or other rationale; it will hinder the Amendment 80 sector's ability to adapt to climate change effects; it will reduce flexibility needed to respond to shifting and evolving markets; and it is likely to cause consolidation of the fishery.

*Response:* NMFS notes that Amendment 22 to the Mackerel, Squid, and Butterfish Fishery Management Plan (Amendment 22) is from the Mid-Atlantic Fishery Management Council. Amendment 22 would have removed vessels from the fishery by regulation to consolidate the fleet and NMFS disapproved it because there was insufficient evidence to support the purpose and need and Council's rationale for the action. Each Fishery Management Council develops fishery management plans and management measures independently for the specific management goals and objectives for each fishery. Therefore, comparison across regions, Councils, and fisheries is not a useful means of assessing the merits of a specific action. Amendment

22 should be viewed in context and based on the NMFS analysis prepared for that action. At the time of disapproval, NMFS offered five reasons for its disapproval in broad terms. Those circumstances and the analysis, decision, and proposed Amendment 22 are very different from the circumstances, analysis, and decision at issue in this action. The disapproval of Amendment 22 is neither comparable nor instructive to this action.

#### National Standard 7

*Comment 44:* The proposed action is not consistent with National Standard 7 because it is expected to increase Amendment 80 operating costs and reduce fishing opportunities in years of low halibut abundance. This action is not practicable and does not minimize costs because NMFS envisions bankruptcy as a viable and reasonable outcome. NMFS should follow the example of disapproved Amendment 22 to the Mackerel, Squid, and Butterfish FMP. That action was found to not be necessary for conservation, did not solve the perceived race to fish, and reduced flexibility through restrictive possession limits and, as a result, was determined to be directly contrary to the intent of National Standard 7.

*Response:* NMFS disagrees. The Council and NMFS determined that Amendment 123 and this final rule are consistent with National Standard 7, as explained in Section 7.1 of the Analysis. National Standard 7 promotes the greatest freedom of action in business and recreation, to the extent such action is consistent with ensuring wise use of the resources and reducing conflict in the fishery. This action seeks to ensure the wise use of the resource by reducing halibut PSC when abundance of halibut is low. As described in Section 3.3 of the Analysis, the Amendment 80 sector operates as a cooperative, so when operational challenges arise within the cooperative, the cooperative may implement resolutions and improvements. Section 5.3 of the Analysis describes how operating costs may increase for the Amendment 80 sector and that the potential for revenue decreasing exists.

Despite the potential for decreasing revenue, the Analysis does not conclude that the bankruptcy of the fleet is likely to occur. The Mid-Atlantic Fishery Management Council Illex squid fleet action (Amendment 22) referenced by commenters would have removed vessels by regulation to consolidate the fleet, which is a very different type of action than this action to implement Amendment 123. As explained in response to Comment 43, each Fishery

Management Council develops fishery management plans and management measures independently for the specific management goals and objectives for each fishery. Therefore, comparison across regions, Councils, and fisheries is not useful in this context and the disapproval of Amendment 22 is neither comparable nor instructive to this action.

*Comment 45:* The proposed action fails to ensure wise use of fishery resources or reduce conflict as required under National Standard 7. The Amendment 80 fishery is responsible for a fraction of the overall coastwide halibut bycatch. In 2021 and 2022, halibut bycatch in the directed halibut fishery was at record low amount (in pounds) and represented approximately 10 percent and 9 percent, respectively, of total halibut removals from all sources. Halibut bycatch throughout the coastwide range of the halibut stock is at a record low of only 9 percent of total halibut removals.

*Response:* Halibut bycatch in the BSAI accounts for more than half of the coastwide total halibut bycatch. In the years 2010 through 2019, the Amendment 80 sector accounted for approximately 60 percent of the halibut bycatch mortality in the BSAI groundfish sectors (see Table 3–18 in the Analysis). By reducing the Amendment 80 sector halibut PSC limit in years of low halibut abundance, this action ensures the wise use of fishery resources. Halibut bycatch in the directed halibut fishery or by other fisheries is outside the scope of this action. As explained in response to Comment 16, other actions have or will address some of that bycatch. The fact that it will continue to occur, however, does not mean that this bycatch reduction action fails to ensure the wise use of fishery resources. Otherwise, NMFS could never take any discrete or incremental action to solve wise use concerns in one fishery.

#### National Standard 8

*Comment 46:* NMFS erroneously concluded that this action provides for the sustained participation of fishing communities and minimizes adverse economic impacts on such communities while balancing the requirements of the Magnuson-Stevens Act. This conclusion is not supported by the Analysis prepared for this action and does not fully consider the significant adverse impacts of the proposed action on the fishing communities that rely upon the Amendment 80 sector. NMFS does not analyze the certain and adverse impact of the proposed action on communities reliant on the Amendment 80 fishery,

compared to any benefits to communities reliant on the directed halibut fishery (which are uncertain).

*Response:* NMFS disagrees. National Standard 8 requires conservation and management measures shall 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 provide for the sustained participation of such communities; and to the extent practicable, minimize adverse economic impacts on such communities. NMFS analyzed the impacts of this action on communities in Appendix 1 and in Section 5.5 of the Analysis, including impacts to communities that rely on the Amendment 80 sector as well as other communities, including subsistence users. While NMFS looked at possible benefits to communities that rely on directed fishing for halibut, those benefits were only seen as a possible indirect benefit of this action, as increasing allocation to the directed halibut fleet is a function of the IPHC and outside the scope of this action. This action takes into account those competing interests and strikes a balance among them and among the National Standards.

*Comment 47:* Much of the analysis of community impacts is specifically focused on either a single community, Saint Paul, or a small group of discrete communities. NMFS's effort to reallocate halibut to benefit these communities (or Saint Paul individually) violates National Standard 8.

*Response:* The Council and NMFS determined that Amendment 123 and this final rule are consistent with National Standard 8, as explained in Section 7.1 of the Analysis. The social impacts analyzed address a number of communities with directed halibut fisheries or other impacts and are not solely focused on Saint Paul. Saint Paul is discussed at length, however, because it is within a region with some of the highest halibut revenues and halibut dependency, meaning the potential indirect benefits of this action could more significantly affect this specific community. Further, as explained in response to Comment 31, this action is not an allocation, and it does not reallocate halibut to communities. The purpose of this action is to link the halibut PSC limit for the Amendment 80 sector to halibut abundance. This action will minimize halibut bycatch to the extent practicable and thus contribute to the conservation of the halibut resource, especially at times of low abundance.

National Standard 9

*Comment 48:* NMFS provided no guidance to the Council or the public on the interpretation of the term "practicability" during consideration of this action, as required by National Standard guidelines. When Congress enacted the term in 1996, it stated that Regional Fishery Management Councils should make reasonable efforts in their management plans to prevent bycatch and minimize mortality, but, in so doing, could not ban a type of fishing gear or a type of fishing. Furthermore, Congress stated that practicability requires an analysis of the cost of imposing a management action.

*Response:* Guidance on the interpretation of National Standard 9 is given in § 600.350, which discusses a number of considerations relevant to the practicability analysis (63 FR 24212, May 1, 1998). As stated in the National Standard guidelines, inconvenience is not an excuse; bycatch must be avoided as much as practicable, and bycatch mortality must be reduced until further reductions are not practicable. Adherence to the National Standards is not discretionary, and the Councils are required to re-examine the conservation and management measures contained in their FMPs for ways to reduce bycatch on a continuing basis to ensure that bycatch is minimized to the extent practicable. This action is the result of NMFS's consideration of the costs and benefits of the PSC limit reductions at low abundance, and while NMFS agrees that there may be costs associated with the action, those costs do not exceed what is practicable. This analysis is consistent with National Standard 9, including the guidelines and the Magnuson-Stevens Act.

*Comment 49:* The proposed action is feasible and practicable because existing halibut avoidance tools are not fully utilized within the Amendment 80 sector. Because of the individual vessel discretion inherent in the application of existing bycatch reduction tools, available data cannot establish the extent to which existing tools may, or may not, have been fully utilized in recent years. The Amendment 80 sector could have chosen to not fully use available halibut avoidance measures to artificially inflate halibut PSC rates to improve their argument against this action by alleging that further halibut reductions are infeasible and impracticable.

*Response:* NMFS acknowledges this comment.

*Comment 50:* The proposed action is inconsistent with National Standard 9 because the Amendment 80 sector has

already reduced halibut PSC usage to the maximum extent practicable using all available tools. The sector has reduced its halibut PSC usage by nearly 35 percent since 2014. Amendment 123 would impose substantial operational costs at a time when costs are already rising, and it does not provide additional tools to help the fleet achieve the bycatch reductions expected to be imposed by this action.

*Response:* The Council and NMFS determined that Amendment 123 and this final rule are consistent with National Standard 9, as explained in Section 7.1 of the Analysis. The Council recommended and NMFS agrees that further halibut bycatch reductions are practicable through the improved use of existing bycatch reduction tools. In the Analysis prepared for Amendment 123, NMFS acknowledged that the Amendment 80 sector has already undertaken efforts and expenditures to reduce halibut bycatch and that dramatic increases in halibut avoidance or reductions in halibut mortality are not expected using existing bycatch reduction tools. However, additional incremental improvements are anticipated to be realized under lower halibut PSC limits and, if not realized, the Amendment 80 sector may forgo some amount of profitability to continue to reduce halibut mortality.

New bycatch reduction tools are not necessary for this action to be practicable. The amount of halibut deck sorting varied during the 2016 through 2019 period and decreased in 2020. When deck sorting was reported on a vessel during any week from 2016 through 2019, the vessel was deck sorting about 70 to 80 percent of halibut that were brought onboard the vessel. A change occurred in 2020 that resulted in the percentage of halibut that were deck sorted falling to 61 percent; in 2021 (through mid-April) the percentage of halibut deck sorted was estimated to be 49 percent. Some have attributed the declining use of halibut deck sorting after 2019 to lower bycatch of halibut, meaning that individual Amendment 80 vessels did not need to deck sort to reduce halibut mortality because they were not encountering halibut at rates where it was necessary to deck sort. It is possible that with under a lower PSC limit, the Amendment 80 sector could increase their use of halibut deck sorting. As illustrated in Section 5.3.2.4 of the Analysis, the range of PSC limits established by the action are expected to have differential impacts on Amendment 80 firms. Throughout the Analysis, NMFS acknowledges that there are many factors, including choices at the individual firm level and



vessel operational level that contribute to realized PSC use.

The amount of mortality reduction that may be expected with associated increased costs or reduced efficiency cannot be quantified with any certainty. If substantial reduction in halibut mortality is realized, it is likely to be derived from the development and implementation of new technologies. The Council and NMFS considered the potential negative economic and social impacts to the Amendment 80 sector and concluded that this action strikes a balance between potential costs to the Amendment 80 sector and conservation of the halibut resource from reductions in bycatch. As explained in the response to Comment 71, NMFS has analyzed the potential costs associated with meeting the new bycatch limits and responded to similar comments in Section 8.4.2 of the Analysis. The Council and NMFS concluded that increased costs do not mean that further bycatch reductions are impracticable.

