

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

[Docket No. 110620343-2149-01]

RIN 0648-BB18

**Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Amendment 97****ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule that would implement Amendment 97 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). If approved, Amendment 97 would allow the owners of trawl catcher/processor vessels authorized to participate in the Amendment 80 catch share program to replace these vessels with vessels that meet certain requirements. This proposed action includes management measures that would establish the requirements for replacement vessels, such as a limit on the overall length of replacement vessels, measures to prevent replaced vessels from participating in Federal groundfish fisheries off Alaska that are not Amendment 80 fisheries, and specific catch limits known as Amendment 80 sideboards for replacement vessels. This action is necessary to promote safety-at-sea, by allowing Amendment 80 vessel owners to replace their vessels for any reason at any time and by requiring replacement vessels to meet certain U.S. Coast Guard vessel safety standards, and is intended to facilitate an increase in the processing capabilities of the fleet to improve the retention and utilization of groundfish catch by these vessels. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Written comments must be received no later than 5 p.m. Alaska local time (A.l.t.) May 4, 2012.

**ADDRESSES:** Send comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by NOAA-NMFS-2011-0147, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the

Federal eRulemaking Portal at <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA-NMFS-2011-0147 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on that line.

- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.

- *Mail:* Address 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.

- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the above address; emailed

to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or faxed to 202-395-7285.

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

**SUPPLEMENTARY INFORMATION:** NMFS manages the U.S. groundfish fisheries of the BSAI in the Exclusive Economic Zone (EEZ) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws. Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

**Background on the Amendment 80 Program**

The proposed action would amend Federal regulations related to the Amendment 80 Program. In June 2006, the Council adopted Amendment 80 to the FMP, which was implemented with a final rule published in 2007 and was fully effective starting with the 2008 fishing year (72 FR 52668, September 14, 2007). Among other measures, Amendment 80 authorized the allocation of specified groundfish species to harvesting cooperatives and established a catch share program for trawl catcher/processors (C/Ps) that are not authorized to conduct directed fishing for pollock under the American Fisheries Act of 1998 (AFA) (Pub. L. 105-227, Title II of Division C). These non-AFA trawl C/Ps also are referred to as Amendment 80 vessels, or the Amendment 80 sector. Amendment 80 was intended to meet a number of policy objectives that included reducing potential bycatch reduction costs, encouraging fishing practices with lower discard rates, and promoting opportunities for the sector to increase the value of harvested species.

Several aspects of the Amendment 80 program as originally implemented would be modified by this proposed rule. The following provides some background on these aspects in order to provide the context for the modifications being proposed. Other aspects of the Amendment 80 program not affected by this proposed rule are described in detail in the final rule for the Amendment 80 program (72 FR 52668, September 14, 2007).

The Amendment 80 Program is a limited access privilege program (LAPP) that allocates a quota share (QS) permit to a person, based on a vessel's catch history of six Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, flathead sole, Pacific cod,

rock sole, and yellowfin sole) in the BSAI, from 1998 through 2004. This criteria is consistent with criteria for participation in the non-AFA trawl C/P subsector set forth in section 219(a)(7) of the BSAI Catcher Processor Capacity Reduction Program (CRP), which is contained within the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law No. 108-447). Based on these criteria, NMFS determined that 28 non-AFA trawl C/Ps originally qualified for the Amendment 80 Program.

In order to participate in the Amendment 80 program, the regulations require a person who owns the catch history of an original qualifying non-AFA trawl C/P to apply to NMFS for an Amendment 80 QS permit. Each of the 28 originally qualifying vessels may be assigned an Amendment 80 QS permit, if that vessel owner applies to receive an Amendment 80 QS permit. In developing the regulations for Amendment 80, NMFS determined that the language of the CRP prohibited vessels that did not meet the criteria from participating in the Amendment 80 sector. Therefore, only the 28 listed vessels were qualified to fish in the Amendment 80 sector and replacement vessels were not permitted unless the replacement vessel was one of the qualifying vessels listed in Table 31 to part 679.

To ensure that no more than the 28 originally qualifying vessels participate in the Amendment 80 fisheries, NMFS implemented regulations, at § 679.4(o)(v), requiring that Amendment 80 QS units assigned to an Amendment 80 QS permit are non-severable from that Amendment 80 QS permit and if transferred, then the Amendment 80 QS permit must be transferred in its entirety to another person. Moreover, regulations prevent the subdivision of an Amendment 80 QS permit and QS allocations of specific Amendment 80 species may not be transferred or otherwise reassigned. Of the 28 originally qualifying vessels, several vessels are no longer active in the Amendment 80 fleet due to an actual or constructive total loss (i.e., *F/V Alaska Ranger*, *F/V Arctic Sole*, *F/V Prosperity*), or because those vessels have been reflagged under foreign ownership and are no longer eligible to re-enter U.S. fisheries under the provisions of 46 U.S.C. 12113 (i.e., *F/V Bering Enterprise*).

In cases where an original qualifying vessel has suffered a total or constructive loss, or is no longer eligible to receive a fishery endorsement (i.e., the vessel has been removed through a vessel buyback program, or has been

reflagged as a foreign vessel), the regulations currently require that an Amendment 80 QS permit must be permanently assigned to the License Limitation Program (LLP) license, described in detail below, initially assigned to that original qualifying vessel, thus creating an Amendment 80 LLP/QS license. Three Amendment 80 QS permits are permanently assigned to LLP licenses.

Once issued, Amendment 80 QS permits, and the Amendment 80 vessels or LLP licenses associated with those Amendment 80 QS permits, may be assigned annually to either an Amendment 80 cooperative or to the Amendment 80 limited access fishery. Amendment 80 QS permit holders assigning their permit to an Amendment 80 cooperative are eligible to receive an exclusive harvest privilege for a portion of the total allowable catch (TAC) for the six defined Amendment 80 species, as well as a portion of the BSAI halibut, Bristol Bay red king crab, snow crab, and Tanner crab prohibited species catch (PSC) assigned to the Amendment 80 sector. Those Amendment 80 QS permit holders who assign their permits to the Amendment 80 limited access fishery do not receive an exclusive harvest privilege. NMFS apportions a specific percentage of the Amendment 80 species and PSC allowances among Amendment 80 cooperatives and the Amendment 80 limited access fishery based on the aggregate Amendment 80 QS held by all of the QS permits assigned to Amendment 80 cooperatives or the Amendment 80 limited access fishery.

NMFS also requires participants in Amendment 80 fisheries to meet the requirements of the LLP program. The Council recommended and NMFS implemented the LLP as part of a comprehensive and rational management program for the fisheries in and off Alaska (63 FR 52642, October 1, 1998). The LLP program limited the number, size, and specific operation type of vessels that may be used in fisheries for groundfish other than demersal shelf rockfish east of 140° W .long. and sablefish managed under the individual fishing quota program for Pacific halibut and sablefish in the EEZ off Alaska. The LLP program was intended to place an upper limit on the amount of capitalization that could occur in specific fisheries and prevent overcapitalization in those fisheries.

LLP licenses were issued based on fishing activity during specific qualification periods. Once issued, transferable LLP licenses authorize holders to conduct directed fishing for LLP groundfish species in the

management areas endorsed on each LLP license. All licenses for groundfish species were designated for use by either CV or C/P operational type designation. This designation prescribed the authorized behavior of the LLP license holder on the vessel on which the license would be used. LLP licenses were issued with a specific vessel length category based on the size of the eligible vessel at the time of qualification for the LLP. LLP licenses specify the maximum length overall (MLOA) of the vessel to which that LLP license may be assigned. The average MLOA of an Amendment 80 LLP license is 170 feet (51.8 m) MLOA with 19 of the 28 Amendment 80 LLP licenses having a MLOA less than 200 feet (61 m), including one license with an MLOA of less than 100 feet (30.5 m). The longest MLOA on an Amendment 80 LLP license is 295 foot (89.9 m) MLOA. Additional detail on the MLOAs of Amendment 80 LLP licenses is provided in Table 1 in Section 2.3.5 of the analysis for this proposed action. Participants in Amendment 80 fisheries, and other LLP groundfish fisheries, are prohibited from using a vessel to fish for LLP groundfish that has a length overall (LOA) that is greater than the MLOA specified on the LLP license (see § 679.7(i)(6)).

As with other North Pacific LAPPs, the Council and NMFS have attempted to mitigate potentially adverse effects of the Amendment 80 program on non-LAPP fisheries that could be caused by the increased economic and operational efficiencies that LAPPs can provide participants. Specifically, once a harvest privilege is allocated, Amendment 80 QS permit holders may consolidate their operations through cooperative management and use Amendment 80 vessels in other fisheries. This could increase competition and the race for fish in non-Amendment 80 fisheries. To prevent this, the Amendment 80 program established a suite of measures, commonly called sideboard limits, to protect participants in other federally managed fisheries from increased participation by Amendment 80 vessel owners.

