



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130424402-4509-01]

RIN 0648-BD23

Fisheries of the Exclusive Economic Zone off Alaska; Bering Sea and Aleutian Islands Management Area; Amendment 105; Bering Sea and Aleutian Islands Flatfish Harvest Specifications Flexibility

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 105 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). If approved, Amendment 105 would establish a process for Western Alaska Community Development Quota (CDQ) groups, and cooperatives established under the Amendment 80 Program (Amendment 80 cooperatives), to exchange harvest quota from one of three flatfish species (flathead sole, rock sole, and yellowfin sole) for an equal amount of another of these three flatfish species, while maintaining total catch below acceptable biological catch (ABC) limits. This action would modify the annual harvest specification process to allow the North Pacific Fishery Management Council (Council) to establish the maximum amount of flathead sole, rock sole, and yellowfin sole that may be exchanged based on social, economic, or biological

considerations. This action is necessary to mitigate the operational variability, environmental conditions, and economic factors that may constrain the CDQ groups and Amendment 80 cooperatives from achieving, on a continuing basis, the optimum yield (OY) in the BSAI groundfish fisheries. This action is intended to promote the goals and objectives of the BSAI FMP, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by, NOAA-NMFS-2013-0074, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0074, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments
- Mail: Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly

accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the Categorical Exclusion prepared for this action, the supplemental information report prepared for the final 2014 and 2015 harvest specifications (Harvest Specifications Supplemental Information Report (SIR)), or the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Harvest Specifications EIS) may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this action may be submitted to NMFS at the above address and by e-mail to OIRA_Submission@omb.eop.gov or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, 907-586-7228

SUPPLEMENTARY INFORMATION:

Regulatory Authority

NMFS proposes regulations to implement Amendment 105 to the BSAI FMP. NMFS manages the U.S. groundfish fisheries of the Exclusive Economic Zone off Alaska under the BSAI FMP and the Fishery Management Plan for Groundfish of the Gulf of Alaska. The Council prepared the BSAI FMP pursuant to the Magnuson-Stevens Act and other applicable law. Regulations implementing the BSAI FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Background

The proposed action would revise Federal regulations and amend the BSAI FMP to:

- Define an amount of flathead sole, rock sole, and yellowfin sole in the BSAI, that is the difference between each species' annual ABC and annual total allowable catch (TAC), as the ABC surplus for that flatfish species.
- Allow the Council to recommend, and NMFS to specify, that some, none, or all, of the ABC surplus for flathead sole, rock sole, or yellowfin sole in the BSAI be set aside each year through the annual harvest specifications process. The amount of ABC surplus set aside for a species is the ABC reserve.
- Allow CDQ groups and Amendment 80 cooperatives to apply to NMFS to receive a portion of the ABC reserve for flathead sole, rock sole, or yellowfin sole in the BSAI if they exchange a portion of their unused annual allocations of one or two flatfish species for an equal amount of another flatfish species (e.g., exchange an amount of unused annual allocation of flathead sole or allocations of flathead sole and rock sole for an equal amount of yellowfin sole ABC reserve). This exchange would be defined as a Flatfish Exchange.
- Allow a Flatfish Exchange only if it would not cause a CDQ group or an Amendment 80 cooperative to exceed the ABC or ABC reserve amount for flathead sole, rock sole, or yellowfin sole.
- Limit the number of Flatfish Exchanges that each CDQ group or

Amendment 80 cooperative could undertake in a calendar year.

- Require that Amendment 80 cooperatives provide an annual report on the use of Flatfish Exchanges.

The purpose of this proposed action is to maximize catch, retention, and utilization of flathead sole, rock sole, and yellowfin sole while maintaining catch at, or below, the ABC and ABC reserve for each species. The following sections provide necessary background to describe the effects of the proposed action. These sections are: (1) the annual harvest specification process; (2) the CDQ Program; (3) the Amendment 80 Program; (4) the objectives for and effects of the proposed action; and (5) the proposed action. The proposed action section includes a description of: the process for setting the ABC surplus and the ABC reserve; the method for determining the portion of the ABC reserve for each flatfish species available to each CDQ group and Amendment 80 cooperative; the Flatfish Exchange process each CDQ group and Amendment 80 cooperative must use; and annual Amendment 80 cooperative Flatfish Exchange reporting requirements.

Annual Harvest Specification Process

General Annual Harvest Specifications Process

Section 3.2.3 of the BSAI FMP and its implementing regulations at § 679.20(c) require that the Council recommend and NMFS specify an overfishing level (OFL), an ABC, and a TAC for each stock or stock complex (i.e., species or species group) of groundfish on an annual basis. The OFLs, ABCs, and TACs for BSAI groundfish are specified through the annual harvest specification process. A detailed description of the annual harvest specification process is provided in the Harvest Specifications EIS, the

Harvest Specifications SIR, and the final 2014 and 2015 harvest specifications for groundfish of the BSAI (79 FR 12108, March 04, 2014) and is briefly summarized here.

Section 3.2.1 of the BSAI FMP defines the OFL as the level above which overfishing is occurring for a species or species group. NMFS manages fisheries in an effort to ensure that no OFLs are exceeded in any year. Section 3.2.4.3 of the BSAI FMP clarifies that if catch is approaching an OFL, NMFS will prevent overfishing by closing specific fisheries identified by gear and area that incur the greatest catch. Closures expand to other fisheries if the rate of take is not sufficiently slowed. Regulations at §§ 679.20(d)(1), (d)(2), and (d)(3) define the process NMFS uses to limit or prohibit fishing to prevent overfishing and maintain total catch at or below the OFL.

Section 3.2.1 of the BSAI FMP defines the ABC as the level of a species or species group's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty. The ABC cannot exceed the OFL as described in section 3.2.3.3.1 of the BSAI FMP. NMFS attempts to manage all fisheries so that total catch does not exceed the ABC by monitoring fisheries, imposing necessary closures, and other limitations. Regulations at §§ 679.20(d)(1) and (d)(2) describe the range of management measures that NMFS uses to maintain total catch at or below the ABC.

Section 3.2.1 of the BSAI FMP defines the TAC as the annual catch target for a species or species group, derived from the ABC by considering social and economic factors and management uncertainty. Section 3.2.3.4.1 of the BSAI FMP requires that the TAC must be set lower than or equal to the ABC. Section 3.2.4.3 of the BSAI FMP clarifies that NMFS may use a variety of management measures to limit catch to avoid

exceeding the TAC. Regulations at §§ 679.20(d)(1) and (d)(2) describe the range of management measures that NMFS uses to maintain total catch at or below the TAC.

The development of the OFLs and ABCs are based on annual Stock Assessment and Fishery Evaluation (SAFE) reports compiled by the Council's BSAI Groundfish Plan Team (Plan Team) and reviewed by the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP). The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of the groundfish fisheries off Alaska. The Plan Team publicly reviews the SAFE reports, receives input from the public, and recommends any needed revisions to the SAFE reports, estimates an OFL and ABC for each species or species group, and provides those recommendations to the Council.

Annually at the December Council meeting, the Council, the SSC, and the AP, publicly review the Plan Team's recommendations. During this meeting, the Council adopts OFLs and ABCs that cannot exceed the amounts recommended by the SSC. In setting specific TAC levels, the Council considers the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass.

Section 3.2.2.2 of the BSAI FMP and regulations at § 679.20(a)(2) require the sum of the TACs in all BSAI groundfish fisheries to be set within a range from 1.4 to 2 million metric tons (mt). This regulation implements the statutory requirement that "[t]he optimum yield for groundfish in the Bering Sea and Aleutian Islands Management Area

shall not exceed 2 million metric tons" (See section 803(c) of Pub. L. No. 108-199). Pursuant to Section 3.2.3.4.1 of the BSAI FMP, the Council may recommend TACs that are lower than the ABCs recommended by the SSC if setting TACs equal to ABCs would cause TACs to exceed 2 million mt. NMFS adheres to the statutory provision by limiting the sum of the TACs for all BSAI groundfish to 2 million mt. Generally, the sum of the ABCs for BSAI groundfish exceeds 2 million mt. For example, in 2014 the sum of all BSAI groundfish ABCs was 2,572,819 mt (79 FR 12108, March 04, 2014). In recent years, the Council and NMFS have specified TACs for several species below their respective ABCs to ensure that the sum of the TACs for groundfish in the BSAI does not exceed 2 million mt.

In addition to public comment received and considered by the Council during the development of annual harvest specifications, NMFS provides the public with notice and an opportunity to comment when it issues a proposed rule to implement the annual harvest specifications, which covers the Council's OFL, ABC, and TAC recommendations. The Secretary of Commerce (Secretary) will approve the final rule implementing the Council's recommended OFLs, ABCs, and TACs if she finds them consistent with the FMP, MSA, and other applicable law. The final 2014 and 2015 harvest specifications provide additional detail on this process (79 FR 12108, March 04, 2014).

Annual Specification Process for Flathead Sole, Rock Sole, and Yellowfin Sole

Flatfish in the BSAI are harvested by vessels primarily using trawl gear. In this mixed species fishery, operators target certain species of flatfish but also take a variety of species incidentally, including halibut and crab (species that are prohibited for harvest by

vessels fishing for groundfish), and other groundfish that typically occupy the same habitat at the same times of year. The composition of groundfish species taken in the BSAI flatfish fisheries varies by season and by fishing year.

Three of the most valuable BSAI flatfish fisheries, and the focus of this proposed action, are flathead sole, rock sole (Lepidopsetta polyxystra), and yellowfin sole (Limanda aspera). In the BSAI, flathead sole represents two morphologically similar species managed by NMFS as single species group. The flathead sole referred to in this document, and targeted in BSAI flatfish fisheries, is comprised of flathead sole (Hippoglossoides elassodon) and Bering flounder (Hippoglossoides robustus); the harvest of both species accrues toward a flathead sole TAC.

Typically the Council has recommended, and NMFS has approved, setting flathead sole, rock sole, and yellowfin sole TACs below the ABCs for those species for a variety of factors summarized here and described in greater detail in Sections 1.5 and 1.6 of the RIR/IRFA prepared for this action. In the Bering Sea, pollock is the target of a highly valued fishery; therefore, the Council often recommends, and NMFS approves, a TAC that is at, or near, the ABC for Bering Sea pollock, and that TAC is almost always completely harvested each year. The pollock TAC accounts for a large portion of the total groundfish available for harvest under the OY range for all BSAI groundfish. For example, in 2014 the Bering Sea pollock ABC is 1,369,000 mt and the TAC is 1,267,000 mt (79 FR 12108, March 04, 2014). This TAC level means that the sum of the TACs for all remaining BSAI groundfish in 2014 must not exceed 733,000 mt to ensure that the sum of the TACs for all BSAI groundfish does not exceed 2 million mt. It follows that setting TACs equal to ABCs for flathead sole, rock sole, and yellowfin sole would further

limit or eliminate harvest opportunities in the remaining non-pollock groundfish fisheries that also must be accommodated within the 2 million mt TAC limit. Although there is a relatively large biomass of flathead sole, rock sole, and yellowfin sole, and relatively large ABCs, compared to other BSAI groundfish species, the TACs set for these three flatfish species have not been fully harvested in recent years. Some of the reasons for the relatively limited harvests of flathead sole, rock sole, and yellowfin sole include the uncertain nature of harvest in these multi-species flatfish fisheries, operational factors specific to the CDQ Program and Amendment 80 fisheries, and economic conditions. These factors are described in more detail below in the “CDQ Program” and “Amendment 80 Program” sections of this preamble. For these reasons the Council did not recommend setting the TAC equal to ABC for flathead sole, rock sole, and yellowfin sole in 2014.

