

Federal Communications Commission.

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Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014-03608 Filed 2-19-14; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 120723270-4100-02]

RIN 0648-BC39

#### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Amendment 95 to the Fishery Management Plan for Groundfish

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 95 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). These regulations modify halibut prohibited species catch (PSC) management in the Gulf of Alaska (GOA) by establishing halibut PSC limits for the GOA in Federal regulation and reducing the GOA halibut PSC limits for the trawl and hook-and-line gear sectors. The reduction to the trawl gear PSC limit also proportionately reduces a subset of trawl halibut PSC limits (also called sideboard limits) for American Fisheries Act, Amendment 80, and Central GOA Rockfish Program vessels. These regulations also incorporate three measures to minimize adverse economic impacts on fishing industry sectors. First, the reductions for these sectors will be phased-in over 3 years. Second, this action allows the Amendment 80 sector to roll over unused halibut PSC sideboard limits from one season to the subsequent season. Third, this action combines management of the deep-water and shallow-water halibut PSC limits from May 15 to June 30, which allows the aggregate halibut PSC limit to be used in either the deep-water or shallow-water fishery. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Effective March 24, 2014.

**ADDRESSES:** Electronic copies of the Environmental Assessment (EA), Regulatory Impact Review (RIR), Finding of No Significant Impact (FONSI) prepared for this action, collectively “the Analysis,” FMP, and proposed rule are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis or Rachel Baker, 907-586-7228.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Authority

NMFS establishes regulations to implement Amendment 95 to the FMP. NMFS manages the GOA groundfish fisheries in the exclusive economic zone off Alaska under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at subpart H of 50 CFR part 600. The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982.

##### Background

NMFS published a Notice of Availability for Amendment 95 on August 29, 2013 (78 FR 53419), with comments invited through October 28, 2013. NMFS published a proposed rule to implement Amendment 95 on September 17, 2013 (78 FR 57106) with comments invited through October 17, 2013. NMFS approved Amendment 95 on November 27, 2013. NMFS received comments on the FMP amendment and the proposed rule from 29 different entities. A summary of these comments and the responses by NMFS are provided under “Response to Comments” below. Those comments did not result in any modification to the proposed rule.

A detailed review of the provisions of Amendment 95, the proposed regulations, and the rationale for these regulations is provided in the preamble to the proposed rule (78 FR 57106, September 17, 2013) and is not repeated here. In addition to the **Federal Register**, the proposed rule is available from the NMFS Alaska Region Web site (see **ADDRESSES**). The preamble to this final rule provides a brief review of the

regulatory changes made by this final rule.

NMFS manages halibut PSC in groundfish fisheries under the authority of the Magnuson-Stevens Act. Prohibited species catch in the GOA is catch that may not be retained unless required under Section 3.6 of the FMP. The FMP and implementing regulations currently authorize the Council to recommend, and NMFS to approve, annual halibut PSC limits as a component of the proposed and final groundfish harvest specifications. Consistent with the Magnuson-Stevens Act’s National Standard 1 and National Standard 9, NMFS uses halibut PSC limits to minimize halibut bycatch in the groundfish fisheries to the extent practicable, while achieving, on a continuing basis, the optimum yield from the groundfish fisheries. The use of halibut PSC limits in the groundfish fisheries reduces halibut bycatch and promotes conservation of the halibut resource.

A PSC limit is an apportioned, non-retainable amount of fish provided to a groundfish fishery to limit the bycatch of that prohibited species (i.e., halibut) in a fishery. NMFS establishes halibut PSC limits to constrain the amount of halibut bycatch in the groundfish fishery. As described in Section 3.6 of the FMP, when a halibut PSC limit is reached in a specific management area, further fishing with specific types of gear or modes of operation is prohibited by those who take their halibut PSC limit in that area. Thus, halibut PSC limits impose an upper-limit on halibut bycatch. Halibut bycatch primarily occurs in the trawl and hook-and-line groundfish fisheries, although it also is incurred by vessels using pot and jig gear. Halibut bycatch in the groundfish fisheries may affect commercial, sport, and subsistence halibut fishing opportunities by decreasing the amount of halibut available for those fisheries.

NMFS manages groundfish fisheries by closing directed fishing for a given species when a species’ total allowable catch (TAC) or seasonal apportionment of a TAC is harvested. In addition, reaching an annual or seasonal trawl or hook-and-line halibut PSC limit results in closure of groundfish directed fisheries using that gear in the GOA for the remainder of the year or season, even if some of the groundfish TAC assigned to that gear for that fishery remains unharvested. NMFS manages halibut bycatch in the GOA by (1) establishing annual halibut PSC limits, and (2) apportioning those limits to fishery categories and seasons to accommodate halibut PSC needs in specific groundfish fisheries.

Historically, halibut PSC limits have been set during the annual groundfish harvest specifications process. The Council recommends proposed groundfish harvest specifications in October each year for the subsequent 2-year period. A 2-year harvest specification cycle allows harvest limits to be specified for a sufficient duration to ensure that catch limits are in place at the start of the second year. This allows fisheries to begin on January 1, pending the final publication of the subsequent set of harvest specifications. The proposed harvest specifications are published in the **Federal Register** for a 30-day comment period and final harvest specifications usually are published between mid-February and March of each year. The total annual halibut PSC limit in the GOA was set at 2,273 mt in the final 2013 and 2014 harvest specifications for the GOA (78 FR 13162, February 26, 2013). Of this amount, 1,973 mt is apportioned to trawl gear and 300 mt is apportioned to hook-and-line gear. This action reduces these limits, as described below under "Actions Implemented by this Rule."

Section 679.21(d)(5) authorizes NMFS to seasonally apportion the annual trawl and hook-and-line halibut PSC limits after consultation with the Council. The halibut PSC limits were most recently apportioned into five seasons for trawl gear and three seasons for the other hook-and-line fishery through the 2013 and 2014 GOA harvest specifications (78 FR 13162, February 26, 2013). During the annual harvest specifications process, the specific amount of halibut PSC limit is assigned to each of these seasons. The halibut PSC limit established for the demersal shelf rockfish (DSR) fishery in the eastern GOA management area is not subject to seasonal apportionment. Additional detail on the annual apportionment of halibut PSC limit by season and fishery is provided in the final 2013 and 2014 harvest specifications for the GOA (78 FR 13162, February 26, 2013).

#### **Actions Implemented by This Rule**

This action (1) establishes GOA halibut PSC limits in Federal regulation; (2) reduces the GOA halibut PSC limits for vessels using trawl and hook-and-line gear; (3) proportionately reduces trawl halibut PSC sideboard limits for American Fisheries Act (AFA), Amendment 80, and Central GOA Rockfish Program vessels; and (4) implements two management measures to modify the accounting of halibut PSC sideboard limits for Amendment 80 vessels and halibut PSC used by trawl vessels from May 15 through June 30. This action minimizes halibut PSC

limits to the extent practicable consistent with National Standard 9, while at the same time achieving, on a continuing basis, the optimum yield from the groundfish fishery. This action also supersedes the halibut PSC limits in the proposed 2014 and 2015 harvest specifications for the GOA (78 FR 74079, December 10, 2013).

#### *Action 1: Establishment of GOA Halibut PSC Limits in Federal Regulation*

This action incorporates the overall annual GOA halibut PSC limits for the trawl and hook-and-line sectors in Federal regulations at § 679.21. This replaces the process of establishing halibut PSC limits through the annual groundfish harvest specifications process. Since the GOA halibut PSC limits now are published in Federal regulations, they may only be modified by a regulatory amendment. Although this action establishes annual halibut PSC limits in Federal regulation, the Council and NMFS will continue to use the annual harvest specification process to apportion the trawl and hook-and-line sector's halibut PSC limits between fisheries and gear categories. The Council must consider the best available information when recommending these apportionments of halibut PSC limits consistent with existing regulations at § 679.21(d)(5).

#### *Action 2: Reduction of the GOA Halibut PSC Limits for the Hook-and-Line and Trawl Sectors*

This action reduces the GOA halibut PSC limits for vessels harvesting groundfish in the GOA. The GOA halibut PSC limit for each gear and fishery category is reduced from the annual halibut PSC limits specified in the proposed 2014 and 2015 harvest specifications for the GOA (78 FR 74079, December 10, 2013). These reductions apply to the 300 mt halibut PSC limit previously specified to the hook-and-line gear sector and the 1,973 mt halibut PSC limit previously specified to the trawl gear sector. Actual reductions vary by sector. The full reductions for the hook-and-line DSR fishery and the hook-and-line catcher/processor sector are implemented upon effectiveness of this rule. The reductions for the trawl sector and hook-and-line catcher vessel sectors are phased-in over 3 years. These halibut PSC limit reductions are described below.

This action reduces the PSC limits for the hook-and-line DSR fishery and the other hook-and-line sectors by different amounts. First, this action reduces the halibut PSC limit for the hook-and-line DSR fishery in the Southeast Outside District by 1 mt, from 10 mt in 2013, to

9 mt in 2014 and each year thereafter. Second, this action reduces the halibut PSC limit for the hook-and-line catcher/processor sector by 7 percent in 2014, and retains that level thereafter. Third, the halibut PSC limit for the other hook-and-line catcher vessel sector is reduced over 3 years, beginning with a 7-percent reduction in 2014, another 5-percent reduction in 2015, and an additional 3 percent in 2016. This results in a total reduction of 15 percent in 2016, compared to the 2013 halibut PSC limit, and the reduced limit is effective thereafter.

This action incorporates the existing other hook-and-line halibut PSC limit of 290 mt in regulation. That amount is the beginning basis for annually apportioning the other hook-and-line halibut PSC limit between the hook-and-line catcher vessel and catcher/processor sectors, using existing formulas that divide this limit between these two sectors (see (§ 679.21(d)(4)(iii))). These calculations are necessary to incorporate annual changes to the Pacific cod distribution between the Western and Central GOA management areas, which affects how the other hook-and-line halibut PSC limit is divided between the catcher vessel and catcher/processor sectors. Each sector's apportionment will then be reduced by the actual percentage reductions implemented by this action.

The trawl halibut PSC limit reductions implemented by this action are based on reductions from the currently specified trawl halibut PSC limit of 1,973 mt, as established in the final 2013 and 2014 harvest specifications for the GOA (78 FR 13162, February 26, 2013). Similar to the other hook-and-line catcher vessel sector, the halibut PSC limit for the trawl sector will be reduced by 15 percent and phased in over 3 years. The halibut PSC limit will be reduced by 7 percent in 2014, another 5 percent in 2015, and an additional 3 percent in 2016. This results in a total reduction of 15 percent in 2016 as compared to the 2013 halibut PSC limit. This new PSC limit will remain in effect each year thereafter.

The trawl halibut PSC limit of 191.4 mt apportioned to the Central GOA Rockfish Program (Rockfish Program) is not reduced by this action. The Rockfish Program (76 FR 81248, December 27, 2011) requires NMFS to assign 191.4 mt of the deep-water fishery's halibut PSC limit apportionment to participants in the Rockfish Program. This fixed amount is used to support fishing for specific allocations of groundfish species under that program (see Table 28d to part 679). The Rockfish Program

was exempted from these halibut PSC limit reductions because participants in the Rockfish Program already had their apportionment of halibut PSC limit reduced relative to historic use of halibut PSC in the Central GOA rockfish fisheries upon implementation of the Rockfish Program on December 27, 2011.