The Council identified Gulf of Alaska (GOA) groundfish fisheries as the fisheries most likely to be at risk of increased harvest pressures with the implementation of the Amendment 80 program. The Council determined that without sideboards limiting Amendment 80 vessel harvests, GOA groundfish fisheries could be subject to increased fishing pressure from Amendment 80 vessels because of (1) the harvest patterns of the Amendment 80 sector, (2) the lack of other fisheries in the BSAI that can be targeted by

Amendment 80 vessels (i.e., pollock is managed under the AFA, crab is managed under the BSAI Crab Rationalization Program, and Pacific cod is allocated to the Amendment 80 sector), and (3) the lack of specific gear or sector allocations for many species in the GOA. Therefore, the Amendment 80 program includes sideboard limit protections for certain GOA groundfish fisheries that the Council and NMFS determined were at risk from increased participation by Amendment 80 vessels owners. The Amendment 80 program established three types of GOA sideboard limits for Amendment 80 vessels other than the F/V *Golden Fleece*. The Amendment 80 Program also established specific management measures applicable to the F/V *Golden Fleece*.

First, Amendment 80 limits catch of specific GOA groundfish species by Amendment 80 vessels other than the F/V *Golden Fleece* to an amount not greater than the sideboard limits shown in Table 37 to part 679. Once a sideboard limit for one of these groundfish species is reached, or projected to be reached, NMFS prohibits directed fishing for that species by Amendment 80 vessels. Amendment 80 vessels can retain incidental catch of that sideboard species subject to existing maximum retainable amount regulations while targeting other GOA groundfish species that are not closed to directed fishing. If the rate of incidental catch of a GOA groundfish sideboard species is expected to be high relative to the sideboard limit, NMFS prohibits directed fishing for that species by Amendment 80 vessels to accommodate this incidental catch.

The GOA groundfish sideboard limits restrict the maximum amount of pollock, Pacific cod, and rockfish that Amendment 80 vessels can harvest. The GOA groundfish sideboard limits restrict the catch of Amendment 80 vessels to their average aggregate catch from 1998 through 2004. Catch of a GOA sideboard species during a directed fishery, as well as incidental catch of a GOA sideboarded species, such as Pacific cod caught during a rex sole fishery, accrues against the GOA sideboard limit for that species. In addition, any catch of a GOA sideboard species within State waters during the State parallel fishery accrues against the sideboard limit. State parallel fisheries occur in State waters, are opened at the same time as Federal fisheries in Federal waters, and catch accrues against the Federal TAC. Accounting for catch in the State parallel fishery ensures that all catch is debited against

a sideboard limit whether that harvest occurs in State or Federal waters.

Second, Amendment 80 limits catch of GOA halibut PSC by Amendment 80 vessels, other than the F/V *Golden Fleece*. The GOA halibut PSC sideboard limits implemented under Amendment 80 are based on the historic use of halibut PSC of Amendment 80 vessels, in each season, and by fishery complex. The GOA halibut PSC sideboard limits restrict the maximum amount of halibut caught by Amendment 80 vessels. NMFS apportions the Amendment 80 halibut PSC sideboard limits through the annual specification process.

The GOA halibut PSC sideboard limits established under Amendment 80 are slightly lower than historic catch of halibut PSC by Amendment 80 vessels in the GOA, during the period from 1998 through 2004, to accommodate two factors: an exemption from the Amendment 80 GOA halibut PSC sideboard limits for the F/V *Golden Fleece*, and the allocation of halibut PSC Cooperative Quota under the Rockfish Program. Both exceptions to the Amendment 80 GOA halibut PSC sideboard limits are described in more detail in Section 2.3 of the EA/RIR/IRFA prepared for this proposed action and summarized below in this preamble.

NMFS subdivides the GOA halibut PSC sideboard limit by the number of seasons, and into two species complexes: the shallow-water and the deep-water fishery species complexes. A shallow-water halibut PSC sideboard limit restricts the catch of halibut PSC in the shallow-water fishery complex, which includes pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species." A deep-water halibut PSC sideboard limit restricts the catch of halibut PSC in the deep-water fishery complex, which includes all species not in the shallow-water complex: all rockfish species, rex sole, deep-water flatfish, sablefish, and arrowtooth flounder. If the shallow-water halibut PSC sideboard limit is reached, all directed fishing for all species in the shallow-water complex is closed in the GOA for that season. Similarly, if the deep-water halibut PSC sideboard limit is reached, all directed fishing for all species in the deep-water complex is closed in the GOA for that season. NMFS can reopen a fishery complex in the following season with the halibut PSC sideboard limit applicable for that season.

Third, regulations implementing Amendment 80 restrict the number of Amendment 80 vessels and Amendment 80 LLP licenses that can be used to conduct directed fishing for flatfish in the GOA. The Council and NMFS

reviewed historic harvest patterns during the 1998 through 2004 qualifying years and recognized a specific group of Amendment 80 vessels that were substantially more dependent on the GOA flatfish fisheries than other Amendment 80 vessels with more sporadic participation. NMFS authorized a subset of Amendment 80 vessels to be used to conduct directed fishing for flatfish in the GOA. Each qualifying Amendment 80 vessel conducted more than 10 weeks of directed fishing for GOA flatfish fisheries during 1998 through 2004 and are designated on an Amendment 80 LLP license that was originally assigned to one of the Amendment 80 vessels meeting that 10-week minimum requirement.

Table 39 to part 679 identifies the eleven Amendment 80 vessels and eleven Amendment 80 LLP licenses eligible for use in the GOA flatfish fishery. If an Amendment 80 vessel listed in Table 39 to part 679 is not designated on an Amendment 80 LLP license also listed in Table 39 to part 679, the regulations prohibit that vessel from conducting directed fishing in GOA flatfish fisheries. Similarly, if an Amendment 80 vessel not listed in Table 39 to part 679 is designated on an Amendment 80 LLP license also listed in Table 39 to part 679, the regulations prohibit that vessel from directed fishing in GOA flatfish fisheries.

The Amendment 80 program established GOA sideboard limits specifically for the F/V *Golden Fleece*. As part of Amendment 80, the Council recognized that any Amendment 80 vessel that fished in GOA flatfish fisheries for at least 80 percent of all weeks during the 2000 through 2003 time period was an Amendment 80 vessel primarily dependent on GOA flatfish fisheries. NMFS identified one Amendment 80 vessel, the F/V *Golden Fleece*, with this distinctive harvest pattern in the GOA flatfish fisheries. The Council recommended, and NMFS implemented, an exemption from the GOA halibut PSC sideboard limits for the F/V *Golden Fleece* to reduce the potential adverse effects that the Amendment 80 GOA halibut PSC sideboard limits could have on the F/V *Golden Fleece*.

The Council recommended, and NMFS implemented, regulations that further recognized the unique catch history of the F/V *Golden Fleece*. The F/V *Golden Fleece* is not subject to certain monitoring and enforcement (M&E) requirements applicable to other Amendment 80 vessels while fishing in the GOA. Many of the M&E requirements established for

Amendment 80 vessels are necessary to properly track GOA groundfish catch and halibut PSC. Because the F/V *Golden Fleece* is exempt from the GOA halibut PSC sideboard limits and is prohibited from conducting directed fishing for Pacific cod, pollock, or in any rockfish fishery in the GOA, the Council determined, and NMFS concurred, that the same degree of precision for monitoring catch was not required for the F/V *Golden Fleece* as with other Amendment 80 vessels. The regulations implementing Amendment 80 established sideboard restrictions specifically applicable to the F/V *Golden Fleece* at § 679.92(d).

Shortly after NMFS published the final rule implementing Amendment 80, Arctic Sole Seafoods, the owner of an original qualifying Amendment 80 vessel that was lost, challenged NMFS's statutory interpretation of section 219(a)(7) of the CRP and contended that the lack of replacement vessel language in the Amendment 80 Program was arbitrary and capricious. On May 19, 2008, the U.S. District Court for the Western District of Washington (Court) issued a decision invalidating those regulatory provisions that limit the vessels used in the Amendment 80 Program to only those vessels meeting the qualification criteria in section 219(a)(7) of the CRP. In *Arctic Sole Seafoods, Inc. v. Gutierrez*, 622 F. Supp. 2d 1050 (W.D. Wash. 2008), the Court found the statutory language of the CRP ambiguous as to whether replacement of qualifying vessels with non-qualifying vessels was permissible, and found the agency's interpretation of the statute to be arbitrary and capricious. The Court concluded that the inability to replace qualifying vessels with non-qualifying vessels would ultimately result in the elimination of the sector through vessel attrition, and that Congress had not intended such an outcome in the CRP. The court ordered that "[t]o the extent that [regulations] restrict access to the BSAI non-pollock groundfish fishery to qualifying vessels without allowing a qualified owner to replace a lost qualifying vessel with a single substitute vessel, the regulations must be set aside."

After receiving the Court's decision, NMFS immediately developed an interim policy for vessel replacement consistent with the Court's decision. In October 2008, NMFS asked the Council to clarify the conditions under which an Amendment 80 vessel may be replaced consistent with the Court's decision, the CRP, and the Magnuson-Stevens Act. In response, the Council developed Amendment 97.