*Comment 51:* NMFS fails to adhere to Magnuson-Stevens Act section 303(a)(11) because Amendment 123 prioritizes the minimization of bycatch mortality over the minimization of bycatch overall, while the statute requires the reverse order of priority.

*Response:* The purpose of this action is to link the halibut PSC limit for the Amendment 80 sector to halibut abundance. This action minimizes halibut bycatch to the extent practicable. Bycatch generally refers to catching non-targeted fish, while bycatch mortality more specifically refers to situations where those non-targeted fish die from their capture. Minimization of halibut bycatch is a purpose of the action, as stated in the purpose and need in Section 1.2 of the Analysis. Minimization of both halibut bycatch and bycatch mortality are expected results of the action, in that lower PSC limits will require Amendment 80 vessels to avoid halibut bycatch and, to the extent they cannot reasonably achieve further reductions in bycatch, use available tools to reduce the mortality of the halibut caught. This is consistent with the Magnuson-Stevens Act, including section 303(a)(11) and National Standard 9.

*Comment 52:* The proposed action is not consistent with National Standard 9, because, as indicated in the Analysis, this action could shift the location and timing of fisheries, which may result in shifts of bycatch. As a result the proposed action is not expected to reduce the bycatch of other species, such as crab, or enhance the resulting population or ecosystem effects. The

impacts on other species were not analyzed.

*Response:* The Analysis considers that there may be shifts in timing and location of fishery operations consistent with the current operations of bycatch avoidance of multiple species and inter annual variability in fishing timing and location across sectors. Section 3 of the Analysis describes crab PSC management in the groundfish fisheries and the Amendment 80 sector and concludes that no change to crab PSC management in the Amendment 80 sector is anticipated. Discussion of potential impacts to bycatch rates for other species in Section 5.6 of the Analysis is theoretical and identifies that as a possible result of any bycatch action. Section 6.0 describes impacts to marine mammals, seabirds, habitat and ecosystem. The Analysis does not indicate that this action is expected to result in increased bycatch of other species because this action will not shift the timing and location of fishing beyond the footprint already analyzed and implemented under the current management structure. Therefore, NMFS does not expect this action to increase the bycatch of other species beyond levels already encountered under existing management measures.

*Comment 53:* The Proposed Action violates National Standard 9 because it will impose substantial economic impacts on one fleet (the Amendment 80 sector), which will result in negative net benefits to the Nation. Additionally, the economic impacts to the Amendment 80 sector are underestimated according to the SSC's review of the draft Analysis in April 2021.

*Response:* NMFS disagrees. Under National Standard 9, the Council and NMFS considered the net benefits to the Nation, including a range of economic and non-economic impacts. NMFS analyzed the impacts of this action on the Amendment 80 sector, the halibut stock, and the directed halibut fishery in Section 5 of the Analysis. Appendix 1 to the Analysis includes the SIA, which evaluated community and regional participation patterns as well as community level impacts and potential impacts to regional subsistence and sport halibut fisheries.

The SSC April 2021 Minutes on the draft Analysis noted that the analysis provided an adequate discussion of the important assumptions that underlie the analysis and their implications for interpreting the estimated economic impacts. However, the SSC's comments indicated that the range of revenue impacts may be considerably larger than those estimated in the Analysis. This

implied that uncertainty associated with revenue impacts may be higher than predicted and that the Amendment 80 sector's ability to predict and avoid halibut bycatch is uncertain given the weak correlation with halibut abundance.

Input from the SSC received in April 2021 was taken into account in subsequent revisions to the Analysis during the Council process. Section 5.6 of the Analysis concludes that Amendment 123 is likely to result in a negative net economic benefit to the Nation; however, after considering the totality of potential impacts, including quantifiable and non-quantifiable economic and non-economic impacts, the Council and NMFS concluded that Amendment 123's overall benefits outweigh the negative economic impacts of this action and that Amendment 123 maximizes the net benefits to the Nation.

*Comment 54:* NMFS fails to consider the levels of halibut bycatch that currently exist, or that could exist under this proposed action, relative to other fisheries that have much higher rates of bycatch that NMFS has determined are fully compliant with National Standard 9. NMFS's own National Bycatch Report provides summaries of bycatch in each region, and in some regions, total bycatch exceeds total catch, and yet these regions are operating dozens of fisheries that NMFS has deemed meet the requirement to "minimize bycatch to the extent practicable" and are fully compliant with National Standard 9.

*Response:* Each Fishery Management Council develops fishery management plans and management measures independently for the specific management goals and objectives for each fishery. Therefore, comparison across regions, Councils, and fisheries is not a useful means of assessing whether this action's conservation and management measure, to reduce bycatch at low levels of abundance, minimizes such bycatch to the extent practicable.

*Comment 55:* When NMFS implemented Amendment 111, reductions in halibut PSC were also considered, but large reductions were rejected as too costly. The Amendment 111 final rule concluded that alternatives that would have reduced the halibut PSC limit by 30, 35, 40, 45, or 50 percent in the Amendment 80 sector would have come at significant economic cost to the Amendment 80 sector and fishing communities participating in the Amendment 80 fisheries. NMFS proposes to impose costs that are 6 to 14 times higher than those deemed acceptable in 2015 when halibut harvesting opportunities in Area

4 are 60 percent higher than they were in 2015, and halibut bycatch in the Amendment 80 sector is 35 percent lower than it was in 2015. NMFS fails to acknowledge and provide rationale to support its arbitrary and dramatic reversal in its rationale for imposing such enormously high costs on a single fishery.

*Response:* The practicability analysis and determination for Amendment 111 were particular to the existing time and circumstances at issue there. The current analysis was conducted with years of additional information after the approval of Amendment 111. As a result, NMFS has the benefit of observing and accounting for the sector's ability to fish under a 1,745 mt PSC limit following Amendment 111 and its ability to adopt and expand existing tools for halibut avoidance and release to minimize bycatch and bycatch mortality during that period. The Amendment 111 analysis explained why NMFS decided against further reductions at that time but did not bind future decisions using additional and new information. The explanation for the determination of practicability concerning Amendment 123 is extensively discussed in the Analysis and includes discussion of Amendment 111 and its findings (see response to comment 8.3–9 on page 319 of the Analysis).

#### National Standard 10

*Comment 56:* NMFS failed to consult with the U.S. Coast Guard and industry as required under National Standard 10 to ensure they recognize any impact on the safety of human life at sea and minimize or mitigate that impact where practicable.

*Response:* NMFS disagrees. The National Standard 10 guidelines encourage consultation with the U.S. Coast Guard if an action might affect safety of human life at sea. This can be done through a Council advisory panel, committee, or other review of the FMP amendment or regulations. The U.S. Coast Guard has a seat at the Council table and was engaged during the Council process for this FMP amendment. Throughout the numerous years Amendment 123 and this action were in development through the Council process, a substantial amount of public input was received from the affected industry sector.

#### Economic Impacts

*Comment 57:* The proposed action will impose certain and substantial additional costs ranging from 86 to more than 100 million dollars on the Amendment 80 sector while only

providing speculative benefits to the directed halibut fishery. NMFS has concluded these impacts will result in negative net benefits to the Nation.

*Response:* NMFS did not conclude that Amendment 123 will result in negative net benefits to the Nation. NMFS analyzed the potential costs and benefits of the proposed action in Section 5 of the Analysis. The quantitative analysis of economic net benefits is limited to purely economic impacts and does not account for non-economic or unquantifiable impacts. The Council and NMFS weighed the potential for the Amendment 80 sector to mitigate negative economic impacts through operational choices; weighed the retrospective estimate of revenue impacts included in the Analysis; and weighed the non-quantifiable conservation, social, and management benefits of the abundance-based management of halibut PSC. The Analysis encompassed consideration of estimated economic impacts and predicted actual economic impacts and potential non-economic impacts of the action. NMFS analyzed the range of possible economic costs to the Amendment 80 sector for the range of possible PSC limits at different levels of halibut abundance. To the extent the Amendment 80 fishery can improve implementation of existing halibut avoidance and survival strategies, or find more efficient ways to avoid halibut PSC, the expected costs associated with reduced PSC limits may be mitigated. As described below, if they cannot be mitigated, the Analysis provides a comparison of what those costs would have been based on historical catch and bycatch levels. These numbers were created to compare costs among the alternatives; they do not try to estimate what the actual, future costs of reducing bycatch will be.

The Analysis used an analytical approach that produced cost estimates by hindcasting past results as if the alternatives considered had been in effect in previous years and looked at the potential effect of the range of PSC limits on Amendment 80 revenues in past years. Table ES–1–11 on page 42 (and Table 5–21) of the Analysis illustrates the results of the revenue analysis at the range of PSC limits analyzed. NMFS acknowledges in the Executive Summary and Section 5 of the Analysis that, based on historical catch and bycatch levels, had this action been in place in previous years, it could result in an average estimated revenue reduction for the Amendment 80 sector of 100 million dollars or more. However, these revenue estimates do not represent stand-alone predictions of

future Amendment 80 revenues under each PSC limit; rather, the Council and NMFS used these estimates to illustrate the potential differences in direction and magnitude of impacts among the alternatives considered. The revenue estimates included in the Analysis do not capture behavioral adjustments such as changes in targeting, fishing location, or other halibut avoidance strategies that might have been employed if the various PSC limits were in effect during those years, nor do they include the costs associated with such avoidance strategies. The impact estimates are “upper bound” estimates due to the assumption that the Amendment 80 sector will utilize their entire PSC limit despite historic evidence that shows that they have not. Further, the estimates contained within the impact scenarios are not actual impacts, as the response of the Amendment 80 sector in applying tools such as halibut deck sorting and spatial redeployment of effort to avoid halibut have not been modeled and will affect both halibut PSC rates and attainment of TAC, albeit with potentially reduced efficiency and increased costs of production leading to negative impacts on producer surplus.

Additionally, the revenue estimates reported in the analysis do not represent the full scope of the economic impacts associated with the proposed action alternatives (see Section 5.6 of the Analysis). The economic impact estimates represent the upper bound of potential lost harvest opportunity for the Amendment 80 sector as compared to status quo revenue (Table 5–6 of the Analysis). The economic net benefits assessment must also be considered within the greater context of all relevant factors, including distributional impacts, human dignity, and equity. The Analysis states that the overall economic net benefits are expected to be negative during future conditions of low halibut abundance. However, there are instances when there are zero impacts estimated on Amendment 80 sector revenue such as when halibut abundance is relatively high.