In order to maintain the Rockfish Program's halibut PSC limit, NMFS will subtract 191.4 mt of the halibut PSC limit that is apportioned to the Rockfish Program from the overall trawl halibut PSC limit before calculating the percentage reductions to the trawl halibut PSC limit implemented by this action. The 191.4 mt amount will be added back to the trawl halibut PSC limit after calculating the 7, 12, and 15 percent annual reduction during the phased-in implementation of the trawl halibut PSC limit reductions. This will prevent the percentage reductions to the overall annual GOA trawl halibut PSC limit from being applied to the halibut PSC limit apportioned to the Rockfish Program.

The annual halibut PSC limit apportionments for the deep-water fishery, shallow-water fishery, and each

of those fisheries' respective seasonal apportionments will continue to be recommended by the Council and published in the annual harvest specifications, rather than in Federal regulations. The halibut PSC limit reductions implemented by this action also will result in reductions to the trawl sector's seasonal apportionments of halibut PSC limits.

The following tables illustrate the reductions that will be made to the proposed 2014 halibut PSC limits (78 FR 74079, December 10, 2013) in the final 2014 and 2015 harvest specifications. These examples portray the 7-percent reduction to the trawl and hook-and-line sectors that are implemented in 2014 with this action, as well as the 1 mt reduction to the DSR fishery's halibut PSC limit. The additional percentage reductions in 2015 and later years that also are implemented by this action are not included in the examples presented in these tables.

Table 1 lists the 2014 halibut PSC limits and allowances that will be established for trawl and hook-and-line sectors. Table 2 portrays the 2014 seasonal apportionments of halibut PSC

limits between the trawl deep-water and shallow-water fisheries. Finally, Table 3 lists the 2014 seasonal apportionment of halibut PSC limits between the hook-and-line catcher vessel and catcher/processor sectors. Each of the specific halibut PSC limits and apportionments included in these three tables will be implemented through the final 2014 and 2015 harvest specifications for the GOA, which is an outgrowth of the proposed 2014 and 2015 harvest specifications.

NMFS intends to incorporate the halibut PSC limit reductions (7 percent) implemented through this action into the final 2014 and 2015 harvest specifications. This includes reductions to the halibut PSC limits, apportionments, and sideboard limits that were included in the proposed 2014 and 2015 harvest specifications (78 FR 74079, December 10, 2013). The final 2014 and 2015 harvest specifications also will include the additional halibut PSC limit reduction (12 percent) for the hook-and-line catcher vessel and trawl sectors for 2015. NMFS anticipates that the final 2014 and 2015 harvest specifications will be effective in March 2014.

TABLE 1—2014 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS INCORPORATING A 7-PERCENT REDUCTION TO THE TRAWL AND OTHER HOOK-AND-LINE SECTORS AND A 1 MT REDUCTION TO THE DSR HOOK-AND-LINE SECTOR

[Values are in metric tons]

Trawl gear			Hook-and-line gear				
Season	Percent	Amount	Other than DSR			DSR	
			Season	Percent	Amount	Season	Amount
January 20–April 1 .....	27.5	508	January 1–June 10 .....	86	233	January 1–December 31 ....	9
April 1–July 1 .....	20	370	June 10–September 1 .....	2	5	.....	.....
July 1–September 1 .....	30	554	September 1–December 31 .....	12	32	.....	.....
September 1–October 1 .....	7.5	139	.....	.....	.....	.....	.....
October 1–December 31 .....	15	277	.....	.....	.....	.....	.....
Total .....	.....	1,848	.....	.....	270	.....	9

TABLE 2—2014 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY CATEGORIES

[Values are in metric tons]

Season	Shallow-water fishery	Deep-water fishery	Total
January 20–April 1 .....	416	92	508
April 1–July 1 .....	92	277	369
July 1–September 1 .....	185	370	555
September 1–October 1 .....	139	( <sup>1</sup> )	139
Subtotal January 20–October 1 .....	832	739	1,571
October 1–December 31 .....	.....	.....	277
Total .....	.....	.....	1,848

<sup>1</sup> Any remainder.

TABLE 3—2014 APPORTIONMENT OF THE “OTHER HOOK-AND-LINE FISHERIES” ANNUAL HALIBUT PSC ALLOWANCE BETWEEN THE HOOK-AND-LINE GEAR CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS

[Values are in metric tons]

“Other hook-and-line” allowance	Hook-and-line sector	Percent of annual amount	Sector annual amount	Season	Seasonal percentage	Sector seasonal amount
270	Catcher Vessel	57.3	154	January 1–June 10	86	132
				June 10–September 1	2	3
				September 1–December 31	12	18
	Catcher/Processor	42.7	115	January 1–June 10	86	99
				June 10–September 1	2	2
				September 1–December 31	12	14

*Action 3: Reduce the Halibut PSC Sideboard Limits for AFA, Amendment 80, and Rockfish Program Vessels*

Over time, a variety of halibut PSC use limits, commonly known as sideboard limits, have been implemented to restrict the amount of halibut PSC limit available to specific participants in GOA groundfish fisheries. Sideboard limits serve as fishery-specific limits that require participants subject to the sideboard limit to stop fishing for specific groundfish once that sideboard limit is reached. Sideboard limits were adopted as part of the AFA, Amendment 80, and Central GOA Rockfish catch share programs to prevent program participants from using the flexibility provided by catch share allocations to increase their harvests in fisheries not subject to exclusive allocations. Regulations that establish halibut PSC sideboard limits are at § 679.64(b)(4) for non-exempt AFA catcher vessels subject to GOA halibut PSC sideboard limits, § 679.92(b)(2) for the Amendment 80 sector, and § 679.82(e) for catcher/processors that opt-out of a Rockfish Program cooperative and are subject to GOA halibut PSC sideboard limits.

This action does not revise the regulations that establish the methodology for calculating the specific percentage of the trawl halibut PSC limit apportioned to the AFA Program, Amendment 80 sector, or Rockfish Program as halibut PSC sideboard limits. Rather, the AFA Program, Amendment 80 sector, and Rockfish Program halibut PSC sideboard limits will continue to be calculated during the annual harvest specifications process as percentages of the GOA halibut PSC limit apportioned to the trawl sector. However, because the annual trawl halibut PSC limit is reduced by this action, the annual amount of each of these management program’s halibut PSC sideboard limit also is proportionately reduced. Examples of the reductions to the halibut PSC sideboard limits

implemented by this action are provided in the proposed rule for this action (78 FR 57106, September 17, 2013).

*Action 4: Implement Changes to the Accounting of Halibut PSC Sideboard Limits for Amendment 80 Vessels and Revise Halibut PSC Apportionments Used by Trawl Vessels From May 15 Through June 30*

This action implements two management measures that are intended to provide operational flexibility to trawl sectors that are constrained by current regulatory restrictions associated with halibut PSC sideboard limits and the segregation of trawl halibut PSC apportionments between the deep-water and shallow-water fisheries. These management measures will (1) allow the Amendment 80 sector to roll over unused halibut PSC sideboard limits from one season to the next season, and (2) allow NMFS to combine available trawl halibut PSC limit apportionments in the second season deep-water and shallow-water fisheries for use in either fishery from May 15 through June 30. These management measures will help to maintain groundfish harvest while minimizing halibut bycatch by these sectors to the extent practicable. The measures will provide the Amendment 80 sectors and deep-water and shallow-water trawl fisheries additional flexibility and the incentive to participate in fisheries at times of the year that may have lower halibut PSC rates relative to other times of the year. Both of these measures are summarized below.

The first management measure allows the Amendment 80 sector to roll over unused halibut PSC sideboard limits from one season to the next season so that the Amendment 80 sector can, potentially, maximize their groundfish catch by using their halibut PSC sideboard limits more efficiently. Non-exempt AFA catcher vessels, Rockfish Program vessels, and vessels not

operating under sideboard limits already have this flexibility. Regulations at § 679.92(b)(2) prevent Amendment 80 vessels from using more halibut PSC sideboard limit than is available in each deep-water or shallow-water fishery and season. If the Amendment 80 deep-water or shallow-water seasonal halibut PSC sideboard limit is reached, then all directed fishing for all species in that fishery close in the GOA for that season. This action amends § 679.92(b)(2) to allow Amendment 80 vessels to roll over unused halibut PSC sideboard limits from one season to the next season.

The second management measure amends regulations at § 679.21(d)(4) to allow all GOA trawl participants to access, on an annual basis, any remaining halibut PSC limits from the first season in either the deep-water fishery or shallow-water fishery during the second season from May 15 through June 30 (except vessels managed under Amendment 80 halibut PSC sideboard limits). Under combined management of halibut PSC limits from May 15 through June 30, GOA trawl gear vessels will be able to use halibut PSC limits that remain in the deep-water complex or shallow-water complex in either the deep-water or shallow-water fisheries. The second season will remain open as long as the combined halibut PSC limit is available. This combination of the management of the deep-water and shallow-water halibut PSC limits from May 15 to June 30 will allow the trawl sector to use remaining second season halibut PSC limits in either fishery complex and provide the trawl sector with greater opportunity to fully harvest TAC for more economically valuable species. After the second season is complete on June 15, NMFS will re-specify halibut PSC limits for the third season, and resume separate management of halibut PSC limits in the deep-water and shallow-water fishery complexes.

### Changes From the Proposed Rule

This rule does not change any of the proposed regulations contained in the proposed rule prepared for this action (78 FR 74079, December 10, 2013).

### Summary of Regulatory Changes

This action makes the following changes to regulations at 50 CFR part 679:

- Revise § 679.21, prohibited species bycatch management, to incorporate explicit annual GOA halibut PSC limits for the trawl and hook-and-line fisheries, add the incremental reduction of the annual PSC limit over a 3-year period, and provide NMFS the ability to re-specify halibut PSC limits in the second season deep-water and shallow-water species fishery categories to aggregate the available halibut PSC limits for use in either fishery.
- Revise § 679.92, Amendment 80 Program halibut PSC use caps and sideboard limits, to remove restrictions on the roll over of seasonal halibut PSC sideboard limits from one season to the next season.
- Revise Table 38 to 50 CFR part 679 to incorporate in this table the seasonal halibut PSC sideboard limit roll over provisions made in § 679.92.

### Response to Comments

NMFS received 29 comment letters containing 34 substantive comments during the public comment periods on the notice of availability for Amendment 95 and the proposed rule to implement Amendment 95. Commenters varied in their support for and opposition to Amendment 95. NMFS also received two letters that were not relevant to the proposed action. No changes were made to this final rule in response to the comment letters received. NMFS' response to the public comments on Amendment 95 and the proposed rule to implement Amendment 95 is presented below.

#### General Comments

*Comment 1:* Several commenters expressed general support for Amendment 95 to the FMP and its implementing regulations.

*Response:* NMFS acknowledges the comment.

*Comment 2:* Several commenters asserted that the comment period for the proposed rule was inadequate and asked for an extension of the comment period. The commenters noted that from October 1, 2013, through October 16, 2013, portions of the Federal government were shut-down due to a lapse of appropriations. The commenters stated that this shutdown affected their ability to contact NMFS

staff during a portion of the comment period for the notice of availability and the proposed rule to implement Amendment 95. Some commenters believed they were disadvantaged by not being able to discuss elements of the action with agency staff during the public comment period.