### Proposed Action

This proposed rule would allow the owner of an Amendment 80 vessel to replace that vessel with up to one other vessel for any reason and at any time. Regulations proposed by this action are intended to facilitate improved retention and utilization of catch by the Amendment 80 sector through vessel upgrades that would provide Amendment 80 vessel owners with the flexibility to incorporate a broad range of processing opportunities that are not currently available on all vessels. This proposed action also is intended to address the regulatory deficiencies that were identified by, and addressed by, the court order resulting from *Arctic Sole Seafoods, Inc. v. Gutierrez*. As part of the proposed action, the Council considered a range of alternatives and options. After reviewing the analysis prepared for Amendment 97 and receiving public testimony on the action, the Council recommended: (1) Allowing Amendment 80 vessels to be replaced for any reason at any time, up to a one-for-one vessel replacement; (2) establishing maximum vessel length limits for Amendment 80 replacement vessels; (3) modifying the MLOA on LLP licenses assigned to Amendment 80 replacement vessels; (4) clarifying the methods for assigning an Amendment 80 QS permit to either an Amendment 80 replacement vessel or an Amendment 80 LLP license; (5) imposing sideboard limitations on replaced vessels; (6) applying GOA sideboard measures that apply to all qualifying Amendment 80 vessels, except the F/V *Golden Fleece*, to continue to apply to their replacement vessels; (7) allowing vessels that subsequently replace Amendment 80 vessels authorized to fish in GOA flatfish fisheries to be eligible to conduct directed fishing for GOA flatfish; (8) establishing specific regulatory restrictions and requirements that would apply to any vessel that replaces the F/V *Golden Fleece*; (9) requiring owners of replacement vessels to demonstrate to NMFS the vessel's compliance with U.S. Coast Guard safety requirements; and (10) establishing the process by which vessel owners would apply to NMFS for approval to use an Amendment 80 replacement vessel in the Amendment 80 sector. Finally, if approved, this action is intended to demonstrate to the U.S. Maritime Administration (MARAD) that the Council recommended, and NMFS approved, conservation and management measures allowing vessels that exceed specific limits set forth in the AFA to participate in certain North

Pacific fisheries under the Council's jurisdiction and therefore are eligible to receive a certificate of documentation consistent with 46 U.S.C. 12113 and MARAD regulations at 46 CFR 356.47.

### Replacement for Any Reason and at Any Time, Up to One-for-One Vessel Replacement

The proposed regulations would allow owners of Amendment 80 vessels to replace their vessels for any reason and at any time up to a one-for-one vessel replacement. The Council determined, and NMFS agrees, that vessel owners are best-suited to determine the appropriate time to replace a vessel, and that vessel owners should be afforded broad discretion as to the reasons supporting vessel replacement. The Council's recommendation under Amendment 97 is intended to ensure that vessel owners would be able to initiate rebuilding or new construction of a vessel while the vessel to be replaced is still active (i.e., before it is lost), providing an opportunity for a potentially seamless replacement process and thereby reducing potential costs associated with foregone harvests. After reviewing the analysis for this action and receiving public testimony, the Council determined that this provision would provide vessel owners with opportunities for financial preparation for the investment, a more considered review of alternative design and construction options, and the optimization of delivery schedules.

Although Amendment 80 vessel owners would be able to replace their vessels at any time for any reason, the proposed rule would limit the number of replacement vessels an owner may have, requiring that each Amendment 80 vessel be replaced by no more than one vessel at any given time. Under the Amendment 80 Program, NMFS determined that 28 vessels met the criteria for participation in the non-AFA trawl catcher/processor sector established under the CRP and therefore were eligible to participate in the Amendment 80 Program. In considering vessel replacement, the Council determined that limiting the number of vessels eligible to participate in the Amendment 80 program at any given time to 28 vessels was consistent with the CRP and the Court's decision. The CRP is legislation aimed at facilitating a reduction in fishing capacity through a buyback program. The Court interpreted the CRP as authorizing vessel replacement to prevent the eventual elimination of the sector, but recognized that vessel replacement provisions that would increase the capacity in the

sector were not authorized, stating that any "regulation that allowed an otherwise qualified owner to replace his or her Amendment 80 vessel with multiple vessels would also be impermissible." Although regulations proposed by this action maintain the upper limit on the number of vessels eligible to participate in the Amendment 80 fisheries, this action also would allow for a reduction in the number of vessels participating in the Amendment 80 fisheries. As described later, a vessel owner would have the option of foregoing replacement of the owner's Amendment 80 vessel and instead assigning the owner's Amendment 80 QS permit to another Amendment 80 vessel, provided that the non-severable Amendment 80 QS permit is transferred in its entirety. Under this proposed rule, in no case could more than 28 vessels participate in the Amendment 80 fisheries at any given time.

As an alternative to new vessel construction, the Council recommended, and NMFS proposes, regulations that would allow some vessels currently participating in the Amendment 80 program to replace other Amendment 80 vessels. As proposed, this action would enable the owners of Amendment 80 vessels to replace aging or underperforming vessels with other vessels currently prosecuting Amendment 80 fisheries, without requiring new construction. NMFS would require that all replacement vessels, including replacement vessels that are currently participating in an Amendment 80 fishery, meet contemporary vessel construction standards that are intended to improve safety-at-sea. A detailed review of the Amendment 80 fleet safety regulations proposed by this action can be found in Section 2.3.9.1 of the analysis for this action and below in this preamble.

#### **Maximum Replacement Vessel Length Limits**

The proposed rule would limit the length overall (LOA) of Amendment 80 replacement vessels to 295 feet (89.9 m) LOA. The Council considered several size limits, including no size limit, and various variable rate and fixed length increases to vessel size prior to recommending a 295 feet (89.9 m) vessel length limit. As described in Section 2.4.5.12 of the analysis for this action, the Council determined that a 295 feet (89.9 m) vessel length limit would allow each vessel in the fleet to reach the same LOA. The Council noted that the LOA of the longest Amendment 80 vessel is 295 feet (89.9 m). Thus this action would promote an equal standard for all

vessels while allowing the largest vessel in the fleet to be replaced with one of equal size.

The Council also considered the operational parameters of the AFA catcher/processor fleet in recommending the 295 feet (89.9 m) LOA limit for the Amendment 80 fleet. Operations from the AFA catcher/processor fleet provided the Council with some perspective on the relative size of vessels that undertake fillet and fish meal operations in the BSAI. Although the AFA catcher/processor fleet primarily targets pollock, they do target and process yellowfin sole and Pacific cod with trawl gear in the same regions as many of the Amendment 80 vessels. The Council noted that vessels measuring 295 feet (89.9 m) participating in the AFA pollock fleet are large enough to incorporate additional processing infrastructure, such as onboard fish meal plants that can substantially improve the ability of vessel operators to produce valuable products from their harvest. AFA vessels that are at least 295 feet have met U.S. Coast Guard vessel class and load line safety requirements, and NMFS anticipates that Amendment 80 vessels of a similar size would likewise be able to meet these requirements. The Council determined that the 295 feet (89.9 m) vessel length limit was not likely to constrain the type of fishing operations possible on an Amendment 80 replacement vessel, or the economic viability of a replacement vessel.

The Council's primary rationale for establishing a limit on the size of replacement vessels is to address the potentially adverse competitive effects of new fishing capacity entering the fishery relative to the existing fleet. As described in detail in Section 2.4.5 of the analysis for this action, the proposed restriction of 295 feet (89.9 m) on the length of replacement vessels is intended to limit overall harvesting capacity of the fleet, reduce the potential for a race for fish, and encourage general improvements in harvesting capacity that any newly constructed vessel would provide over the vessel being replaced, while providing an upper boundary on total fleet capacity.

As described in the analysis for this action, the Council has frequently recommended limits on vessel length as a proxy for controlling fishery effort. Although length is only one measure of a vessel's fishing capacity, it is a metric that is commonly used, considered to be a reasonable indicator of total harvest capacity, and is relatively easily measured and enforced compared to other vessel measurements (e.g., vessel

hold capacity). As proposed, the 295 feet (89.9 m) LOA limit for Amendment 80 replacement vessels would improve the Council's and NMFS' ability to analyze and predict the maximum fishery impacts of the Amendment 80 fleet in future actions.

The proposed vessel length restrictions in concert with cooperative quota and sideboard restrictions are intended to reduce the potential for a race for fish in the Amendment 80 limited access fishery. As noted in the section 2.4.5.2 of the EA/RIR/IRFA for this action, Amendment 80 vessels are constrained by quotas in most fisheries in the BSAI and sideboards limits in the GOA. These quotas and sideboard limits reduce the incentive for vessel operators to expand their vessel length in order to be more competitive in a race for fish. Specifically, vessels participating in an Amendment 80 cooperative are not competing in a race for fish and would not have an incentive to lengthen a replacement vessel in order to increase harvests of Amendment 80 species sideboard limits. These restrictions will remain in place and will continue to constrain the fleet in most fisheries.