During the annual harvest specification process, the Council and NMFS must apportion the flathead sole, rock sole, and yellowfin sole TAC according to specific regulatory requirements. First, regulations require that NMFS reserve 10.7 percent of the TAC for each of these species for use by CDQ groups (see regulations at §§ 679.20(b)(1)(ii)(C) and 679.31). Second, the remaining TAC for each of these species is reduced by an incidental catch allowance (ICA) to account for incidental catch of flathead sole, rock sole and yellowfin sole by non-CDQ and non-Amendment 80 Program participants (see regulations at §§ 679.20(a)(8) and (10)). For the purposes of this proposed action, incidental catch refers to the flatfish caught and retained while targeting another species or species group. For example, NMFS must accommodate incidental catch of yellowfin sole in the Bering Sea pollock fishery by including an amount in the

ICA that will accommodate incidental catch in that fishery; NMFS must also add an amount to the yellowfin sole ICA to accommodate incidental catch in all other non-CDQ and non-Amendment 80 fisheries. Third, the remainder of the TAC is assigned to Amendment 80 Program and non-Amendment 80 Program participants as required for each species. Regulations require that the flathead sole and rock sole TACs remaining after establishing the CDQ reserves and ICAs are fully assigned to the Amendment 80 Program (see Table 33 to part 679). The yellowfin sole TAC remaining after establishing the CDQ reserve and the ICA is apportioned between the Amendment 80 sector and the BSAI trawl limited access sector (i.e., non-Amendment 80 trawl vessels) according to a specific formula that varies with the abundance of yellowfin sole (see Table 34 to part 679 for additional detail).

CDQ Program

The CDQ Program is an economic development program associated with federally managed fisheries in the BSAI. The purpose of the CDQ Program is to provide western Alaska communities with the opportunity to participate and invest in BSAI fisheries, to support economic development in western Alaska, to alleviate poverty, to provide economic and social benefits for residents of western Alaska, and to achieve sustainable and diversified local economies in western Alaska.

Regulations establishing the CDQ Program were first implemented in 1992 (57 FR 46133, October 7, 1992). Additional provisions applicable to the CDQ Program were incorporated in the Magnuson-Stevens Act in 1996 through the Sustainable Fisheries Act (Pub. L. 104-297). Regulations implementing the CDQ Program provide an exclusive harvest privilege for a portion of the groundfish, crab, and halibut annual catch limits for

use by non-profit entities representing specific eligible western Alaska communities. These exclusive harvest privileges are known as CDQ allocations. A total of 65 communities are authorized under section 305(i)(1)(D) of the Magnuson-Stevens Act to participate in the CDQ Program. These communities participate in the CDQ Program through six nonprofit corporations (CDQ groups) that manage and administer the CDQ allocations, investments, and economic development projects. These communities, and their CDQ groups, are identified in the Magnuson-Stevens Act at section 305(i)(1)(D).

The CDQ Program is defined as a catch share program because it provides an exclusive harvest privilege (i.e., a CDQ allocation) to a specific fishery participant (i.e., a CDQ group) for its exclusive use. The CDQ Program allocates a portion of commercially important BSAI groundfish species, including flathead sole, rock sole, and yellowfin sole, to the CDQ groups. Specific to this proposed action, section 305(i)(1)(B) of the Magnuson-Stevens Act requires an annual allocation of 10.7 percent of the TAC of flathead sole, rock sole, and yellowfin sole to the CDQ Program. Section 305(i)(1)(C) of the Magnuson-Stevens Act clarifies that 10 percent of the TAC for flathead sole, rock sole, and yellowfin sole is allocated among the six CDQ groups, based on the percentage allocations that were in effect on March 1, 2006, while the remaining 0.7 percent of the TAC for each of these species is distributed among CDQ groups based on the percentage allocations agreed on by a Board of Directors, serving in its capacity as the Administrative Panel or is allocated by the Secretary based on the nontarget needs of eligible CDQ groups in the absence of an Administrative Panel decision (see section 305(i)(1)(G) of the Magnuson-Stevens Act). Currently, the Western Alaska Community Development Association (WACDA) serves as the Administrative Panel specified in the

Magnuson-Stevens Act and defines the allocation of 0.7 percent of the TAC for each of these species among the CDQ groups. Section 1.6.1 of the RIR/IRFA prepared for this action provides additional detail on the CDQ allocations of flathead sole, rock sole, and yellowfin sole to the CDQ Program as a whole, and to each CDQ group.

NMFS prohibits any CDQ group from exceeding its CDQ allocation (see regulations at § 679.7(d)(3)). NMFS established this regulatory prohibition to hold CDQ groups accountable for maintaining their catch below their CDQ allocations. NMFS determined that this management measure is appropriate because CDQ groups have greater control over their harvesting activities, and are not engaged in a “race for fish” that can occur in fisheries that do not receive an exclusive harvest privilege. The CDQ allocations allow CDQ groups to make operational choices to improve fishery returns, reduce bycatch, and reduce fish discards. These operational changes are not likely to occur under a race for fish. Since the implementation of the CDQ Program, CDQ groups have maintained all harvests within their CDQ allocations with very few overages.

CDQ groups can also transfer their CDQ allocation among CDQ groups to provide an opportunity for CDQ groups to more fully harvest their allocations (see regulations at § 679.5(n)). This transfer provision helps CDQ groups ensure that they can receive a transfer if needed and have adequate allocations to avoid exceeding their CDQ allocation.

Currently, the six CDQ groups harvest their flathead sole, rock sole, and yellowfin sole CDQ allocations through contracts with Amendment 80 and non-Amendment 80 harvesting partners. Although the CDQ groups vary individually in the degree to which they harvest their flathead sole, rock sole, and yellowfin sole CDQ

allocations, the six CDQ groups have not collectively harvested their allocations in recent years. For example, from 2008 through 2012, CDQ groups have collectively harvested approximately 12 percent of their flathead sole, 30 percent of their rock sole, and 39 percent of their yellowfin sole CDQ allocations. Section 1.6.1 of the RIR/IRFA provides additional detail on the dynamics that can affect the ability of CDQ groups to fully harvest their flathead sole, rock sole, and yellowfin sole CDQ allocations. Those dynamics are also summarized in the “Amendment 80 Program” section of the preamble.

Amendment 80 Program

In June 2006, the Council adopted Amendment 80 to the BSAI FMP, which was implemented in 2008 with a final rule published in 2007 (72 FR 52668, September 14, 2007) and is commonly known as the Amendment 80 Program. Among other measures, the Amendment 80 Program authorized the allocation of six BSAI groundfish species to trawl catcher/processors (C/Ps) that are not specifically listed as authorized to conduct directed fishing for Bering Sea pollock under the American Fisheries Act of 1998 (AFA) (Pub. L. 105-227, Title II of Division C). The minimum participation requirements to enter this non-AFA trawl C/P subsector were established by Congress in section 219(a)(7) of the BSAI Catcher Processor Capacity Reduction Program, which is contained within the Department of Commerce and Related Agencies Appropriations Act, 2005 (Pub. L. No. 108-447). Based on these criteria, NMFS determined that 28 non-AFA trawl C/Ps originally qualified for the Amendment 80 Program. These non-AFA trawl C/Ps are commonly referred to as Amendment 80 vessels or the Amendment 80 sector. The final rule implementing Amendment 80 provides additional detail on the Amendment 80 Program (72 FR 52668, September 14, 2007). Key elements of the

Amendment 80 Program applicable to this proposed action are summarized here.

NMFS issued an Amendment 80 quota share (QS) permit to each person holding the catch history of an original qualifying Amendment 80 vessel beginning in 2008. The amount of QS issued was based on the qualifying Amendment 80 vessel's catch history of six license limitation groundfish species, known as Amendment 80 species (i.e., Aleutian Islands Pacific ocean perch, Atka mackerel, flathead sole, Pacific cod, rock sole, and yellowfin sole), in the BSAI from 1998 through 2004. The sum of all Amendment 80 QS issued for an Amendment 80 species is defined as the Amendment 80 QS pool.

The Amendment 80 Program is intended primarily to improve retention and utilization of fishery resources; encourage fishing practices with lower discard rates; and improve the opportunity for increasing the value of harvested species while lowering operational costs. The Amendment 80 Program accomplishes these goals by encouraging the formation of cooperatives and the development of cooperative fishing practices among all persons holding Amendment 80 QS permits. Amendment 80 cooperatives are eligible to receive cooperative quota (CQ), which represents an exclusive harvest privilege for a portion of the TAC for each Amendment 80 species annually. Throughout this preamble, the term CQ is used to refer to Amendment 80 CQ. An Amendment 80 cooperative receives an allocation of CQ for a specific Amendment 80 species based on the proportion of the total amount of Amendment 80 QS assigned to that cooperative (e.g., an Amendment 80 cooperative would receive 60 percent of the flathead sole CQ if the members of the cooperative held 60 percent of the flathead sole QS). In any given fishing year, Amendment 80 sector participants who do not choose to join a harvesting cooperative must fish in the Amendment 80 limited access fishery, without an exclusive

harvest privilege. Participants in the Amendment 80 limited access fishery race for fish with other participants in that fishery. Amendment 80 cooperatives receive CQ that allows vessel operators to make operational choices to reduce discards, reduce bycatch, and improve the value of Amendment 80 species harvests because the incentives of the Amendment 80 limited access fishery—to maximize catch rates to capture a larger share of the available catch—are removed. Amendment 80 cooperatives, like CDQ groups, operate as catch share fisheries. The Amendment 80 Program provides an exclusive harvest privilege (i.e., CQ) to a specific fishery participant (i.e., an Amendment 80 cooperative) for its exclusive use. The benefits realized by the Amendment 80 Program are described more fully in the final rule implementing Amendment 80 (72 FR 52668, September 14, 2007).

NMFS prohibits any Amendment 80 cooperative from exceeding its CQ allocation (see regulations at § 679.7(o)(4)(iv)). NMFS established this regulatory prohibition to hold Amendment 80 cooperatives accountable for maintaining their catch below their CQ allocations. NMFS determined that this management measure is appropriate because Amendment 80 cooperatives have greater control over their harvesting activities, and are not engaged in a race for fish that can occur in fisheries that do not receive exclusive harvest privileges. No Amendment 80 cooperative has exceeded any of its CQ allocations since the implementation of the Amendment 80 Program.

Although the Amendment 80 Program has met many of its goals, Amendment 80 cooperatives have found it difficult to predict the amount of flathead sole, rock sole, and yellowfin sole that can be taken when specifically targeting those species, while ensuring adequate CQ remains to accommodate incidental harvest of these species while targeting

other species (e.g., an Amendment 80 cooperative must ensure that it has adequate yellowfin sole CQ to accommodate both a targeted yellowfin sole fishery and all incidental harvest of yellowfin sole in all other BSAI fisheries). Section 1.5.3 of the RIR/IRFA prepared for this action provides additional detail on specific conditions that can constrain the full use of a cooperative's flathead sole, rock sole, and yellowfin sole CQ. Those factors are briefly summarized here.