The Council was clear that the economic impacts of the alternatives should be compared across alternatives and within the Amendment 80 sector and not used to compare the economic costs to the non-quantified benefits to the directed halibut fishery. This approach is a cost effectiveness analysis, which is an economic tool that compares alternatives to determine which can achieve a desired result at the lowest cost. In the Analysis prepared for this action, the impacts are compared to each other for their relative effect of reducing halibut mortality

versus their relative scale of the potential effects on annual revenue of the Amendment 80 sector.

Analysis of the economic net benefits does not imply that the social, cultural, or environmental impacts and benefits discussed in the Analysis are not relevant, nor that they can be excluded when considering overall costs and benefits. To the contrary, the Analysis, particularly Section 5 of the Analysis, contains extensive discussion of both economic impacts and impacts that cannot be assessed monetarily, such as social and cultural impacts.

Benefits to the directed fishery are supported by conservation of the halibut resource. To the extent halibut PSC can be reduced, the conserved biomass may be included in the directed fishery catch limit, as the IPHC has done since 2017 under its spawner per recruit-based strategy. To the extent such biomass is not harvested by the directed fishery, it is expected to accrue to the stock, resulting in a long-term potential increase in the amount of halibut available to the directed fishery.

*Comment 58:* The proposed action will negatively impact the Amendment 80 sector, crew members, and numerous types of support service businesses. Members of the Amendment 80 sector, a CDQ group, as well as numerous companies that support the Amendment 80 sector, provided specific information about the direct negative financial impacts to the Amendment 80 sector and Dutch Harbor tax revenue, as well as a comparison of the benefits to halibut crew members and losses to Amendment 80 crew members. Commenters expect the action to result in lost harvesting opportunity for the Amendment 80 sector and increased costs due to bycatch avoidance, longer tows, and processing time that will reduce profits and limit the Amendment 80 sector in its ability to replace or make technological upgrades to their vessels as they have in recent years. As a result, numerous support businesses expect a reduction in the demand for their services, such as welding, electronic support, stevedoring, fuel, packaging supplies, general supplies, and/or other support services.

The proposed action will have substantial adverse impacts on the Amendment 80 sector crew, the majority of whom are minorities and people of color. As indicated in the Analysis, Amendment 80 companies that cannot remain viable under this action will eventually exit the fishery. Amendment 80 vessels provide middle class and blue collar American men and women career-path jobs, and the painful impacts of contraction of the sector will

be borne by these hard-working American fishermen and their families.

*Response:* NMFS analyzed the impacts of this action, the community and regional participation patterns in the Amendment 80 fishery and the BSAI halibut commercial fishery, and the potential community level impacts of this action in Section 5 and Appendix 1 of the Analysis. The Analysis included a qualitative analysis of potential downstream economic impacts and a quantitative analysis of potential revenue impacts to the Amendment 80 sector. The analytical approach used to evaluate the impacts to the Amendment 80 sector is described in Section 5.3.1 of the Analysis. The Analysis notes there may be an impact to the Amendment 80 sector if they cannot reduce their halibut bycatch, but the exact financial amount could not be determined as Amendment 80 companies did not share their financial data for a detailed analysis.

In any event, the revenue impacts are only one portion of the analysis that the Council considered in selecting the preferred alternative. The Council considered the impacts of alternative ranges of halibut PSC limit reductions 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 and communities that are engaged in the BSAI groundfish fisheries. In particular, Section 5.5 on Social and Environmental Justice summarizes results of Appendix 1, the SIA, which evaluates community and regional participation patterns in Amendment 80 fishery (including minority population demographics) and the Area 4 halibut commercial fishery as well as potential community level impacts from the alternatives. The Council considered the detailed information provided in the analysis for the proposed action.

The costs associated with avoiding halibut are discussed quantitatively and qualitatively throughout the document, particularly in Section 5.3.2.3 of the Analysis, where it is stated that all of the measures that could be implemented to reduce halibut mortality would have a cost to the fleet and the increased costs limit how those tools can be implemented while keeping the fleet economically viable. The gross or net cost directly associated with reducing halibut mortality is not estimated in the analysis.

The Analysis did not incorporate generally understood but poorly quantified economic multipliers that would allow for an estimate of the total

economic contributions of the Amendment 80 fishery or the directed halibut fishery in terms of output, income, employment or other economic measures. The broad, downstream economic impacts of commercial fishing can be understood and appreciated without drawing an equivalency between metrics or existing studies that have fundamentally different scopes.

*Comment 59:* In the Analysis, NMFS used different methods to generate the revenue estimates for the Amendment 80 sector and the directed halibut fishery sector. Revenues are estimated separately using different methodologies and are meant to compare impacts across alternatives within each sector and should not be used to compare impacts across sectors. By using different methods, NMFS has made it impossible to measure benefits of this action or compare the impacts across sectors.

*Response:* NMFS explains the revenue estimation methodology in Section 5.3.1 of the Analysis and why it is the best available data. The methodology used to estimate revenue impacts was reviewed on several occasions by the Council's SSC, and the SSC concurred with the methodology used in the Analysis, as noted in the SSC Minutes from May 2021 (see **ADDRESSES**). The SSC concurred with the assessment of the inappropriateness of comparing revenue impacts across the two sectors and recommended that estimated revenue impacts be used only for comparing across alternatives for a given sector and not for comparing impacts across sectors. The SSC was concerned that, in its current form, reporting revenue estimates for each fleet would invite readers to make inaccurate comparisons across fleets and suggested the analysts consider whether it may be better to provide no estimate than a misleading one. In comparing the alternatives, it is not necessary to be able to directly compare the revenue impacts between the two fleets; it is merely necessary to compare the relative impacts of each alternative on each affected fleet.

*Comment 60:* NMFS should have used the most complete available dataset that included the years 2010 through 2021 for estimating impact revenues to the Amendment 80 sector. This wider range of years better reflects environmental and operational conditions than the dataset used by NMFS. Using the dataset that narrowly includes 2016 through 2019 does not consider the effects of annual variation and events that significantly influenced the proportion of the halibut PSC limit used in 2016 and 2017. These events include the 45 percent reduction in flatfish

harvested in 2016 than in the previous 4 years by the Alaska Groundfish Cooperative and the limited fishing by three Fishing Company of Alaska vessels in the first quarter of 2017.

*Response:* As discussed in the Analysis in Section 5.3.2.2, NMFS did not rely on a single dataset; rather, the analysis includes a number of different datasets and potential outcomes, as well as their likelihood of accurately representing future outcomes. After extensive input from the public, the affected industry, and the Council's SSC, NMFS concluded that the 2016 through 2019 dataset is likely the best predictor of potential revenue impacts for the reasons stated in the Analysis. Data from years prior to Amendment 111's implementation (that is, prior to 2016) have higher PSC limits and less PSC avoidance behavior, meaning the 2016 through 2019 period is likely to be more reliable in predicting future results under lower PSC limits and more PSC avoidance behavior. As described in Section 5.3.2.2.3 of the Analysis, NMFS recognizes that the analytical approach used to quantify potential revenue impacts to the Amendment 80 sector is only representative of the time period analyzed and it does not incorporate fishing adaptations or behavioral changes that may occur in the future since those are too speculative to predict. Additionally, the 2016 through 2019 dataset was not considered in isolation.

*Comment 61:* The resampling approach used in the Analysis to estimate revenue impacts to the Amendment 80 sector assumes 100 percent of the Amendment 80 sector's halibut PSC limit is used each year. In reality, however, the Amendment 80 sector does not use 100 percent of its halibut PSC limit and has not done so for the last 10 years. The result of this evaluation of economic impacts grossly overstates the likely effects on Amendment 80 sector revenues, and even lower PSC limits in times of low halibut abundance (as considered under Alternative 4 in the Analysis) are viable and appropriate.

*Response:* As explained in Section 5.3 of the Analysis, NMFS agrees that the economic impact estimates represent the upper bound of potentially forgone catch and revenue impact as compared to status quo revenue because this action will reduce halibut PSC at times of low halibut abundance. The Council and NMFS concluded that the results are most easily understood by showing 100 percent use to illustrate maximum adverse impact. Section 5.3.2.1 of the Analysis provides a detailed discussion on the assumptions and evaluation on

the assumption that 100 percent of the PSC limit would be used. Forecasting fleet behavior under a constraining PSC limit is a challenge in analyses considering alternative PSC limits; thus, in this case, the Analysis includes an estimate of the maximum adverse impact.

The revenue estimates reported in Section 5.3.2 of the Analysis compare the estimates of different alternatives under the same scenarios to inform the reader of the relative difference in direction and magnitude of the alternatives. As stated in the Analysis, these results are not stand-alone predictions of future Amendment 80 revenues under each PSC limit established by this action. A limitation of this analytical approach is that estimates reflect only the environmental conditions and fishing behavior that occurred during the past 10 years. The Amendment 80 sector is expected to make strategic choices in harvesting behavior (*i.e.*, prevalence of halibut avoidance strategies such as deck sorting) that are different from the randomized or stratified random selection of hauls used in the Analysis.

Given reductions in PSC limits and expected operational changes such as increased deck sorting, it is most likely that future PSC use will be similar to what has been seen in the years since 2015 (*i.e.*, estimates using 2016 through 2019 or 2017 through 2018 data are most likely to represent future PSC use). Revenue data for 2020 and beyond were not available when the Analysis first analyzed revenue impacts. NMFS did not subsequently include revenue data for 2021 because Amendment 80 sector operations, along with other fisheries in Alaska, were negatively affected by COVID-19 mitigation measures and pandemic-related upheavals in international supply chains and markets.

*Comment 62:* The Analysis provides only a cursory consideration of the potential impact of the proposed action on cooperative dynamics and misstates the potential viability of the Amendment 80 limited access fishery. The proposed action will effectively eliminate the Amendment 80 limited access fishery as a viable management option.

*Response:* The Amendment 80 proposed rule (72 FR 30052, May 30, 2007) states that the Council recommended the Amendment 80 Program specifically to discourage fishing practices that accelerate the race for fish in the Amendment 80 limited access fishery, and requiring a QS holder to fully commit to a cooperative would provide additional incentives to

achieve the Amendment 80 Program's objectives. The Amendment 80 Program was implemented in 2008. Since 2010 there has been no participation in the Amendment 80 limited access fishery and the regulations implementing the Amendment 80 limited access fishery remain unchanged by this final rule. The amount of Amendment 80 halibut PSC assigned to the Amendment 80 limited access fishery will continue to be determined as specified in regulations at § 679.91(d)(3).