However, vessels participating in the Amendment 80 limited access fishery continue to compete in a race for Amendment 80 species catch so vessel size could provide a competitive advantage to larger replacement vessels. Under Amendment 97, a vessel owner could choose to enter the Amendment 80 limited access fishery with a larger vessel and out-compete other participants. It is not possible to predict the likelihood that a vessel owner would choose to enter a longer vessel in the Amendment 80 limited access fishery for this purpose, but the incentives would increase as the difference becomes greater between potential harvests in the Amendment 80 limited access fishery and the amount of catch that the vessel may receive if participating in a cooperative.

The proposed maximum vessel length is intended to provide the opportunity for a vessel owner to increase the length of the vessel to improve the range of processed products and hold capacity onboard the vessel while establishing a maximum capacity for the fleet. The Council recognized that in many cases vessel length is less important for increasing harvest rates than for providing a large enough vessel to provide adequate hold capacity. Depending on the nature of an Amendment 80 fishery, a vessel may be constrained primarily by the rate of throughput and vessel hold capacity. The sizes of vessels that can incorporate

these features will vary, depending on the specifics of vessel construction.

Although the owner of an Amendment 80 vessel can apply to use an existing Amendment 80 vessel as an Amendment 80 replacement vessel, as described in more detail below, the Council and NMFS anticipate that most replacement vessels would be newly constructed. Many of the existing vessels in the Amendment 80 fleet were originally constructed for purposes other than fishing; therefore, these vessels are less well-designed for fishing than a new, purposefully constructed fishing vessel would be. A vessel built to contemporary standards would likely have improved hold capacity, fuel efficiency, and harvest capacity relative to existing similarly sized vessels in the Amendment 80 fleet. Larger vessels can incorporate improved hold design, processing plant construction, engines, and other advancements in marine design that improve a vessel's efficiency. Such modifications can enable vessel operators to store large quantities of fish and create or make value added products like surimi, fillets, and fishmeal in onboard fishmeal plants. Smaller vessels lack the capacity to incorporate such facilities. Thus smaller vessels require more trips to travel to and from fishing grounds to offload product. As noted earlier in this preamble, the average MLOA on an Amendment 80 LLP license is currently 170 feet (51.8 m). Under this action, the average LOA of all Amendment 80 vessels could increase up to 295 feet (89.9 m) LOA. Replacing a smaller vessel with a larger vessel could allow participants to fish for longer periods of time and reduce the number of trips required to offload products. Fewer trips would reduce fuel consumption and would allow vessel owners to minimize the time required to harvest their quota.

#### **American Fisheries Act Vessels and Amendment 80 Vessel Replacement**

The Council's motion for Amendment 97 does not recommend that NMFS prohibit or otherwise establish regulations to limit the use of AFA vessels as Amendment 80 replacement vessels. Additionally, as explained in the court's decision, the CRP does not prevent non-qualifying vessels from being used as replacement vessels in the Amendment 80 sector. Therefore, this proposed rule does not prohibit the use of an AFA vessel as an Amendment 80 replacement vessel. However, the Council's recommendation for Amendment 97 does not address potential statutory or regulatory conflicts that may limit the ability of an AFA vessel from actively participating

in both AFA and Amendment 80 fisheries. NMFS notes that should a listed AFA vessel be approved by NMFS for use as an Amendment 80 replacement vessel, then that vessel would not be released from the monitoring and enforcement requirements, sideboard restrictions, and the PSC limits that may be applicable to that AFA vessel. Any vessel eligible to participate in both fisheries would be required to meet the statutory and regulatory requirements for both fisheries, possibly impacting that vessel's ability to participate in either fishery. For example, a listed AFA C/P that replaces an Amendment 80 vessel would be subject to existing directed fishing and halibut PSC sideboard limits applicable to listed AFA C/Ps. Under section 213(c) of the AFA, the Council and NMFS may supersede the sideboard provisions established by the AFA to mitigate adverse effects in fisheries caused by the AFA. AFA C/P vessel owners may ask the Council and NMFS to examine changes to existing sideboard limits for AFA C/Ps that would accommodate the use of an AFA C/P as an Amendment 80 replacement vessel.

NMFS notes that replaced AFA vessels are prohibited by statute from participation in fisheries other than AFA fisheries. Under section 602 of the Coast Guard Authorization Act of 2010 (Pub. L. 111-281, Title VI, Sec. 602), replaced AFA vessels are not eligible for a fishery endorsement in any fishery other than an AFA fishery and are prohibited from fishing other Federal fisheries, including Amendment 80 fisheries. As described in more detail in the Council's "AFA Vessel Replacement on GOA Sideboard" discussion paper (February 2012; see **ADDRESSES**), the U.S. Coast Guard Authorization Act stipulates that, once replaced, a vessel loses not only its AFA fishing privileges but also any fishery privileges in other fisheries, including sideboard fisheries.

#### **Maximum Length Overall on License Limitation Program Licenses**

The proposed rule would modify the MLOA on Amendment 80 LLP licenses to reflect the 295 feet (89.9 m) proposed limit on the length overall (LOA) for Amendment 80 vessels. Under regulations at §§ 679.4(o) and 679.7(i)(2), an Amendment 80 vessel is required to use an Amendment 80 LLP while fishing in the BSAI or GOA. The number of Amendment 80 LLP licenses is limited to those 28 LLP licenses originally issued for an Amendment 80 vessel as shown in Table 31 to part 679, and the seven non-AFA trawl C/P LLP licenses with a Bering Sea or Aleutian

Islands endorsement that are eligible to be assigned to the Amendment 80 sector but have not yet been assigned to an Amendment 80 vessel (see Table 25 of Section 2.4.5.8 of the analysis for this action). Section 2.3.5 of the analysis for this action identifies the 28 LLP licenses that are currently assigned, or may be eligible to be assigned, to Amendment 80 vessels. Currently, each LLP license designated as an Amendment 80 LLP cannot be used on any vessel other than an Amendment 80 vessel. Under the LLP program, each LLP license (including those derived from a qualifying Amendment 80 vessel) upon initial issuance was assigned a MLOA based on the length of the qualifying vessel on a specific date. Additional detail on the methods for assigning MLOAs to specific LLP licenses is addressed in the final rule for the LLP program (63 FR 52642 October 1, 1998) and is not repeated here.

This proposed rule would remove the prohibition on using an Amendment 80 LLP license on a non-qualifying vessel and allow Amendment 80 LLP licenses to be used on approved Amendment 80 replacement vessels. In most cases, the MLOA on an Amendment 80 LLP license is below 295 feet (89.9 m); therefore, NMFS must increase the MLOA on Amendment 80 LLP licenses to ensure that replacement vessels are not constrained by the MLOA on an Amendment 80 LLP license. To ensure that the maximum size limit recommended by the Council can be implemented, NMFS proposes to establish a 295 feet (89.9 m) MLOA for all Amendment 80 LLP licenses that are assigned to an Amendment 80 replacement vessel. This provision would ensure that Amendment 80 LLP licenses accurately reflect the MLOA of the replacement vessel. NMFS would not adjust the MLOA of an Amendment 80 LLP license until it is transferred to a replacement vessel. For those LLP licenses eligible to be assigned but not yet assigned to an Amendment 80 vessel, NMFS would adjust the MLOA of those LLP licenses if one of these licenses is assigned to an Amendment 80 replacement vessel. Furthermore, NMFS would not approve any Amendment 80 replacement vessel that was greater than 295 feet (89.9 m) LOA.

#### **Assignment of Amendment 80 Quota Share Permits**

This proposed rule would make three modifications to existing regulations concerning the assignment of Amendment 80 QS permits. First, the proposed regulations would provide an Amendment 80 vessel owner with the choice of either assigning the

Amendment 80 QS permit to an Amendment 80 replacement vessel or permanently assigning the Amendment 80 QS permit to the LLP license derived from the originally qualifying vessel. Second, the proposed regulations would prohibit replaced or replacement vessels from participating in an Amendment 80 fishery unless an Amendment 80 QS permit is assigned to that vessel or to the LLP license naming that vessel. Third, the proposed regulations would allow a person holding an Amendment 80 QS permit associated with an Amendment 80 vessel that is permanently ineligible to re-enter U.S. fisheries to replace the vessel associated with its Amendment 80 QS permit. Each of these proposed modifications is discussed in detail below.

The proposed regulations would provide an Amendment 80 vessel owner with the choice of either assigning the Amendment 80 QS permit to an Amendment 80 replacement vessel or permanently assigning the Amendment 80 QS permit to the LLP license derived from the originally qualifying vessel. Existing regulations at § 679.90(f) require the permanent coupling of an Amendment 80 QS permit and an LLP license for Amendment 80 vessels that are lost or permanently ineligible to participate in the Amendment 80 fisheries. This action would no longer require this permanent coupling if a vessel is lost or permanently ineligible to participate in the Amendment 80 fisheries. Instead, the proposed rule would provide Amendment 80 vessel owners with a choice of either assigning the Amendment 80 QS permit to an Amendment 80 replacement vessel or permanently affixing the Amendment 80 QS permit to the LLP license derived from the originally qualifying Amendment 80 vessel, as specified in Table 31 to part 679. Under this second option, the holder of an Amendment 80 LLP/QS license could then assign the license to a vessel authorized to participate in the Amendment 80 sector. Existing regulations prohibit Amendment 80 QS permits that have been assigned to an LLP license (e.g. Amendment 80 LLP/QS license) from being uncoupled at a later date. Under this proposed rule, NMFS would maintain the existing practice of permanently affixing the Amendment 80 QS permit to the LLP license.