As an Amendment 80 cooperative approaches the maximum harvest permitted under its CQ, all participants in the cooperative must modify their fishing behavior to avoid exceeding that CQ allocation. Amendment 80 cooperative members rely on their cooperative managers to assist them in their multi-species flatfish fisheries to ensure cooperatives do not exceed their CQ allocation. Prior to the start of the fishing year, Amendment 80 cooperative managers consider the specific fishing plans of cooperative members, and anticipated incidental catch of flathead sole, rock sole, and yellowfin sole by cooperative members in other fisheries in the BSAI. However, the relative catch composition of flathead sole, rock sole, and yellowfin sole can be unpredictable from month to month, and from year to year. Because of this uncertainty, Amendment 80 cooperative managers may recommend cooperative members limit the harvest of certain species early in the fishing year. For example, Amendment 80 cooperative members may choose to stop fishing in the valuable rock sole roe fishery that occurs in the early part of the year (winter), to ensure adequate rock sole CQ is available to accommodate incidental harvest of rock sole while fishing for yellowfin sole from late summer through fall. If rock sole incidental catch is lower than expected in the fall fisheries, too much rock sole CQ may have been set aside and there may no longer be adequate opportunity for

cooperative members to target rock sole at the end of the fishing year and fully use the remaining rock sole CQ. The economic loss of this foregone harvest may be amplified because the Amendment 80 cooperative members did not harvest as much of the higher value roe-bearing rock sole as could have been possible earlier in the fishing year.

Variations in environmental conditions also can constrain the ability of cooperative managers and cooperative members to predict changes in catch composition over time and space. The location of flathead sole, rock sole, and yellowfin sole aggregations on fishing grounds, particularly those that can be harvested with limited bycatch of halibut, is affected by the location of colder water, “cold pool,” on the Eastern Bering Sea shelf. Ice conditions in the Bering Sea, which can vary substantially from year to year, can effectively preclude vessels from reaching specific fishing grounds where flathead sole, rock sole, and yellowfin sole are typically harvested. Vessel operators may have to shift harvesting to other non-flatfish species during these conditions. This shift could increase incidental harvest of flathead sole, rock sole, and yellowfin sole, and decrease the number of opportunities for cooperative members to target these flatfish later in the fishing year. The unpredictable nature of environmental conditions limits the ability of cooperative managers and vessel operators to predict harvest rates or harvest amounts.

Market conditions may also affect harvests. BSAI flatfish are sold into a global market, and a wide array of factors may make harvests of a given flatfish species more or less economically desirable, or not economically viable to harvest. These market conditions may change throughout the year, and cooperative managers may have a difficult time coordinating fishing plans to accommodate uncertainty in incidental harvest

rates, unpredictable environmental conditions, and changing market conditions.

As the fishing year progresses, vessel operators and cooperative managers can better predict whether they will fully harvest their flathead sole, rock sole, and yellowfin sole CQ. However, harvest opportunities later in the year may be limited due to the lack of time to fully harvest CQ for a specific species before the end of the year and the expiration of the annual CQ permit. As noted earlier, environmental conditions could limit access to fishing grounds for specific species, and changing market conditions may make it uneconomic to harvest a species later in a year.

During the development of the Amendment 80 Program, the Council and NMFS recognized the broad range of intra- and inter-annual factors that can affect catch composition. As noted in the preamble to the final rule for the Amendment 80 Program, this variability could be addressed within cooperatives and between cooperatives through non-regulatory contractual agreements (72 FR 52668, September 14, 2007). Specifically, Amendment 80 cooperatives have established private contractual arrangements stipulating processes and procedures cooperative members use to share information on catch rates and ensure access to CQ issued to the cooperative (i.e., intra-cooperative transfers) as needed, while ensuring other members are not unduly constrained.

The Amendment 80 Program incorporates regulatory provisions that are designed to facilitate the harvest of flathead sole, rock sole, and yellowfin sole. Regulations provide that if, during a fishing year, NMFS determines that a portion of the flathead sole, rock sole, or yellowfin sole ICA or yellowfin sole TAC assigned to the BSAI trawl limited access sector is unlikely to be harvested, NMFS may reallocate that remaining amount to Amendment 80 cooperatives in proportion to the amount of Amendment 80

QS for that flatfish species assigned to that cooperative (see regulations at § 679.20(a)(10)(iii)(B)). This provision provides additional harvest opportunities to Amendment 80 cooperatives to the extent there are remaining amounts of ICAs or BSAI trawl limited access yellowfin sole TAC.

The Amendment 80 Program established provisions that allow the transfer of CQ between cooperatives to allow more efficient use of Amendment 80 species among cooperatives (72 FR 52668, September 14, 2007, see regulations at § 679.91(g)). Inter-cooperative transfers have been used to maximize the harvest of flathead sole, rock sole, and yellowfin sole CQ. Beginning in 2011, and in each year since, each Amendment 80 QS holder has been a member of one of the two Amendment 80 cooperatives. Since 2011, the use of inter-cooperative transfers increased (see Section 1.4.1 of the RIR/IRFA prepared for this action).

In 2009, the Council recommended, and NMFS adopted, revisions to the inter-cooperative transfer provisions to allow post-delivery transfers in the Amendment 80 Program (74 FR 42178, August 21, 2009). These revisions mitigate potential overages, reduce enforcement costs, and provide for more precise TAC management and more value from the harvests for participants. Post-delivery transfers also increase fleet flexibility and allow more efficient use of resources. The flexibility to complete transfers after deliveries reduces the potential that some CQ will remain unharvested if a cooperative is not able to harvest its CQ allocation without the risk of an overage, and minimizes the potential for CQ overages because a CQ account can be balanced after delivery (see regulations at § 679.7(o)(4)(v)). Section 1.4.1 of the RIR/IRFA prepared for this action provides additional detail on non-regulatory and regulatory measures used

to maximize the harvest of flathead sole, rock sole, and yellowfin sole CQ.

Although a broad range of non-regulatory arrangements exist and regulatory measures have been implemented to aid in the more complete harvesting of flathead sole, rock sole, and yellowfin sole CQ, these measures do not fully address the range of conditions summarized here that can constrain harvest. Although annual harvest rates by Amendment 80 cooperatives can vary, from 2008 through 2012, Amendment 80 cooperatives harvested approximately 21 percent of their flathead sole, 55 percent of their rock sole, and 48 percent of their yellowfin sole CQ. The fact that harvests of flathead sole, rock sole, and yellowfin sole are substantially below the available CQ suggests that existing management measures may not provide the flexibility needed to allow more complete harvest.

The factors discussed here that limit Amendment 80 cooperatives from fully harvesting their allocations also apply to the CDQ groups. As noted in the “CDQ Program” section of this preamble, CDQ groups contract with both Amendment 80 and non-Amendment 80 vessels to harvest their flathead sole, rock sole, and yellowfin sole CDQ allocations. Both Amendment 80 vessels and non-Amendment 80 vessels fishing CDQ allocations are affected by the same uncertain operational conditions (e.g., difficulty predicting harvest rates of flatfish in target and non-target fisheries), unpredictable environmental conditions, and market conditions that can limit harvest. Recent harvests of flathead sole, rock sole, and yellowfin sole by the six CDQ groups have been substantially below CDQ allocations, as described in Section 1.6.1 of the RIR/IRFA and the “CDQ Program” section of this preamble. This indicates that existing management measures applicable to CDQ groups may not provide the flexibility needed

to allow more complete harvest.

Objectives of and Rationale for This Proposed Action

The objective of this proposed action is to establish a new accounting methodology that would provide CDQ groups and Amendment 80 cooperatives with additional opportunities to fully harvest flathead sole, rock sole, or yellowfin sole allocations, while ensuring ABCs cannot be exceeded. This proposed action would establish regulatory limits to ensure that the individual ABCs for flathead sole, rock sole, and yellowfin sole would not be exceeded, while facilitating a more complete harvest of one or more of these flatfish species, up to the ABC for a species, if specific conditions are met. Although an individual TAC (not ABC) may be exceeded, this proposed rule would establish a regulatory mechanism designed to prevent the sum of all TACs for flathead sole, rock sole, and yellowfin sole from being exceeded, thereby ensuring the sum of BSAI groundfish TACs does not exceed 2 million mt. Moreover, because no exchange can exceed the ABC reserve and because the action requires the consideration of flathead sole, rock sole, and yellowfin sole catch during the harvest of groundfish and incidental catch of non-groundfish species prior to any flatfish exchange, this proposed action would ensure that the ABC for each flatfish species would not be exceeded. This proposed action is designed to provide the tools necessary to maximize the sustainable harvest of flathead sole, rock sole, and yellowfin sole, and thus continues to achieve the OY in the BSAI groundfish fisheries.

The rationale for this proposed action follows. Flathead sole, rock sole, and yellowfin sole are valuable species that are not fully harvested due to a variety of statutory and regulatory constraints on the setting of TACs and operational, economic,

and environmental limitations described previously in this preamble and detailed in Sections 1.5 and 1.6 of the RIR/IRFA prepared for this action. The proposed modifications provide additional flexibility to existing management practices and are appropriate given the fact that CDQ groups and Amendment 80 cooperatives are participating in catch share fisheries that are capable of limiting their overall harvests within specific catch limits, and CDQ groups and Amendment 80 cooperatives are subject to strict management controls that prohibit fishing beyond these catch limits as described in the “CDQ Program” and “Amendment 80 Program” sections of this preamble.

Although CDQ groups and Amendment 80 cooperatives have a range of regulatory tools available to maximize harvests, such as the ability to transfer allocations of flathead sole, rock sole, and yellowfin sole between CDQ groups or between Amendment 80 cooperatives to increase overall harvesting opportunities, the existing harvest patterns indicate that neither CDQ groups or Amendment 80 cooperatives are likely to fully harvest their existing allocations (see the “CDQ Program” and “Amendment 80 Program” sections of this preamble and Sections 1.5 and 1.6 of the RIR/IRFA prepared for this action). The Council and NMFS expect that additional regulatory tools will promote increased harvest of CDQ and CQ allocations. This proposed action is not intended to completely resolve the complex issues that have constrained the CDQ groups and Amendment 80 cooperatives from fully harvesting their flatfish allocations. This proposed action is intended to provide the flexible management necessary to mitigate a diverse range of conditions that may limit catch of flathead sole, rock sole, and yellowfin sole.

This proposed action is also intended to preserve the Council's and NMFS' ability to consider a broad range of factors when determining how much flexibility to provide CDQ groups and Amendment 80 cooperatives through the annual harvest specifications process. For example, the Council could recommend setting the ABC reserve below the ABC surplus for flathead sole, rock sole, and yellowfin sole to account for any management uncertainty as a precautionary measure. If approved, this action promotes the Council's and NMFS' ability to ensure a transparent annual harvest specification process and articulate the criteria by which the Council and NMFS are making those decisions.

The objectives of this proposed action are consistent with the 10 National Standards established under the Magnuson-Stevens Act. The proposed action addresses the Magnuson-Stevens Act National Standards and would balance a number of competing objectives for fishery conservation and management. These include National Standard 1, National Standard 8, and National Standard 9. National Standard 1 requires that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. The ability to harvest the entire TAC for each groundfish fishery, in any given year, is not determinative of whether the BSAI groundfish fishery achieves optimum yield. Providing the opportunity for the CDQ groups and the Amendment 80 cooperatives to maximize catch, retention, and utilization of flathead sole, rock sole, and yellowfin sole while maintaining catch at or below the ABC for each species is one aspect of achieving optimum yield in the long term. National Standard 8 requires considering the importance of fishery resources to fishing communities and minimizing adverse economic impacts on

such communities. This action is intended to improve the ability of CDQ groups to harvest their allocations, which could increase the economic benefits that CDQ groups and western Alaska communities derive from the BSAI groundfish fisheries. National Standard 9 requires that conservation and management measures shall, to the extent practicable, minimize bycatch. This proposed action is intended to result in higher retention and utilization of groundfish without increasing overall bycatch of groundfish or non-groundfish species beyond existing limitations, such as the ABCs.