*Comment 63:* This action will benefit Alaska communities because the directed halibut fishery is largely prosecuted by community-based vessels supporting Alaska-based families and businesses, many times with few income-producing alternatives. By contrast, the Amendment 80 sector is composed of large Seattle-based factory trawlers doing nearly all of their rigging, supplying, and support services in the state of Washington, leaving a minimum of monetary exchange onshore in Alaska. The high level of Alaskan ownership of the directed halibut fleets means that most halibut fishing revenues and earnings are spent locally on goods and services generating benefits for local economies.

*Response:* NMFS acknowledges the support for this action. See the responses to comments under the "Economic impacts" and "Directed Halibut Fishery" headings for additional discussion of the expected impacts of this action on the Amendment 80 sector and the directed halibut fishery, as well as the responses under the "National Standard 4" heading for a discussion of state residency.

#### NEPA

*Comment 64:* The Analysis fails to utilize a wealth of available and highly relevant scientific information on how climate change in the Bering Sea will affect the Amendment 80 sector's ability to catch its target species under the lower PSC levels of the proposed action.

*Response:* NMFS is aware of the rapid ecosystem changes in the Bering Sea ecosystem and the impacts this has had, and will continue to have, on the spatial extent of the Amendment 80 fishery. Section 5.3.2.3.2 of the Analysis provides a summary of the potential impact of warming Bering Sea waters on flatfish CPUE as targeted by the Amendment 80 sector and resultant halibut PSC. This summary notes that there is considerable variation in halibut mortality rates by week, and the greater use of deck sorting to reduce mortality in years when halibut could not be avoided makes drawing conclusions difficult. The Analysis also includes a

section (Section 6.4) on the status of the ecosystem, and the Ecosystem Status Report is incorporated by reference into the Analysis. Climate change uncertainties can be inferred from different time frames used in the analysis and the discussion of uncertainties in halibut population dynamics. See Section 8.4.3 on page 381 of the Analysis Comments on Climate change/Greenhouse gas emissions for additional information. NMFS acknowledges that changes in the distribution and abundance of fish stocks due to climate change may affect all sectors of the fishing industry to varying degrees going forward, and we do not expect the lower halibut PSC limits due to this action will measurably increase those effects for the Amendment 80 sector.

*Comment 65:* NMFS should have written a supplemental EIS, as there is ample, significant new information that indisputably bears on the proposed action and its impacts, requiring supplementation of the Analysis. Such information includes relevant Amendment 80 sector and halibut fishery data for the years 2020, 2021, and 2022 and consideration of the implications of recent red king crab biomass changes on the fleet's ability to avoid halibut. The Analysis should have evaluated whether a reduced red king crab PSC limit will influence halibut bycatch rates.

*Response:* NEPA implementing regulations at 40 CFR 1502.9(d) instruct agencies to prepare supplements to either draft or final environmental impact statements if: (1) the agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

Not every change requires a supplemental EIS; only those changes that cause significantly different effects from those already studied require supplementary consideration. The Supreme Court directs that "an agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decision-making intractable." *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 373 (1989). On the other hand, if a major Federal action remains to occur, and if new information indicates that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared. Ultimately, an agency

is required "to take a 'hard look' at the new information to assess whether supplementation might be necessary." *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 72–73 (2004).

NEPA implementing regulations at 40 CFR 1502.9(d)(4) stipulate that an agency may find that new circumstances or information relevant to environmental concerns are not significant and therefore do not require a supplement to an EIS.

NMFS issued its Analysis in December 2022; some of the information the commenter references was not available to NMFS during the development of the Analysis. NMFS considered relevant fishery data for the Amendment 80 sector and directed halibut fishery in approving Amendment 123 and developing this final rule. Based on this public comment, NMFS assessed the information from the years 2020, 2021, and 2022 that were not available prior to the publication of the Analysis on December 9, 2022. NMFS concluded that this new information is not of a scale nor scope that requires NMFS to supplement the EIS. The new information does not indicate that the action will affect the quality of the human environment in a significant manner or to a significant extent not already considered in the Analysis. Therefore, a supplemental EIS is not necessary.

*Comment 66:* The purpose and need statement is unlawfully narrow and forecloses the consideration of viable alternatives. By narrowing the purpose in this fashion, the Analysis forecloses the consideration of other types of bycatch reduction that, if needed, may be more rational, as well as forecloses consideration of revised or new halibut bycatch limits for any other fisheries or sectors or by any U.S. West Coast fisheries (that also have halibut bycatch).

*Response:* NMFS disagrees that the purpose and need statement is too narrow, thereby foreclosing the consideration of reasonable alternatives. In the Analysis, NMFS considered and analyzed five alternatives, including three options. Throughout the lengthy public Council and NEPA processes (described in Section 1.3 of the Analysis), many other ideas were considered and eliminated. Specific alternatives that were considered but not carried forward are noted in the Analysis in Section 2.8, including the reasons they were not further analyzed. The commenter did not offer other alternatives to the proposed action, and alternatives considering halibut PSC limits for other fisheries are outside the

scope of this action but, as noted above in response to Comment 16, separate actions have been taken to address halibut PSC in some other fisheries.

The purpose and need statement was crafted after substantial consideration by the Council and NMFS. It is reasonably tailored to meet the identified conservation needs, while balancing other equities. Agencies have considerable discretion in defining the purpose and need for their proposed actions, provided that they are reasonable. A purpose and need statement is unreasonable if the agency defines it so narrowly as to allow only one alternative from among the environmentally benign options in the agency's authority, such that the Analysis becomes essentially a formality. A purpose and need statement can also be unreasonable if the agency draws it so broadly that an unreasonably large number of alternatives would accomplish it, and the project would collapse under the weight of the possibilities. The agency must strike a balance between the two, as NMFS has done here.

*Comment 67:* Although the purpose and need statement erroneously says that the proposed action "could also promote conservation of the halibut stock," NMFS's findings elsewhere in the Analysis foreclose that possibility altogether.

*Response:* NMFS disagrees that its findings in the Analysis foreclose the possibility of conservation of the halibut stock. This action promotes conservation of the stock by reducing the Amendment 80 sector's halibut PSC limit in the Bering Sea under conditions of lower halibut abundance, and that conclusion is supported in the proposed rule and the Analysis. Although the IPHC is responsible for the management of the coastwide halibut stock, NMFS implements regulations that apply to the harvest of halibut including establishing halibut PSC limits in NMFS-managed groundfish fisheries under the Magnuson-Stevens Act in the BSAI FMP and Federal regulations. It is appropriate to use the Magnuson-Stevens Act definition for "conservation and management," at section 1802(5) to consider whether the reduction of PSC promotes conservation of a fishery resource, such as the halibut stock. That definition does not define conservation separately and notes that the term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures: (1) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and

the marine environment; and (2) which are designed to assure that a supply of food and other products may be taken and that recreational benefits may be obtained, on a continuing basis, are irreversible or long-term adverse effects on fishery resources and the marine environment are avoided, and that there will be a multiplicity of options available with respect to future uses of these resources. The Magnuson-Stevens Act does not assume that conservation means keeping a managed resource in an unfished state, since its conservation and management requirements are focused, in simple terms, on maintaining the resources for the benefit of the Nation through achieving optimum yield, while preventing overfishing and minimizing bycatch.

Where the annual Amendment 80 sector halibut PSC limit is reduced under conditions of lower halibut abundance, the overall halibut bycatch is reduced. This bycatch reduction measure helps maintain the fully-utilized halibut fishery resource and the marine environment and is designed to ensure that, on a continuing basis, a supply of food and other products may be taken and recreational benefits may be obtained. Further, the reduction of Amendment 80 halibut PSC limit at lower halibut abundance levels helps ensure that irreversible or long-term adverse effects on the halibut fishery resources and the marine environment are avoided and that there will be a multiplicity of options available with respect to future uses of these resources. As noted in the proposed rule, halibut PSC limits in the groundfish fisheries overall provide a constraint on halibut PSC mortality and promote conservation of the halibut resource.

Because the annual catch limit for the directed halibut fishery is established by the IPHC, it is uncertain whether the result of this action will benefit the long-term status of stock itself or directly benefit the directed halibut fishery. That result will mostly depend on actions of the IPHC. Due to historical IPHC practices, NMFS expects that the IPHC may establish higher catch limits for the directed halibut fleet to the degree that this action results in conserved halibut. This expectation is merely a prediction of likely impacts of this action, and the action does not depend on that result. To the extent that this action results in an overall reduction in halibut mortality in the BSAI management area, NMFS expects this to benefit the halibut stock.

*Comment 68:* The Analysis does not consider a reasonable range of alternatives. The Council and NMFS unreasonably and unlawfully rejected

reasonable alternatives, including those that would cause far less harm. NMFS unlawfully failed to consider other reasonable alternatives, such as (1) other mechanisms for reducing halibut bycatch and (2) other fisheries and sectors that have significant halibut bycatch. The public should have been given an opportunity to, at the very minimum, review and consider at least one alternative that would have addressed halibut bycatch in a broader array of sectors and fisheries.

*Response:* The Council and NMFS considered a wide range of alternatives during the development of Amendment 123. NEPA does not require an agency to explicitly consider every possible alternative to a proposed action. Under NEPA, NMFS can eliminate alternatives to FMP amendments prior to conducting a comprehensive review of such alternatives, as long as rationale is provided for its decision.

In the Analysis, five alternatives and three options were analyzed to meet the purpose and need, and many other alternatives were considered but eliminated from further analysis through the extensive period of development for Amendment 123 (see Section 2 of the Analysis). These alternatives were developed over numerous years with extensive input from the public through Council process. The Council and NMFS at one time considered including other fishery sectors but chose to focus on the Amendment 80 sector for this action. Section 1.3 of the Analysis explains the rationale for why this action is limited to the Amendment 80 sector. In short, the Amendment 80 sector comprises the majority of the annual halibut PSC mortality in the BSAI groundfish fisheries.

*Comment 69:* The Analysis fails to address incomplete or unavailable information under 40 CFR 1502.22. For example, the Analysis fails to consider fishery data for 2020, 2021, and 2022, and when evaluating environmental justice impacts, NMFS stated that no recent information from secondary sources on sector-wide catcher/processor crew demographics is readily available. The Analysis does not address the incomplete or unavailable information giving rise to these recognized uncertainties. NMFS acknowledges that other categories of information are unavailable but fails to perform analysis for them as required.

*Response:* NMFS noted in the Analysis where there was incomplete, unavailable, and uncertain information to inform the effects analysis. NEPA requires that the EIS contain high-quality information and accurate

scientific analysis, and, if there is incomplete or unavailable relevant data, the EIS discloses that fact.

The regulation cited by the commenter (40 CFR 1502.22) requires that when an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an EIS, and there is incomplete or unavailable information, the agency must make clear that such information is lacking. If the unavailable information is essential to the analysis and can be obtained without unreasonable effort or cost, the agency should obtain it; if such information is essential and the agency cannot obtain it, the agency needs to state the information is unavailable, whether its relevant, and give a summary of the existing information and state the agency's evaluation of the current information based upon approaches or research methods generally accepted in the scientific community.