The proposed regulations would not require that a replacement vessel be limited to only one Amendment 80 QS permit or an Amendment 80 LLP/QS license. As proposed, one replacement vessel could have several Amendment 80 QS permits assigned to that vessel in any fishing year. In making this

recommendation, the Council considered that smaller vessel owners may wish to replace one, or more, of their smaller vessels with a single, longer vessel that can be used to fish the entire allocation assigned to the replaced vessels. A larger vessel with greater hold capacity could reduce travel times and operational costs associated with operating two or more vessels instead of one.

Amendment 97 would address two situations where the owner of an original qualifying Amendment 80 vessel and the person holding the Amendment 80 QS permit derived from that vessel differ. First, the proposed regulations prohibit replaced or replacement vessels from participating in an Amendment 80 fishery unless an Amendment 80 QS permit is assigned to that vessel or to the LLP license naming that vessel. This provision is intended to eliminate the risk that a person, who is not linked to the Amendment 80 fishery other than through holding title to a lost Amendment 80 vessel, could replace that vessel and enter the replacement vessel into the Amendment 80 limited access fishery. In making this recommendation, the Council recognized vessel owners could have an incentive to enter a replacement vessel into the Amendment 80 sector without having any underlying Amendment 80 QS permits being assigned to that vessel.

One example of this situation exists with the Amendment 80 QS permit derived from the *F/V Prosperity*. The *F/V Prosperity* is an originally qualifying vessel but the vessel was lost prior to the implementation of Amendment 80. The Amendment 80 QS permit derived from the *F/V Prosperity* is held by U.S. Seafoods, Inc., but U.S. Coast Guard documentation indicates that the owner of the *F/V Prosperity* is undetermined at this time. The Council and NMFS recognized that a person other than U.S. Seafoods, Inc. could become the documented owner of the *F/V Prosperity* and choose to replace it in order to participate in the Amendment 80 sector. In that case, a vessel without associated QS could become active in the fishery. Without a regulation that requires assignment of an Amendment 80 QS permit to the participating vessel or the Amendment 80 LLP license, a replacement vessel for the *F/V Prosperity* could become active in the fishery and increase the number of vessels qualified to participate in the Amendment 80 sector. Not only would such a situation be inconsistent with the CRP and the Court's decision, this would also likely pose a risk of increased competition for participants

in the Amendment 80 limited access fishery because a cooperative would establish contractual obligations that would limit the ability of a vessel to fish more than the amount specified in the cooperative contract—typically, the amount derived from the QS held by the vessel owner. A vessel owner may have an incentive to enter that replacement vessel into the Amendment 80 limited access fishery, if it is perceived that such a vessel would be able to out-compete other participants in the limited access fishery. Therefore, in order to be consistent with the CRP and to prevent unintended negative incentives, NMFS is proposing regulatory provisions that would require a vessel participating in the Amendment 80 sector to have an Amendment 80 QS permit assigned to that vessel or permanently assigned to the LLP license derived from the original qualifying vessel.

Second, this proposed rule would permit a person holding an Amendment 80 QS permit associated with an Amendment 80 vessel that is permanently ineligible to re-enter U.S. fisheries to replace the vessel associated with its QS permit. In making this recommendation, the Council determined that an Amendment 80 QS permit holder who does not hold documentation to a vessel should be eligible to replace a vessel because it would provide these QS holders with the same opportunities as other QS holders who own vessels; that is, the ability to actively participate in the Amendment 80 fisheries with a replacement vessel. This provision is consistent with the CRP because the maximum number of vessels participating in the Amendment 80 sector would not increase given that the replaced vessel cannot re-enter U.S. fisheries. As an example, the holder of the *F/V Bering Enterprise* Amendment 80 QS permit does not hold documentation of title to the *F/V Bering Enterprise*. The *F/V Bering Enterprise* is in service overseas and is permanently ineligible to receive documentation as a U.S. fishing vessel. Therefore, without a change to the regulations, the *F/V Bering Enterprise* Amendment 80 QS holder could never replace the vessel associated with its QS history. Based on this concern, the Council recommended that NMFS allow persons holding an Amendment 80 QS permit associated with a vessel that is permanently ineligible to re-enter U.S. fisheries to replace the vessel associated with its QS permit.

To implement the Council's recommendations for this provision, NMFS would verify which vessels are

permanently ineligible to re-enter U.S. fisheries. NMFS would make this determination based on the best available information provided by the U.S. Coast Guard or MARAD, as applicable, at the time the final rule implementing Amendment 97 becomes effective. NMFS would permit the holder of the original Amendment 80 QS permit to enter an approved Amendment 80 replacement vessel into the Amendment 80 fisheries. If a vessel subsequently becomes ineligible to receive documentation, then the person holding the Amendment 80 QS permit derived from that vessel would become eligible to replace that vessel, once ineligibility is established through a determination by the U.S. Coast Guard or MARAD. The person holding the Amendment 80 QS permit would be responsible for supplying NMFS with that determination when applying to replace the ineligible vessel.

#### Sideboard Limitations for Replaced Vessels

Amendment 97 would limit effort in non-Amendment 80 fisheries by replaced vessels. Therefore, this proposed rule would establish restrictions on the ability of replaced Amendment 80 vessels to participate in Federal groundfish fisheries within the BSAI and GOA. NMFS would allocate to any replaced vessel (e.g., an Amendment 80 vessel not assigned to an Amendment 80 fishery) a catch limit of zero metric tons in all BSAI or GOA groundfish fisheries. Catch limits of zero metric tons would effectively prohibit these vessels from conducting directed fishing for groundfish in the BSAI and GOA.

The Council made this recommendation after considering an option that would remove the associated Federal fishing permit (FFP) and the associated LLP license from the replaced vessel. The Council and NMFS determined that assigning replaced vessels a catch limit of zero metric tons was the most direct way to limit participation by replaced vessels. The proposed regulations are intended to prevent replaced Amendment 80 vessels from increasing fishing effort in non-catch share fisheries. Additionally, the Council noted the potential for consolidation of capital among longtime participants in groundfish fisheries that might disadvantage or have negative impacts on other participants in those fisheries. The Council's recommendation is consistent with other LAPP provisions for BSAI fisheries recommended by the Council and proposed in this action. NMFS notes that Amendment 97 would not

restrict replaced Amendment 80 vessels from participating in the BSAI and GOA fisheries as motherships, Community Quota Entity floating processors, or stationary floating processors that only receive deliveries from other vessels for processing. Similarly, this action would not restrict replaced Amendment 80 vessels from operating in fisheries managed under the jurisdiction of other regional fishery management councils.

#### Management Applicable to Replacement Vessels

Monitoring and enforcement, permitting, recordkeeping and reporting, prohibitions, and general GOA sideboard measures that apply to all original Amendment 80 vessels, except the F/V *Golden Fleece*, would continue to apply to all replacement vessels. As noted elsewhere in the preamble, if the MLOA of the vessel replacing the F/V *Golden Fleece* is greater than the MLOA of the license that was originally assigned to the F/V *Golden Fleece*, then that vessel would be subject to the sideboard restrictions applicable to the rest of the Amendment 80 fleet. As noted in the analysis, the Council intended that Amendment 97 would extend existing management practices and limitations to any replacement vessel and would treat any replacement vessel the same as any similarly situated original qualifying vessel. The regulations that apply to Amendment 80 vessels are best described in the final rule implementing Amendment 80 (September 14, 2007; 72 FR 52668).

#### Directed Fishing in GOA Flatfish Fisheries

Under Amendment 97, any vessel that replaces an Amendment 80 vessel that is eligible to conduct directed fishing for flatfish in the GOA would continue to be allowed to conduct directed fishing in the GOA flatfish fishery. There are 11 Amendment 80 vessels currently authorized to conduct directed fishing in the GOA flatfish fisheries. Although the Council considered measures to limit access or to limit the size of replacement vessels for these 11 Amendment 80 vessels, the Council did not recommend that NMFS prohibit or limit GOA flatfish harvest by these replacement vessels. The Council determined, in part, that eligible Amendment 80 vessel owners should not have to choose between vessel safety improvements and the ability to continue to harvest GOA flatfish. Moreover, the harvest of GOA flatfish by these vessels is constrained by halibut PSC limits specified for GOA flatfish fisheries. Finally, the Council

acknowledged that the GOA TACs for some species of GOA flatfish are typically not fully harvested, thus indicating that increased harvest would not likely affect other participants in these fisheries.