Other species of flatfish that are harvested by CDQ groups and the Amendment 80 sector would not be subject to this proposed action, because only Arrowtooth flounder and Bering Sea Greenland turbot are allocated to the CDQ groups, and no other flatfish species are allocated to the Amendment 80 Program. Therefore, these other flatfish species are still subject to a race for fish. This limits the ability of CDQ groups and Amendment 80 cooperatives to constrain harvests of non-allocated flatfish species, and reduces the management and enforcement tools available to NMFS to ensure harvests do not exceed an ABC. In addition, other flatfish fisheries are not allocated to CDQ groups and Amendment 80 cooperatives and are not prosecuted in the same manner as mixed-stock flatfish fisheries that include flathead sole, rock sole, and yellowfin sole (see Sections 1.5.3 and 1.6.1 of the RIR/IRFA prepared for this action). Therefore, there is no need to provide the same management flexibility to the other flatfish fisheries as this proposed action would provide to the CDQ groups and Amendment 80 cooperatives. Participants that do not join an Amendment 80 cooperative and participate in an Amendment 80 limited access fishery would not be subject to this proposed rule and would not receive the opportunity to access an ABC reserve (see Section 1.4.2 in the

RIR/IRFA prepared for this action). The participants in the Amendment 80 limited access fishery would continue in a race for fish. Such participants are not subject to the strict management controls that apply to CDQ groups and Amendment 80 cooperatives, such as prohibitions against fishing once a CDQ or CQ allocation is reached. Similarly, the BSAI trawl limited access sector, which is allocated a portion of the yellowfin sole TAC, is not assigned an exclusive harvest privilege as are CDQ groups and the Amendment 80 cooperatives. The lack of exclusive harvest privileges in the Amendment 80 limited access fishery and the BSAI trawl limited access sector limits NMFS' ability to strictly manage harvests to ensure an ABC is not exceeded; therefore, those sectors would not be eligible for Flatfish Exchanges.

Proposed Action

Summary of Regulatory Changes

This action proposes the following changes to the existing regulatory text at 50 CFR part 679:

- Add definitions for "ABC reserve," "ABC surplus," "Amendment 80 ABC reserve," "CDQ ABC reserve," and "Flatfish Exchange" to § 679.2.
- Add § 679.4(p) to establish the Flatfish Exchange Application requirements and annual limitations on the number of Flatfish Exchanges.
- Add requirements for the Preliminary Amendment 80 Cooperative Flatfish Exchange Report to § 679.5(s)(7).
- Add § 679.20(b)(1)(iii) to establish the ABC reserves, CDQ ABC reserves, and Amendment 80 ABC reserves as part of the general limitations.

- Revise § 679.20(c)(1)(iv) to include Flatfish Exchange specifications in the annual proposed groundfish harvest specifications.
- Revise § 679.20(c)(3)(iii) to include Flatfish Exchange specifications in the annual final groundfish harvest specifications.
- In § 679.31, revise the headings of paragraphs (a) and (b) to be consistent with this proposed rule.
- Add § 679.31(a)(5) to establish the CDQ ABC reserve as part of the CDQ allocations.
- Add § 679.31(b)(4) to allocate CDQ ABC reserves among CDQ groups.
- Add § 679.31(d) to allow CDQ groups to access the CDQ ABC reserves.
- Add § 679.91(i) to establish the Amendment 80 ABC reserves as annual harvest privileges allocated to Amendment 80 cooperatives, and to allow Amendment 80 cooperatives to access the Amendment 80 ABC reserves.

ABC Surplus

NMFS proposes revising regulations at § 679.2 to define the ABC surplus for flathead sole, rock sole, and yellowfin sole in the BSAI as the difference between each species' annual ABC and TAC. NMFS proposes to revise regulations at § 679.20(c)(1)(iv) to clarify that the ABC surplus would be specified in the annual harvest specifications. Under this proposed action, the Council would continue to set the OFLs, ABCs, and TACs, and allocations of flathead sole, rock sole, and yellowfin sole in the annual harvest specifications process, and once those amounts are determined, the annual harvest specifications would also specify an ABC surplus for each flatfish species. The ABC surplus would represent the maximum additional amount of flathead sole, rock sole or yellowfin sole that could be harvested above the TAC. However, the actual amount

available for harvest would be the ABC reserve.

ABC Reserve

NMFS proposes to revise regulations at § 679.2 to define the ABC reserve for flathead sole, rock sole, and yellowfin sole in the BSAI as an amount equal to or less than the ABC surplus, depending on whether the Council and NMFS reduce the surplus for social, economic, or ecological considerations during the determination of the annual harvest specifications. NMFS proposes to revise annual harvest specifications regulations at § 679.20(b)(1)(iii)(A) to clarify that the ABC reserve would be set after consultation with the Council. Unless the Council recommends otherwise, or NMFS determines there is a need to set the ABC reserve below the ABC surplus, NMFS would set the ABC reserve equal to the ABC surplus for each species. Setting the ABC reserve as a portion of the ABC surplus, or equal to the ABC surplus, would ensure that the total amount of each species that is accessible would not exceed the ABC.

Section 1.4.3 of the RIR/IRFA prepared for this action provides additional detail on why the ABC reserve may be set below the ABC surplus, and those factors are briefly summarized here. The Council or NMFS could choose to establish a precautionary buffer to accommodate uncertainty in harvests under an ICA, or to address a range of socioeconomic considerations. As noted in the “Annual Harvest Specifications” section of this preamble, the amount of harvest in the ICA can be uncertain from year to year because it is difficult to predict specific incidental harvest rates in the non-CDQ and non-Amendment 80 fisheries. The Council and NMFS may deem it appropriate to set the ABC reserve below the ABC surplus to accommodate potential harvests of non-target species greater than the ICA. Similarly, the Council may recommend establishing an

ABC reserve less than the ABC surplus to accommodate market conditions. For example, the Council may be concerned that setting an ABC reserve for a given species at a specific harvest level could increase supply, and thereby reduce demand and reduce the ex-vessel value of that flatfish species. These effects could affect CDQ groups, Amendment 80 cooperatives, and other fishery participants differently. The Council and NMFS could evaluate these socioeconomic considerations when setting the ABC reserve. The specific recommendation to set an ABC reserve below the ABC surplus for a specific flatfish species would be described in the annual harvest specifications.

Once the ABC reserve is identified for a flatfish species, the ABC reserve for that flatfish species would then be apportioned among CDQ groups and Amendment 80 cooperatives. NMFS would publish the allocation of ABC reserve available to CDQ groups and Amendment 80 cooperatives in the proposed and final harvest specifications. NMFS proposes revising annual harvest specification regulations at §§ 679.20(c)(1)(iv) and (3)(iii) to clarify that the proposed and final harvest specifications would include the ABC surplus, the ABC reserve, the CDQ ABC reserve, the apportionment of the CDQ ABC reserve among CDQ groups, the Amendment 80 ABC reserve, and the apportionment of the Amendment 80 ABC reserve among Amendment 80 cooperatives. This revision would be necessary to clearly inform the public about the specific proposed and final allocations. Section 1.4.2 of the RIR/IRFA provides additional detail on the process for allocating the ABC reserve among CDQ groups and Amendment 80 cooperatives.

CDQ ABC Reserve

NMFS proposes to revise regulations at § 679.2 to define a “CDQ ABC reserve”

as 10.7 percent of the amount of the flathead sole, rock sole, or yellowfin sole ABC reserve that is allocated among CDQ groups as annually calculated according to the methods described at § 679.31(b)(4). As noted in the “CDQ Program” portion of the preamble, the CDQ Program is currently allocated 10.7 percent of the TAC for these flatfish species. This proposed rule would allocate 10.7 percent of the ABC reserve of each of these flatfish species to the CDQ Program to be consistent with section 305(i)(1)(B) of the Magnuson-Stevens Act that requires that 10.7 of the TAC be assigned to the CDQ Program.

NMFS proposes to revise annual harvest specification regulations at § 679.20(b)(1)(iii)(B) to clarify that an amount equal to 10.7 percent of the ABC reserves for flathead sole, rock sole, and yellowfin sole would be allocated to CDQ ABC reserves for each species. The CDQ ABC reserves would be further allocated to each CDQ group as described under § 679.31(b)(4). NMFS proposes to revise regulations at § 679.31(b)(4) to clarify that NMFS would allocate each CDQ ABC reserve among CDQ groups consistent with the requirements in section 305(i)(1) of the Magnuson-Stevens Act for allocating TAC among CDQ groups. Specifically, 10 percent of the ABC reserve would be allocated in fixed percentages to specific CDQ groups as described in section 305(i)(1)(C) of the Magnuson-Stevens Act, while the remaining 0.7 percent of the ABC reserve would be allocated among CDQ groups according to WACDA agreements (i.e., the Administrative Panel established in section 305(i)(1)(G) of the Magnuson-Stevens Act). Alternative methods for calculating catch limits and allocating the CDQ ABC reserve were considered by the Council and NMFS and rejected because they would not be consistent with 305(i)(1) of the Magnuson-Stevens Act (see Section 1.4.6 of the

RIR/IRFA for additional information).

Amendment 80 ABC Reserve

NMFS proposes to revise regulations at § 679.2 to define an “Amendment 80 ABC reserve” as the amount of the flathead sole, rock sole, or yellowfin sole ABC reserve that remains for each species after designating the amount assigned to the CDQ ABC reserves. The Amendment 80 ABC reserve would be allocated among Amendment 80 cooperatives annually as calculated according to the methods described at § 679.91(i)(2).

NMFS proposes to revise annual harvest specification regulations at § 679.20(b)(1)(iii)(C) to clarify that the Amendment 80 ABC reserve would be calculated as the ABC reserves as reduced by the CDQ ABC reserve. Given the allocation of 10.7 percent of the ABC reserve to the CDQ ABC reserve, 89.3 percent of the ABC reserve would be allocated to the Amendment 80 ABC reserve. The Amendment 80 ABC reserves would be apportioned to each Amendment 80 cooperative as described under § 679.91(i)(2).

NMFS proposes to revise regulations at § 679.91(i)(2) to clarify that the amount of Amendment 80 ABC reserve for each species of flathead sole, rock sole, and yellowfin sole assigned to an Amendment 80 cooperative is equal to the amount of Amendment 80 QS units of that species assigned to that Amendment 80 cooperative by Amendment 80 QS holders divided by the total Amendment 80 QS pool for that species multiplied by the Amendment 80 ABC reserve for that species. For example, if 60 percent of the flathead sole, 30 percent of the rock sole, and 20 percent of the yellowfin sole Amendment 80 QS were assigned to an Amendment 80 cooperative by Amendment 80 QS holders, that

Amendment 80 cooperative would receive access to 60 percent of the flathead sole, 30 percent of the rock sole, and 20 percent of the yellowfin sole Amendment 80 ABC reserves. This approach would ensure that each Amendment 80 cooperative would receive access to a portion of the Amendment 80 ABC reserve in proportion to its Amendment 80 QS holdings of a species, and in turn would provide flexibility for Amendment 80 cooperatives to engage in exchanges to maximize their overall harvest of flatfish. Alternative methods for allocating the Amendment 80 ABC reserve among Amendment 80 cooperatives were considered and rejected because they did not provide an equitable allocation of the Amendment 80 ABC reserve in proportion to Amendment 80 QS holdings (see Section 1.4.6 of the RIR/IRFA prepared for this action for additional information).