The Analysis meets all requirements of NEPA and its implementing regulations. Throughout the analyses, NMFS clearly discloses where information is lacking, unavailable, or incomplete. If such information could not be obtained, NMFS explains the approach taken in the Analysis using the information available to the agency. No extra analysis is required.

*Comment 70:* The Analysis's cursory treatment of cumulative effects is insufficient and unlawful by including only those involving halibut, while ignoring other cumulative effects that may affect the Amendment 80 sector. The Analysis has not but should have considered additional impacts to fishing communities and the Amendment 80 sector due to: (1) an increasing likelihood that the Area 4 catch limits will not be fully harvested; (2) increased challenges in maintaining halibut fishery processing operations throughout Area 4 that have historically relied on offsetting costs with crab processing; (3) changes in distribution of Area 4 halibut deliveries; (4) additional crab bycatch management measures; (5) potential establishment of National Marine Sanctuaries near the Pribilof Islands; (6) climate change; (7) future IPHC actions; and (8) other factors including inflation, tariffs, and the market and supply disruptions due to the war in Ukraine.

*Response:* As explained in response to Comment 65, NEPA requires agencies to consider and give a hard look at the cumulative impacts of proposed actions. NMFS did so in Section 5.8 of the Analysis (see ADDRESSES). Cumulative impacts are effects on the environment that result from the incremental impact

of the action when added to other past, present, and reasonably foreseeable future actions. Some of the actions cited by commenters occurred so close in time to the Analysis (e.g., inflation and other market disruptions), were still under consideration and development by the Council and/or NMFS (e.g., crab bycatch measures), or occurred after publication of the Analysis (e.g., potential establishment of a National Marine Sanctuary and future IPHC actions) that they could not reasonably be considered and were therefore not “reasonably foreseeable.” As noted above, NMFS considered whether some of these new circumstances warranted supplementing the EIS and concluded they do not.

Other actions and accompanying analyses (such as directed halibut fishery catch) commenters cite were incorporated by reference either from other analyses or from other sections of the Analysis. In particular, the IPHC’s setting of directed fishery catch limits is noted as a reasonably foreseeable future action in this analysis, but in conjunction with other direct impacts of this action, is not considered to be cumulatively significant.

Some of the actions commenters cite are so uncertain or in such early stages of development that the impacts cannot be considered “reasonably foreseeable” and/or there is not enough information for a meaningful analysis. For further discussion on Climate change, considerations are addressed in the responses to Comments 26 and 64.

*Comment 71:* In violation of NEPA, NMFS failed to consider the additional economic impact from increased cost recovery fee percentages as a result of reduced harvest opportunity expected under this action. Specifically, the Analysis acknowledged that the Amendment 80 sector is subject to cost recovery fees as a portion of its ex-vessel revenue for costs directly related to the management of the fishery. However, because the proposed action would significantly reduce the amount of harvests in the fishery and the expected value to the fishery, Amendment 80 sector participants would expect to pay considerably higher percentage of their ex-vessel revenue to meet their required cost recovery payments. This is not analyzed in the Analysis, but effects on cost recovery fees are recognized in the proposed rule.

*Response:* In Section 5.9.1 of the Analysis, NMFS discussed and considered the Amendment 80 cost recovery fee program. NMFS implemented the Amendment 80 cost recovery fee program on February 4, 2016 (81 FR 150, January 5, 2016). The

Magnuson-Stevens Act section 304(d) limits total cost recovery fees to three percent of the ex-vessel value for a fishery, which is consistent with the maximum fee percentage as implemented in regulations applicable to the Amendment 80 fee program at \$ 679.95 that remain unchanged by this action. Additionally, Section 3.3.2 of the Analysis discusses cost recovery in several places and provides fee information from fiscal year 2017 through fiscal year 2020.

*Comment 72:* NMFS violated NEPA and the Administrative Procedure Act (APA) by arbitrarily modifying the following true statement that was included in the draft Analysis to imply an opposite conclusion, without any factual support or rational explanation:

Because of the efforts and expenditures already undertaken by the sector, dramatic increases in halibut avoidance or reductions in mortality are not expected with the tools that are currently available to the fleet. Some marginal improvements are anticipated to continue to be realized, especially if halibut limits are further reduced and the fleet forgoes some profitability to reduce halibut mortality further. Reductions in halibut mortality are expected to result from the [Amendment 80] sector increasing costs or reducing efficiency.

*Response:* The statements made in the draft Analysis and the Analysis prepared for this action are not significantly different. NMFS modified and clarified the language from the draft Analysis text referenced by the commenter in the Analysis in response to public comments. The Analysis adds that reductions in halibut mortality in the Amendment 80 sector could also come from “. . . improving the use of existing tools.” As required by NEPA, changes from the draft to final Analysis are documented and can be located in Section 8.8 on page 392 of the Analysis. While a number of substantive changes are detailed, Analysis Section 8.8 notes that edits were made throughout the document for clarification, in response to public comments, or both, and not all of them were expressly identified in Section 8.8. NMFS does not consider the change to imply an opposite conclusion from the draft text and does not therefore consider it a substantive change to the document. The clarified text found in the Analysis Section 5.3.2.5 states the following:

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 and the fleet forgoes some amount of profitability to reduce halibut

mortality further. Reductions in halibut mortality that are realized are expected to result from the sector increasing costs or reducing efficiency. The amount of mortality reductions cannot be quantified with any certainty. If substantial reductions in halibut mortality are realized, they are likely to be derived from the development and implementation of new technologies.

#### *Directed Halibut Fishery*

*Comment 73:* There is no FMP for the management of halibut.

*Response:* True, there is no FMP for halibut because the halibut stock is managed by the IPHC under the Convention. The Council and NMFS have the authority to develop and implement regulations under the Halibut Act, including limited access regulations that are in addition to, and not in conflict with, IPHC regulations. The Council and NMFS manage groundfish fisheries under FMPs pursuant to the Magnuson-Stevens Act. Section 1.1 of the Analysis discusses how the IPHC and NMFS manage halibut.

*Comment 74:* There is no rational basis for NMFS’s continuing prohibition on the Amendment 80 sector’s ability to retain and sell the halibut it catches below the PSC limits.

*Response:* Removing halibut from the list of prohibited species or changing the provisions regarding the prohibition on retention would involve a departure from longstanding policy and is beyond the scope of this action. Section 1.1 of the Analysis discusses how the IPHC and NMFS manage halibut. This section discusses prohibition on the retention of a category of species that are valuable to other users and fully utilized by them, known as “prohibited species.” That category includes salmon, herring, crab, and halibut. Through the FMP process and regulation, NMFS and the Council have determined that the capture of species in this category must be avoided, and they prohibit their retention except when authorized by other law.

*Comment 75:* The halibut stock is considered to be stable and not subject to overfishing or overfished by the IPHC, even though those terms are not applicable to halibut because it is not managed under the Magnuson-Stevens Act or an FMP. The halibut stock declined in the 1990s to approximately 2012. After 2012, the stock’s spawning biomass stabilized around 100,000 mt and has remained stable since 2012.

*Response:* NMFS acknowledges this comment. The halibut spawning stock biomass has remained stable since 2012 at a historically low level.

*Comment 76:* The proposed action will not result in any identifiable

economic, social, or cultural benefits to the directed halibut fishery.

*Response:* The relationship between this action's PSC limit reductions and benefits to the directed halibut fishery is complex and depends on a number of factors, as discussed in Section 5.4 of the Analysis. NMFS expects that there may be benefits to the directed fishery resulting from reduced halibut PSC by the Amendment 80 sector. NMFS considered benefits to other communities and users. Benefits from conserved halibut are likely to be indirect instead of direct, due to the limited scope of the action, and because the IPHC annually establishes halibut catch limits applicable to each regulatory area. Impacts to communities, including social and cultural impacts, as well as impacts to Alaska Native and subsistence users, are considered in Section 5.5.2.1.5 of the Analysis.

*Comment 77:* Halibut is not fully utilized in the BSAI. The fact that utilization rates (percent harvested) in the Area 4 halibut fishery are at a record low of 66 percent is not addressed or analyzed by NMFS.

*Response:* The total allowable catch for halibut is completely assigned to user groups; thus, it is considered fully utilized. Halibut is targeted by commercial, recreational, charter, and subsistence users. The IPHC allocates halibut to achieve Total Constant Exploitation Yield or TCEY. Halibut is thus fully utilized even though a portion of the commercial harvest allocation may not be fully harvested every year. A portion of the distributed TCEY within Area 4 goes unharvested each year for a number of reasons. The exact amount of unharvested quota varies from year to year, area to area, and depending upon how data is aggregated. The IPHC compiles harvest figures annually in the Fisheries Data Overview presented at the Annual Meeting at the end of January. The following portion of the total catch limits were harvested in 2022 by Area: 4CDE (Bering Sea) = 91 percent; 4B (Central & Western Aleutians) = 49 percent; and 4A (Eastern Aleutians) = 80 percent.

The largest proportion of halibut that remained unharvested in Area 4 is in Area 4B, and there is a smaller amount of quota remaining unharvested in Area 4A. These areas represent remote sections of the Western Aleutian Islands. Fishing in Area 4B is usually inconsistent, resulting in directed fishing vessels spending a higher amount on fuel not only to find halibut but to reach the fishing grounds. Further, there is very little to no infrastructure out in the Western

Aleutian Islands to support a directed halibut fishing fleet resulting in vessels having to return to Dutch Harbor to sell fish and resupply.

*Comment 78:* Halibut is culturally, socially, and economically important to Alaska residents, a value that cannot be captured monetarily. The proposed action can help coastal communities and fishermen secure other directed fishing opportunities and be more diversified, a critical step as U.S. fisheries face growing climate impacts and uncertainty. The small-boat halibut fishery is the cultural and economic lifeblood of Saint Paul, Alaska. It is a critical source of employment (both direct and indirect). It is also an important and historically significant subsistence fishery that is key to Saint Paul Island's cultural heritage and well-being. Saint Paul identifies with this ancient resource: the halibut harvest—and sharing the bounty with the community—is an irreplaceable cultural touchstone. An abundance-based PSC limit more fairly distributes conservation limits so as not to jeopardize coastal community participants in the directed halibut fishery in the BSAI area.

*Response:* NMFS acknowledges this comment.

*Comment 79:* In 2015, the commercial IFQ and CDQ catch limits in Area 4 were 3.815 million net pounds. In 2022, the commercial IFQ and CDQ catch limits in Area 4 were 5.1 million net pounds. This improved harvest opportunity is nearly four times greater than the harvest opportunities envisioned under Amendment 111 even though the overall abundance of halibut on a coastwide basis has not changed substantially since 2015.