*Response:* NMFS does not believe that an extended comment period was warranted because the government shutdown did not prevent the public from reviewing the proposed rule, the Analysis prepared for this action, or submitting comments, either electronically or in writing, on the notice of availability and the proposed rule during the period from October 1, 2013, through October 16, 2013. NMFS considered comments received during the comment periods on the proposed rule (September 17 through October 17, 2013) and the notice of availability (August 29 through October 28, 2013) in this final rule. These comment periods occurred prior to and after the shutdown. NMFS notes that the public was also afforded multiple opportunities to provide comments to the Council as it developed Amendment 95 (see Section 1.2.3 of the Analysis that describes the Council action on Amendment 95).

#### Comments Associated With the Range of Alternatives and Practicability of Halibut PSC Reductions

*Comment 3:* The Secretary should partially disapprove Amendment 95. The proposed 15-percent reduction is not practicable for the trawl fleet to meet without additional management tools, such as a catch share program, or other measures that allow harvesters and processors to better manage operations and more effectively manage halibut PSC. The proposed 15 percent PSC limit reduction would have far reaching negative economic effects due to the potential reduction of groundfish harvest. NMFS should only implement the first 7-percent step of the proposed halibut PSC limit reduction for the trawl sector.

*Response:* NMFS approved Amendment 95 on November 26, 2013. Section 303(a)(3) of the Magnuson-Stevens Act requires that NMFS, acting on behalf of the Secretary of Commerce, can disapprove a plan amendment only after specifying the applicable law with which the plan amendment is inconsistent; the nature of such inconsistencies; and recommendations concerning the actions that could be taken by the Council to conform such plan amendment to the requirements of applicable law. Before approving Amendment 95, NMFS considered these

factors and concluded that Amendment 95 is not inconsistent with applicable law. For the following reasons, NMFS believes that limiting the reduction in trawl PSC limits to only 7 percent relative to the current trawl PSC limits would not meet the objectives of the action to minimize halibut bycatch to the extent practicable.

Amendment 95 minimizes halibut PSC to the extent practicable considering the management measures currently available to the GOA groundfish fleet, the derby-style prosecution of some components of the groundfish fishery, the uncertainty about the extent to which halibut PSC in the groundfish fishery has adverse effects on the halibut resource, and the need to ensure that catch in the trawl (and hook-and-line) fisheries contributes to the achievement of optimum yield in the groundfish fisheries. As described in the proposed rule (78 FR 57106, September 17, 2013) and Section 4.6.3 of the Analysis, the Amendment 95 halibut PSC limit reductions may result in earlier groundfish season closures, attendant reductions in target groundfish catches when the lower seasonal PSC limit is reached, and forgone groundfish revenue for sectors that are unable to fully prosecute TAC limits. Participants in the groundfish fisheries could also incur additional costs associated with halibut PSC avoidance.

Although the proposed halibut PSC limit reductions may result in earlier season closures and an attendant reduction in target groundfish catches when the lower seasonal PSC limit is reached, the frequency and extent of early season closures and effects of such closures will vary across gear types and segments of the fleets to the extent that fleets are willing to change fishing behavior in response to lower PSC limits. If sector participants are successful in taking action to control halibut PSC use to avoid a closure, additional gross revenues may be gained. Historical records and NMFS' management experience in the trawl fisheries indicate that the amount of halibut PSC in the GOA groundfish fisheries can be reduced through increased communication among industry participants and coordination of fishing activities and effort. Section 4.6.4 of the Analysis reviewed potential measures that could be adopted by participants to reduce halibut PSC and factors that are likely to affect the willingness of participants to adopt these measures.

The Analysis considered not only changes in trawl sector revenues, but also changes in costs resulting from the

fleets' altered fishing behavior to minimize halibut bycatch. However, these effects are not possible to directly quantify with available information. The effects on communities are summarized in Section 4.6.7 of the Analysis, and examined in detail in Appendix 7 to the Analysis. Appendix 7 also summarizes mitigating factors for possible adverse impacts on the primary GOA communities associated with the trawl groundfish fishery. The halibut PSC limit reductions implemented by this final rule balance the potential financial effects of reduced groundfish harvests and increased costs to groundfish fleets, the benefits of minimizing bycatch to the extent practicable, the potential benefits that may occur from reducing a known source of mortality to the halibut stock, and potential additional harvest opportunity that may accrue to other users of the halibut resource.

The Council and NMFS recognize that the trawl and catcher vessel hook-and-line sectors will likely experience the largest economic constraints following implementation of this action. Therefore, Amendment 95 implements three measures to minimize adverse economic impacts on the trawl and catcher vessel hook-and-line sectors to the extent practicable. First, this action would phase in the reductions for these sectors over three years to mitigate the impact the halibut PSC limit reductions have on groundfish fishery revenue while the fleets modify their fishing behaviors and adopt measures such as those described in Section 4.6.4 of the Analysis to reduce halibut PSC. This action would reduce halibut PSC limits assigned to the trawl and catcher vessel sectors by 7 percent in the first year of implementation, an additional 5 percent in the second year, and the final 3 percent in the third year. Second, this action would allow the Amendment 80 sector to roll over unused halibut PSC sideboard limits from one season to the next season. Finally, this action would combine management of the deep-water and shallow-water halibut PSC limits from May 15 to June 30 for use in either fishery. These measures are described under Action 2 and Action 4 in the preamble.

In addition, the Council and NMFS recognized that additional restrictions beyond those considered in this action would not meet the stated purpose and need for the action because of the relatively limited ability of the trawl and hook-and-line fleets to adapt to additional constraints on halibut PSC (see Sections 2.4 and 3.8.1.7 of the Analysis). The Council is actively developing an action known as the GOA trawl bycatch management program,

with a primary objective of improving incentives for PSC reduction and PSC management while at the same time achieving, on a continuing basis, the optimum yield from the groundfish fishery.

*Comment 4:* The EA did not consider a reasonable range of alternatives because the maximum PSC limit reduction analyzed was 15 percent. The EA should have analyzed PSC limit reductions of up to 50 percent.

*Response:* The EA analyzes a reasonable range of alternatives that meet the purpose and need for the proposed action. As explained in Section 2.5 of the Analysis and in the preamble to the proposed rule (78 FR 57106, September 17, 2013), while some members of the public recommended greater halibut PSC limit reductions, greater halibut PSC limit reductions do not meet the purpose and need for this action (see Section 1.1 of the Analysis). The proposed action and its alternatives minimize halibut PSC to the extent practicable and achieve, on a continuing basis, the optimum yield from the groundfish fishery. The Council and NMFS developed a suite of alternatives in consideration of the management measures currently available to the groundfish fleet, the derby-style prosecution of some components of the groundfish fishery, the uncertainty about the extent to which halibut PSC in the groundfish fishery has adverse effects on the halibut resource, and the need to ensure that catch in the trawl and hook-and-line fisheries contributes to the achievement of optimum yield in the groundfish fisheries. Halibut bycatch cannot be avoided completely and more stringent PSC limit reductions would severely limit the groundfish fleet. Section 4.6.3 of the Analysis notes that reductions of halibut PSC limits beyond those considered in this action would have been likely, on average, to constrain the total groundfish harvests from the trawl and hook-and-line fleets in each year since 2003. Section 4.6.4 of the Analysis notes that given the existing management measures in the trawl and hook-and-line fleets, the ability of these fleets and fishery managers to limit halibut PSC, while achieving optimum yield on a continuing basis, is limited.

*Comment 5:* NMFS should disapprove Amendment 95 and remand it to the Council for development of alternatives that would implement higher levels of PSC limit reductions. The Council and NMFS did not adequately address key halibut stock uncertainties or fully consider the impacts of halibut PSC on the halibut stock and on the directed halibut fisheries.

*Response:* NMFS approved Amendment 95 on November 26, 2013. As noted in the response to Comment 3, section 303(a)(3) of the Magnuson-Stevens Act requires that NMFS, acting on behalf of the Secretary of Commerce, can disapprove a plan amendment only after specifying the applicable law with which the plan amendment is inconsistent; the nature of such inconsistencies; and recommendations concerning the actions that could be taken by the Council to conform such plan amendment to the requirements of applicable law. Before approving Amendment 95, NMFS considered these factors and concluded that Amendment 95 is not inconsistent with applicable law. Specifically, NMFS considered whether the range of alternatives considered by the Council and NMFS was consistent with the National Environmental Policy Act (NEPA). As noted in the responses to Comments 3 and 4, the range of alternatives considered is consistent with the purpose and need for the action to minimize halibut bycatch in the groundfish fisheries to the extent practicable. NMFS did not identify a need for the Council to consider a range of alternatives beyond those considered. NMFS notes that nothing in this action would preclude the Council or NMFS from considering additional changes in halibut PSC limits through a subsequent action. Delaying action pending additional analysis of halibut PSC data would be inconsistent with National Standard 9 obligations to minimize halibut bycatch to the extent practicable, and would delay the benefits of reducing halibut PSC to the extent practicable in groundfish fisheries.

*Comment 6:* In addition to considering halibut PSC limit reductions greater than 15 percent, there should be additional consideration of prioritizing the apportionment of halibut PSC to gear types with relatively lower bycatch than other gear types and modifying the behavior of the fisheries with high bycatch.

*Response:* NMFS interprets this comment as requesting that NMFS establish PSC limits based on the relative rates of halibut PSC use among the groundfish fisheries. This approach would be inconsistent with the overall purpose and need for this action, and would be outside the scope of this action. Furthermore, it would require that the Council and NMFS establish a method for assessing bycatch rates and apportioning halibut PSC among those gear types. Such an approach would not necessarily result in lower halibut PSC, but would reapportion the existing

halibut PSC limits. NMFS notes that this action does not alter the process for the apportionment of PSC limits among gear types, and during the harvest specification process the Council considers factors relevant to the apportionment of PSC limits among gear types. Section 679.21(d)(3) and (4) establish the annual halibut PSC limit apportionments to trawl and hook-and-line gear in the GOA through the annual groundfish harvest specification process. The apportionment of halibut PSC limits by gear, fishery category, and seasons under the annual harvest specifications process provides the opportunity for groundfish harvests in specific fisheries. This apportionment process ensures that halibut PSC limit is available for use in groundfish fisheries earlier in the year (e.g., the trawl deep-water fisheries in the first season), but limits that use so that halibut PSC limit remains to support other groundfish fisheries that occur later in the year (e.g., the trawl shallow-water fisheries in the fourth season). The limits assigned to each season reflect halibut PSC likely to be taken during specific seasons by specific fisheries.

The commenter did not provide a specific method to accomplish their recommendation, but NMFS encourages the commenter to participate in the Council process associated with the annual harvest specifications, particularly with respect to providing potential suggestions for apportioning halibut PSC limits.

#### *Comments Associated With Halibut Biology and Conservation*

*Comment 7:* Halibut PSC limit reductions are needed in the GOA groundfish fisheries because halibut PSC has direct impacts on the halibut stock and on the directed halibut fisheries.

