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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 679 and 680

[Docket No. 110627357-2209-03]

RIN 0648-BB24

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Gulf of Alaska Pollock Fishery; Amendment 93

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

ACTION: Final rule and notice of approval of an FMP amendment.

SUMMARY: NMFS publishes regulations to implement Amendment 93 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The regulations apply exclusively to the directed pollock trawl fisheries in the Central and Western Reporting Areas of the Gulf of Alaska (GOA) (Central and Western GOA). Amendment 93 establishes separate prohibited species catch (PSC) limits in the Central and Western GOA for Chinook salmon (*Oncorhynchus tshawytscha*), which would cause NMFS to close the directed pollock fishery in the Central or Western regulatory areas of the GOA, if the applicable limit is reached. This action also requires retention of salmon by all vessels in the Central and Western GOA pollock fisheries until the catch is delivered to a processing facility where an observer is provided the opportunity to count the number of salmon and to collect scientific data or biological samples from the salmon. This action makes several revisions to the Prohibited Species

Donation (PSD) program. Amendment 93 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 August 25, 2012, except for: 50 CFR 679.21(h)(2) will be effective January 1, 2013, and 50 CFR 679.21(h)(3) will be effective August 25, 2012, until November 1, 2012.

ADDRESSES: Electronic copies of the proposed and final rules, the Environmental Assessment (EA), and Regulatory Impact Review for this action may be obtained from

<http://www.regulations.gov> or from the Alaska Region Web site at

<http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; and by e-mail to OIRA_Submission@omb.eop.gov, or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Mary Grady, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the U.S. exclusive economic zone of the GOA under the Fishery Management Plan for Groundfish of the GOA (FMP). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The Notice of Availability for Amendment 93 was published in the Federal Register on November 23, 2011 (76 FR 72384), with a 60-day comment period that ended January 23, 2012. The Secretary of Commerce (Secretary) approved Amendment 93 on February 17, 2012. The

proposed rule to implement Amendment 93 was published in the Federal Register on December 14, 2011 (76 FR 77757). The 45-day comment period on the proposed rule ended January 30, 2012. NMFS received written comments on Amendment 93 and the proposed rule from four different entities. After considering these comments, the Secretary of Commerce approved Amendment 93 on February 17, 2012. A summary of these comments and the responses by NMFS are provided under Response to Comments below.

Regulatory Amendments

The preamble to the proposed rule provides a detailed description of the reasons for and provisions of Amendment 93 and its implementing rule (76 FR 77757, December 14, 2011). The proposed rule is available from the NMFS Alaska Region web site (see ADDRESSES). This final rule makes the following regulatory amendments to the management of the directed pollock trawl fisheries in the Central and Western GOA to reduce Chinook salmon bycatch and to the PSD program.

Prohibitions

This final rule adds prohibitions under § 679.7(b)(8) to specify when salmon must be retained and discarded in the Central and Western GOA directed pollock fisheries. The final rule adds paragraph (b)(8) to expressly prohibit any action that does not comply with the regulations described below for § 679.21(h). This is necessary to expressly inform participants in the pollock trawl fisheries in the Central and Western GOA that except for salmon under the PSD program at § 679.26, all salmon must be discarded, following notification by an observer that the number of salmon has been estimated and the collection of scientific data or biological samples has been completed.

PSC Management

The final rule revises PSC management measures under § 679.21 to establish Chinook salmon PSC limits and management measures for directed pollock trawl fishing in the Central and Western Reporting Areas of the GOA. The final rule revises paragraph (b)(2)(ii) to add an exception for salmon PSC caught by vessels directed fishing for pollock with trawl gear in the Central and Western GOA to the requirement to immediately sort catch and return salmon PSC to the sea. The final rule also revises paragraph (b)(2)(ii) to clarify that the requirement to immediately sort catch and discard PSC does not apply to PSC that may be retained pursuant to a permit issued under the PSD program. This clarification is necessary to ensure participants in the PSD program may retain salmon for donation purposes and to facilitate observer sampling and counting of all salmon. The final rule revises paragraph (b)(3) to limit the scope of the rebuttable presumption regarding PSC retained on board that was previously in place. As revised, paragraph (b)(3) does not establish a rebuttable presumption that any salmon retained on board during a directed pollock fishery in the Central or Western GOA was caught and retained in violation of § 679.21. This change is necessary to ensure that vessels that comply with the requirement to retain salmon are not presumed to violate § 679.21. In addition, this change maintains the existing rebuttable presumption that any Chinook salmon retained on board during a directed pollock fishery in the GOA outside of the Western and Central reporting areas was caught and retained in violation of this section.