*Response:* This action is expected to minimize halibut mortality, and it may result in additional harvest opportunities for subsistence and recreational fishermen, and commercial halibut fishermen in Area 4. This action does not modify allocations of halibut under the IFQ Program or the CDQ Program. Since 2015, the amount of halibut harvested in Area 4 has remained fairly constant; however, the IPHC survey indices (*i.e.*, the estimated all-sizes WPUE time series) for Area 4 have shown a downward trend. While it may be true that there is an increase in the Area 4 halibut catch limits from 2015 to 2022, these data points are the low and high points in the time series, and this comparison fails to examine the yearly harvest across this time series, which varies drastically. As with catch limits, there is also a lot of variation within the amount of halibut harvested; however, 2022 saw the lowest harvest

from 2015 to 2022 in Area 4 with only 3.37 million net pounds harvested, well below the average TCEY for this time period of 3.71 million net pounds.

*Comment 80:* Canadian halibut catch limits are too high. NMFS should stop giving Canada too many fish.

*Response:* Halibut catch limits apportioned to Canada are determined by the IPHC and are outside the scope of this action.

*Comment 81:* Amendment 123 will benefit halibut users in IPHC Area 2A because reducing bycatch of small halibut in the Bering Sea will benefit the halibut stock and support migration into IPHC Area 2A.

*Response:* NMFS acknowledges support for this action. Expected benefits to the halibut stock are addressed in response to Comment 67.

#### Regulatory Process

*Comment 82:* It is unclear which agency official has been delegated authority to approve the Proposed Action. The proposed rule is signed by Samuel Rauch (Deputy Assistant Administrator for Regulations, NMFS). The NOA for proposed Amendment 123 is signed by Kelly Denit, Director, Office of Sustainable Fisheries, NMFS. The comment extension deadline for the NOA is signed by Jennifer M. Wallace, Acting Director, Office of Sustainable Fisheries, NMFS. The Analysis "Dear Reviewer Letter" is signed by Jon Kurland, Regional Administrator.

*Response:* Two delegations of authority are relevant: (1) Department of Commerce Directive (DOO 10–15) delegates the functions prescribed in the Magnuson-Stevens Act from the Secretary of Commerce to the NOAA Administrator, and (2) NOAA delegation 61 (NOAA's Organizational Handbook) delegates to the Assistant Administrator for Fisheries authority to perform functions relating to the Magnuson-Stevens Act. Pursuant to that authority, the Assistant Administrator issues and approves rulemaking actions, including the proposed and final rules. The Assistant Administrator authorizes subordinates to carry out certain ministerial tasks associated with the Assistant Administrator's issuance of rulemakings. The commenter refers to several ancillary procedural actions related to the rulemaking. These ancillary actions should not be confused with issuance of the relevant rule.

*Comment 83:* The Council never formally deemed the proposed regulations "necessary" or "appropriate," as the Magnuson-Stevens Act requires.

*Response:* It is well documented that the Council deemed the proposed



regulations to be necessary and appropriate in accordance with section 303(c) of the Magnuson-Stevens Act. In the Council Motion C2 Halibut Abundance-Based Management (ABM) from December 13, 2021, the Council deemed proposed regulations that clearly and directly flow from the provisions of the motion to be necessary and appropriate in accordance with section 303(c) of Magnuson-Stevens Act. Similar language appears in the December 2021 Council Meeting Summary Report.

Further, the Council authorized the Executive Director and the Chairman of the Council to review a draft of the proposed regulations to ensure that the proposed regulations were consistent with its instructions. On October 25, 2022, the Executive Director sent a letter to NMFS notifying it that he and Chairman Kinneen reviewed the draft FMP amendment text, notice of availability, proposed rule, initial regulatory flexibility analysis, and Analysis and concluded that they were consistent with the Council's action.

*Comment 84:* In the proposed rule published December 9, 2022, NMFS erroneously concluded that Amendment 123 and the proposed rule are consistent with the Magnuson-Stevens Act (87 FR 75570). NMFS has unlawfully predetermined the result of the proposed action and rubber-stamped the Council's ill-advised proposal before completing review of public comments.

*Response:* NMFS disagrees. The Council considered, assessed, and heard from the public on a number of different alternatives before it selected the preferred alternative. Further, in the Classification section of the proposed rule (87 FR 75570 and 75582, December 9, 2022), NMFS states that the NMFS Assistant Administrator has determined that the proposed rule was consistent with Amendment 123, other provisions of the Magnuson-Stevens Act, and other applicable laws and was subject to further consideration after public comment period. It is NMFS's common practice and consistent with applicable law to provide such a preliminary conclusion when publishing the proposed rule (see Magnuson-Stevens Act section 304(b)(1)). Because any such conclusion is subject to further consideration after public comments are received and considered by NMFS, NMFS did not predetermine the result of the proposed action.

*Comment 85:* If NMFS proceeds with the proposed action, it should be implemented no earlier than January 1, 2025.

*Response:* NMFS did not delay implementation of this action in

response to this comment. The Council recommended Amendment 123 on December 13, 2021, with the clear expectation that NMFS implement it as soon as possible. In routine reports to the Council during its regularly scheduled meetings, NMFS provided status updates to the Council and the public about the ongoing rulemaking process, and, after approval of Amendment 123 by the Secretary of Commerce on March 7, 2023, the expected timing of its implementation. During those meetings, NMFS informed the public that NMFS will implement Amendment 123 as soon as possible.

#### *Other Applicable Laws and Executive Orders*

*Comment 86:* NMFS fails to rationalize the enormous costs of the proposed action with the requirements of E.O. 12866 and E.O. 13563.

*Response:* The analysis of potential social and economic impacts is covered extensively in Sections 5.3 through 5.6 of the Analysis. In addition, a SIA is provided in Appendix 1 to the Analysis. These sections provide a thorough analysis of those E.O.s and potential socioeconomic impacts.

*Comment 87:* The proposed action is a "significant regulatory action" under E. O. 12866 and, therefore, should have been reviewed by the Office of Information and Regulatory Affairs (OIRA), thus NMFS unlawfully failed to comply with E.O. 12866.

*Response:* As noted in the Classification section of this final rule, OIRA has determined both the proposed and this final rule to be not significant for purposes of E.O. 12866 via the process outlined in the executive order itself and pursuant to all applicable laws and guidance.

*Comment 88:* The proposed action fails to address the statutory Capacity Reduction Program (CRP). The CRP was a key component in defining the parameters and limitations of participation in the Amendment 80 sector and is referred to extensively in the Amendment 80 implementing rulemaking (72 FR 52668, September 14, 2007). Section 219(g)(2) of the CRP makes clear that the Council should "take actions that promote the stability of [the non-pollock BSAI groundfish fisheries] consistent with the goals of this section and the purposes and policies of the Magnuson-Stevens Fishery Conservation and Management Act."

*Response:* NMFS agrees that the CRP defines parameters and limitations of participation on the Amendment 80 sector. The CRP, as part of a consolidated appropriations bill, made

available capacity reduction funds to certain sectors, defining those sectors/subsectors (including Amendment 80) and eligibility criteria. To this end, NMFS did not address the CRP, as this action has nothing to do with the CRP funding, definitions, or eligibility criteria. Further, section 219(g)(2) of the CRP, which was enacted in the Consolidated Appropriations Act of 2005 (Pub. L. 108-447; 118 Stat. 2890; Dec. 8, 2004) provides the Council should continue on its path toward rationalization of the BSAI non-pollock groundfish fisheries, complete its ongoing work with respect to developing management plans for the BSAI non-pollock groundfish fisheries in a timely manner, and take actions that promote stability of these fisheries consistent with the goals of this section and the purposes and policies of the Magnuson-Stevens Act. The Council and NMFS have completed those actions and any claim to the contrary is well beyond the scope of this action.

*Comment 89:* The proposed action violates the Information Quality Act (IQA) because NMFS is using third-party data (i.e., IPHC data) to make decisions that have a large impact on the public without showing how the use of this data complies with the IQA. For example, NMFS does not describe how it will review IPHC survey results, how it will determine the data is of "known quality," how it will determine the data's consistency with NOAA's information policy guidelines, or how the limitations of the data will be taken into account and disclosed.

*Response:* NMFS disagrees. The IQA directed the Office of Management and Budget (OMB) to issue guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by Federal agencies. Pursuant to OMB guidance, NOAA issued guidelines specifically for NOAA information to ensure quality of information, an important management objective for NOAA and NMFS. The Agency's information quality guidelines are not intended to prevent the use of reliable outside information or full utilization of the best scientific information available. Use of third-party information from either domestic or international sources, such as the IPHC, is a common practice in NMFS. IPHC scientists are highly-trained, independent specialists. Their work is reviewed at least twice a year by the IPHC Scientific Review Board, as well as an external review conducted every 3 years. All findings of peer reviews are openly discussed in public meetings and published online. As specified in

regulations at § 679.21(b)(1)(i)(B) governing the annual procedure for establishing the halibut PSC limit for the Amendment 80 sector, NMFS will annually receive and review the indices of halibut abundance produced by the IPHC and publish the resulting PSC limit in the annual harvest specifications.

*Comment 90:* The proposed action is facially arbitrary and capricious, in violation of the APA. It nonsensically premises a halibut bycatch reduction measure on a metric that has little or no correlation to halibut bycatch, intends to improve results at low abundance states but then regulates all abundance states including one (very low) that has never been observed, fails to explain rejection of proposed options to adjust the alternatives, and fails to sufficiently analyze the action and its consequences.

*Response:* The Council and NMFS have conducted extensive analysis and consideration in reaching the decision on this action, as recorded in the Analysis and the many documents incorporated into it. Most comments regarding assertions of APA violations are addressed in other applicable response sections, *e.g.*, Response to Comment 72. This action is well-supported and reasonable for the circumstances addressed.

Notably, the action's purpose and need statement required selection of a suitable means of determining halibut abundance. The best available science resulted in selection of the two indices included in this action. Since those indices are intended to measure abundance, not bycatch, any lack of correlation with bycatch does not affect their suitability. The goal of the action is to link the Amendment 80's PSC limit to halibut abundance, which essentially means that the annual PSC limit will vary according to indices of halibut abundance, similar to the harvest levels of other, regulated users of halibut. The fact that past bycatch levels poorly correlate to halibut abundance means there may be greater costs to reduce bycatch when halibut abundance is low, *i.e.*, the mere fact that halibut abundance is lower may not directly translate into lower bycatch levels without changes in fleet behavior to avoid the bycatch, or there may be forgone harvest of groundfish because the fleet failed to sufficiently avoid it and hit the lower PSC limit. The costs and benefits of the action are discussed extensively in Section 5 of the Analysis. The Analysis also extensively describes the alternatives and options considered and the reason for selecting this action.