*Response:* This action is necessary to minimize halibut PSC to the extent practicable. NMFS notes that the impacts of halibut PSC, and the reductions in halibut PSC limits implemented by this action, on the halibut stock and on the directed halibut fisheries are uncertain. In recommending Amendment 95, the Council considered the best scientific information available on the biological condition of the halibut stock (see Section 3.2 of the Analysis). Recent declines in halibut exploitable biomass, particularly in the GOA, underscore the need to minimize bycatch of halibut in the groundfish fisheries to the extent practicable. Since the current GOA halibut PSC limits were established, the total biomass and abundance of halibut has varied, and in recent years the stock

is experiencing an ongoing decline in size-at-age for all ages in all areas. While the cause of this decline in size-at-age is not fully understood, the commercial and charter halibut sectors have experienced decreased catch limits as a result.

The Council and NMFS considered the potential for GOA halibut PSC limit reductions to lead to future increases in the amount of halibut available for the direct halibut fisheries. Section 3.2.8 of the Analysis describes that reductions in halibut mortality resulting from reductions in PSC in the groundfish fisheries could contribute to future increases in halibut biomass, may promote improved halibut reproductive potential, and may contribute to increased halibut yields available to harvesters in the directed halibut fisheries. However, the Analysis also estimates that any potential increases in halibut biomass from reduced PSC are likely to be relatively small, and as a result, are unlikely to have a significant impact on the halibut stock or the directed halibut fisheries (see Section 2.4 of the Analysis). Overall, the 2011 halibut PSC in the GOA represented only approximately 12 percent of the known removals from the halibut exploitable biomass in the GOA, as portrayed in Section 3.2.2 of the Analysis. Therefore, reductions in existing halibut PSC limits would not be expected to result in substantial changes in the halibut biomass or the amount available to other halibut resource users. As noted in Section 2.4 of the Analysis, the Council considered a range of alternatives to assess the impacts of minimizing halibut bycatch to the extent practicable while preserving the potential for the full harvest of the TACs assigned to the trawl and hook-and-line sectors. The Council considered the trade-offs between the halibut saved and the forgone groundfish catch. Based on this information, NMFS has determined that the GOA halibut PSC limit reductions implemented by this final rule are precautionary measures given the uncertainty of the impacts of halibut PSC on the halibut stock and other users of the halibut resource.

*Comment 8:* NMFS should implement greater halibut PSC limit reductions in the groundfish fisheries. Halibut PSC limits have not changed appreciably for many years, while the catch limits in directed halibut fisheries have significantly decreased. While commercial and charter fishermen have made sacrifices to conserve the halibut resource as the population diminishes, the groundfish fishery has been allowed to continue taking the same level of bycatch. This has resulted in an

inequitable distribution of halibut conservation measures between the groundfish and directed halibut fisheries.

*Response:* The Council and NMFS determined that it was necessary to evaluate halibut PSC limits for the GOA groundfish fisheries. NMFS agrees that GOA halibut PSC limits have remained relatively constant in recent years as catch limits for the commercial and charter halibut fisheries have declined. However, the purpose and need for this action is not to reduce halibut PSC limits proportional with changes in directed fishery allocations. The purpose and need for the action is to minimize bycatch to the extent practicable while at the same time achieving, on a continuing basis, the optimum yield from the groundfish fishery by preserving the potential for the full harvest of the TACs assigned to the trawl and hook-and-line sectors. Sections 3.2.3 and 3.2.5 of the Analysis describe trends in bycatch of halibut in the groundfish fisheries and directed halibut harvests.

This action implements reductions to halibut PSC limits, which are limits specifically applicable to the groundfish fisheries. Section 2.5 of the Analysis notes that the Council considered larger reductions to halibut PSC limits than those implemented by this final rule. However, halibut bycatch cannot be avoided completely, and more stringent PSC limit reductions would severely limit the ability of the groundfish fleet to fully harvest total allowable catches of groundfish species. Therefore, greater reductions in halibut PSC limits are not practicable and do not meet the purpose and need for this action.

Information presented in the Section 4.6.3 of the Analysis shows that reductions beyond those considered in this action would have limited groundfish harvests, on average, in almost all years since 2003. The proposed rule and Section 4.6.4 of the Analysis describe that the Council considered the ability of trawl and hook-and-line groundfish fisheries to reduce halibut PSC use, how much of the halibut PSC limit had been left unused by each sector in the past, and the potential effects of reduced PSC limits on GOA groundfish catch and revenue. Section 4.6.3 of the Analysis provided estimates of groundfish catch and revenue that would have been forgone in the GOA groundfish fisheries if halibut PSC limits had been reduced from the halibut PSC limits in place from 2003 through 2010. Reduced halibut PSC limits could potentially impact revenue generated from the groundfish fisheries, and some

groundfish fisheries may not harvest their full TAC. Currently, most of the groundfish fleet in the GOA is involved in competitive fisheries and does not have available tools, such as catch share programs or fishery cooperatives, that have been demonstrated to successfully reduce halibut PSC and still maintain current harvest levels of groundfish (for example, see the discussion of the Rockfish Program in Section 4.5.5 of the Analysis). Therefore, the Council and NMFS determined that reductions to halibut PSC limits beyond those implemented by this final rule are not practicable.

*Comment 9:* The proposed halibut PSC limit reductions are critical to the conservation of the halibut stock and to reducing impacts on other halibut users and fishing communities.

*Response:* Halibut PSC limit reductions may reduce a known source of mortality from the halibut biomass in the GOA, which in turn could benefit the directed halibut fisheries as well as other halibut resource users (also see response to Comment 8). However, as noted in response to Comment 7, the impacts of halibut PSC, and the reductions in halibut PSC limits implemented by this action on the halibut stock and on the directed halibut fisheries, are uncertain. In selecting the preferred alternative, the Council considered changes in groundfish and halibut management programs and fishing patterns, environmental conditions, fishing technology, and knowledge of halibut and groundfish stocks. The Council considered the trade-offs between the halibut saved and the forgone groundfish catch.

The Analysis examines the impacts of potential halibut PSC limit reductions on the directed halibut fisheries in Section 4.6.2. This includes projections of the potential amount of halibut that could be available for harvest in the charter and commercial individual fishing quota (IFQ) fisheries, depending on different reduction levels to the hook-and-line and trawl halibut PSC limits. It also includes estimates of increases in revenue in the charter and commercial individual fishing quota (IFQ) fisheries due to halibut PSC limit reductions in the groundfish fisheries. The Analysis demonstrates that there may be a potential benefit to the directed halibut fisheries and the consumers of halibut harvested in those fisheries under various halibut PSC limit reductions.

*Comment 10:* The proposed reductions in halibut PSC limits are minimal compared to the reductions to the directed halibut fishery catch limits.

Therefore, NMFS should implement the full halibut PSC reductions in the first year of implementation as a starting point for future reductions to halibut PSC limits.

*Response:* NMFS acknowledges that the commercial and sport halibut fisheries have been subject to decreased annual catch limits in recent years, as described in Section 4.5.1 of the Analysis. However, the purpose and need for the action is to minimize bycatch to the extent practicable while at the same time achieving, on a continuing basis, the optimum yield from the groundfish fishery by preserving the potential for the full harvest of the TACs assigned to the trawl and hook-and-line sectors. The trawl and catcher vessel hook-and-line sectors will likely experience the largest economic constraints following implementation of this action. Consistent with National Standard 8, this action phases in the 15-percent reduction over the course of three years to minimize the adverse economic consequences of Amendment 95 on the trawl and catcher vessel hook-and-line sectors to the extent practicable. NMFS intends that phasing in the halibut PSC limit reductions for these sectors will mitigate the impact Amendment 95 will have on groundfish fishery revenue while the fleets modify their fishing behaviors and adopt measures such as those described in Section 4.6.4 of the Analysis. Additional reductions to halibut PSC limits may be implemented through subsequent actions should further minimization of halibut bycatch in the groundfish fisheries be practicable.

*Comment 10:* Biological uncertainties associated with the halibut resource warrant a more precautionary approach to halibut bycatch management than the halibut PSC reductions proposed in Amendment 95. The precautionary approach requires that fisheries policies manage risks so as to minimize serious or irreversible damage to the resource until further evidence is gathered. The reductions to halibut PSC proposed in Amendment 95 are not precautionary enough given the uncertainties associated with the long-term impacts of halibut PSC removals on juvenile and female halibut, depressed growth rates, and migration patterns.

*Response:* Section 3.2 of the Analysis presents a summary of the current condition of the Pacific halibut stock, including a discussion of the uncertainties mentioned by the commenter. The discussion in the EA is based on stock assessment and biological information that is primarily derived from the IPHC's research and

findings. The Council and NMFS considered the information presented in the Analysis, the best available scientific information, in recommending and implementing Amendment 95. This action follows the precautionary principle by implementing conservation measures to reduce overall halibut PSC in the groundfish fisheries even though there is limited data and information to determine the impact of halibut PSC on halibut stocks. Although the effects of halibut PSC in the groundfish fishery on the halibut fishery are uncertain, this action reduces the overall potential impacts by reducing existing halibut PSC limits in the groundfish fisheries. The halibut PSC limit reductions in the groundfish fisheries minimize bycatch to the extent practicable given the tools currently available to the fleet, the derby style prosecution of the fishery, the uncertainty about whether the bycatch has adverse effects on the halibut stocks, and the need to ensure that the trawl and hook-and-line fisheries contribute to the achievement of optimum yield in the groundfish fisheries.

*Comment 11:* Climate change and ocean acidification effects warrant a precautionary approach to halibut PSC. NMFS should consider climate change as an important factor that warrants a more precautionary approach, i.e., higher halibut PSC limit reductions.

*Response:* NMFS did consider the potential effects of climate change in Sections 3.7 and 3.8.2 of the Analysis. Section 3.8.2 of the Analysis notes that "long-term climate change and regime shifts could have impacts on the reproductive success of Pacific halibut depending on the direction of the shift. It has been shown that warm trends favor recruitment while cool trends weaken recruitment in most fish species including halibut." Notwithstanding this information, the extent to which climate change impacts halibut stocks is uncertain. This action adheres to the precautionary principle by implementing conservation measures to reduce overall halibut PSC in the groundfish fisheries to the extent practicable even though there is limited data and information to determine the extent of climate change impacts on the halibut resource or the extent to which halibut PSC impacts halibut stocks.

NMFS continues to study a variety of environmental factors associated with the GOA and Bering Sea and Aleutian Islands (BSAI) ecosystems. Examples of such research may be accessed at the Web site for the Habitat and Ecological Processes Research Program, <http://www.afsc.noaa.gov/HEPR/default.php>. NMFS will continue to monitor the best available scientific information

concerning climate change and ocean acidification in coordination with the IPHC. This action does not preclude NMFS from considering and implementing additional management measures in the future in response to new information on climate change or ocean acidification.

*Comment 12:* The EA incorrectly characterizes the environmental baseline and the description of status quo is wrong because the EA relies on environmental analyses that predate the recent and sharp halibut decline. Delay action pending additional scientific research that addresses some of the uncertainties regarding the halibut resource.

*Response:* The EA contained in the Analysis summarizes previous NEPA documents for context and background, and incorporates those documents by reference to focus the EA analysis on the issues ripe for decision and eliminate repetitive discussions. The EA does not rely on these documents to define the environmental baseline. In the EA, the environmental baseline is the current existing conditions at the time of the analysis. The EA summarizes the most recent relevant information from a variety of sources to characterize the environmental baseline. Importantly, the EA provides the best available information from a variety of sources, including the IPHC on halibut biomass and explains recent trends in abundance (see Section 3.2.4 of the Analysis).