The final rule adds PSC management measures under § 679.21(h) to establish Chinook salmon PSC limits for the pollock trawl fisheries in the Central and Western GOA. Paragraph (h)(1) specifies that the regulations in this paragraph apply to federally permitted vessels directed fishing for pollock in the Central and Western GOA reporting areas and processors taking deliveries from such vessels. Paragraph (h)(2) establishes GOA Chinook salmon PSC limits.

Paragraph (h)(2)(i) specifies an annual PSC limit of 18,316 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA. Paragraph (h)(2)(ii) specifies an annual limit of 6,684 Chinook salmon for vessels engaged in directed fishing for pollock in the Western reporting area of the GOA. Paragraph (h)(3) sets Chinook salmon PSC limits and allocations for the Central and Western GOA pollock fisheries during the C and D seasons in 2012. The 2012 PSC limits are effective until November 1, 2012. Paragraphs (h)(3)(i) and (ii) specify a PSC limit of 8,929 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA for the C and D seasons in 2012, and a PSC limit of 5,598 Chinook salmon for vessels engaged in directed fishing for pollock in the Western reporting area of the GOA for the C and D seasons in 2012. These revisions are necessary to establish the annual Chinook salmon PSC limits and the 2012 C and D season limits recommended by the Council and approved by the Secretary.

Paragraph (h)(4) of § 679.21 requires temporary salmon retention in the Central and Western GOA directed pollock fisheries. The operator of a vessel and the manager of a shoreside processor or stationary floating processor may not discard any salmon or transfer or process any salmon under the PSD program at § 679.26, if the salmon are taken incidental to a Central or Western GOA directed pollock fishery, until after an observer at the processing facility has been provided the opportunity to count the number of salmon and to collect any scientific data or biological samples from the salmon.

Paragraph (h)(5) of § 679.21 requires that all salmon, except for salmon donated pursuant to the PSD program at § 679.26, must be discarded following notification by an observer that the number of salmon has been estimated and the collection of scientific data or biological samples has been completed. This requirement is necessary to ensure observers are provided the

opportunity to count salmon and to take biological samples, and to ensure that the salmon not donated is discarded, as required of all PSC.

Paragraph (h)(6) of § 679.21 establishes Chinook salmon PSC closure management. NMFS would close pollock fisheries using trawl gear if, during the fishing year, the Regional Administrator determines that vessels engaged in directed fishing for pollock in the Central or Western GOA will catch all the Chinook salmon PSC limit specified for that area. NMFS will publish a notice in the Federal Register closing the applicable regulatory area to directed fishing for pollock. This step is necessary to allow NMFS to manage area closures for the pollock fisheries in the Central and Western Regulatory Areas of the GOA based on Chinook salmon PSC reaching the Chinook salmon PSC limits for the Central and Western Reporting Areas. The State of Alaska will manage the closure of the State waters parallel pollock fishery.

Prohibited Species Donation Program

This final rule revises § 679.26(c)(1) reporting and recordkeeping requirements for the PSD program to add the Central and Western GOA pollock fisheries and to ensure observer sampling of donated fish. This is necessary to facilitate the counting and biological sampling of donated salmon and to ensure NMFS applies the Chinook salmon donated to the PSD program to the PSC limits.

In addition, this final rule modifies the PSD program regulations to implement the intent of the program to allow participation by all types of near shore, stationary processors for halibut donations. Paragraph (a)(2) of § 679.26 is revised to include stationary floating processors as eligible to receive and process donated halibut. Stationary floating processors are generally located near shore and remain in one location and are therefore similar to a shoreside processor for purposes of the halibut donation program. This revision is necessary to meet the Council's

intent under Amendment 50 to the GOA FMP that halibut that cannot be sorted at sea and delivered to a processor located in one location in a near shore area may be donated to the PSD program.

The final rule revises paragraph (b)(1)(xi) of § 679.26 to clarify information required for the application process to become an authorized PSD distributor. This rule removes the requirement that the vessel or processor provide a fax number, as faxes are no longer used for communication between NMFS and the vessels or processors for the purposes of this program. This revision reduces the reporting burden for the PSD applicant.

The final rule revises paragraph (b)(2)(iv) of § 679.26 to change the selection criteria considered by the Regional Administrator in issuing a PSD permit. The revision changes the consideration of the potential number of groundfish trawl vessels and processors in the fishery to the potential number of vessels and processors participating in the PSD program. The number of vessels and processors in the groundfish fishery is not an important consideration to determine how many distributors should participate in the program. Instead, the Regional Administrator will consider the number of vessels and processors currently in the PSD program, along with the number and qualification of applicants, the number of harvesters and quantity of fish that applicants can effectively administer, and the anticipated level of bycatch of prohibited species. A comparison of the number of vessels and processors currently in the program with the number of harvesters that prospective distributors can effectively administer provides a more meaningful basis by which to determine the appropriate number of distributors for the program. This revision focuses the considerations for issuing a permit on pertinent vessel and processor information.