*Comment 91:* For the same reasons that the proposed action violates the

Magnuson-Stevens Act, the proposed action violates the Halibut Act.

*Response:* The comment does not raise specific objections with regard to the Halibut Act. Therefore, no specific response is possible; NMFS maintains that this action is consistent with the Halibut Act and the Magnuson-Stevens Act.

#### Changes From the Proposed Rule

This final rule includes the following change from the proposed to final rule to address the timing for when the abundance indices will be available relative to the annual harvest specification process.

At § 679.21(b)(1)(i)(B), NMFS removed the word "proposed" from the last sentence of the paragraph referring to the annual harvest specification for BSAI groundfish fisheries. NMFS will publish the Amendment 80 sector halibut PSC limit from table 58 to part 679 in the annual harvest specifications and it is not necessary to specify "proposed." This change is necessary to make these new halibut PSC limit regulations consistent with the existing PSC regulations at § 679.21. Additionally, because the final rule specifies that the IPHC submit the IPHC index to NMFS by December 1 of each year, and the proposed annual BSAI groundfish harvest specifications are prepared prior to December 1 each year, the IPHC index may not be available for inclusion in the proposed harvest specifications each year. NMFS will make the indices available to the public and the Council when they are provided by the AFSC and IPHC. The public can apply the indices to table 58 to part 679 to see the applicable PSC limit for the upcoming year prior to the publication of the final harvest specifications.

#### Classification

Pursuant to sections 304(b)(3) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Amendment 123 to the BSAI FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

NMFS prepared a final EIS (FEIS) for Amendment 123 to the BSAI FMP. The FEIS for this action was filed with the Environmental Protection Agency on November 28 and a notice of availability was published on December 9, 2022 (87 FR 75625). In approving Amendment 123 on March 7, 2023, NMFS issued a ROD identifying the selected alternative. A copy of the ROD is available from NMFS (see **ADDRESSES**).

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

#### Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS implements Amendment 123 and the regulatory revisions in this final rule based on those measures that maximize net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Final Regulatory Flexibility Analysis section.

#### Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on the NMFS Alaska Region website (<https://alaskafisheries.noaa.gov/sustainablefisheries/bycatch/default.htm>) to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule.

#### Final Regulatory Flexibility Analysis (FRFA)

Section 604 of the Regulatory Flexibility Act (RFA, 5 U.S.C. 604) requires that, when an agency promulgates a final rule under section 553 of title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. The following constitutes the FRFA prepared for the regulations implementing Amendment 123. This FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support this action.

Section 604 of the RFA describes the required contents of a FRFA: (1) a statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities

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

A description of this action, its purpose, and its legal basis is included in the preamble to this final rule and is not repeated here.

*Public and Chief Counsel for Advocacy Comments on the IRFA*

An IRFA was prepared in the Classification section of the preamble to the proposed rule (87 FR 75570, December 9, 2022). The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule. NMFS has evaluated the two comments received from CDQ groups. Those comments are discussed above in the Comments and Responses section of this final rule.

Two CDQ groups provided comment letters and the substantive points of those comments were incorporated with other similar comments and responded to in this final rule. One CDQ group commented that they and many others advocated more restrictive PSC limits to further reduce halibut bycatch. They also noted the extraordinary challenge the Council faced with determining what action to recommend and that the process was informed by extensive and often divergent written comment and testimony. The central theme of their comment letter was that they strongly urge NMFS to move forward with Amendment 123 and this final rule, as crafted by the Council, without substantive alterations from NMFS.

The second CDQ group comment stressed support for liming halibut bycatch and highlighted their efforts to do so. However, the comment also indicated that the action would impose unacceptable costs on the Amendment 80 sector including their wholly owned for-profit fishing subsidiary thus adversely impacting their subsidiary. The for-profit fishing subsidiary is

considered a cooperative-affiliated large entity.

NMFS made no changes to the final rule in response to the CDQ group comments.

*Number and Description of Small Entities Regulated by This Final Rule*

NMFS has determined that vessels that are members of a fishing cooperative are affiliated when classifying them for the RFA analyses. In making this determination, NMFS considered the SBA “principles of affiliation” at 13 CFR 121.103. Specifically, in § 21.103(f), SBA refers to “[a]ffiliation based on identity of interest,” which states: “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 indirectly affects the six Western Alaska CDQ groups 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 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 depends 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 dollars for all affiliated operations worldwide (81 FR 4469; January 26, 2016). Since at least 1993, NMFS Alaska Region has considered catcher/processors to be predominantly engaged in fish harvesting rather than fish processing.

One additional vessel, the Golden Fleece, has been identified as a potentially directly regulated small entity based on revenue analysis. Revenue data for this single small entity is confidential. The Golden Fleece is not Amendment 80 cooperative or ownership-affiliated, as it is an independent company. Therefore, the Golden Fleece is considered to be the only non-CDQ small entity directly regulated by this action.

Based on this analysis, NMFS has determined that one catcher/processor may be considered small and would 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 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 corporations owning the LLPs is the proper entity for determining whether a substantial number of directly regulated entities is affected.

*Description of Significant Alternatives Considered to the Final Action 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, and minimize costs to potentially affected small entities more than this action. The Council and NMFS considered five alternatives including three sub-options that could apply to all action alternatives.

The Council recommended and this final rule implements Amendment 123 (Alternative 5) to establish an annual process to determine the annual PSC limit for the Amendment 80 sector based on two indices of halibut abundance, the IPHC index and NMFS EBS index. Alternatives 2 through 4

included use of the same style of index table as Amendment 123 but included different ranges of halibut PSC limits for the various survey index levels.

Alternative 2 included a range of halibut PSC limits from 1,745 mt to 1,396 mt (20 percent reduction). Alternative 3 included a range from 2,007 mt (15 percent increase) to 1,222 mt (30 percent reduction). Alternative 4 included a range from 1,745 mt to 960 mt (45 percent reduction).

This action 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. This action specifies halibut PSC limits that range from 1,745 mt (the previous static Amendment 80 halibut PSC limit) to 1,134 mt (35 percent reduction). This is within the range of halibut PSC limits considered. The Council and NMFS 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 be reduced. Under those conditions, reduced halibut mortality through lower PSC limits is expected to ensure that the Amendment 80 sector's share of the overall halibut removals in the Bering Sea does not become a larger proportion at lower levels of halibut abundance, consistent with the Council's purpose and need statement.

The Council and NMFS appropriately considered the Magnuson-Stevens Act requirements. This 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 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.

#### *Collection of Information Requirements*

This final rule contains no information collection ("recordkeeping and reporting") requirements under the Paperwork Reduction Act of 1995. This rule does not change 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 existing collection of information requirements for the

Amendment 80 Economic Data Report continue to apply under Office of Management and Budget Control Number 0648–0564.

#### *Tribal Summary Impact Statement*

NMFS's responsibilities for Tribal consultations on Federal policies with Tribal implications are outlined in E.O. 13175, Consultation and Coordination with Indian Tribal Governments (November 6, 2000), the Executive Memorandum (April 29, 1994), the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995), the Department of Commerce Tribal Consultation and Coordination Policy (78 FR 33331, June 4, 2013), Presidential Memorandum (Tribal Consultation and Strengthening Nation-to-Nation Relationships) (86 FR 7491, January 29, 2021), and the updated NOAA Policy on Government-to-Government Consultations with Federally Recognized Indian Tribes and Alaska Native Corporations (July 27, 2023). Further, section 161 of Public Law 108–199 extends the consultation requirements of E.O. 13175 to Alaska Native corporations.

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 following is a Tribal Summary Impact Statement for this final rule.

Under E.O. 13175 and agency policies, NMFS notified all potentially impacted federally recognized Tribal governments in Alaska and Alaska Native Corporations potentially affected by this action and supporting analyses, as well as of the opportunity to comment and respond to the agency's invitation for Tribal consultation on the action.

#### *Description of the Extent of NMFS's Prior Consultation With Tribal Officials*

On August 18, 2020, NMFS mailed Tribal consultation invitation letters to Alaska Native Tribes, Alaska Native Corporations, and Alaska Native Organizations ("Alaska Native representatives"). The letter notified Alaska Native representatives that a preliminary draft Analysis on setting annual halibut PSC limits for the Amendment 80 sector, based on halibut abundance levels (Halibut ABM), would be presented to the Council for initial review, with an invitation to participate in the process and contribute to fishery decisions at the October 2020 meeting. NMFS and the Council sought public

input on the Analysis, including comments on the alternatives analyzed and preliminary results. In addition to public participation in the Council process, NMFS invited Alaska Native representatives to consult with and provide comments to the agency directly via virtual meeting or by telephone.

On April 26, 2021, NMFS mailed Tribal consultation invitation letters to Alaska Native representatives. The letter notified Alaska Native representatives that a draft Analysis evaluating the potential effects of the Halibut ABM action would be presented to the Council for final action at the December 2021 meeting. The letter invited Alaska Native representatives to participate in the process and contribute toward final management decisions. NMFS included information on when the Agency expected to publish the draft Analysis, further instructions to submit public comments on the document (including comments on the alternatives analyzed and preliminary results), and ways to provide additional public input on this action, including methods to provide such input through the Council process prior to the Council taking final action in December 2021. In addition to public participation in the Council process, an invitation for government-to-government consultation, and ways to provide comments to the agency on the Halibut ABM action directly via virtual meeting or by telephone, was also provided by NMFS.

In September 2021, NMFS, in conjunction with the Council, issued the draft Analysis. In conformance with NEPA requirements, NMFS solicited public comment on the draft Analysis. NMFS accepted public comments during a 60-day public comment period from September 6, 2021, to October 25, 2021. NMFS received 542 letters of comment. Of the 542 written public comments, NMFS received two letters from Alaska Native representatives: Aleutian Pribilof Islands Association (APIA) and Aleut Community of Saint Paul Island (ACSPI). A copy of the written comments are available on the NMFS Alaska Region Tribal Consultation website (see **ADDRESSES**).

Additionally, on November 10, 2021, NMFS mailed a letter inviting Alaska Native representatives to participate in a halibut bycatch listening session on November 29, 2021, to discuss Halibut ABM. NMFS listened to concerns on halibut bycatch issues and provided the time for Alaska Native representatives and NMFS staff to get acquainted. A status update and a description of how NMFS works with the Council staff on fishery management actions was

provided. This listening session was considered Tribal engagement, not government-to-government consultation. The listening session included the following Alaska Native representatives: Kuskokwim Inter-Tribal Fish Commission, Kawerak, Inc., Bristol Bay Native Association, Association of Village Council Presidents, ACSPI, APIA, and a native Bristol Bay halibut fisherman. Comments from Alaska Native representatives are summarized in the Halibut Bycatch in Alaska Listening Session (November 2021) available on the NMFS Alaska Region website (see **ADDRESSES**).