In the EA, Alternative 1 is the no action alternative, which is the status quo. The EA correctly describes no action/status quo as the PSC limits that would be in place if NMFS took no action to reduce them under any of the action alternatives. The EA provides great detail on the recent relevant information from a variety of sources to characterize halibut PSC in the groundfish fisheries under the status quo PSC limits. The EA also provides detailed information on halibut PSC in the groundfish fisheries relative to total fishery removals (see Section 3.2.3 of the Analysis).

The EA provides the information necessary to make an informed decision on the proposed action to reduce halibut PSC limits to the extent practicable. The EA sharply defines the issues, rigorously explores and objectively evaluates the alternatives, and provides a clear basis for choice among the alternatives. While NMFS and the IPHC are continually conducting scientific research to improve our understanding of the halibut resource, the EA provides sufficient information to make an informed decision on this action. Delaying action pending additional

research would delay the benefits of minimizing halibut PSC to the extent practicable in groundfish fisheries, and would be inconsistent with National Standard 9 obligations to minimize bycatch to the extent practicable.

*Comment 13:* The EA does not adequately address NMFS' past, present, or prospective inability to monitor halibut PSC in the trawl fisheries. The EA fails to disclose that current halibut PSC data is flawed because of low coverage rates under the restructured Observer Program. NMFS' management uncertainties require more restrictive PSC limits.

*Response:* NMFS uses observers to monitor halibut PSC. NMFS' Catch Accounting System (CAS) generates reliable estimates of halibut PSC in the groundfish fisheries using observer data. The CAS uses the highest resolution of data when available and, if needed for fisheries without high resolution data, generates estimates using observer data from vessels in the same gear, area, or target category. The methods NMFS uses to estimate bycatch through the CAS are further described in "Cahalan, J., J. Mondragon, and J. Gasper. 2010. Catch sampling and estimation in the Federal groundfish fisheries off Alaska. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-AFSC-205, 42 p." This publication is available on the NMFS Alaska Region's Web site at <http://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-205.pdf>.

The restructured Observer Program improved the quality of the observer data NMFS uses to estimate halibut PSC by collecting more representative data and deploying observers relative to fishing effort (fisheries with more effort receive more observers). Importantly, the restructured observer program uses a scientifically-based method to deploy observers that improves the reliability of data collection and addresses statistical bias in observer data caused by the old program. Further, to address concerns with ensuring adequate coverage for PSC limits, NMFS maintained a higher coverage rate for the majority of vessels in the partial coverage category that are managed under PSC limits relative to smaller vessels in the partial coverage category that are typically not managed under PSC limits in 2013 and 2014. Further information can be found in the final rule implementing the restructured observer program (77 FR 70062, November 21, 2012). Additional detail on the deployment of observers in the partial coverage category is available in the final 2014 Annual Deployment Plan on the NMFS Web site at <http://www.alaskafisheries.noaa.gov/>

[sustainablefisheries/observers/default.htm](#).

NMFS has continued to improve its management of halibut PSC limits in the groundfish fisheries. Comprehensive recordkeeping and reporting requirements for catch reporting by participants in the groundfish fisheries, the development of more real-time electronic catch reporting, and the restructured Observer Program have decreased management uncertainty about halibut PSC in the GOA. The EA provides the best available information on halibut PSC in the groundfish fisheries (see Section 3.2.3 of the Analysis). Analysis of halibut PSC data is ongoing and NMFS continually improves the estimates of catch and bycatch in the groundfish fisheries. However, these improvements do not change the issues addressed by the proposed action. In taking final action, the Council recognized the potential for underestimation of halibut PSC in the groundfish fisheries and cited that as one of the reasons for recommending the reduced halibut PSC limit in Amendment 95 (see Section 2.4 of the Analysis).

*Comment 14:* The Council should implement a long-term halibut PSC limit reduction plan.

*Response:* This action implements reductions to halibut PSC limits in the GOA groundfish fisheries. Once the reductions are fully implemented in 2016, the Council could choose to evaluate the effects of the reductions made by this action, and could recommend further halibut PSC limit reductions to the extent such reductions are practicable. Furthermore, the Council has undertaken a variety of efforts to limit the bycatch of halibut in the GOA groundfish fisheries over time, and continues to evaluate whether additional PSC restrictions are warranted. Appendix 3 to the Analysis summarizes the Council's action to reduce or limit halibut removals. NMFS encourages the commenter to participate in the Council process with respect to actions that may reduce or modify PSC limits.

*Comment 15:* NMFS should direct the Council to consider alternatives that implement marine reserves that provide a no-trawl buffer to account for the impacts of bycatch on communities reliant on halibut subsistence.

*Response:* NMFS notes that the purpose and need for the action is to minimize halibut bycatch in the groundfish fishery to the extent practicable while at the same time achieving, on a continuing basis, the optimum yield from the groundfish fishery. Implementing a series of marine

reserves that would limit trawling would have a range of effects on the groundfish fisheries outside of the scope of this action. NMFS notes that this action would reduce the amount of halibut PSC in trawl and hook-and-line fisheries, and these measures could provide additional harvest opportunities for other users of the halibut resource, including subsistence users. Currently, subsistence users are not constrained by any limit on the amount of allowable harvest (see Sections 3.2.7 and 4.6.2.3 of the Analysis). This action would not establish any additional limitation on subsistence users.

*Comment 16:* Evaluate the need to do an environmental impact statement (EIS) for Amendment 95 and groundfish fishery impacts on halibut. If NMFS is not going to do an EIS, then make the Finding of No Significant Impact (FONSI) available for public review prior to approving Amendment 95. This action is similar to the Bering Sea Chinook salmon PSC action that required NMFS to complete an EIS.

*Response:* NMFS did evaluate the need to do an EIS for Amendment 95 in preparing the EA and FONSI. NMFS prepared an EA that discloses the potential impacts of the proposed action and its alternatives (see **ADDRESSES**). The EA analysis did not identify any potentially significant impacts from any of the alternatives. NMFS prepared a FONSI (see **ADDRESSES**) for Amendment 95 that describes in more detail why NMFS determined that the action will not significantly impact the quality of the human environment. Based on this FONSI, an EA is the appropriate NEPA analysis for this action and preparation of an EIS is not warranted. NMFS prepares FONSI based on the analysis in the EA, and the draft EA was available for public review prior to approving Amendment 95.

NMFS prepared an EIS for the action to manage Chinook salmon PSC in the Bering Sea pollock fishery to assist agency planning and decision-making. That action was novel, controversial, and far more complicated because it involved fundamental changes to the way the Bering Sea pollock fishery was managed that were only possible because that fleet is managed under a catch share program. Assessing and understanding the impacts of bycatch on Chinook abundance was also more complex with uncertainty in ocean abundance and in rivers of origin for bycaught Chinook salmon.

*Comment 17:* Produce a Supplemental Information Report that evaluates the significant changes in halibut population in light of PSC impacts because there have been substantial

biological and ecological changes, important scientific research on migration, and changes in fishery intensity and effort since the development of these programmatic analyses.

*Response:* NMFS agrees that there have been changes in halibut abundance and the halibut fisheries, as well as advancements in scientific understanding. The EA evaluates the impacts of halibut PSC in light of these changes (see Section 3.2 of the Analysis). Further, the IPHC comprehensively assesses these types of changes on an annual basis in its stock assessment process (see Section 3.2.4.2 of the Analysis for a description of the IPHC stock assessment process).

The Council is in the process of preparing a Supplemental Information Report for the 2004 Alaska Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement. This Supplemental Information Report will include an assessment of the impacts of the groundfish fisheries on halibut. The Council plans on reviewing a draft Supplemental Information Report at its February 2014 meeting. Interested members of the public are encouraged to participate in the Council process for this issue.

*Comments Associated With the Effects on Other Halibut User Sectors and Communities*

*Comment 18:* The halibut PSC limit reductions imposed on the trawl sector through Amendment 95 will minimally benefit other halibut user groups, such as the halibut IFQ and charter sectors.

*Response:* The purpose and need for the action is to minimize bycatch to the extent practicable while at the same time achieving, on a continuing basis, the optimum yield from the groundfish fishery by preserving the potential for the full harvest of the TACs assigned to the trawl and hook-and-line sectors. The Analysis does estimate that any potential increases in halibut biomass from reduced PSC is likely to be relatively small given that the existing halibut PSC limits in the GOA groundfish fishery are a relatively small proportion of the known removals from the halibut exploitable biomass. However, halibut savings from the groundfish fisheries halibut PSC limit reductions may modestly benefit the directed halibut fisheries in the long-term. The Analysis examines the impacts of potential halibut PSC limit reductions on the directed halibut fisheries in Section 4.6.2. This includes projections of the potential amount of halibut that could be available for

harvest in the charter and commercial IFQ fisheries, depending on different reduction levels to the hook-and-line and trawl halibut PSC limits. It also includes estimates of increases in revenue in the charter and commercial individual fishing quota (IFQ) fisheries due to halibut PSC limit reductions in the groundfish fisheries. The Analysis demonstrates that there is a potential benefit to the directed halibut fisheries and the consumers of halibut harvested in those fisheries under various halibut PSC limit reductions. (Also see the response to Comment 9.)

As noted in the response to Comment 7, the 2011 halibut PSC in the GOA represented only approximately 12 percent of the known removals from the halibut exploitable biomass in the GOA, as portrayed in Section 3.2.2 of the Analysis. Therefore, reductions in existing halibut PSC limits may not result in substantial changes in the halibut biomass or the amount available to other halibut resource users. (see Section 2.4 of the Analysis).

*Comment 19:* The removal of halibut by the groundfish trawl fishery is causing localized depletion of halibut around GOA communities dependent on halibut for subsistence purposes, including Kodiak Island villages. Localized depletion has resulted in declines in halibut subsistence harvests in these areas. The Analysis does not consider the impacts of these issues on communities dependent on halibut for subsistence purposes.

*Response:* NMFS notes that the purpose and need for this action is to minimize bycatch of halibut overall to the extent practicable. However, this does not include reducing halibut bycatch in specific areas or addressing possible localized depletion of halibut in specific areas. The latter issue is outside of the scope of this action. Sections 3.2.8 and 3.3.5.2 of the Analysis describe the potential localized effects of halibut PSC on the halibut resource. Section 3.2.7 of the Analysis describes the halibut subsistence fishery. Although Section 3.2.7 of the Analysis notes that subsistence harvests have decreased in recent years, the survey conducted by the State of Alaska on halibut subsistence that is cited in Section 3.2.7 ([http://www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/Subsistence\\_report2010.pdf](http://www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/Subsistence_report2010.pdf)) notes that a variety of factors could affect subsistence harvest rates. Halibut subsistence harvest rates could be affected by changes in participation in the Subsistence Halibut Registration Certificate program administered by NMFS that allows for improved accounting of subsistence

harvests, changes in subsistence harvest survey methods, or other changes in subsistence harvest patterns with a range of possible causes that can vary from community to community. Overall, this action could benefit non-commercial user groups, such as subsistence halibut fishermen, in the long-term by minimizing a known source of halibut mortality. Because this action would result in a reduction in halibut PSC limits relative to the status quo, it would be expected to reduce the overall impact of halibut PSC on other users of the halibut resource (also see the response to Comment 9).