Changes From the Proposed Rule

This final rule does not include a provision imposing increased observer coverage on vessels less than 60 feet length overall (LOA) that participate in the directed pollock fishery in the Central or Western regulatory areas of the GOA by January 2013. Consistent with the Council's intent, the proposed rule stated that increased observer coverage on vessels less than 60 feet LOA under this action would only be effective until the restructured observer program is implemented (76 FR 77762). It would be premature to adopt a final rule that imposes such increased observer coverage at this time, because NMFS approved Amendment 86 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 76 to the GOA FMP on June 7, 2012. Having approved these FMP amendments that provide for a restructured observer program, NMFS intends to fulfill its legal responsibility to implement the amendments. The proposed rule for Amendment 86 and Amendment 76 was published on April 18, 2012, with the comment period ending on June 18, 2012 (77 FR 23266). NMFS has not yet made any final decisions regarding the publication of a final rule to implement Amendments 86 and 76 and NMFS recognizes that revisions to the proposed rule may occur as a result of public comments. Nonetheless, at this time, NMFS anticipates that the restructured observer program will be implemented by January 1, 2013, meeting the Council's intent of increased coverage under Amendment 93.

Implementing a short-term change to the observer program for these vessels between the effective date of this final rule and January 2013, would burden NMFS and fishery participants without providing much improvement over current data collection efforts. Moreover, such a short-term change is not needed to meet the Council's intent under Amendment 93. Rather than require an interim change to observer requirements that would provide little data collection benefit relative to the effort the agency would expend to implement this short-term program,

resources will be used to ready NMFS and the industry for the restructured observer program that NMFS has proposed and anticipates will be implemented beginning in 2013. If NMFS does not implement the restructured observer program by January 1, 2013, the agency will consult with the Council regarding how to achieve observer coverage for vessels less than 60 feet LOA under Amendment 93 until the restructured observer program is implemented. Therefore, NMFS changed this final rule for GOA Chinook PSC management to omit the increased observer coverage set forth in the proposed rule. NMFS consulted with the Council in June 2012 regarding this approach to observer coverage for these vessels under the final rule for Amendment 93.

Response to Comments

NMFS received 4 letters containing 12 unique comments during the public comment periods for the Notice of Availability and for the proposed rule. One letter received was not responsive to this action. A summary of relevant comments, grouped by subject matter and NMFS' responses, follows.

Comment 1: Several commenters expressed general support for Amendment 93 to the FMP and its implementing regulations.

Response: NMFS acknowledges these comments.

Comment 2: The range of alternatives considered in the environmental assessment was inadequate, and NMFS should have considered lower PSC limits.

Response: The environmental assessment for this action included a reasonable range of alternatives that met the purpose and need of this action to take prompt action to protect against the risk of high Chinook salmon PSC levels. The Council's problem statement recognizes the obligation under the MSA to minimize Chinook salmon bycatch to the extent practicable. The

alternatives included (1) no action; (2) GOA-wide PSC limits of 15,000, 22,500, 25,000, and 30,000 Chinook salmon; (3) alternative ways of allocating the PSC limits between the Central and Western Reporting Areas; and (4) a 25-percent buffer for the PSC limit in one out of three consecutive years. Alternative 2 included a range of PSC caps that would reduce Chinook salmon PSC to varying degrees, with lower limits resulting in potentially greater adverse economic impacts on fishery participants. During the Council's development of this action, no member of the public objected to the adequacy of the range of GOA-wide PSC limits evaluated in the Council's Public Review draft of the Environmental Assessment. Throughout the Council process, no member of the public commented that the Council must consider GOA-wide PSC limits below 15,000 Chinook salmon, nor did any member of the public suggest that a lower GOA-wide PSC limit was needed to achieve the Council's stated purpose, which was to diminish the risk of high Chinook salmon PSC levels to the extent practicable.

The Council considered the importance of equity among user groups in recommending Amendment 93. The Council noted that the Chinook salmon resource is of value to many stakeholders, including but not limited to commercial, recreational, and cultural user groups, and it is a resource that is currently fully allocated. The Council also recognized that efforts to reduce Chinook salmon PSC in the pollock fishery would impose costs on participants in the pollock fishery. The preferred alternative balances the need to minimize Chinook PSC to the extent practicable, consistent with the MSA National Standard 9, with the requirements of National Standard 1, to enable the pollock fishery to contribute to the achievement of optimum yield in the groundfish fishery. In an effort to strike this balance, the Council considered a range of PSC limits. As indicated by the analysis (see ADDRESSES), a PSC limit of 15,000 fish would result in considerable amounts of foregone harvest in the pollock fishery, and relatively

high costs (in terms of foregone revenue) per salmon saved. PSC limits lower than 15,000 fish would be expected to further increase these costs.