In 2021, NMFS conducted Tribal consultation on the Halibut ABM action with Alaska Native representatives that expressed interest including the ACSPI and APIA, which represents the following 13 federally recognized Tribes: Native Village of Akutan, Native Village of Atka, Native Village of Belkofski, Native Village of False Pass, Agdaagux Tribe of King Cove, Native Village of Nelson Lagoon, Native Village of Nikolski, Pauloff Harbor Village, Qagan Tayagungin Tribe of Sand Point Village, Aleut Community of St. George Island, ACSPI, Qawalangin Tribe of Unalaska, and Native Village of Unga. The purpose was to complete consultation between the ACSPI and NMFS Alaska Region per the agency's government-to-government relationship regarding the Halibut ABM action scheduled for final action at the December 2021 Council meeting. NMFS shared information about the action and its potential implementation during the meeting but primarily wanted to hear and better understand the ACSPI perspective regarding Tribal impacts.

On February 9, 2022, NMFS continued the Tribal consultation process by mailing Tribal consultation invitation letters to the following 19 federally recognized Tribes and representatives that may be impacted by the Halibut ABM action: Akutan Native Village, Atka Native Village, Village of Cheforak, Curyung Tribal Council, Native Village of Hooper Bay, Native Village of Kipnuk, Native Village of Kwinhagak, Native Village of Mekoryuk, Newtok Village, Native Village of Nightmute, Nome Eskimo Community, Nunakauyarmiut Tribe, Qawalangin Tribe of Unalaska, Native Village of Savoonga, Aleut Community of Saint George Island, ACSPI, Traditional Village of Togiak, Native Village of Tununak, and Twin Hills Village. Each agency letter to the Tribal communities potentially affected by the Halibut ABM action had a link to the website where the draft Analysis was posted. NMFS also responded to requests from Alaska

Native representatives for copies of the draft Analysis. In addition, NMFS provided information on the intent to solicit public comment on the proposed regulations to implement the action and on the notice of availability of the Amendment 123. The letter included clarification on the action, and, although the public comment period on the draft Analysis had closed, NMFS sought additional input from Alaska Native representatives that may be affected by the fishery action for the development of the Analysis. NMFS stated that any additional information Alaska Native representatives may wish to provide through Tribal consultation would be considered and summarized in the Analysis.

On March 4, 2022, NMFS sent a letter to the Bering Intergovernmental Tribal Advisory Council (BITAC) notifying them that the Council took final action on Halibut ABM and selected a preferred alternative that would determine the Amendment 80 PSC limit annually based on the most recent values from surveys conducted by the AFSC and the IPHC. NMFS also notified BITAC that during the public comment period on the draft Analysis, released in the fall of 2021, the U.S. Environmental Protection Agency submitted a comment letter on the draft Analysis advising NMFS that the BITAC may be able to provide helpful information on this action. NMFS stated in the letter to BITAC that the Agency was seeking additional input from them as this action occurred within the Northern Bering Sea Climate Resilience Area. The Agency provided a link to the draft Analysis and stated that Tribal feedback was optional, but any additional information that BITAC may wish to provide would be considered and summarized in the Analysis.

Additionally, NMFS provided a copy of the 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 action.

#### *A Summary of the Nature of Tribal Concerns*

Comments from Alaska Native representatives are summarized in the Halibut Abundance-Based Management Consultation Summary Aleut Community of Saint Paul Island (November 2021) and Summary of Tribal Consultation Teleconference to Discuss Halibut ABM Concerns with APIA (July 2021) available on the NMFS Alaska Region website (see **ADDRESSES**). NMFS received one letter from APIA providing oral and written public

testimony on the Halibut ABM action. A copy of the oral public testimony on April 21, 2021, at the April 2021 Council meeting (Appendix 1) and written comments on March 30, 2021 (Appendix 2), are also available in the Summary of Tribal Consultation Teleconference to Discuss Halibut ABM Concerns with Aleutian Pribilof Islands Association (July 2021) available on the NMFS Alaska Region website (see **ADDRESSES**).

On November 24, 2021, during the Tribal consultation between NMFS and the ACSPI, a summary of Tribal Concerns included: (1) the Halibut ABM action decides the future of the community of St. George, as it is linked to the success of the Saint Paul halibut fishery; (2) continued out migration of people from the Pribilof Islands to elsewhere due to limited economic opportunities; (3) more attention needs to be paid to coastal fishing communities, including Tribal members, by NMFS and the Council; (4) halibut abundance has declined, although bycatch limits have not, with cumulative losses to the directed halibut fishery of approximately 50 million dollars and this information should be included in the draft Analysis prepared for the ABM action; (5) there are 17 communities that are categorized as halibut-dependent communities in the Analysis and those communities should be directly involved with NMFS regarding this action because it is inequitable and unjust that fishery communities get the leftovers after the establishment of bycatch limits; (6) Alternative 4 of the Analysis is the only alternative supported by the Aleut Community of Saint Paul Island in order to restore equity of the resource; (7) halibut is not just a Saint Paul issue—it is an ecosystem wide issue and all communities need halibut from Norton Sound to the North Pacific; (8) the allocation policy must be addressed because it is not appropriate use of the public's resources; and (9) Tribes need a voice in halibut management because it is an issue of sovereignty related to the agency's government-to-government obligations with Alaska Native Tribes and Corporations. ACSPI discussed the history of halibut fishing in the Pribilof Islands, previous related decisions, and the current action that were threatening their way of life, and encouraged NMFS and the Council to implement Alternative 4, which would provide relief to native families and communities, curtail out migration of families/residents, and restore the long-term health of the halibut resource.

During the Tribal consultation between NMFS and APIA, a summary of

Tribal Concerns included statements such as: (1) Alaska Native regional non-profit consortiums should have the same opportunity for Tribal consultation as Alaska Native Corporations; (2) few Tribes have requested Tribal consultation on Halibut ABM because the NMFS consultation process is difficult to navigate and needs improvement; (3) APIA supports Halibut ABM Alternative 4, option 3; (4) the lack of resource access due to Amendment 80 bycatch in the Pribilof communities is an environmental justice issue; (5) National Standard 5 (economic efficacy) cannot be the reason to continue the halibut allocation policy and there is a need to reduce direct economic impacts; (6) NMFS did a decent job of capturing the negative per capita impacts and burdens to small communities, but there are more impacts to add to the draft Analysis; (7) under National Standard 9 (reducing bycatch), use of a stringent bycatch limit will give Amendment 80 the power to do so; (8) halibut are culturally important and are critical to subsistence and commercial use; (9) direct losses to IFQ users, with IFQ quota lowered to unsupportable amounts, given this may be their only fishery, should be included in the Analysis; (10) all of the impacts discussed in the Analysis, except for groundfish and Amendment 80, are experienced by users in the Pribilof Islands; (11) the Council could do a better job describing the impacts to various users using a different analysis; and (12) NMFS should provide the Council with the best available data (including information on impact to recruitment classes and on current abundance and distribution) that allows many fishery users, as well as the ecosystem benefits of halibut, to continue.

During the November 29, 2021 Listening Session, a summary of Tribal Concerns included: (1) all Alaska Native representatives who participated in the listening session supported Alternative 4 for final action; (2) the draft Analysis need to consider impacts to all 17 affected halibut native fishing communities; (3) conservation of the halibut resource is essential to the socio ecological system; and (4) NMFS should continue to improve how the agency engages under Tribal consultation.

NMFS also conducted Tribal consultations with these entities on July 16 and November 24, 2021, respectively. Specific Tribal concerns conveyed during government-to-government Tribal consultation are described above in the first two paragraphs of this section. Alaska Native representative comments were also summarized and

responded to in the Comment Summary Report in Chapter 8 of the Analysis, which is posted on the NMFS Alaska Region website (see **ADDRESSES**). In summary, Tribal Concerns were focused on providing relief to native halibut fishing families and communities as well as needed improvements in NMFS Tribal engagement and consultation process. Individual detailed summaries of the Tribal Concerns listed above are available on the NMFS Alaska Region website (see **ADDRESSES**).

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

This final rule is needed to implement management improvements to minimize halibut bycatch in the Amendment 80 fisheries. NMFS's position is stated in the Preamble and Response to Comments sections.

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

From the perspective of a number of Alaska Native Tribes and Corporations, one of the primary factors in initiating this action was concern over the impacts of halibut bycatch to local Alaska Native fishing communities that rely on halibut for subsistence and commercial use. While the final fishery rule does not reflect the most conservative actions advocated by some Alaska Native representatives, it will minimize bycatch to the extent practicable within our authorities. To address Tribal concerns that the draft Analysis did not include the 17 Alaska communities potentially directly affected by this action, NMFS, during the initial screening criteria for the selection of Alaska communities for inclusion in the Analysis, identified 29 Alaska communities, 20 of which are in the BSAI region. These communities were selected for analysis as potentially substantially engaged in, and/or potentially substantially dependent on, the BSAI Area 4 halibut fishery sectors most likely to be directly affected by one or more of the proposed action alternatives communities. A total of 17 of these Alaska communities were considered halibut-dependent for the purposes of our analyses. Of the 17 Alaska communities identified, 16 are home to federally recognized Alaska Native Tribes.

NMFS and the Council have made great improvements in conducting direct outreach, communication, formal Tribal consultation, and informal engagement with Alaska Native representatives, which include Alaska Native Tribes, Alaska Native corporations, native organizations, and

communities over the last few years. NMFS and the Council made significant efforts to involve Alaska Native representatives in the Halibut ABM action. In conjunction with the Council outreach, NMFS provided information to Alaska Native representatives who were interested in engaging at each step in the process and consulted with interested Alaska Native representatives, as described in "A Description of the Extent of the Agency's Prior Consultation with Tribal Officials."

As a result of these consultations and engagements, NMFS made significant improvements to the Analysis and final rulemaking to: (1) accurately document the importance of the subsistence way of life and address resulting deficiencies within the suite of Analysis alternatives and analyses, and (2) uphold E.O. 13175 to improve the agency's Tribal consultation process regarding the Halibut ABM action.

NMFS acknowledges the long-standing challenges that Alaska Native representatives have had communicating with NMFS and appreciates the Tribes' commitment to communicating needed improvements to the consultation process. NMFS has taken several actions over the last year, including building staff capacity and hosting listening sessions, to improve Tribal consultation.

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

Alaska, Fisheries, Halibut, Reporting and recordkeeping requirements.

Dated: November 14, 2023.

#### **Samuel D. Rauch, III,**

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

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

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

■ 1. The authority citation for 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 to 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 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 § 679.21(b)(1)(i) and table 58 to this part for the annual determination process for Amendment 80 halibut PSC limits in the BSAI.

■ 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

[FR Doc. 2023–25513 Filed 11–22–23; 8:45 am]

BILLING CODE 3510–22–P