*Comment 20:* NMFS did not sufficiently analyze the effects of this action on communities dependent on the halibut resource. The community impact analysis overemphasized adverse impacts to trawl dependent communities and failed to consider the adverse impacts of PSC to halibut dependent communities.

*Response:* The Analysis examines the potential effects of halibut PSC limit reductions on communities engaged in groundfish fisheries, as well as those engaged or dependent on halibut fisheries (see Section 4.6.7 and Appendix 7). In general, it is not possible to quantitatively differentiate potential impacts of the different GOA halibut PSC limit reduction alternatives on an individual community basis. Qualitatively, however, it is possible to anticipate the communities where adverse impacts, if any, would most likely accrue, along with the nature, direction, and at least rough order of magnitude of those impacts. Groundfish dependent communities may experience various degrees of adverse economic effects due to halibut PSC limit reductions, especially within the GOA groundfish trawl sector in Kodiak, and those processing operations in Kodiak substantially dependent on GOA groundfish trawl deliveries of flatfish in particular. Halibut-dependent communities may experience some positive effects as halibut PSC limits are decreased, whereas some communities could experience a combination of effects since residents participate in both the groundfish fisheries and commercial halibut fisheries.

*Comment 21:* The RIR underestimates the adverse economic impacts of halibut PSC to directed halibut fishery users. The RIR uses outdated economic information and fails to adequately account for the increased long-term value to participants in directed halibut fisheries in the GOA that would occur from reductions in halibut PSC in the groundfish fisheries.

*Response:* Section 4.6.2 of the Analysis uses the best available economic information to examine the costs and benefits of halibut PSC limit reductions on the halibut fisheries. Section 4.6.1 describes the assumptions made about potential economic impacts on directed halibut users and the rationale for the assumptions made. Although alternative assumptions may be possible about the potential economic impact of the alternatives, the Analysis provides a clear rationale for the choices made.

Cost and revenue information is not available for individual charter and commercial halibut fishing operations in the GOA. Therefore, the Analysis estimated the increased amount of halibut that would be available to the charter and IFQ fisheries from reduced PSC limits and the potential increases in revenues for the charter and IFQ fisheries from the estimated increased halibut harvests. A complete analysis of net benefits to the directed halibut fisheries would require information on the charter fishing fleet's costs, including opportunity costs, and revenues. Information would also be needed on the consumer surplus of the charter clients. Additionally, cost and revenue information would be needed for the IFQ fleet and the processors of their halibut catch, as well as data on consumer surplus of the people that purchase halibut. This information is not available for the charter and IFQ fisheries off Alaska.

*Comment 22:* Amendment 95 and the proposed rule under-value the recreational halibut fishery. The Analysis uses outdated information and inappropriate indicators, such as the cost of charter halibut trips, to estimate the economic impacts of halibut PSC reductions on the charter halibut fisheries.

*Response:* As described in the response to Comment 21, the Council and NMFS do not have information to quantify the net benefits of reduced halibut PSC limits to the charter fishery. Similarly, information is not available to quantify the overall economic contribution of the recreational halibut fishery in Alaska at a local, regional, or statewide level. Section 4.8 of the Analysis states that Amendment 95 is not expected to positively or negatively impact the amount of halibut available for unguided sport fishermen, since the PSC reductions are not anticipated to affect their overall harvest.

Section 4.6.2.2 of the Analysis examines the effects of halibut PSC limit reductions on the charter halibut fisheries with available information. The Analysis estimated the economic

impacts of Amendment 95 on the charter sector using the projected increase in the amount of halibut available for harvest in the charter sector from reduced halibut PSC limits. Estimated increases in the amount of halibut that may be available to the charter halibut fishery vary depending on the level of halibut PSC limit reductions. The Analysis also estimated the increase in gross revenues for the charter sector from the projected increased halibut harvests. Even at the highest level of PSC reductions analyzed, expected revenue increases to the charter sector are relatively modest. Changes in gross revenue for the charter fleet were very small in Area 2C. Only two halibut were estimated to be added to the charter limit for each 5-percent decrease in the PSC limit. This estimate excluded migration of halibut from the IPHC's assessment model, so the value may be underestimated. The potential effects of halibut migration were excluded from the model due to the uncertainty in estimating the amount of migration that may occur between management areas. In Area 3A, the increase in the charter sector's gross revenue was estimated at about \$10,000 for each 5-percent reduction to the hook-and-line PSC limit and \$140,000 for each 5-percent reduction to the trawl PSC limit (see Section 3.2.8 in the Analysis). Area 3B does not have a developed charter fishery for halibut, in part due to the remote location of potential charter fishing ports. Therefore, the Analysis assumed that increases in directed halibut harvests resulting from halibut PSC limit reductions would accrue to the commercial IFQ fleet.

*Comment 23:* The economic analysis for Amendment 95 is flawed because it underestimates the net benefits of halibut PSC reductions to directed halibut fisheries and fails to consider the adverse impacts of the ongoing reallocation of the halibut resource to the groundfish fishery through PSC. This undermines the "Net Benefit" finding.

*Response:* The Council and NMFS have determined that the Analysis provides a comprehensive description of the projected costs and benefits of varying levels of halibut PSC limit reductions considered for this action. This includes examining the effects of halibut PSC limit reductions on the groundfish fisheries, which could experience decreased groundfish catches due to reduced halibut PSC limits. It also includes examining potential positive effects on other halibut fisheries (commercial, charter, and subsistence) due to projected

increases in halibut availability due to PSC limit reductions. The net benefit finding (see Section 4.9) summarizes the combined effects with respect to the net benefits to the Nation that may arise out of the halibut PSC limit reductions analyzed and implemented by this action. NMFS believes that this net benefit conclusion is valid and well-reasoned using the best available information, and not flawed as characterized by the commenter. (Also see the response to Comments 21 and 22.)

#### *Comments Associated With Fisheries Management Issues*

*Comment 24:* The current management system for GOA groundfish fisheries creates rigid seasonal and fishery apportionment categories that prevent efficient use of PSC by the trawl sector, which makes it impracticable for the trawl fleet to adapt to a 15-percent halibut PSC limit reduction.

*Response:* GOA halibut PSC is managed under the FMP and applicable Federal regulations in 50 CFR part 679. This includes halibut PSC limits that are apportioned by gear, season and sector. NMFS notes that while existing fishery management measures in the GOA may appear to be inflexible, they were designed to divide the available annual halibut PSC limits so that it is available throughout the year, and to a variety of different fisheries with very different operating characteristics. The trawl sector's PSC limits reflect the estimated halibut PSC in different target fisheries throughout the year. Such fisheries may be very dependent on the seasonal distribution and aggregation of groundfish species, such as Pacific cod. Historically, the trawl PSC limit seasonal apportionments have adequately supported groundfish target species. There is some flexibility in the available management measures. For example, unused amounts of seasonal halibut PSC limits may be carried forward to subsequent seasons.

As noted in response to Comment 3, the historical records and NMFS' management experience in the trawl fisheries indicates that the amount of halibut PSC in the GOA groundfish fisheries can be used more efficiently by increased communication among industry participants and coordination of fishing activities and effort. The current management system for GOA groundfish fisheries does not prevent the trawl fleet from improving communication and coordination to avoid and more efficiently use halibut PSC. Furthermore, this action amends regulations to allow available trawl halibut PSC limit apportionments in the

second season deep-water and shallow-water fisheries to be combined and made available for use in either fishery from May 15 through June 30. This is intended to provide additional flexibility to the trawl fleet and help maintain this sector's groundfish harvest while minimizing halibut bycatch to the extent practicable. This change is described above under "Action 4."

*Comment 25:* There is a disincentive for halibut PSC avoidance due to disparate fleets that operate in different management areas, with different operating characteristics, and different fisheries. Reduced halibut PSC limits will exacerbate the issue associated with a common PSC limit for trawl fisheries.

*Response:* The Analysis examines the potential effects of halibut PSC limit reductions across gear types and segments of the fleet (see Section 4.6.5). This includes a discussion that considers both the potential for halibut avoidance measures to be effective in the various management areas and target fisheries of the GOA, as well as the potential for interactions between fisheries sectors to affect the inclination of participants to adopt avoidance measures. Section 4.6.5 notes that although different fleets have different incentives and abilities to respond to halibut PSC limit reductions, there are a variety of formal and informal arrangements and tools available to all of the affected fleets. Section 4.6.5 also notes that because trawl and hook-and-line PSC limits are managed separately, fleets will need to coordinate among participants within the same gear category, and not across all participants in all fisheries.

*Comment 26:* The proposed rule sets a timeline for phasing in PSC limit reductions, which should provide the fishing industry with time to adapt their fishing practices to meet these new PSC limits.

*Response:* NMFS agrees. The Council chose a phased-in implementation of the reductions to allow affected fleets to adapt to the lower halibut PSC limits, thereby minimizing detrimental economic effects that could occur due to foregone or curtailed groundfish harvesting opportunities. (Also see the response to Comment 3.)

#### *Comments Associated With the Magnuson-Stevens Act and National Standards*

*Comment 27:* The reductions to the halibut PSC limits comply with the mandate to achieve optimum yield, as required under National Standard 1 of the Magnuson-Stevens Act. Optimum yield is not determined solely by the

amount of the target fishery that may be harvested, but by overall benefits to the Nation.

*Response:* NMFS agrees. Section 6.1 of the Analysis addresses National Standard 1. Specific to National Standard 1, the Analysis concludes that the overall benefits to the Nation may be positively affected by the action. Pacific halibut is a valuable species to commercial, recreational, and cultural entities. If halibut PSC limits are reduced, while concurrently limiting the amount of foregone groundfish catch, net benefits to the Nation will accrue.

*Comment 28:* Amendment 95 and the proposed rule are not consistent with National Standard 3 because of weakened protections for halibut in the GOA relative to other jurisdictions. National Standard 3 provides 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." National Standard 3 guidelines provide that the purpose of the standard is "to induce a comprehensive approach to fishery management that is not jeopardized when fish live in waters of more than one jurisdiction," and that "the geographic scope of the fishery, for planning purposes, should cover the entire range of the stocks of fish, and not be overly constrained by political boundaries." Halibut PSC is managed differently in the GOA when compared to other IPHC regulatory areas. For example, all other IPHC regulatory areas require 100 percent observer coverage on trawl vessels, and trawl fisheries in IPHC regulatory areas 2B and 2A have been subject to greater reductions in halibut PSC than those that will be imposed by Amendment 95. NMFS' management of halibut PSC in the GOA falls short of measures implemented in other IPHC regulatory areas. Therefore Amendment 95 is inconsistent with National Standard 3.

*Response:* NMFS interprets this comment as suggesting that Amendment 95 does not implement halibut PSC management measures or limits that are comparable or equivalent to those that have been implemented in IPHC regulatory areas 2A and 2B. However, consistent with National Standards 1 and 9, the Council evaluated measures that minimize halibut bycatch in the GOA groundfish fisheries to the extent practicable while continuing to allow the GOA groundfish fisheries the opportunity to achieve optimum yield efficiently. Management measures implemented in IPHC regulatory areas 2A and 2B are under the jurisdiction of

other entities and are not within the jurisdiction of the North Pacific Fishery Management Council.