A Chinook salmon PSC limit of 15,000 would impose a greater burden on small entities that participate in the pollock fishery by constraining pollock fishing to a greater degree than the 25,000 fish limit of the preferred alternative. Any lower PSC limits would have further burdened fishery participants and were not considered practicable by the Council for minimizing Chinook salmon bycatch because they were determined to be unnecessarily constraining to the pollock fisheries. Given the considerable costs per salmon saved at PSC limits of 15,000 or less and uncertainty over the added benefits to individual Chinook stocks of such limits, the environmental assessment evaluated a reasonable range of alternatives.

Comment 3: The proposed limit does not comply with National Standard 9 and the precautionary principle.

Response: In developing Amendment 93, the Council considered consistency with the MSA's ten National Standards, including National Standard 9, which requires NMFS to minimize bycatch to the extent practicable, and National Standard 1, to achieve optimum yield for the managed fishery. The Council designed Amendment 93 to balance the competing requirements of the National Standards. Specifically, the Council recognized the need to balance and be consistent with the mandate of National Standard 9 and the mandate of National Standard 1. In selecting the overall limit on Chinook salmon PSC, the Council considered a range of alternatives to assess the impacts of minimizing Chinook salmon bycatch to the extent practicable while preserving the potential for the full harvest of the pollock TAC. The Council considered the trade-offs between Chinook salmon saved and the forgone pollock catch. The EA

and RIR include a description of the alternatives and a comparative analysis of the potential impacts of the alternative PSC limits (see ADDRESSES).

The action follows the precautionary principle by implementing conservation measures to reduce overall Chinook salmon PSC, even though data is not available to determine the impact of Chinook salmon PSC on individual Chinook salmon stocks. Even though effects on individual Chinook salmon stocks cannot be determined at this time, this action reduces overall potential impacts and improves data collection, which is a necessary precursor to any future analysis of the potential impacts of the pollock fisheries on individual Chinook salmon stocks. The PSC limits 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 any particular Chinook salmon stocks, and the need to ensure that the pollock fishery contributes to the achievement of optimum yield in the groundfish fishery.

Comment 4: The proposed limit does not adequately address the full costs and benefits to each user sector and did not provide the public with the opportunity to review more stringent PSC limits that appropriately respond to uncertainties about the Chinook resource, impacts to downstream users, and the requirements of National Standard 9.

Response: See response above to comment 2 regarding a more stringent PSC limit and response to comment 3 above regarding uncertainties about impacts to the Chinook salmon resource. The Council considered the importance of equity among user groups in recommending Amendment 93. In addition to providing a fair and equitable apportionment of the total GOA-wide PSC limit between the Central and Western GOA pollock fisheries, the Council also considered the needs of Chinook salmon users. The Council noted that the Chinook salmon resource is of value to many stakeholders, including, but not limited to, commercial, recreational,

and cultural user groups, and it is a resource that is currently fully allocated. By recommending a PSC limit that reduces Chinook salmon PSC in relatively high bycatch years, the Council also has considered the needs of these other user groups and has recommended measures to promote their access to the Chinook salmon resource. The RIR included a qualitative discussion of the benefits of a PSC limit to users of Chinook salmon (both consumptive and non-consumptive uses); therefore, the benefits have been described, albeit with some limitations due to the information that is available (see ADDRESSES). With the information that is currently available, neither the total “cost” of Chinook salmon PSC nor the total “value” of Chinook salmon savings can be estimated for the various user groups. The potential salmon savings that are estimated in the analysis do not translate directly into adult salmon that would otherwise have survived to return to spawning streams. Because of these and other data limitations, it is beyond the scope of the analysis to monetize or even quantify the benefits of this action, which is expected to reduce Chinook salmon PSC by, on average, 5,800 fish annually. However, the Council heard and considered testimony and was provided additional information by representatives of most groups that utilize the Chinook salmon resource demonstrating the breadth and variety of values associated with this species.

An analysis of the preferred alternative suggests that the imposition of PSC limits is likely to be constraining to the GOA pollock fisheries in some years, and consequently may result in impacts to the communities that depend on those fisheries. The preferred alternative that is implemented by this final rule balances the need to minimize Chinook salmon PSC consistent with National Standard 9, with the requirement to achieve optimum yield in the managed fishery, consistent with National Standard 1. The preferred alternative also reflects consideration of the requirements of National Standard 8—to minimize adverse impacts on

fishing communities, consistent with the conservation requirements of the MSA. To this end, the final rule establishes PSC limits for the Western and Central GOA that could allow the pollock quota to be fully harvested in both areas, if the fleet can maintain the average long-term (17-year) Chinook salmon PSC rate, recognizing that in years of high PSC, if the fleet is unable to work together to come up with mechanisms to reduce Chinook salmon PSC, the PSC limit may result in an early closure to the fishery. One consequence of such a closure may be a benefit to fishing communities that depend on Chinook salmon. In approving the final rule, the Secretary minimizes the risk of adverse impacts to fishing communities, while adhering to her conservation obligations under National Standard 9.