The Council made this recommendation after considering that there is no conservation or management issue for those fisheries at this time. The Council and NMFS recognize the potential for fishing effort to move the Amendment 80 fisheries in the BSAI to other non-AFA fisheries, including the GOA flatfish fishery. However, NMFS and the Council do not anticipate a rapid increase in fishing effort due to the impact of replacement vessels and could address the issue at a later date should a conservation or management problem be predicted. As described in Section 2.3.8 of the EA/RIR/IRFA for this action, construction times can vary substantially for vessels, but new construction would probably require a minimum of 2 years from the beginning of construction to final delivery based on the vessel characteristics desired by vessel owners. Additional time would be required to develop blueprints, undertake computer-aided testing, and source materials.

#### Regulatory Requirements Specific to the F/V *Golden Fleece*

The proposed regulations implementing Amendment 97 recognize the special standing that the F/V *Golden Fleece* has under the Amendment 80 program. As noted earlier in this preamble, the Council recognized the F/V *Golden Fleece* as having a unique harvest pattern in the GOA that warranted specific GOA sideboard measures. Under current regulations, the exemption to the GOA halibut PSC sideboard limit only applies if the F/V *Golden Fleece* uses the LLP license originally issued for the F/V *Golden Fleece* (LLP license number LLG 2524). This provision ensures that only the F/V *Golden Fleece* is exempted from the GOA halibut PSC sideboard limits. Exempting the F/V *Golden Fleece* from the GOA halibut PSC sideboard has not increased the overall amount of GOA halibut PSC taken by Amendment 80 vessels. As described in Section 2.4.7 of EA/RIR/IRFA for this action, the F/V *Golden Fleece* has maintained its historic fishing patterns, including its halibut PSC rates. By exempting the F/V *Golden Fleece* from the GOA halibut PSC sideboard limits, the Council and NMFS maintained the F/V *Golden Fleece's* ability to continue to harvest its traditional amounts of GOA flatfish protected from any adverse impacts resulting from other

Amendment 80 vessels that could choose to fish in the GOA and use halibut PSC.

NMFS is proposing regulations under Amendment 97 that would ensure that any replacement vessel for the F/V *Golden Fleece* that is less than or equal to the MLOA of the LLP license that was originally assigned to the F/V *Golden Fleece* (124 feet, 37.8 m) would continue to benefit from the F/V *Golden Fleece* sideboard limits and GOA halibut PSC exemption implemented under Amendment 80. However, if the replacement vessel for the F/V *Golden Fleece* is greater than 124 feet (37.8 m) LOA, then that replacement vessel will be subject to all sideboards that apply to other Amendment 80 vessels. In the latter case, NMFS would recalculate the sideboards implemented under Amendment 80 so that they would include the catch history of the F/V *Golden Fleece* from 1998 through 2004. Under the latter scenario, the replacement vessel would not retain the specific F/V *Golden Fleece* sideboard restrictions and GOA halibut PSC use of the F/V *Golden Fleece* would be added to the existing GOA sideboards. Section 2.7.4.3 of the analysis for this action describes the methods that NMFS would use to modify GOA sideboard limits if the F/V *Golden Fleece* is replaced with a vessel greater than 124 feet (37.8 m) LOA. The Council made this recommendation to accommodate the historic fishing patterns of this vessel while limiting the potential for the vessel to expand its effort into other groundfish fisheries in which it has not traditionally participated. NMFS notes that the MLOA for any vessel replacing the F/V *Golden Fleece* would be 295 feet.

### Safety Requirements

The Council and NMFS have long sought to improve safety-at-sea and have recognized the safety concerns within the Amendment 80 fleet. Since 2000, vessel losses and individual fatalities have made the Amendment 80 fleet one of the highest-risk Federal fisheries within the jurisdiction of the Council. Amendment 80 vessels are considered by the U.S. Coast Guard as high risk primarily due to the area in which they operate, the large number of crew they carry, and their high-consequence of marine casualty history. Since 2000, there have been two major vessel losses in this fleet. The sinking of the F/V *Arctic Rose* in 2001 resulted in 15 fatalities, the highest number of fishermen killed in a single event in Alaska since 1990. The sinking of the F/V *Alaska Ranger*, in which 5 died and

42 were rescued, resulted in one of the largest at-sea rescues in Alaskan history.

Prior to 2006, the Amendment 80 sector had been regulated by the U.S. Coast Guard for safety regulations as “fishing vessels” that conducted head and gut (H&G) operations (46 U.S.C. 2101). This meant that vessels in the Amendment 80 fleet only had to meet minimal standards for the carriage of primary lifesaving equipment. However, in 2005, formal U.S. Coast Guard investigations into the loss of the F/V *Arctic Rose* (2001) and F/V *Galaxy* (2002) found most Amendment 80 vessels were actually operating (and had been operating for some time) as “fish processing vessels,” based on the products they produced. As fish processing vessels, these Amendment 80 vessels are required by law to be classed or load lined.

Under current law, any fish processing vessel which is built or undergoes a major conversion after July 27, 1990, is required by 46 U.S.C. 4503 to meet all survey and classification requirements prescribed by the American Bureau of Shipping or another similarly qualified classification society. A classification society is a non-governmental organization that establishes and maintains technical standards and rules for the construction (hull, machinery and other vital systems) and operation of ships and offshore structures. The classification society will also validate that construction is according to these standards and carry out regular surveys in service to ensure compliance with the standards. Similarly, all fish processing vessels 79 feet or greater that are built or converted for use as a fish processing vessel after January 1, 1983, are required by 46 U.S.C. 5102 to have a load line. A load line establishes the maximum draft of the ship and the legal limit to which a ship may be loaded for specific water types and temperatures. A load line is intended to ensure that a ship has sufficient freeboard so that the vessel has the necessary stability to operate safely.

However, the vast majority of the Amendment 80 sector is not load lined or classed. Due to a variety of concerns, classification societies have not recently classed or load lined vessels greater than 20 years old, and do not appear likely to do so in the foreseeable future. Based upon this limitation, 22 of 24 Amendment 80 vessels cannot meet the requirements of class and loadline. The U.S. Coast Guard and owners of Amendment 80 vessels collaborated to develop an alternative program to address the safety risks of this fleet. This collaborative effort is known as the

Alternative Compliance and Safety Agreement (ACSA). Program development began in June 2005, and implementation was achieved between June 2006 and January 2009. The ACSA program is designed to achieve numerous safety, economic, and fishery management goals, both directly and indirectly.

ACSA is both a preventative safety regime, as well as a reactive one. Preventative safety components of the ACSA program focus primarily on maintaining hull condition and watertight integrity, preventing down flooding, ensuring adequate vessel stability, requiring enhanced fire detection and suppression, and establishing preventative maintenance for machinery and critical piping systems. Reactive safety components of ACSA include enhanced emergency training, improved lifesaving equipment, and additional firefighting capabilities of the vessel and crew. These standards are achieved through mandatory annual inspections and regular drydock examinations.

While the U.S. Coast Guard and Amendment 80 vessel owners have seen significant improvements in vessel safety as a result of the ACSA program, there are limitations to its long-term effectiveness for the Amendment 80 fleet. The Council and NMFS recognize that no Amendment 80 vessels were constructed to meet the requirements of class and loadline; therefore, there are some inherent limitations in achieving a total safety equivalency. Moreover, the National Transportation and Safety Board’s (NTSB) investigation into the sinking of the F/V *Alaska Ranger* found that “while the NTSB finds that ACSA has improved the safety of the vessels enrolled in the program, the effectiveness of ACSA is limited because it is a voluntary program.” Another key limitation to the ACSA program is vessel age. The average age of an Amendment 80 vessel is 32 years. U.S. Coast Guard marine inspectors in charge of implementing the ACSA program continue to express serious concern over the material condition of this aging fleet; in part, because some studies have shown that an increase in vessel age increases the probability of a total loss due to a collision, fire/explosion, material/equipment failure, capsizing, and sinking.

If Amendment 80 vessel operators wish to undertake a major modification of a vessel to increase its size, address safety concerns, or otherwise improve its efficiency, those vessel operators would need to recertify that vessel under ACSA, which is an extensive and expensive process. It is highly unlikely

a converted Amendment 80 vessel could be classed, and it may have difficulty meeting the requirements of the ACSA program. NMFS and the Council note that newly constructed fish processing vessels would have to meet the full suite of modern safety standards—including all construction, stability, and manning requirements—intended to ensure such a vessel is inherently safer. Any newly constructed Amendment 80 replacement vessel would be required to be classed and load lined.

If Amendment 97 is implemented, NMFS would require Amendment 80 vessel owners applying to NMFS to replace their vessel to submit documentation demonstrating that their replacement vessel meets U.S. Coast Guard requirements applicable to processing vessels operating in the Amendment 80 sector or, if unable to meet these requirements, demonstrate that the vessel is enrolled in the ACSA program. These provisions are intended to improve safety at sea by requiring Amendment 80 replacement vessels to meet safety requirements established for fishing vessels in recent years. NMFS notes that it would likely take decades for all vessels to receive safety upgrades; however, the proposed management measures requiring minimum safety certifications would promote long-term safety improvements for the Amendment 80 fleet.