The comment also suggests that NMFS, through its implementation of Amendment 95, does not manage halibut throughout its range or in close coordination with interrelated stocks of fish and is therefore inconsistent with Magnuson-Stevens Act National Standard 3. However, Amendment 95 does not directly manage halibut or halibut fisheries. Actions taken by the Council to manage halibut fisheries are developed under the authority of the Halibut Act, and National Standard 3 of the Magnuson-Stevens Act does not apply to such actions.

NMFS implements Amendment 95 to manage the GOA groundfish fisheries under the authority of the Magnuson-Stevens Act by reducing the upper limit on the amount of halibut bycatch that may be taken by the GOA trawl and hook-and-line groundfish fisheries. This action is consistent with National Standard 3 in that NMFS manages the GOA groundfish fisheries as a unit, throughout their range, and NMFS manages interrelated stocks of the groundfish fisheries as a unit or in close coordination. Even if National Standard 3 imposes obligations on NMFS to manage the GOA groundfish fisheries halibut PSC as a unit throughout the groundfish fisheries' range, measures taken to minimize halibut PSC need not be identical for each geographic area.

Section 3.6.2.1 of the FMP describes that the IPHC manages the Pacific halibut stocks in its jurisdiction through regulations implementing the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773–773k). Halibut is not managed under the FMP. However, the Council manages halibut bycatch limits under the FMP and believes that treatment of halibut as a prohibited species is appropriate. In addition, the FMP states that under the Magnuson-Stevens Act, it is the Council's responsibility to recommend conservation and management measures, such as Amendment 95, that minimize halibut bycatch in the groundfish fisheries to the extent practicable.

*Comment 29:* Amendment 95 and the proposed rule are inconsistent with National Standard 4 because the proposed reductions fail to take into account the increasing share of the halibut resource that has been allocated to groundfish fishery participants through PSC. The GOA halibut PSC limits do not promote conservation or equity because they do not reflect changes in the exploitable biomass and do not require the trawl sector to share in the costs of recovering the resource.

*Response:* The Council and NMFS have determined that Amendment 95 is consistent with National Standard 4 (see Section 6.1 of the Analysis). National Standard 4 provides that “conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.” (16 U.S.C. 1851)

Nothing in the alternatives requires consideration of considers residency as a criterion for the Council's decision. Residents of various states, including Alaska and states of the Pacific Northwest, participate in the major sectors affected by the proposed action. No discriminations are made among fishermen based on residency or any other criteria. No geographic apportionment of halibut PSC is provided through this action.

As described in the responses to Comments 8 and 9 and in Sections 1.1 and 1.3 of the Analysis, the objective for Amendment 95 is to minimize halibut PSC to the extent practicable while achieving, on a continuing basis, the optimum yield from the groundfish fishery. NMFS uses halibut PSC limits to minimize the amount of halibut bycatch in the groundfish fishery to the extent practicable. The halibut PSC limits implemented by this action are not an allocation of, or an allowance for, halibut bycatch in the groundfish fishery. Rather, the halibut PSC limits impose an absolute limit on the amount of halibut bycatch that may be caught by the GOA groundfish trawl and hook-and-line fisheries.

In developing Amendment 95, the Council considered equity among halibut user groups, recognizing that users in the directed halibut fisheries have been impacted by reductions in catch limits and additional harvest restrictions as the halibut stock has declined (see Sections 3.2.8 and 4.6.2 of the Analysis). The Council also recognized that reductions in halibut PSC limits likely will constrain groundfish harvests in some years and that these reductions could result in reduced revenues and increased costs for participants in those fisheries (see Sections 4.6.3 and 4.6.5 of the Analysis). Amendment 95 balances these considerations to achieve the stated objective for the action.

As noted in the response to Comment 8, recent declines in halibut exploitable

biomass and decline in size-at-age, particularly in the GOA, underscore the need to minimize bycatch of halibut in the groundfish fisheries to the extent practicable. While the causes of these declines are not well understood, Section 3.2.8 of the Analysis describes that reductions in halibut mortality resulting from reductions in PSC in the groundfish fisheries could contribute to future increases in halibut biomass, may promote improved halibut reproductive potential, and may contribute to increased halibut yields available to harvesters in the directed halibut fisheries.

*Comment 30:* The analysis does not adequately address National Standard 8 with respect to the effects of the trawl fisheries on subsistence use of the halibut resource.

*Response:* See the response to Comment 19.

*Comment 31:* The halibut PSC limit reductions meet the mandate of National Standard 9, which stipulates that bycatch be minimized to the extent practicable.

*Response:* NMFS agrees with this comment.

*Comment 32:* The action does not meet National Standard 9's requirement to minimize bycatch to the extent practicable.

*Response:* This action is specifically intended to control removals of halibut in the groundfish fisheries in the GOA. The practicability of reducing halibut removals in groundfish fisheries is discussed in Section 4.6 of the Analysis and in the response to Comments 3 and 12.

*Comment 33:* The proposed rule appears to improperly juxtapose National Standards 1 and 9 by presuming that the two standards are at odds, and that bycatch reductions are only practicable if the reductions allow for an optimum yield that is calculated separately from bycatch considerations. This is inconsistent with the Magnuson-Stevens Act's intent and construction.

*Response:* The preferred alternative that is implemented by this action balances the need to minimize halibut bycatch to the extent practicable consistent with National Standard 9, with the requirement to achieve optimum yield in the groundfish fishery, consistent with National Standard 1. In developing the preferred alternative, NMFS and the Council have appropriately balanced obligations under National Standard 1 and National Standard 9. This action provides the flexibility for participants in the groundfish fisheries to potentially harvest the TAC, which is one aspect of achieving optimum yield on a

continuing basis. As noted in the Analysis and in the preamble to the proposed rule, this action minimizes bycatch to the extent practicable by recognizing the range of management tools currently available to the groundfish fisheries to avoid halibut bycatch (also see the response to Comment 3). This action is likely to reduce, in some years, the ability for the groundfish fleet to fully harvest its allocation (see Sections 4.6.3 and 4.6.5 in the Analysis). Although the proposed halibut PSC limit reductions may result in earlier season closures and an attendant reduction in target groundfish catches, when the lower seasonal PSC limit is reached, the frequency and extent of early season closures will vary across gear types and segments of the fleets to the extent that fleets are willing to change fishing behavior in response to lower PSC limits. The fact that this action would reduce halibut PSC, and likely result in a reduced ability for harvests, reflects a well-reasoned and articulated balance between National Standard 1 and 9.

*Comment 34:* To be consistent with the requirements of the Magnuson-Stevens Act, the Council and NMFS should consider the optimum yield for halibut as a target species in addition to considering optimum yield for the fisheries in which halibut is caught as bycatch.

*Response:* As described in the proposed rule and in Section 6.1 of the Analysis, Amendment 95 is consistent with the Magnuson-Stevens Act. The purpose of this action is to minimize halibut bycatch to the extent practicable and to achieve, on a continual basis, the optimum yield from the groundfish fishery. As described in the response to Comment 28, Amendment 95 implements a halibut PSC management program in the GOA groundfish fisheries that is comprehensive and coordinated with IPHC's management of the Pacific halibut stock in Convention waters. The Analysis examined the potential effects of the alternatives considered under this action with respect to the effects of halibut PSC limit reductions on the groundfish fisheries, halibut biomass, and other user groups such as the directed halibut fishery (see Sections 4.6.2, 3.2.8, and 4.6.3 of the Analysis). The Council has recommended, and NMFS has implemented, a variety of programs that directly regulate different components of the halibut fisheries, including commercial, charter, and subsistence. Furthermore, as described in the response to Comment 28, Amendment 95 provides a halibut PSC management program in the GOA groundfish

fisheries that is comprehensive and coordinated with IPHC's management of the Pacific halibut stock in Convention waters.

#### Classification

The NMFS Assistant Administrator has determined that Amendment 95 to the FMP and this rule are necessary for the conservation and management of the groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable law.

This rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a Final Regulatory Flexibility Analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The preambles to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preambles. Copies of the proposed rule and this final rule are available from the NMFS Web site at <http://alaskafisheries.noaa.gov>.

#### Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS published the proposed rule on September 17, 2013 (78 FR 57106), with comments invited through October 17, 2013. An IRFA was prepared and summarized in the "Classification" section of the preamble to the proposed rule. The FRFA describes the impacts on small entities, which are defined in the IRFA for this action and not repeated here. Analytical requirements for the FRFA are described in Regulatory Flexibility Act, section 304(a)(1) through (5), and summarized below.

The FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;
2. A summary of the significant issues raised by the public comments in response to the IRFA, a summary 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. A description 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;

4. 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

5. 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 which affect the impact on small entities was rejected.

The "universe" of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

#### Need for and Objectives of This Final Action

The Council developed a purpose and need statement defining the reasons for considering this action, as described in Section 1.1 of the Analysis for this action (see **ADDRESSES**). The Magnuson-Stevens Act National Standards require balancing optimum yield with minimizing bycatch and minimizing adverse impacts to fishery dependent communities. Pacific halibut bycatch taken incidentally in GOA groundfish fisheries is a concern because halibut is a resource that is shared by many other user groups, including the directed halibut fishery, sport, and subsistence users. Since existing GOA halibut PSC limits were established, the total biomass and abundance of halibut has varied, and in recent years the stocks have experienced an ongoing decline in size at a given age. Given this species

importance to a variety of user groups, the Council chose to evaluate the existing halibut PSC limits, which was followed by a recommendation to reduce the halibut PSC limits for the hook-and-line and trawl gear sectors.

#### Summary of Significant Issues Raised During Public Comment

No comments were received that raised significant issues in response to the IRFA specifically; therefore, no changes were made to the rule as a result of comments on the IRFA. However, several comments were received on the economic impacts of Amendment 95 on different sectors of the industry. For a summary of the comments received and the agency's responses, refer to the section above titled "Response to Comments," particularly the sections titled "Comments Associated with the Range of Alternatives and Practicability of Halibut PSC Reductions" and "Comments Associated with the Effects on Other Halibut User Sectors and Communities."

#### Number and Description of Directly Regulated Small Entities

On June 20, 2013, the Small Business Administration issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from \$4.0 to 19.0 million, Shellfish Fishing from \$4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million. *Id.* at 37400 (Table 1). The new size standards were used to prepare the FRFA for this action.

The entities directly regulated by this final action are those entities that participate in harvesting groundfish from the Federal or parallel groundfish fisheries of the GOA with trawl gear or hook-and-line gear (excluding sablefish). These directly regulated entities include the groundfish catcher vessels and groundfish catcher/processor vessels active in the GOA. We also consider those entities with halibut PSC sideboard limits, which include non-exempt AFA catcher vessels, Amendment 80 catcher/processors, and catcher/processors operating in Rockfish Program cooperatives, to be directly regulated. Fishing vessels are considered small entities if their total annual gross receipts, from all of their activities combined, are less than \$19.0 million. This FRFA estimates the number of harvesting vessels that are considered small entities, but these estimates may overstate the number of small entities because (1) some vessels

may also be active as tender vessels in the salmon fishery, fish in areas other than Alaska and the West Coast, or generate revenue from other non-fishing sources; and (2) all affiliations are not taken into account, especially if the vessel has affiliations not tracked in available data (i.e., ownership of multiple vessel or affiliation with processors) and may be misclassified as a small entity. The Analysis for this action identified an estimated 486 total vessels considered directly regulated small entities in 2012, the most recent year of available data on the size of regulated entities.