Comment 5: Mid-year implementation is opposed and the Secretary should disapprove this part of the rule. The caps to be put in place for the C and D seasons in 2012 will constrain the 2012 fall GOA pollock fisheries in the Central GOA.

Response: The Council recommended the PSC limits for the 2012 C and D seasons to be 8,929 Chinook salmon in the GOA Central Reporting Area and 5,598 Chinook salmon in the GOA Western Reporting Area. NMFS has determined that implementing these limits is consistent with the MSA and other applicable law.

These PSC limits were calculated by multiplying the annual PSC limit in each area by the average percentage of annual Chinook salmon PSC taken in the C and D seasons within each area, over the same time series of 2001 to 2010 but excluding 2007 and 2010, and adjusting upward by 25 percent. The Council adjusted the amount upward by 25 percent the first year to provide a buffer and reduce the constraint of mid-year implementation limits on the pollock fisheries. The Council recommended the 25 percent increase recognizing that pollock total allowable catch limits (TACs) may be higher in 2012 than they were in 2011. NMFS expects the

upward adjustment of the PSC limits that will be implemented in 2012 will result in PSC limits that are not overly restrictive on the Central GOA pollock fishery. Nevertheless, the limits are intended to be constraining in years of high Chinook salmon PSC. If they are constraining, they are performing their intended function to prevent excessively high PSC. By the commenter's own analysis, full prosecution of the C season in the Central Gulf should be expected. If the fleet is able to achieve a modest reduction in its Chinook PSC rate compared to 2011, when there was no PSC limit in place, it may be able to avoid a closure before the TAC is reached in the D season as well.

Comment 6: There are numerous recent and upcoming Council and State actions that cumulatively may restrict the harvesters.

Response: Beyond the cumulative impact analyses in the EA for this action, the 2006 and 2007 harvest specifications EA, Groundfish Harvest Specifications Environmental Impact Statement, Allocation of Pacific Cod among Sectors in the Western and Central GOA EA, and the Central GOA Rockfish Program EA, no other additional past or present cumulative impact issues were identified. The combination of effects from the cumulative effects of past, present, and reasonably foreseeable future actions and this action are not likely to result in significant effects for any of the environmental components analyzed and are therefore not significant. Socioeconomic impacts are a direct result of the action of imposing PSC limits on the fisheries. These impacts are independent of the natural or physical effects of imposing PSC limits on the fisheries and are not expected to be significant. The environmental analyses listed are available at <http://alaskafisheries.noaa.gov>.

Comment 7: Due to inshore/offshore regulations, no pollock catcher/processors participate in the GOA pollock fisheries.

Response: NMFS acknowledges this comment. This final rule applies to the directed pollock trawl fisheries in the Central and Western Reporting Areas of the GOA, including pollock catcher/processors if they were to participate in the GOA pollock fishery in the future.

Comment 8: The proposed rule states in the preamble that the only State of Alaska-managed pollock guideline harvest level fishery in those areas is the Prince William Sound (PWS) pollock fishery. If “those areas” refers to the Central and Western GOA, the PWS area (649) is considered part of the Eastern GOA, not the Central or Western GOA.

Response: NMFS acknowledges this comment, and agrees that the PWS area (649) is considered part of the Eastern GOA. “Those areas” referred to the entire GOA.

Comment 9: The proposed rule preamble stated paragraph (h)(2)(ii) would specify an annual limit of 6,684 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA. “Central” should be “Western.”

Response: NMFS agrees. This was an erroneous statement in the proposed rule preamble which was not reflected in the proposed regulatory text set forth in the proposed rule. The correct annual PSC limits of 6,684 Chinook salmon for vessels engaged in directed fishing for pollock in the Western reporting area of the GOA, and 18,316 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA, were stated in the proposed regulatory text and elsewhere throughout the preamble of the proposed rule.

Comment 10: The proposed rule needs clarification for regulatory text for observers on catcher/processors in a directed pollock fishery in the Central or Western reporting areas of the GOA. Catcher/processors do not participate in GOA directed pollock fisheries, so requiring catcher/processors less than 60 ft. to carry an observer for pollock directed fishing seems unnecessary and conflicting.

Response: NMFS acknowledges this comment. For reasons noted in the preamble, no observer requirements are included in this final rule.