Under these proposed regulations, it is important to note that if all Amendment 80 QS holders have not joined an Amendment 80 cooperative, not all of an Amendment 80 ABC reserve would be allocated. Using the example provided in this section of the preamble, if there is only one Amendment 80 cooperative in the Amendment 80 sector that is assigned 60 percent of the flathead sole, 30 percent of the rock sole, and 20 percent of the yellowfin sole Amendment 80 QS, and all other Amendment 80 QS holders are participating in the Amendment 80 limited access fishery, then NMFS would allocate only 60 percent of the flathead sole, 30 percent of the rock sole, and 20 percent of the yellowfin sole Amendment 80 ABC reserve to that Amendment 80 cooperative. The remaining 40 percent of the flathead sole, 70 percent of the rock sole, and 80 percent of the yellowfin sole Amendment 80 ABC reserve would not be allocated. NMFS notes that this example differs from the one previously provided to the Council in the Section 1.4.2

of the RIR/IRFA prepared for this action when the Council recommended Amendment 105. Under both examples, the scenario is identical (i.e. some Amendment 80 QS holders are not members of the single cooperative). Unfortunately, the example in the RIR/IRFA prepared for Amendment 45 that was available to the Council at that time did not consider that allocating 100 percent of the Amendment 80 ABC reserve to a portion of the Amendment 80 QS holders is inconsistent with overall Council intent that the apportionment of the Amendment 80 ABC reserve for a species be in proportion the amount of the Amendment 80 QS pool the Amendment 80 cooperative is assigned for that species. Allocating all the Amendment 80 ABC reserve to a cooperative out of proportion to its Amendment 80 QS holdings could create incentives for members of the sole Amendment 80 cooperative to exclude Amendment 80 QS holders from an Amendment 80 cooperative to increase the amount of the Amendment 80 ABC reserve available to it. These effects on Amendment 80 cooperative formation and membership were not considered or addressed by the Council at the time it recommended Amendment 105. The example and method for apportioning the Amendment 80 ABC reserve provided above in this preamble is consistent with Council intent and would instead assign the Amendment 80 ABC reserve in proportion to the amount of the Amendment 80 QS pool an Amendment 80 cooperative is assigned. Additional detail on this example and the consistency of this example with the Council's overall recommendation for Amendment 105 is provided in Section 1.4.2 of the RIR/IRFA prepared for this action.

In years where no CQ is assigned, Flatfish Exchanges could not occur among Amendment 80 Program participants. Since the establishment of the Amendment 80 Program, one or two Amendment 80 cooperatives have been established each year. Since

2011, all Amendment 80 QS holders are members of an Amendment 80 cooperative. However, it is possible that Amendment 80 QS holders may be unwilling or unable to establish a cooperative. In years when no Amendment 80 cooperatives are established, NMFS would not assign any Amendment 80 ABC reserve because there would be no Amendment 80 cooperatives receiving CQ.

Example of an Annual Harvest Specification of ABC surplus, ABC reserve, CDQ ABC Reserve, and Amendment 80 ABC Reserve

To aid the reader in understanding this proposed action, this section provides a hypothetical example of the annual harvest specification process and the allocation of the ABC surplus, ABC reserve, CDQ ABC reserve, and Amendment 80 ABC reserve. This example uses the 2014 OFLs, ABCs, and TACs established for flathead sole, rock sole, and yellowfin sole in the final 2014 and 2015 harvest specifications (79 FR 12108, March 04, 2014). This example also uses the 2014 apportionments of CDQ among CDQ groups, and the allocation of CQ among Amendment 80 cooperatives that existed at the time of publication of the final 2014 and 2015 harvest specifications (79 FR 12108, March 04, 2014). Specifically, there are six CDQ groups, and two Amendment 80 cooperatives that include all of the Amendment 80 QS holders. For this example, the flathead sole and rock sole ABC reserves are set 1,000 mt below the ABC surpluses for those species, the yellowfin sole ABC reserve is set 500 mt below the yellowfin sole ABC surplus.

Table 1 describes the OFLs, ABCs, ABC surpluses, ABC surpluses, CDQ ABC reserves, and Amendment 80 ABC reserves based on the proposed allocation methodologies described previously in this preamble. Table 2 shows the allocation of the

TAC among the ICA, CDQ Program, Amendment 80 Program, and the BSAI trawl limited access sector.

Table 1. Example of Allocation of ABC surplus, ABC Reserve, CDQ ABC Reserve, and Amendment 80 ABC Reserve for Flathead Sole, Rock Sole, and Yellowfin Sole Using Final 2014 Harvest Specification Amounts in Metric Tons

Species	OFL	ABC	TAC	ABC Surplus	ABC Reserve	CDQ ABC Reserve (10.7 % of ABC Reserve)	Amendment 80 ABC Reserve (89.3 % of ABC Reserve)
Flathead sole	79,633	66,293	24,500	41,793	40,793	4,365	36,428
Rock sole	228,700	203,800	85,000	118,800	117,800	12,605	105,195
Yellowfin sole	259,700	238,800	184,000	54,800	54,300	5,810	48,490

Table 2. Example of Allocation of TAC among ICA, CDQ Program, Amendment 80 Program, and BSAI Trawl Limited Access Fishery Allocations for Flathead Sole, Rock Sole, and Yellowfin Sole Using Final 2014 Harvest Specification Amounts in Metric Tons

Species	TAC	ICA	CDQ Program Allocation	Amendment 80 Program Allocation	BSAI Trawl Limited Access Fishery Allocation
Flathead sole	24,500	5,000	2,622	16,879	0
Rock sole	85,000	8,000	9,095	67,905	0
Yellowfin sole	184,000	2,400	19,688	132,205	29,707

Table 3 describes the allocation of the ABC reserve among the six CDQ groups based on the CDQ allocations that existed at the time of publication of the final 2014 and 2015 harvest specifications (79 FR 12108, March 04, 2014). A matrix describing the specific allocations to each CDQ group, for each CDQ species, is available on the Alaska Region website at <http://alaskafisheries.noaa.gov/cdq/allocations/annualmatrix2014.pdf>. As noted earlier in this preamble, the CDQ ABC reserve is equal to 10.7 percent of the

ABC reserve for each of these flatfish species. Table 3 describes the allocation of the CDQ ABC reserve based on the CDQ allocations to CDQ groups applicable in 2014.

Table 3. Example of CDQ ABC Reserve Allocations to CDQ Groups for Flathead Sole, Rock Sole, and Yellowfin Sole Using Final 2014 Harvest Specification Amounts in Metric Tons. (The allocations to each CDQ group are provided as a percentage within the parentheses.)

Species	CDQ ABC Reserve	CDQ Group and Allocation of CDQ ABC Reserve					
		APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA
Flathead sole	4,365	875 (20.05%)	921 (21.09%)	387 (8.87%)	654 (14.98%)	653 (14.96%)	875 (20.05%)
Rock sole	12,605	3,034 (24.07%)	2,900 (23.00%)	1,004 (7.96%)	1,379 (10.96%)	1,382 (10.96%)	2,907 (23.06%)
Yellowfin sole	5,810	1,610 (27.71%)	1,390 (23.92%)	465 (8.00%)	369 (6.35%)	423 (7.29%)	1,552 (26.72%)

Aleutian Islands Pribilof Community Development Association (APICDA), Bristol Bay Economic Development Corporation (BBEDC), Central Bering Sea Fishermen’s Association (CBSFA), Coastal Villages Region Fund (CVRF), Norton Sound Economic Development Corporation (NSEDC), Yukon Delta Fisheries Development Association (YDFDA).

Table 4 describes the allocation of the Amendment 80 ABC reserve between the two Amendment 80 cooperatives that applied for CQ in 2014. In 2014, all Amendment 80 QS holders are members of one of these cooperatives. The allocation of ABC reserve is based on the proportion of the Amendment 80 QS of flathead sole, rock sole, and yellowfin sole that each Amendment 80 cooperative is assigned. As noted earlier in this preamble, the Amendment 80 ABC reserve is equal to 89.3 percent of the ABC reserve for each species.

Table 4. Example of Amendment 80 ABC Reserve Allocations to Amendment 80 Cooperatives for Flathead Sole, Rock Sole, and Yellowfin Sole Using Final 2014 Harvest

Specification Amounts in Metric Tons. (The allocations to each Amendment 80 cooperative are provided as a percentage within the parentheses.)

Species	Amendment 80 ABC Reserve	Amendment 80 Cooperative Allocation of Amendment 80 ABC Reserve	
		Alaska Groundfish Cooperative (AGC)	Alaska Seafood Cooperative (ASC)
Flathead sole	36,428	7,151 (19.63%)	29,277 (80.37%)
Rock sole	105,195	30,054 (28.57%)	75,141 (71.43%)
Yellowfin sole	48,490	20,826 (42.95%)	27,664 (57.05%)

Flatfish Exchange Application

This proposed action would require that a CDQ group or an Amendment 80 cooperative would have to submit a Flatfish Exchange Application to NMFS. That application would have to be approved by NMFS, and revised TACs would have to be published in the Federal Register, before unused CDQ or CQ would be exchanged for a portion of its CDQ ABC reserve or Amendment 80 reserve. NMFS’ approval of a Flatfish Exchange Application is necessary to ensure that ABC’s are not exceeded. As proposed, NMFS would have the authority to disapprove an application if it is likely that an ABC will be exceeded. This section describes this process and associated, proposed regulations, and provides an example of a Flatfish Exchange.

NMFS proposes to revise regulations at § 679.2 to define a “Flatfish Exchange” as the exchange of unused CDQ, or Amendment 80 CQ, of flathead sole, rock sole, or yellowfin sole in the BSAI for an equivalent amount (in metric tons) of CDQ ABC reserve or Amendment 80 ABC reserve, respectively, for flathead sole, rock sole, or yellowfin sole in the BSAI other than the species listed for exchange on the Flatfish

Exchange Application as described in a notice of adjustment or apportionment in the Federal Register.

NMFS proposes to revise regulations at § 679.4(p) to describe the Flatfish Exchange Application. NMFS would process any completed Flatfish Exchange Application submitted by a CDQ group or Amendment 80 cooperative. The Flatfish Exchange Application must specify the amounts of flathead sole, rock sole, and yellowfin sole to be exchanged, and certify the information submitted is true, correct, and complete. The specific requirements of the Flatfish Exchange Application are provided on the form that would be posted at the Alaska Region website: <http://alaskafisheries.noaa.gov> once Amendment 105 and its implementing regulations become effective. All Flatfish Exchange Applications would be submitted electronically through the Alaska Region website: <http://alaskafisheries.noaa.gov>. Currently, CDQ groups and Amendment 80 cooperatives submit a range of applications and reports electronically. This provision would be consistent with existing electronic submittal requirements applicable to CDQ groups and Amendment 80 cooperatives and would reduce administrative burden and costs.