#### **Amendment 80 Replacement Vessel Applications**

The proposed rule would add regulations at § 679.4(o)(4) to establish the process for eligible participants to request that a vessel be approved as an Amendment 80 replacement vessel. The proposed regulations require all eligible participants to submit a completed application before NMFS would approve a replacement vessel for use in the Amendment 80 fisheries. For NMFS to consider an application for approval, the applicant must identify the Amendment 80 vessel being replaced. The applicant would need to specify vessels that have been lost at sea or are permanently ineligible to participate, identify the replacement vessel, provide documentation demonstrating that the replacement vessel is classed and load lined or if incapable of being classed and load lined, and that it meets the requirements of ACSA. The applicant must sign and date an affidavit affirming that all information provided on the application is true, correct, and complete to the best of his or her knowledge and belief. Persons holding an Amendment 80 QS permit for a vessel that has been deemed ineligible for use and are applying to replace that

vessel would have to provide evidence to NMFS that ineligibility has been established through a U.S. Coast Guard or MARAD determination. Written documentation would need to be provided to establish that an ineligible vessel cannot reenter the fishery and that the replacement vessel should be permitted to replace the ineligible vessel.

#### **Approval of Application**

If NMFS receives a completed application submitted under one of the approved methods described in the proposed regulations at § 679.4(o)(4)(ii)(D), then NMFS will process that application as soon as possible. Once received by NMFS, a replacement vessel will be approved by the Regional Administrator as an Amendment 80 vessel provided that:

- The replacement vessel does not exceed 295 feet LOA;
- The replacement vessel was built in the United States and, if ever rebuilt, rebuilt in the United States;
- The replacement vessel is classed and load lined or, if the vessel cannot be classed and load lined, the vessel meets the requirements of the U.S. Coast Guard ACSA program; and
- Only one replacement vessel is used as a replacement for any one replaced vessel at a given time.

Based on experience with similar actions, NMFS would likely complete the review of an application within 10 calendar days. Applicants should consider the potential time lag between submission of a completed application and the effective date of NMFS' approval of an Amendment 80 replacement vessel. A list of NMFS-approved Amendment 80 vessels, including replacement vessels, would be made publicly available at the NMFS Web site at <http://alaskafisheries.noaa.gov>.

The evaluation of an application for an Amendment 80 replacement vessel would require a decision-making process that would be subject to administrative appeal. Applications not meeting the requirements will not be approved, and NMFS would issue an initial administrative determination (IAD) to indicate the deficiencies and discrepancies in the information (or the evidence submitted in support of the application) and provide information on how an applicant could appeal an IAD. The appeals process is described under § 679.43. However, if an application is denied, eligible contract signatories could reapply at any time. This program is designed to be flexible and includes no deadlines for submission or limit on

the number of times applications could be submitted to NMFS.

#### **Amendment 80 QS Transfer Application**

In order to implement the Council's recommendations under Amendment 97, NMFS proposes to modify existing regulations at § 679.90(d), (e), and (f) regarding the allocation, use, and transfer of Amendment 80 QS permits. Specifically, NMFS would add provisions to the Application to Transfer Amendment 80 Quota Share (QS) that would allow QS holders to transfer an Amendment 80 QS permit to an Amendment 80 replacement vessel, transfer an Amendment 80 QS permit to a new person, transfer an Amendment 80 QS permit to the Amendment 80 LLP license assigned to the originally qualifying Amendment 80 LLP license as noted in Table 31 to part 679, or transfer an Amendment 80 QS permit affixed to an Amendment 80 QS/LLP license to an Amendment 80 replacement vessel. In order to transfer an Amendment 80 QS permit to another person, or to a vessel approved as an Amendment 80 replacement vessel, to an Amendment 80 LLP license defined in Table 31 to part 679, a person would have to submit an application to transfer an Amendment 80 QS permit that is approved by NMFS under the provisions proposed at § 679.90(f). A person holding an Amendment 80 LLP/QS license would be able to transfer that Amendment 80 LLP/QS license to another person under the provisions of § 679.4(k)(7).

#### **United States Maritime Administration (MARAD) Vessel Documentation**

In order to participate in a U.S. fishery, a vessel must obtain a certificate of documentation with a fishery endorsement either from the U.S. Coast Guard or MARAD (See, e.g., 46 U.S.C. 12102(a), 12113(b)(1), 12151(b)). Vessels greater than 100 feet in length must receive this documentation through MARAD. Federal law prohibits larger vessels from obtaining a fishery endorsement unless specific conditions are met. These prohibitions are currently codified at 46 U.S.C. 12113(d).

Unless an exemption applies, a vessel is not eligible for a fishery endorsement if it is greater than 165 feet in registered length; is more than 750 gross registered tons (as measured pursuant to 46 U.S.C. chapter 145) or 1900 gross registered tons (as measured pursuant to 46 U.S.C. chapter 143); or possesses a main propulsion engine or engines rated to produce a total of more than 3,000 shaft horsepower, excluding auxiliary engines for hydraulic power, electrical generation, bow or stern thrusters, or

similar purposes. One exemption states that a vessel that is prohibited from receiving a fishery endorsement because it exceeds one or more of the three size limits will be eligible for a fishery endorsement if the owner of such vessel demonstrates to MARAD that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Act has recommended after October 21, 1998, and the Secretary has approved, conservation and management measures to allow such vessel to be used in fisheries under such council's authority.

As described earlier, the Council determined and NMFS agrees that any Amendment 80 replacement vessel should be permitted to be up to 295 feet (89.9 m) LOA and have the tonnage and horsepower deemed necessary by the vessel's owner. Because several of the options considered by the Council for length of replacement vessel would permit an Amendment 80 vessel to be longer than 165 feet registered length and may require greater tonnage or horsepower than permitted by the 46 U.S.C. 12113(d) for a fishery endorsement, NOAA General Counsel and MARAD General Counsel consulted to determine what action on the part of the Council and NMFS would satisfy this exemption. NOAA General Counsel and MARAD General Counsel determined that the Council would need to recommend, and the Secretary would need to approve, conservation and management measures that would allow such a vessel to be used in the Amendment 80 fisheries. The Council recommended Amendment 97 and this proposed rule, which contain conservation and management measures that would permit an Amendment 80 replacement vessel to exceed the specific length (*i.e.*, the 165 foot (59.4 m) limit), tonnage, and horsepower limits specified at 46 U.S.C. 12113(d).

If the Secretary approves Amendment 97 and issues a final rule to implement Amendment 97, the Secretary will have approved conservation and management measures that would permit an Amendment 80 replacement vessel to exceed the specific length (*i.e.*, the 165 foot (59.4 m) limit), tonnage, and horsepower limits specified at 46 U.S.C. 12113(d). Secretarial approval of Amendment 97 and publication of implementing regulations is intended to provide MARAD with a clear indication that the Council and NMFS have recommended that Amendment 80 replacement vessels meeting or exceeding the specific length, tonnage, or horsepower limits set forth at 46 U.S.C. 12133(d)(1) are eligible to receive a fishery endorsement consistent with

46 U.S.C. 12113(d)(2)(B) and MARAD regulations at 46 CFR 356.47(c). MARAD has stated that it would request documentation from NMFS demonstrating the Secretary's approval of measures that permit Amendment 80 replacement vessels to exceed these limits, prior to issuing a fishery endorsement to an Amendment 80 replacement vessel.

#### **Classification**

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

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 proposed action, why it is being considered, and the legal basis for this proposed action are contained at the beginning of this section and in the **SUMMARY** section of the preamble and are not repeated here. A summary of the analysis follows. A copy of the complete analysis is available from NMFS (see **ADDRESSES**).

#### **Number and Description of Small Entities Regulated by the Proposed Action**

Information concerning ownership of non-AFA trawl C/Ps and QS holdings that would be used to estimate the number of small entities that are directly regulated by this action is limited. Information about the ownership patterns of non-AFA trawl C/Ps and QS holdings is not required by NFMS. To estimate the number of small versus large entities, gross earnings from all fisheries of record for 2009 were matched with the vessels, the known ownership of those vessels, and the known affiliations of those vessels in the BSAI or GOA groundfish fisheries for that year. NMFS has specific information on the ownership of vessels and the affiliations that exist based on data provided by the Amendment 80 sector, as well as a review of ownership data independently available to NMFS on FFP and LLP applications. The vessels with a common ownership linkage, and therefore affiliation, are reported in Table 2 in Section 2 of the analysis. In addition, those vessels that

are assigned to a cooperative and receive an exclusive harvest privilege would be categorized as large entities for the purpose of the RFA, under the principles of affiliation, due to their participation in a harvesting cooperative.

NMFS knows that up to 28 non-AFA trawl C/Ps could be active in the Amendment 80 fishery. Those persons who apply for and receive Amendment 80 QS are eligible to fish in the Amendment 80 sector, and those QS holders would be directly regulated by the proposed action. Vessels that are assigned Amendment 80 QS and that are eligible to fish in the Amendment 80 sector are commonly known as Amendment 80 vessels. Currently, there are 27 Amendment 80 vessels that would be directly regulated based on this action. One vessel owner who could be eligible for the Amendment 80 Program and could apply for Amendment 80 QS has not done so, and would not be directly regulated by the proposed action unless and until the owner is approved to do so. Based on the known affiliations and ownership of the Amendment 80 vessels, all but one of the Amendment 80 vessel owners would be categorized as large entities for the purpose of the RFA. Thus, this analysis estimates that only one small entity would be directly regulated by the proposed action. It is possible that this one small entity could be linked by company affiliation to a large entity, which may then qualify that entity as large entity, but complete information is not available to determine any such linkages.