Comment 11: Unlike the Bering Sea American Fisheries Act (AFA) fleet, the GOA pollock catcher vessels are subject to 30 percent observer coverage, not 100 percent coverage, so the PSC estimates will not be based entirely on observer census numbers for all deliveries. Given the high number of permutations of area/target/gear type and the 30 percent observed rate, a high Chinook salmon bycatch rate in one area/target/gear with poor observer coverage could result in underestimated or overestimated salmon numbers for the entire fleet in that area/target/gear fishery. The Bering Sea, with 100 percent observer coverage for distinct pollock trips (no mixing of catch species, which happens in the Central GOA) and mid-water fishery only, results in 100 percent census data to manage the hard caps for Chinook salmon PSC. For the GOA, the data will be more variable and less robust; this will challenge NMFS to accurately manage a hard cap for Chinook salmon PSC and will challenge the fleet to stay within the cap. A better approach could be to have PSC estimates derived from all pollock trips as one group by regulatory area instead of creating separate estimates across all the different possible permutations. Variability and precision may improve and this type of approach should be evaluated.

Response: NMFS acknowledges this comment. The current Catch Accounting System is described in Chapter 5 of the analysis for this action (see ADDRESSES). NMFS estimates of Chinook salmon are based on well-established sampling methodology implemented by the observer program and ratio estimators based on post stratification of catch. Changes to the estimation process are outside the scope of this rule.

Comment 12: The GOA pollock fishery is not the Bering Sea AFA pollock fishery. A hard cap with no tools or incentives for saving is a very blunt and antiquated management scheme.

Response: NMFS acknowledges this comment. This action sets PSC limits, but it does not restructure the management of the pollock fishery. The Council acknowledged that the selection of a Chinook salmon PSC limit for the GOA pollock fishery requires a balance of obligations under the MSA National Standards and the needs of different user groups. The Council intends for the Chinook salmon PSC limits to allow the full prosecution of the pollock fishery in the Central and Western GOA in most years, while truncating the fishery in high bycatch years, to prevent events of relatively high Chinook salmon PSC in these areas, such as occurred in 2010 (44,813 Chinook salmon).

Classification

The Administrator, Alaska Region, NMFS determined that the FMP amendment is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the MSA and other applicable law. After considering the comments received on the amendment, the Secretary of Commerce approved Amendment 93 on February 17, 2012.

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 NMFS at the following website: <http://alaskafisheries.noaa.gov>.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

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 December 14, 2011 (76 FR 77757), with comments invited through January 30, 2012. 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 and 3.3 of the analysis for this action (see ADDRESSES). The MSA National Standards require balancing optimum yield with minimizing bycatch and minimizing adverse impacts to fishery dependent communities. Chinook salmon bycatch taken incidentally in GOA pollock fisheries is a concern, historically accounting for the greatest proportion of Chinook salmon taken in GOA groundfish fisheries.

Salmon bycatch control measures have not yet been implemented in the GOA, and 2010 Chinook salmon bycatch levels in the area were unacceptably high. Limited information on the origin of Chinook salmon in the GOA indicates that stocks of Asian, Alaska, British Columbia, and lower-48 origin are present, including Endangered Species Act-listed stocks.

The legal basis for this action is the MSA. Under the authority of the MSA, the Secretary of Commerce (NMFS Alaska Regional Office) and the Council have the responsibility to prepare fishery management plans and associated regulations for the marine resources found to require conservation and management. NMFS is charged with carrying out the federal mandates of the Secretary of Commerce with regard to marine fish, including the publication of federal regulations. The Alaska Regional Office of NMFS and the Alaska Fisheries Science Center research, draft, and support the management actions recommended by the Council. The GOA groundfish fisheries are managed under the FMP. The action represents amendments to the FMP, as well as amendments to associated Federal regulations. Two principal objectives of the FMP amendment and regulations are to reduce Chinook salmon PSC in the Central and Western GOA pollock fisheries to the minimal level practicable, consistent with National Standard 9 of the MSA, and to enable pollock harvests to contribute to the achievement of optimum yield on a continuing basis in the GOA groundfish fishery, consistent with National Standard 1 of the MSA.

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 93 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."

Number and Description of Directly Regulated Small Entities

This final action directly regulates those federally-permitted or licensed entities that participate in harvesting groundfish from the Federal or State of Alaska-managed parallel pollock target fisheries of the Central or Western GOA. Fishing vessels are considered small entities if their total annual gross receipts, from all their activities combined, are less than \$4.0 million. The analysis identified 63 vessels in 2010 that would be affected by this action, 37 catcher vessels of which fished for pollock in the Central or Western GOA pollock fisheries and are members of a cooperative. These vessels are members of an AFA cooperative for Bering Sea pollock, a rockfish program cooperative in the GOA, a Bering Sea crab cooperative, or members of two or more of these cooperatives. The remaining 26 vessels are not part of a cooperative and are considered to be small entities.