NMFS' approval of a Flatfish Exchange Application would be required prior to the use of the CDQ or CQ subject to the Flatfish Exchange. NMFS would approve the Flatfish Exchange Application if: (1) the CDQ group or Amendment 80 cooperative exchanging flathead sole, rock sole, or yellowfin sole has sufficient CDQ ABC reserves or Amendment 80 ABC reserves for the flatfish species for which it is requesting to increase its CDQ or CQ; (2) the CDQ group or Amendment 80 cooperative requesting an exchange of flathead sole, rock sole, yellowfin sole exchanges an equal amount of unused

CDQ allocation or unused CQ for the amount of flathead sole, rock sole, or yellowfin sole received from the CDQ ABC reserve or Amendment 80 ABC reserve; and (3) the CDQ group or Amendment 80 cooperative has not submitted three Flatfish Exchange applications, as described in the next section of this preamble. NMFS notes that unused CDQ allocation could only be exchanged for CDQ ABC reserve, and unused CQ could only be exchanged for Amendment 80 ABC reserve. Furthermore, NMFS notes that a CDQ group could only submit a Flatfish Exchange

Application for an amount of CDQ ABC reserve assigned to that CDQ group, and an Amendment 80 cooperative could only submit a Flatfish Exchange Application for an amount of Amendment 80 ABC reserve assigned to that Amendment 80 cooperative.

Proposed regulations at § 679.4(p)(4) would provide that no Flatfish Exchange would take effect until notification has been published in the Federal Register with a statement of the findings on which the apportionment or adjustment is based. This provision would provide clear notification to the public and the affected CDQ group or Amendment 80 cooperative that the Flatfish Exchange Application has been approved and display the resulting adjustment in CDQ ABC reserve and CDQ allocation for that CDQ group, or the resulting adjustment in Amendment 80 ABC reserve and CQ for that Amendment 80 cooperative.

Proposed regulations at § 679.4(p)(5) would provide that each NMFS-approved Flatfish Exchange Application is debited as one Flatfish Exchange, and that an approved Flatfish Exchange is effective on the date of publication of the notice of adjustment or apportionment in the Federal Register. NMFS proposes to revise regulations at § 679.31(d) to note that CDQ groups would need to submit and have NMFS approve a

Flatfish Exchange Application to access their CDQ ABC reserve. Similarly, NMFS proposes to revise regulations at § 679.91(i)(3) to note that Amendment 80 cooperatives would need to submit and have NMFS approve a Flatfish Exchange Application to access their Amendment 80 ABC reserve.

To aid the reader, an example of a Flatfish Exchange is provided in Table 5. For this example, NMFS assumes that the Amendment 80 cooperative, Alaska Seafood Cooperative (ASC), has submitted, and NMFS has approved, a Flatfish Exchange Application. This example assumes the 2014 allocations of Amendment 80 ABC reserve that ASC would receive are based on the final 2014 and 2015 harvest specifications and described in Table 4 of this preamble. This example assumes that ASC has not previously engaged in any Flatfish Exchanges, has an adequate amount of unused CQ remaining, and has adequate ABC reserve. In this example, ASC is requesting an additional 3,500 mt of yellowfin sole CQ from its ABC reserve, for which it would exchange 1,500 mt of unused flathead sole CQ, and 2,000 mt of unused rock sole CQ. No net change in the total flatfish available for harvest to the ASC would result, but the Amendment 80 cooperative would gain additional access to yellowfin sole and forego access to flathead sole and rock sole.

Table 5. Example of Flatfish Exchange by an Amendment 80 Cooperative (ASC) for Flathead Sole, Rock Sole, and Yellowfin Sole Using Final 2014 Annual Harvest Specification Amounts in Metric Tons

Species	Before Exchange		Exchange		After Exchange	
	ASC ABC Reserve Before Flatfish Exchange	ASC CQ Before Flatfish Exchange	Adjustment to ABC Reserve Amount	Adjustment to CQ Amount	ASC ABC Reserve After Flatfish Exchange	ASC CQ After Flatfish Exchange
Flathead sole	29,277	13,566	+1,500	-1,500	30,777 (+1,500)	12,066 (-1,500)
Rock sole	75,141	48,505	+2,000	-2,000	77,141 (+2,000)	46,505 (-2,000)
Yellowfin sole	27,664	75,426	-3,500	+3,500	24,164 (-3,500)	78,926 (+3,500)
Sum	132,082	137,497	0	0	132,082	137,497

As noted earlier in this preamble and illustrated in Table 5, under this proposed action there would be no net change in the total available sum of flathead sole, rock sole, and yellowfin sole available for harvest as CDQ or CQ. However, CDQ groups or Amendment 80 cooperatives could use Flatfish Exchanges to increase the available CDQ or CQ of one or two flatfish species, by foregoing an amount of unused CDQ or CQ for another flatfish species, but not maximize the harvest of all three flatfish species during a calendar year. In the example provided in Table 5, the ASC cooperative has increased the amount of yellowfin sole available for harvest. In this example, ASC would reduce the amount of yellowfin sole ABC reserve available to exchange for flathead sole or rock sole CQ in future exchanges. As is clear from the example, there is no net increase in the ABC reserve, as summed across the three flatfish species as a result of this exchange. Moreover, Table 5 clarifies that Flatfish Exchanges will result in the same sum of flathead sole, rock sole, and yellowfin sole available for harvest before, and after the

exchange.

NMFS is proposing regulations at § 679.4(p)(3) to provide that NMFS would not approve any Flatfish Exchange that could result in exceeding an ABC or ABC reserve for a species. As proposed, this method for implementing Flatfish Exchanges is designed to ensure that although an individual flatfish TAC could be exceeded, the ABC will not be exceeded. As proposed, NMFS would have the authority to disapprove an application if NMFS determines it is likely that an ABC will be exceeded because of fishing effort in another groundfish fishery. For example, the risk of exceeding an ABC could arise if incidental catch of the allocated flatfish species in other fisheries (e.g., catch of yellowfin sole by AFA vessels in the BSAI pollock fishery) was much higher than anticipated. NMFS will review each Flatfish Exchange Application and consider approval or disapproval in light of incidental catch levels occurring in other groundfish fisheries. NMFS would consider the amount of incidental harvest under the ICAs and the amount of harvest in the yellowfin sole BSAI limited access fishery before a Flatfish Exchange Application would be approved. For example, if the ICAs for flathead sole, rock sole, or yellowfin sole were exceeded, or the BSAI trawl limited access fishery exceeded its yellowfin sole allocation, NMFS would not approve a Flatfish Exchange Application to harvest from an ABC reserve if the exchange would cause a species' ABC to be exceeded. Moreover, NMFS would consider increases in an Amendment 80 cooperative's CQ from unused ICAs or reallocations of yellowfin sole from the BSAI limited access fishery, and inter-cooperative CQ or CDQ transfers, before approving a Flatfish Exchange Application to ensure accurate amounts in CDQ allocation and CQ accounts.

As noted earlier in this preamble, Flatfish Exchanges would not be effective until publication of a notice in the Federal Register. The requirement for publication in the Federal Register would allow NMFS to fully consider the Flatfish Exchange Application and total catch of flathead sole, rock sole, and yellowfin sole. NMFS could disapprove the Flatfish Exchange if, upon further review of the Flatfish Exchange Application and all other sources of catch, approval of the Flatfish Exchange Application could cause an ABC or ABC reserve to be exceeded. NMFS believes that any such situation is highly unlikely given methods in place to accurately track catch, but this provision would ensure proper accounting before any Flatfish Exchange is approved.

To further simplify the catch accounting for Flatfish Exchanges, NMFS proposes regulations at § 679.4(p)(3)(vii) to clarify that Flatfish Exchanges would not be approved unless the Flatfish Exchange Application is received and approved by NMFS during the same calendar year that the Flatfish Exchange would be implemented. As described earlier in this preamble, CDQ groups and Amendment 80 cooperatives have initiated CDQ and CQ transfers at the end of the year to account for catch that occurred earlier during the year. This proposed provision would clarify that all Flatfish Exchanges would need to be completed and received by NMFS prior the end of the calendar year to ensure proper accounting for catch and ABC reserves. NMFS notes that CDQ groups and Amendment 80 cooperatives would need to submit a Flatfish Exchange Application prior to the end of the calendar year that the exchange would occur to allow for at least 10 business days for NMFS review and approve (or deny) the Flatfish Exchange Application (i.e. publication in the Federal Register).

The Council considered and rejected alternatives that would have either limited

the ability to exchange flathead sole or rock sole ABC reserve for yellowfin sole CQ, or limit the maximum amount of yellowfin sole CQ that could be received through a Flatfish Exchange (see Section 1.8.4 of the RIR/IRFA prepared for this action). These measures were considered as a way to mitigate potential adverse impacts of additional harvest opportunities that a Flatfish Exchange could provide to Amendment 80 cooperatives relative to other fishery participants. Participants in the yellowfin sole fishery in the BSAI trawl limited access sector raised specific concerns. The Council and NMFS rejected these alternative approaches because the Council and NMFS have the ability to set the TAC amounts and modify the yellowfin sole ABC reserve under this proposed action based on a broad range of biological and socioeconomic factors, including the potential impact on the yellowfin sole BSAI trawl limited access fishery during the annual harvest specifications process. Section 1.4.6 of the RIR/IRFA provides additional detail on these alternatives considered but not selected for this proposed action.

Flatfish Exchange Limits

NMFS proposes to revise regulations at § 679.4(p)(5) to limit to three the number of Flatfish Exchanges each CDQ group or Amendment 80 cooperative could execute within a fishing year to limit the administrative burden associated with Flatfish Exchanges. The Council and NMFS considered an option that would not limit the number of Flatfish Exchanges. However, as noted in Section 1.8.3 of the RIR/IRFA, unlimited Flatfish Exchanges would increase administrative burden and costs for NMFS, and was not deemed as necessary to provide adequate opportunities for CDQ groups and Amendment 80 cooperatives to engage in Flatfish Exchanges for additional harvest opportunities. For example, a CDQ group could exchange unused yellowfin sole CDQ

allocation for an equal tonnage of rock sole CDQ ABC reserve early in the year if such a need is projected. Subsequently, the same CDQ group could exchange any unused yellowfin sole CDQ allocation for an equal tonnage of flathead sole or rock sole ABC reserve if needed later in the year. This would still provide CDQ group an opportunity for a final Flatfish Exchange by the end of the calendar year if needed. The Council recommended, and NMFS proposes an annual limit of three Flatfish Exchanges based on input from CDQ groups, Amendment 80 cooperatives, and the need to balance the administrative concerns raised by NMFS. Assuming that the same number of CDQ groups (six) and Amendment 80 cooperatives (two) that existed in 2014 exist in future years, NMFS could process a maximum of 24 Flatfish Exchanges per year.

Preliminary Amendment 80 Cooperative Flatfish Exchange Report

NMFS proposes to revise regulations at § 679.5(s)(7) to require each Amendment 80 cooperative to submit annually to the Council a Preliminary Amendment 80 Cooperative Flatfish Exchange Report reviewing the use of the cooperative's Amendment 80 ABC reserve for flathead sole, rock sole, and yellowfin sole. Each Amendment 80 cooperative would report the number of vessels used to harvest the Amendment 80 cooperative's quota; the number of Flatfish Exchanges and dates those exchanges were approved; the types and amounts of CQ and Amendment 80 ABC reserve used; and the dates, types, and amounts of inter-cooperative CQ transfers. This report would be due to the Council by December 1 of each year. This report would allow the Council, during the annual harvest specifications process, to assess the use of Flatfish Exchanges, the use of CQ, and weigh the potential socioeconomic impact of Flatfish Exchanges before

establishing the ABC reserve. The Council would make this report available to the public.