There are 65 Western Alaska communities that work through six non-profit Community Development Quota (CDQ) groups that are considered small entities for Regulatory Flexibility Act purposes. The CDQ groups' ownership of harvesting vessels that operate in the GOA means that some of the CDQ groups' activities could be directly regulated in the same manner as other small entities that own vessels harvesting groundfish in the GOA.

The AFA vessels, Amendment 80 catcher/processors, and Central GOA Rockfish fisheries operate under sideboard limits of halibut PSC and are therefore directly regulated. These cooperative entities are structured to increase the joint profits to their members. In 2012, there were seven inshore AFA cooperatives, two Amendment 80 cooperatives, and two Central GOA Rockfish cooperatives that are considered large entities for this action.

#### Description of Significant Alternatives Considered

The Council considered an extensive series of alternatives, options, and suboptions to reduce halibut PSC limits in the GOA, including the "no action" alternative. The RIR presents the complete set of alternatives (see **ADDRESSES**). Alternative 1, the Status Quo/No Action alternative, would retain the process of changing GOA halibut PSC limits through the annual groundfish harvest specification process. Alternative 2 would amend the FMP to remove setting GOA halibut PSC limits from the annual harvest specification process and instead establish the limits in Federal regulation. Alternative 2 includes two options. Option 1, Status Quo/No Action, would retain the existing 1,973 mt trawl and 300 mt hook-and-line gear halibut PSC limits provided in the final 2013 and 2014 annual harvest specifications for the GOA and place them in Federal regulation. Option 2 would revise the current GOA halibut

PSC limits and write the new limits into Federal regulation. Alternative 2, Option 2, contained a number of suboptions for the amount of halibut PSC limit reduction by trawl and the hook-and-line fisheries, and additional measures. Other significant alternatives to the rule that were considered are discussed in Section 2.1.4 of the Analysis. Alternative 3, the preferred alternative, includes a suite of options and suboptions that considered a range of different halibut PSC limit reductions and modifications to halibut PSC sideboard limit management.

Other than Alternative 1, the Status Quo/No Action Alternative, all of the alternatives and options that were considered, including the Council's preferred alternative, would implement the halibut PSC limits through Federal regulation to reduce uncertainty about the final annual halibut PSC limit, which may benefit small entities. Based on the best available scientific information, none of the alternatives to the preferred alternative appear to have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes (as reflected in this action), while minimizing any significant adverse economic impact on small entities beyond those achieved under this action. This action will minimize bycatch to the extent practicable while providing mechanisms to reduce the impacts on small entities in the GOA groundfish fisheries by phasing-in reductions to these halibut PSC limit reduction measures over several years and establishing other measures described in this rule to ensure more efficient use of the available halibut PSC limits.

#### Recordkeeping and Recording Requirements

This action does not modify recordkeeping or reporting requirements.

#### Federal Rules That May Duplicate, Overlap, or Conflict With This Action

The Analysis did not reveal any Federal rules that duplicate, overlap, or conflict with this final action.

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 12, 2014.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, 50 CFR part 679 is amended 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.*; and Pub. L. 108–447.

■ 2. In § 679.21,

■ a. Remove paragraph (d)(2);

■ b. Redesignate paragraphs according to the following table;

Redesignate paragraph	As paragraph
(d)(4)	(d)(2)
(d)(5)	(d)(4)
(d)(6)	(d)(5)
(d)(7)	(d)(6)
(d)(8)	(d)(7)

■ c. Revise paragraph (d)(1), newly redesignated paragraph (d)(2), paragraph (d)(3) heading, paragraphs (d)(3)(i) and (d)(3)(ii), and newly redesignated paragraphs (d)(4)(iii)(C) and (d)(6)(ii); and

■ d. Add paragraph (d)(4)(iii)(D) to read as follows:

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(1) *Notification and public comment*—(i) *Proposed and final apportionments.* NMFS will publish in the **Federal Register** proposed and final apportionments of the halibut PSC limits in paragraphs (d)(2) and (3) of this section in the notification required under § 679.20.

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

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

(2) *Hook-and-line gear and pot gear annual halibut PSC limit.* (i) The annual total PSC limit of halibut caught while conducting any hook-and-line gear fishery for groundfish in the GOA is an amount of halibut equivalent to the amount of halibut mortality established for each of the fishery categories in paragraphs (d)(2)(i)(A) and (B) of this section. The notification at paragraph (d)(1) of this section also may specify a halibut PSC limit for the pot gear fisheries.

(A) *Demersal shelf rockfish, Southeast Outside (SEO) District.* The halibut PSC

limit in the demersal shelf rockfish fishery in the SEO District is 9 mt.

(B) *Other hook-and-line fishery.* The halibut PSC limit in the other hook-and-line gear fishery is established according to the provisions of paragraphs (d)(2)(iii) and (d)(2)(iv) of this section.

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

(A) *Demersal shelf rockfish, SEO District.* Fishing with hook-and-line gear in the SEO District of the Eastern GOA regulatory area during any weekly reporting period that results in a retained catch of demersal shelf rockfish that is greater than the retained amount of any other fishery category defined under this paragraph (d)(2)(ii).

(B) *Other hook-and-line fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of groundfish and is not a demersal shelf rockfish fishery defined under paragraph (d)(2)(ii)(A) of this section.

(iii) Apportionment of the GOA halibut PSC limit among other hook-and-line catcher vessels and catcher/processors.

(A) Catcher vessels using hook-and-line gear in the other hook-and-line fishery will be apportioned part of the GOA halibut PSC limit in proportion to the total Western and Central GOA Pacific cod allocations, where X is equal to annual TAC, as follows:

$$290 \text{ mt} * \frac{(1.4\%(X_{WGOA}) + 21.3\%(X_{CGOA}))}{((19.8\% + 1.4\%)(X_{WGOA}) + ((5.1\% + 21.3\%)(X_{CGOA}))}$$

(B) Catcher/processors using hook-and-line gear in the other hook-and-line fishery will be apportioned part of the

GOA halibut PSC limit in proportion to the total Western and Central GOA

Pacific cod allocations, where X is equal to annual TAC, as follows:

$$290 \text{ mt} * \frac{(19.8\%(X_{WGOA}) + 5.1\%(X_{CGOA}))}{((19.8\% + 1.4\%)(X_{WGOA}) + ((5.1\% + 21.3\%)(X_{CGOA}))}$$

(C) No later than November 1, any halibut PSC limit allocated under paragraph (d)(2)(ii)(B) of this section not projected by the Regional Administrator to be used by one of the hook-and-line

sectors during the remainder of the fishing year will be made available to the other sector.

(iv) *Other hook-and-line fishery annual PSC limit reductions.* The

annual halibut PSC limits established for the other hook-and-line fishery under paragraph (d)(2)(iii) of this section are reduced, as follows:

Vessel category	Annual PSC limit percent reduction from the annual halibut PSC limit established under paragraph (d)(2)(iii) of this section.	Effective years
(A) Catcher vessel .....	7 12 15	2014. 2015. 2016 and each year thereafter.
(B) Catcher/processor .....	7	2014 and each year thereafter.

(3) *Trawl gear annual halibut PSC limit.* (i) The annual total PSC limit of halibut caught while conducting any trawl gear fishery for groundfish in the GOA is an amount of halibut equivalent to 1,973 mt of halibut mortality. This amount is reduced as follows:

Percent reduction from 1,973 mt	Annual trawl gear PSC limit (mt) <sup>1</sup>	Effective years
7 .....	1,848	2014.
12 .....	1,759	2015.
15 .....	1,705	2016 and each year thereafter.

<sup>1</sup> This amount maintains the 191 mt annual allocation to the Rockfish Program (see Table 28d to this part) from the 1,973 mt halibut PSC limit, while reducing the remainder of the annual trawl gear halibut PSC limit by the percentage listed in the first column.

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

\* \* \* \* \*

(4) \* \* \*  
(iii) \* \* \*

(C) The amount of unused halibut PSC not reapportioned under the provisions described in § 679.21(d)(4)(iii)(B) will not be available for use as halibut PSC by any person for the remainder of that calendar year.

(D) *Combined management of trawl halibut PSC limits from May 15 through June 30.* NMFS will combine management of available trawl halibut PSC limits in the second season deep-water and shallow-water species fishery categories for use in either fishery from May 15 through June 30 during the

current fishery year. Halibut PSC sideboard limits for the Amendment 80 and AFA sectors will continue to be defined as deep-water and shallow-water species fisheries from May 15 through June 30. NMFS will reapportion the halibut PSC limit between the deep-water and shallow-water species fisheries after June 30 to account for actual halibut PSC use by each fishery category during May 15 through June 30. The Regional Administrator will issue a **Federal Register** notice to reapportion the amounts of trawl halibut PSC to each species fishery category.

\* \* \* \* \*

(6) \* \* \*

(ii) *Hook-and-line fisheries.* If, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the three hook-and-line gear and operational type fishery categories listed under paragraph (d)(2) of this section will catch the halibut PSC allowance, or apportionments thereof, specified for that fishery category under paragraph (d)(1) of this section, NMFS will publish notification in the **Federal Register** closing the entire GOA or the applicable

regulatory area, district, or operation type to directed fishing with hook-and-line gear for each species and/or species group that composes that fishing category.

\* \* \* \* \*

■ 3. In § 679.92, revise paragraph (b)(2) introductory text to read as follows:

**§ 679.92 Amendment 80 Program use caps and sideboard limits.**

\* \* \* \* \*

(b) \* \* \*

(2) *GOA halibut PSC sideboard limits.* All Amendment 80 vessels, other than the fishing vessel GOLDEN FLEECE as specified in paragraph (d) of this section, may not use halibut PSC in the fishery categories and management areas, greater than the amounts specified in Table 38 to this part during January 1 through December 31 of each year. Any residual amount of a seasonal sideboard halibut PSC limit may carry forward to the next season limit. This restriction on halibut PSC usage does not apply to the following two exceptions:

\* \* \* \* \*

■ 4. Revise Table 38 to part 679 to read as follows:

TABLE 38 TO PART 679—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR HALIBUT PSC FOR THE AMENDMENT 80 SECTOR

In the . . .	The maximum percentage of the total GOA halibut PSC limit that may be used by all Amendment 80 qualified vessels subject to the halibut PSC sideboard limit as those seasons <sup>1</sup> are established in the annual harvest specifications is . . .				
	Season 1	Season 2	Season 3	Season 4	Season 5
Shallow-water species fishery as defined in § 679.21(d)(3)(iii)(A) in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. . . . .	0.48	1.89	1.46	0.74	2.27
Deep-water species fishery as defined in § 679.21(d)(3)(iii)(B) in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season. . . . .	1.15	10.72	5.21	0.14	3.71

<sup>1</sup> Any residual amount of a seasonal sideboard halibut PSC limit may carry forward to the next season limit (see § 679.92(b)(2)).

[FR Doc. 2014-03631 Filed 2-19-14; 8:45 am]

BILLING CODE 3510-22-P