Description of Significant Alternatives to the Final Action

During consideration of this action, the Council evaluated a number of alternatives to the preferred alternative, including (1) no action; (2) GOA-wide PSC limits of 15,000, 22,500, 25,000, and 30,000 Chinook salmon; (3) alternative ways of allocating the PSC limits between the Central and Western Reporting Areas; and (4) a 25-percent buffer for the PSC limit in one out of three consecutive years. The preferred alternative selected for Amendment 93 was a 25,000 fish limit, with 73 percent going to the Central GOA and 27 percent to the Western GOA. None of the other alternatives met the objectives of the action and had a smaller impact on small entities.

No action would have left the Chinook salmon PSC unlimited, which would have failed to meet the objective of the action. The 30,000 GOA-wide Chinook salmon PSC limit would likewise have failed to significantly control Chinook salmon PSC, and therefore failed to balance the benefits of the action to the Chinook salmon stocks and target fisheries for Chinook salmon with the needs of pollock trawlers in the way sought by the Council. A Chinook salmon PSC limit of 15,000 would have imposed a greater burden on small entities by constraining pollock fishing beyond the preferred alternative. The Chinook salmon PSC limit of 22,500 would be constraining in more years for the Central GOA compared to the recommended 25,000 PSC limit. The option for a 25-percent buffer to the PSC limits did not meet the intended objectives of reducing Chinook salmon PSC to the maximum extent practicable. Under the apportionment options, the Central GOA's proportion of the GOA-wide PSC limit ranges from 61 percent to 77 percent, or 9,122 Chinook salmon to 23,224 Chinook salmon, depending on the overall PSC limit. For the Western GOA, the range is from 23 percent to 39 percent, which results in a range of 3,388 Chinook salmon to 11,757 Chinook salmon. The apportionment options were based on the relative historical pollock catch in each regulatory area, the relative historical Chinook salmon catch amounts in each area, or a weighted ratio of the two. The Council determined lower percentages for either area were unnecessarily constraining to the pollock fisheries in the area while larger percentages for either area did not provide the incentive to minimize PSC to the extent practicable.

The changes to the PSD program regulations reduce reporting burden for applicants, streamline the application process considerations, and improve the description of eligible processors. No alternatives were identified for these regulatory amendments that would further reduce any potential impacts on small entities.

Collection-of-Information Requirements

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under Control Number 0648-0316.

Public reporting burden for the Application to become a NMFS Authorized Distributor in the PSD program is estimated to average 13 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

OMB Revisions to PRA references in 15 CFR 902.1(b).

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule adds a collection-of-information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the new section resulting from this final rule.

Tribal Consultation

Executive Order (E.O.) 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law No. 108–199 (188 Stat. 452), as amended by section 518 of Public Law No. 109–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations.

NMFS is obligated to consult and coordinate with federally recognized tribal governments and Alaska Native Claims Settlement Act regional and village corporations on a government-to-government basis pursuant to E.O. 13175 which establishes several requirements for NMFS, including (1) to provide regular and meaningful consultation and collaboration with Indian tribal governments and Alaska Native corporations in the development of Federal regulatory practices that significantly or uniquely affect their communities, (2) to reduce the imposition of unfunded mandates on Indian tribal governments, (3) and to streamline the applications process for and increase the availability of waivers to Indian tribal governments. This Executive Order requires Federal agencies to have an effective process to involve and consult with representatives of Indian tribal governments in developing regulatory policies and prohibits regulations that impose substantial, direct compliance costs on Indian tribal communities.

Section 5(b)(2)(B) of E.O. 13175 requires NMFS to prepare a tribal summary impact statement as part of the final rule. This statement must contain (1) a description of the extent of the agency's prior consultation with tribal officials, (2) a summary of the nature of their concerns, (3) the agency's position supporting the need to issue the regulation, and (4) a statement of the extent to which the concerns of tribal officials have been met.

Tribal Summary Impact Statement

On December 14, 2011, NMFS consulted on this action by mailing letters to all Alaska tribal governments, Alaska Native corporations, and related organizations (“Alaska Native representatives”) by notifying them of the opportunity to comment when the Notice of Availability for Amendment 93 and the proposed rule were published in the Federal Register. The letter invited requests for further consultation on this action. One letter was received from the tribes in support of implementation of Amendment 93. The agency will implement Amendment 93 to establish PSC limits of salmon in the Central and Western GOA pollock fisheries. There were no concerns regarding the proposed action raised by tribal officials during this consultation process.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Parts 679 and 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 17, 2012.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

performing the functions and duties of the Assistant Administrator for Fisheries,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR chapter IX and 50 CFR chapter VI as follows:

TITLE 15—COMMERCE AND FOREIGN TRADE

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
DEPARTMENT OF COMMERCE

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE
PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 et seq.