NMFS is not proposing to require Amendment 80 cooperatives to disclose catch data that may be considered confidential. When the Council recommended this proposed action, it requested that NMFS implement Federal regulations that would require each Amendment 80 cooperative to provide catch information for flathead sole, rock sole, and yellowfin sole catch as part of this new proposed reporting requirement. However, Amendment 80 cooperative catch data at this level of fisheries participation currently is considered confidential and therefore protected under section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a). Therefore, these data cannot be disclosed to the Council or the public. NMFS notes that information on aggregate catch by all vessels operating in the BSAI are available by species at NMFS website at <http://alaskafisheries.noaa.gov> or could be provided to the Council on request at the December meeting, or any time prior to that meeting.

NMFS has issued a proposed rule that, if implemented, will provide additional clarification on the release of catch information under “limited access privilege” programs, as defined under the Magnuson-Stevens Act (see 77 FR 30486, May 23, 2012). As proposed, that rule addresses the release of catch information collected under the Amendment 80 Program. NMFS is currently in the process of developing a final rule for that proposed rule. Because that proposed rule broadly addresses the release of confidential data under section 402 of the Magnuson-Stevens Act, it could provide for the release of the currently-confidential catch information on flathead sole, rock sole, and yellowfin sole the Council requested when it recommended this proposed action. If that

final rule provides additional clarification on the amount and type of data that may be released by Amendment 80 cooperatives prior to the publication of a final rule for this proposed action (if approved), then NMFS would amend the rule proposed here so that the final rule accommodates the specific catch information requests made by the Council.

The proposed reporting requirements are intended to maintain a transparent groundfish harvest specifications process while providing the Council and the public additional information that could be used to identify any fishery impacts of this proposed action on non-Amendment 80 cooperative participants. The Council and NMFS acknowledged that the use of the flexibility provided by this proposed rule could have impacts on other fishery participants, which were previously assessed (see Categorical Exclusion, see Addresses), but could be better understood by obtaining information on the use of CQ transfers and Flatfish Exchanges by Amendment 80 cooperatives. For example, the use of Flatfish Exchanges could allow additional access to markets or modify the timing of harvests that may have socioeconomic impacts on non-Amendment 80 Program fisheries (see Sections 1.8.2.3 and 1.8.2.4 of the RIR/IRFA prepared for this action for more detail).

The Council and NMFS determined the best way to monitor potential socioeconomic changes in non-Amendment 80 Program fisheries would be to review the transfers of flathead sole, rock sole, and yellowfin sole CQ among Amendment 80 cooperatives, and the amount of Amendment 80 ABC reserves used by Amendment 80 cooperatives. Reporting the amounts and frequency of Flatfish Exchanges (and CQ transfers) could aid the Council, NMFS, and the public in providing a greater understanding of the relative impacts of this proposed action on harvests of flathead sole,

rock sole, and yellowfin sole. The Preliminary Amendment 80 Cooperative Flatfish Exchange Report would provide the Council, NMFS, and the public with specific data on the timing and amount CQ transferred between cooperatives, and the number and amounts of flathead sole, rock sole, and yellowfin sole exchanged through Flatfish Exchanges.

The proposed Preliminary Amendment 80 Cooperative Flatfish Exchange Report would be integrated into the annual harvest specifications process. The Council would receive the reports, receive public comment on these reports, and incorporate that information in its ABC reserve decisions. Under this proposed action, the Council would use these data when deciding whether to recommend ABC reserve amounts below the ABC surplus amounts for flathead sole, rock sole, and yellowfin sole. This proposed reporting requirement is intended to maximize the Council's ability to consider factors that it may not otherwise have available relating to the use of flathead sole, rock sole, and yellowfin sole when it considers establishing an ABC reserve during its December Council meeting.

This proposed action would not modify existing reporting requirements for the CDQ groups. The Council did not recommend, and this proposed rule would not propose a similar report from CDQ groups, given the small amount of the ABC reserve (10.7 percent) allocated to CDQ Program, and the limited impact that the use of Flatfish Exchanges by CDQ groups would be likely to have on other fishery participants. The potential impact of the use of the CDQ ABC reserve is limited by the fact that the CDQ ABC reserve is allocated among six CDQ groups, and no one CDQ group is likely to be able to substantially increase its harvests relative to the TAC for any species under this

proposed action (see Tables 1 and 3 of this preamble for an example of the amount of TAC and ABC reserve available to each CDQ group). This proposed rule would not modify existing regulations that require each Amendment 80 cooperative to submit an Annual Amendment 80 cooperative report (see regulations at § 679.5(s)(6)).

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that Amendment 105 to the BSAI FMP and this proposed rule are consistent with the BSAI FMP, provisions of the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section and in the SUMMARY section of the preamble and are not repeated here. Each of the statutory requirements of section 603(b) and (c) has been addressed and is summarized as follows. A copy of the complete IRFA is available from NMFS (see ADDRESSES).

Number and Description of Small Entities Regulated by the Proposed Action

CDQ groups and Amendment 80 cooperatives are directly regulated through this proposed action through their allocations of harvesting privileges for flathead sole, rock sole, and yellowfin sole.

On June 20, 2013, the Small Business Administration (SBA) 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 IRFA for this action.

All the vessels and companies participating in the Amendment 80 sector have been affiliated with one of two Amendment 80 cooperatives, the Alaska Seafood Cooperative or the Alaska Groundfish Cooperative, since 2011. The most recent gross revenue data for Amendment 80 cooperatives is from 2011, and these data indicates that the total gross revenues earned by the vessels in each of the Amendment 80 cooperatives exceed \$19.0 million. Thus, the vessels and companies participating in Amendment 80 cooperatives are all large entities, either by virtue of their own gross revenues or by virtue of their affiliation with other large entities through their cooperative membership. Therefore, this analysis addresses the impact on the directly regulated small entities (i.e., CDQ groups) and not Amendment 80 cooperatives.

The six CDQ groups are all small entities by virtue of their non-profit status. These groups include Aleutian Pribilof Island Community Development Association, Bristol Bay Economic Development Corporation, Central Bering Sea Fishermen's Association, Coastal Villages Region Fund, Norton Sound Economic Development Corporation, and Yukon Delta Fisheries Development Association. Each of these groups is organized as an independently owned and operated not-for-profit entity and none is dominant in its field; consequently, each is a "small entity" under the RFA.

All six CDQ groups annually are allocated groundfish, halibut, and crab CDQ allocations. These groups participate, either directly or indirectly, in the commercial harvest of these allocations. Commercially valuable allocations include (among others) Alaska pollock, Pacific cod, sablefish, Pacific halibut, Greenland turbot, Atka mackerel, various flatfish species, as well as king and Tanner crab. CDQ groups receive royalties from the successful harvest of CDQ by commercial fishing companies, as well as access to employment and training opportunities for their communities' residents. Royalties and income from CDQ harvesting activities are used to fund economic development projects in CDQ communities. In 2011, the six CDQ groups earned approximately \$311.5 million in royalties (i.e., gross revenues) from the harvest of CDQ allocations. CDQ Program activities are discussed in detail in Section 1.6 of the RIR/IRFA prepared for this action.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap or conflict between this proposed action and existing Federal rules has been identified.

Description of Significant Alternatives that Minimize Adverse Impacts on Small Entities

An IRFA also requires a description of any significant alternatives to the preferred alternative (Alternative 3, option 1 described below) that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. The suite of potential actions includes three alternatives and associated options. A detailed description of these alternatives and options is provided in Section 1.4 of the RIR/IRFA prepared for this action.

Alternative 1 is the status quo, and does not provide additional harvesting

flexibility for flathead sole, rock sole, or yellowfin sole to CDQ groups. Alternative 2 would establish a CDQ ABC reserve for flathead sole, rock sole, or yellowfin sole that is allocated among CDQ groups equal to 10.7 percent of the ABC surplus for each species, while Alternative 3 would allow the Council or NMFS to establish a CDQ ABC reserve for flathead sole, rock sole, or yellowfin sole that is allocated among CDQ groups that may be less than or equal to 10.7 percent of the ABC surplus for each species after considering socioeconomic or biological considerations.

Alternative 2 is less restrictive, and thus has fewer adverse impacts on the directly regulated CDQ groups. While Alternative 2 may be less restrictive to CDQ groups, Alternative 3 was adopted because it provides the Council flexibility to address socioeconomic or biological considerations during the annual harvest specifications process. The Council and NMFS may deem it appropriate to set the ABC reserve below the ABC surplus to accommodate potential harvests of non-target species greater than the ICA. Similarly, the Council may recommend establishing an ABC reserve less than the ABC surplus to accommodate market conditions.

The Council also considered three options that could apply to either Alternative 2 or Alternative 3; however, options 2 and 3 are mutually exclusive. Option 1 would establish an ABC surplus, ABC reserve, and CDQ ABC reserve for flathead sole, rock sole, and yellowfin sole, but limit the number of Flatfish Exchanges to no more than three Flatfish Exchanges per CDQ group per calendar year. Option 2 would create an ABC surplus, ABC reserve, and CDQ ABC reserve only for flathead sole and rock sole. Option 3 limits the maximum amount of the ABC surplus, ABC reserve, and CDQ ABC reserve for yellowfin sole available to CDQ groups. Options 2 and 3 are more restrictive

than Option 1 and provide fewer opportunities for CDQ groups to use Flatfish Exchanges to maximize their harvests, particularly their harvests of yellowfin sole. Therefore, Options 2 or 3 would have more adverse impacts on CDQ groups than the preferred alternative, which combines Alternative 3 and Option 1.

Option 1, which limits CDQ groups to three Flatfish Exchanges during a year, is more restrictive than the adoption of Alternative 3 without the option. Alternative 3 without Option 1 would not limit the number of Flatfish Exchanges that a CDQ group could undertake each calendar year. However, Option 1 was meant to limit the potential administrative burden and costs on NMFS of the proposed action. As explained in Section 1.8.3 of the RIR/IRFA prepared for this action, the Council determined and NMFS agreed that a maximum of three Flatfish Exchanges per calendar year per CDQ group would meet the goals and objectives for the proposed action, would not unduly constrain CDQ groups, and would reduce administrative burden and costs on NMFS. The Flatfish Exchange limits are intended to allow the CDQ groups to make an adequate number of exchanges needed to accommodate uncertain harvesting conditions throughout the year as described earlier in the preamble and in Section 1.6.1 of the RIR/IRFA prepared for this action.

Projected Reporting, Recordkeeping, and other Compliance Requirements

This action is projected to have a negligible impact on the recordkeeping and reporting requirements of CDQ groups participating in the BSAI groundfish fisheries. The regulations proposed under this amendment directly impact the recordkeeping and reporting requirements of Amendment 80 cooperatives, but not those of the CDQ groups. Under this action, NMFS would not require the directly regulated small entities (i.e.,

CDQ groups) to annually report data on Flatfish Exchanges. Moreover, the decision to submit a Flatfish Exchange Application is entirely voluntary on the part of all affected entities. If a CDQ group chooses to submit a Flatfish Exchange Application, it will need to submit the information required. The information required in a Flatfish Exchange Application is similar to the information already required by for transfers of CDQ allocations among CDQ groups (see regulations at § 679.5(n)). Some recordkeeping and reporting requirements would be required by Amendment 80 cooperatives, which are considered large entities and is not addressed further here.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval under OMB Control Number 0648-0565. Public reporting burden is estimated to average 30 minutes for the Flatfish Exchange Application and 25 hours for Preliminary Amendment 80 Cooperative Flatfish Exchange Report. The estimated response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of collecting the information, including the use of automated collection techniques or other forms of information technology. Send

comments on these or any other aspects of the collection of information to NMFS at the ADDRESSES above, and 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.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 24, 2014

Eileen Sobeck,
Assistant Administrator for Fisheries,
National Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679-- FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

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

2. In § 679.2, add definitions for “ABC reserve”; “ABC surplus”; “Amendment 80 ABC reserve”; “CDQ ABC reserve”; and “Flatfish Exchange” in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

ABC reserve means, for purposes of flathead sole, rock sole, and yellowfin sole in the BSAI, an amount, not to exceed the ABC surplus, that may be reduced for social, economic, or ecological considerations according to § 679.20(b)(1)(iii).

ABC surplus means, for purposes of flathead sole, rock sole, and yellowfin sole in the BSAI, the difference between each species’ annual ABC and TAC.

* * * * *

Amendment 80 ABC reserve means the amount of the flathead sole, rock sole, or yellowfin sole ABC reserve that remains after designating the amount assigned to the CDQ ABC reserve and that is allocated among Amendment 80 cooperatives as calculated annually as described at § 679.91(i)(2).

* * * * *

CDQ ABC reserve means 10.7 percent of the amount of the flathead sole, rock sole, or yellowfin sole ABC reserve that is allocated among the CDQ groups as calculated annually as described at § 679.31(b)(4).

* * * * *

Flatfish Exchange means the exchange of unused CDQ, or Amendment 80 CQ, of flathead sole, rock sole, or yellowfin sole in the BSAI for an equivalent amount (in metric tons) of CDQ ABC reserve or Amendment 80 ABC reserve, respectively, for flathead

sole, rock sole, or yellowfin sole in the BSAI other than the species listed for exchange on the Flatfish Exchange Application as described in a notice of adjustment or apportionment in the Federal Register.

* * * * *

3. In § 679.4, add paragraph (p) to read as follows:

§ 679.4 Permits.

* * * * *

(p) Flatfish Exchange Application. (1) Completed application. NMFS will process only completed Flatfish Exchange Applications submitted by CDQ groups or Amendment 80 cooperatives.

(2) Certification. The designated representative must log into the Alaska Region Online application website and complete an exchange application form provided on the website. By using the NMFS ID, password, and Transfer Key and submitting the Flatfish Exchange Application, the designated representative certifies that all information submitted is true, correct, and complete.

(3) Approval. A CDQ group or Amendment 80 cooperative must receive NMFS' approval of a Flatfish Exchange Application prior to using the CDQ or Amendment 80 CQ subject to the Flatfish Exchange. NMFS will approve the Flatfish Exchange Application if:

(i) The CDQ group has sufficient CDQ ABC reserves of flathead sole, rock sole, or yellowfin sole;

(ii) The Amendment 80 cooperative has sufficient Amendment 80 ABC reserves of flathead sole, rock sole, or yellowfin sole;

(iii) The CDQ group receiving flathead sole, rock sole, or yellowfin sole from its CDQ ABC reserve exchanges an equal amount of unused CDQ of flathead sole, rock sole, or yellowfin sole, other than the species received from its CDQ ABC reserve;

(iv) The Amendment 80 cooperative receiving flathead sole, rock sole, or yellowfin sole from its Amendment 80 ABC reserve exchanges an equal amount of unused Amendment 80 CQ of flathead sole, rock sole, or yellowfin sole, other than the species received from its Amendment 80 ABC reserve;

(v) The CDQ group or Amendment 80 cooperative has not received at least three approved Flatfish Exchanges during that calendar year, as described at paragraph (p)(5) of this section;

(vi) Approval of the Flatfish Exchange Application will not cause flathead sole, rock sole, or yellowfin sole to exceed an ABC or an ABC reserve for that species; and

(vii) NMFS receives a completed Flatfish Exchange Application from a CDQ group or Amendment 80 cooperative during the calendar year for which the Flatfish Exchange would be effective, and NMFS can approve that Flatfish Exchange Application before the end of the calendar year in which the Flatfish Exchange would be effective.

(4) Notification. (i) No exchange, adjustment, or apportionment of flathead sole, rock sole, or yellowfin sole may take effect until a notice of adjustment or apportionment has been published in the Federal Register with a statement of the findings on which the apportionment or adjustment is based.

(ii) Each NMFS approved Flatfish Exchange is debited as one Flatfish Exchange. An approved Flatfish Exchange is effective on the date of publication of the notice of adjustment or apportionment in the Federal Register.

(5) CDQ ABC reserve and Amendment 80 ABC reserve exchange limitations.

Each CDQ group and each Amendment 80 cooperative is limited to no more than three Flatfish Exchanges per calendar year.

4. In § 679.5, redesignate paragraph (s)(7) as (s)(8) and add a new paragraph (s)(7) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(s) * * *

(7) Preliminary Amendment 80 Cooperative Flatfish Exchange Report—(i) Applicability. An Amendment 80 cooperative issued a CQ permit must submit annually to the Council a Preliminary Amendment 80 Cooperative Flatfish Exchange Report reviewing the use of the cooperative's ABC reserve for flathead sole, rock sole, and yellowfin sole.

(ii) Time limits and submittal. (A) The Preliminary Amendment 80 Cooperative Flatfish Exchange Report must be submitted to the North Pacific Fishery Management Council at 605 West 4th Avenue, Suite 306, Anchorage, AK 99501.

(B) The Preliminary Amendment 80 Cooperative Flatfish Exchange Report must include a review of the Flatfish Exchanges for that calendar year through October 31.

(C) The Preliminary Amendment 80 Cooperative Flatfish Exchange Report must be received by the Council not later than 1700 hours, A.l.t., December 1 of each year.

(iii) Information required. Each Preliminary Amendment 80 Cooperative Flatfish Exchange Report must include all of the information required on the Preliminary

Amendment 80 Cooperative Flatfish Exchange Report form and all required additional documentation.

* * * * *

5. In § 679.20, add paragraph (b)(1)(iii) and revise paragraphs (c)(1)(iv) and (c)(3)(iii) to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *

(1) * * *

(iii) ABC reserves. (A) ABC reserves are annually established for flathead sole, rock sole, and yellowfin sole. For each flatfish species, the ABC reserve is calculated as an amount less than or equal to the ABC surplus. NMFS, after consultation with the Council, may set the ABC reserve for flathead sole, rock sole, or yellowfin sole below the ABC surplus for that species based on social, economic, or ecological considerations.

(B) CDQ ABC reserves. An amount equal to 10.7 percent of the ABC reserves for flathead sole, rock sole, and yellowfin sole will be allocated to a CDQ ABC reserve. The CDQ ABC reserves will be:

(1) Calculated during the annual harvest specifications described at paragraph (c) of this section, as allocations to CDQ groups; and

(2) Allocated to each CDQ group as described under § 679.31(b)(4).

(C) Amendment 80 ABC reserves. Amendment 80 ABC reserves shall be calculated as the ABC reserves described under paragraph (b)(1)(iii)(A) of this section as

reduced by the CDQ ABC reserves under paragraph (b)(1)(iii)(B) of this section. The Amendment 80 ABC reserves will be:

(1) Calculated during the annual harvest specifications described at paragraph (c) of this section, as allocations to Amendment 80 cooperatives; and

(2) Allocated to each Amendment 80 cooperative as described under § 679.91(i)(2).

* * * * *

(c) * * *

(1) * * *

(iv) BSAI. (A) The proposed harvest specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserves.

(B) The proposed harvest specifications will specify for up to two fishing years the ABC surpluses, ABC reserves, CDQ ABC reserves, CDQ ABC reserves for each CDQ group, Amendment 80 ABC reserves, and Amendment 80 ABC reserves for each Amendment 80 cooperative for flathead sole, rock sole, and yellowfin sole.

* * * * *

(3) * * *

(iii) BSAI. (A) The final harvest specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, PSQ reserves

and prohibited species catch allowances, seasonal allowances of pollock (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserves.

(B) The final harvest specifications will specify for up to two fishing years the annual ABC surpluses, ABC reserves, CDQ ABC reserves, CDQ ABC reserves for each CDQ group, Amendment 80 ABC reserves, and Amendment 80 ABC reserves for each Amendment 80 cooperative for flathead sole, rock sole, and yellowfin sole.

* * * * *

6. In § 679.31, revise paragraphs (a) heading and (b) heading and add paragraphs (a)(5), (b)(4), and (d) to read as follows:

§ 679.31 CDQ and PSQ reserves, allocations, and transfers.

(a) CDQ, PSQ, and CDQ ABC reserves. * * *

(5) CDQ ABC reserves. (See § 679.20(b)(1)(iii)(A))

(b) Allocations of CDQ, PSQ, and CDQ ABC reserves among the CDQ groups. *

* *

(4) Annual allocations of CDQ ABC reserves among the CDQ groups. (i) An amount equivalent to 10 percent of the ABC reserve for flathead sole, rock sole, and yellowfin sole as determined under the annual harvest specifications at § 679.20(c) shall be allocated among the CDQ groups based on the CDQ percentage allocations under 16 U.S.C. 1855(i)(1)(C), unless modified under 16 U.S.C. 1855(i)(1)(H); and

(ii) An amount equivalent to 0.7 percent of the ABC reserve for flathead sole, rock sole, and yellowfin sole as determined under the annual harvest specifications at § 679.20(c) shall be allocated among the CDQ groups by the panel established in section 305(i)(1)(G) of the Magnuson-Stevens Act.

* * * * *

(d) Accessing CDQ ABC reserves. Each CDQ group may request that NMFS approve a Flatfish Exchange to add flathead sole, rock sole, or yellowfin sole to its CDQ account in exchange for reducing its CDQ account by an equal amount of flathead sole, rock sole, or yellowfin sole. CDQ groups may request Flatfish Exchanges by submitting a completed Flatfish Exchange Application as described at § 679.4(p).

7. In § 679.91, add paragraph (i) to read as follows:

§ 679.91 Amendment 80 Program annual harvester privileges.

* * * * *

(i) Amendment 80 ABC reserves. (1) General. The Regional Administrator will determine the Amendment 80 ABC reserves for flathead sole, rock sole, and yellowfin sole that will be assigned to the Amendment 80 sector as part of the annual harvest specifications described at § 679.20(c). Amendment 80 ABC reserves will be further allocated to Amendment 80 cooperative(s), as described in paragraph (i)(2) of this section.

(2) Allocation of Amendment 80 ABC reserves to Amendment 80 cooperatives. The amount of Amendment 80 ABC reserve for each species of flathead sole, rock sole, and yellowfin sole assigned to an Amendment 80 cooperative is equal to the amount of Amendment 80 QS units of that species assigned to that Amendment 80 cooperative by Amendment 80 QS holders divided by the total Amendment 80 QS pool for that species multiplied by the Amendment 80 ABC reserve for that species.

(3) Accessing Amendment 80 ABC reserves. An Amendment 80 cooperative may request that NMFS approve a Flatfish Exchange to add flathead sole, rock sole, or

yellowfin sole CQ to its Amendment 80 CQ account in exchange for reducing its Amendment 80 CQ by an equal amount of flathead sole, rock sole, or yellowfin sole. An Amendment 80 cooperative may request Flatfish Exchanges by submitting a completed Flatfish Exchange Application as described in § 679.4(p).

* * * * *

[FR Doc. 2014-15185 Filed 06/27/2014 at 8:45 am; Publication Date: 06/30/2014]