2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR,” add entry in alphanumeric order for “679.21(h).” The addition reads as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR	
* * * * *	
679.21(h)	-0316
* * * * *	

TITLE 50—WILDLIFE AND FISHERIES

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE
PART 679-- FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

3. 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.

4. In § 679.7, add paragraph (b)(8) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(b) * * *

(8) Prohibitions specific to salmon discard in the Central and Western Reporting Areas of the GOA directed fisheries for pollock. Fail to comply with any requirement of § 679.21(h).

* * * * *

5. In § 679.21:

- a. Revise paragraphs (b)(2)(ii) and (b)(3); and
- b. Add paragraph (h) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

- (b) * * *
- (2) * * *

(ii) After allowing for sampling by an observer, if an observer is aboard, sort its catch immediately after retrieval of the gear and, except for salmon prohibited species catch in the BS and GOA pollock fisheries under paragraph (c) or (h) of this section, or any prohibited species catch as provided (in permits issued) under § 679.26, return all prohibited species, or parts thereof, to the sea immediately, with a minimum of injury, regardless of its condition.

(3) Rebuttable presumption. Except as provided under paragraph (c) and (h) of this section and § 679.26, there will be a rebuttable presumption that any prohibited species retained on board a fishing vessel regulated under this part was caught and retained in violation of this section.

* * * * *

(h) GOA Chinook Salmon PSC Management—(1) Applicability. Regulations in this paragraph apply to vessels directed fishing for pollock with trawl gear in the Central and Western reporting areas of the GOA and processors taking deliveries from these vessels.

(2) GOA Chinook salmon prohibited species catch (PSC) limits (effective January 1, 2013).

(i) NMFS establishes an annual PSC limit of 18,316 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA.

(ii) NMFS establishes an annual PSC limit of 6,684 Chinook salmon for vessels engaged in directed fishing for pollock in the Western reporting area of the GOA.

(3) Chinook salmon PSC limit for the GOA pollock fishery C and D seasons in 2012. (Effective from August 25, 2012, until November 1, 2012). NMFS establishes the GOA Chinook salmon PSC limits for the Central and Western GOA pollock fisheries during the 2012 C and D seasons as follows:

(i) A PSC limit of 8,929 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA; and

(ii) A PSC limit of 5,598 Chinook salmon for vessels engaged in directed fishing for pollock in the Western reporting area of the GOA.

(4) Salmon retention. The operator of a vessel and the manager of a shoreside processor or SFP must not discard any salmon or transfer or process any salmon under the PSD program at § 679.26, if the salmon were taken incidental to a Central or Western GOA directed pollock fishery, until an observer at the processing facility that takes delivery of the catch is provided the opportunity to count the number of salmon and to collect any scientific data or biological samples from the salmon.

(5) Salmon discard. Except for salmon under the PSD program at § 679.26, all salmon must be discarded, following notification by an observer that the number of salmon has been estimated and the collection of scientific data or biological samples has been completed.

(6) Chinook salmon PSC closures in Pollock trawl gear fisheries. If, during the fishing year, the Regional Administrator determines that vessels engaged in directed fishing for pollock in the Central reporting area or Western reporting area of the GOA will catch the applicable Chinook salmon PSC limit specified for that reporting area under paragraph (h)(2) of this

section, NMFS will publish notification in the Federal Register closing the applicable regulatory area to directed fishing for pollock.

6. In § 679.26, revise paragraphs (a)(2), (b)(1)(xi) introductory text, (b)(1)(xi)(C), (b)(2)(iv), and (c)(1) to read as follows:

§ 679.26 Prohibited Species Donation Program.

(a) * * *

(2) Halibut delivered by catcher vessels using trawl gear to shoreside processors and stationary floating processors.

(b) * * *

(1) * * *

(xi) A list of all vessels and processors, and food bank networks or food bank distributors participating in the PSD program. The list of vessels and processors must include:

* * * * *

(C) The vessel's or processor's telephone number.

* * * * *

(2) * * *

(iv) The potential number of vessels and processors participating in the PSD program.

* * * * *

(c) * * *

(1) A vessel or processor retaining prohibited species under the PSD program must comply with all applicable recordkeeping and reporting requirements, including allowing the collection of data and biological sampling by an observer prior to processing any fish under the PSD program. A vessel or processor participating in the PSD program:

(i) In the BS pollock fishery must comply with applicable regulations at §§ 679.7(d) and (k), 679.21(c), and 679.28; and

(ii) In the Central or Western GOA pollock fishery must comply with applicable regulations at §§ 679.7(b), 679.21(h) and 679.28.

* * * * *

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