#### **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**

The suite of potential actions includes three alternatives. A detailed description of these alternatives is provided in Section 2 of the analysis. Alternative 1 is the "no action" alternative. This alternative would not address the Federal Court Order to provide for replacement of Amendment 80 vessels and would not be consistent with the purpose and need of this action. Alternative 2 would allow an Amendment 80 vessel owner to replace a vessel under conditions of loss or permanent ineligibility. This alternative would meet the minimum requirements of the court order but was not selected

because it may limit a vessel's ability to add modern safety upgrades. It also carried a substantially higher economic cost to achieve the same regulatory outcome for the fishing sector, causing it to fail the requirement that it minimize the adverse economic impacts on directly regulated small entities. Alternative 3, the preferred alternative of the Council and NMFS, would allow a vessel owner to replace a vessel for any purpose. Based on the best available scientific data and information, none of the alternatives to the preferred alternative appear to have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes (as reflected in the proposed action), while minimizing any significant adverse economic impact on small entities beyond those achieved under the proposed action. The proposed action would improve the safety and efficiency of vessels owned by at least one small entity, and enhance its participation in the Amendment 80 fisheries.

**Collection-of-Information Requirements**

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden estimates per response for these requirements are listed by OMB control number.

*OMB Control No. 0648-0334*

Public reporting burden is estimated to average per response: 1 hour for Application for Transfer, License Limitation Program Groundfish/Crab License.

*OMB Control No. 0648-0565*

Public reporting burden is estimated to average per response: 2 hours for Amendment 80 Quota Share (QS) permit application; 2 hours for Amendment 80 QS permit transfer application; and 2 hours for Amendment 80 Vessel Replacement application.

Public reporting burden estimates 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 shall 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 the collection of information, including through 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 by email 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: March 28, 2012.

**Alan D. Risenhoover,**

*Acting Deputy Assistant Administrator for Regulatory Programs, 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,

a. Revise the definition of "Amendment 80 LLP/QS license" and introductory paragraphs (1) and (2) of the definition for "Amendment 80 vessel", and add paragraph (2)(iv) to the definition of "Maximum LOA (MLOA)"; and

b. Add a new definition of "Amendment 80 replacement vessel".

The revisions and additions read as follows:

**§ 679.2 Definitions.**

*Amendment 80 LLP/QS license* means an LLP license originally assigned to an originally qualifying Amendment 80 vessel with an Amendment 80 QS permit assigned to that LLP license.

*Amendment 80 replacement vessel* means a vessel approved by NMFS in accordance with § 679.4(o)(4).

*Amendment 80 vessel* means any vessel that:

(1) Is listed in Column A of Table 31 to this part with the corresponding USCG Documentation Number listed in Column B of Table 31 to this part; or

(2) Is designated on an Amendment 80 QS permit, Amendment 80 QS/LLP license, or Amendment 80 LLP license and is approved by NMFS in accordance with § 679.4(o)(4) as an Amendment 80 replacement vessel.

*Maximum LOA (MLOA)* means:

(iv) The MLOA of an Amendment 80 LLP license or Amendment 80 LLP/QS license will be permanently changed to 295 ft (89.9 m) when an Amendment 80 replacement vessel is listed on the license following the approval of a license transfer application described at § 679.4(k)(7).

3. In § 679.4,

a. Revise paragraphs (k)(7)(vii), (o)(1)(ii), (o)(1)(v); and

b. Add paragraphs (k)(3)(i)(C), (o)(1)(vii), (o)(4), and (o)(5).

The revisions and additions read as follows:

**§ 679.4 Permits.**

(k) \* \* \*  
(3) \* \* \*  
(i) \* \* \*

(C) *Modification of the MLOA on an Amendment 80 LLP license or an Amendment 80 LLP/QS license.* The MLOA designated on an Amendment 80 LLP license or an Amendment 80 LLP/QS license will be 295 ft (89.9 m) if an Amendment 80 replacement vessel is designated on the license following the approval of a license transfer request under paragraph (k)(7) of this section.

(7) \* \* \*

(vii) *Request to change the designated vessel.* (A) A request to change the vessel designated on an LLP groundfish or crab species license must be made on a transfer application. If this request is approved and made separately from a license transfer, it will count towards the annual limit on voluntary transfers specified in paragraph (k)(7)(vi) of this section.

(B) A request to change the vessel designated on an Amendment 80 LLP license or an Amendment 80 LLP/QS license must be made on an Application for Amendment 80 Replacement Vessel in accordance with § 679.4(o)(4)(ii). The MLOA modification specified at paragraph (k)(3)(i)(C) of this section will be effective when a complete application is submitted to NMFS in accordance with paragraph (k)(7) of this

section, and the application is approved by the Regional Administrator.

\* \* \* \* \*

(o) \* \* \*

(1) \* \* \*

(ii) An Amendment 80 QS permit is assigned to the owner of an Amendment 80 vessel that gave rise to that permit under the provisions of § 679.90(b), or its replacement under § 679.4(o)(4), unless the Amendment 80 QS permit is assigned to the holder of an LLP license originally assigned to an Amendment 80 vessel under the provisions of § 679.90(d) or § 679.90(e).

\* \* \* \* \*

(v) Amendment 80 QS units assigned to an Amendment 80 QS permit are non-severable from that Amendment 80 QS permit and if transferred, the Amendment 80 QS permit must be transferred in its entirety to another person under the provisions of § 679.90(d) or § 679.90(e).

\* \* \* \* \*

(vii) The owner of an Amendment 80 vessel must designate the Amendment 80 vessel on an Amendment 80 QS permit and on an Amendment 80 LLP license, or designate the Amendment 80 vessel on the Amendment 80 LLP/QS license to use that Amendment 80 vessel in an Amendment 80 fishery.

\* \* \* \* \*

(4) *Amendment 80 Replacement Vessel.* (i) The owner of an Amendment 80 vessel may replace such vessel for any purpose. All Federal fishery regulations applicable to the replaced vessel apply to the replacement vessel, except as described at § 679.92(d)(2)(ii) if applicable. A vessel that replaces an Amendment 80 vessel will be approved by the Regional Administrator as an Amendment 80 vessel following the submission and approval of a completed application for an Amendment 80 Replacement Vessel, provided that:

(A) The replacement vessel does not exceed 295 ft (89.9 m) LOA;

(B) The replacement vessel was built in the United States and, if ever rebuilt, rebuilt in the United States; and

(C) The applicant provides documentation demonstrating that the vessel complies with U.S. Coast Guard safety requirements applicable to processing vessels operating in the Amendment 80 sector or if unable to provide such documentation, the applicant provides documentation that the vessel meets the requirements of the U.S. Coast Guard's Alternative Compliance and Safety Agreement.

(ii) *Application for Amendment 80 Replacement Vessel.* A person who wishes to replace an Amendment 80 vessel must submit to NMFS a complete

Application for Amendment 80 Replacement Vessel. An application must contain the information specified on the form, with all applicable fields accurately completed and all required documentation attached. This application must be submitted to NMFS using the methods described on the application.

(5) *Application evaluations and appeals.*—(i) *Initial evaluation.* The Regional Administrator will evaluate an application for an Amendment 80 replacement vessel submitted in accordance with paragraph (o)(4) of this section. If the vessel listed in the application does not meet the requirements for an Amendment 80 replacement vessel at § 679.4(o)(4), NMFS will not approve the application. An applicant who submits claims based on inconsistent information or fails to submit the information specified in the application for an Amendment 80 replacement vessel will be provided a single 30-day evidentiary period to submit evidence to establish that the vessel meets the requirements to be an Amendment 80 replacement vessel. The burden is on the applicant to establish that the vessel meets the criteria to become a replacement vessel.

(ii) *Additional information and evidence.* The Regional Administrator will evaluate the additional information or evidence to support an application for Amendment 80 replacement vessel submitted within the 30-day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the vessel meets the requirements to become an Amendment 80 Replacement Vessel, the application will be approved. However, if the Regional Administrator determines that the vessel does not meet the requirements to become an Amendment 80 Replacement Vessel, the applicant will be notified by an initial administrative determination (IAD) that the application for replacement vessel is denied.

(iii) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to establish that the vessel meets the requirements for an Amendment 80 replacement vessel or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or

her 30-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43.

\* \* \* \* \*

5. In § 679.7, add paragraph (o)(3)(iv) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(o) \* \* \*

(3) \* \* \*

(iv) A vessel to fish in an Amendment 80 fishery without an Amendment 80 QS permit or Amendment 80 QS/LLP license assigned to that vessel.

\* \* \* \* \*

5. In § 679.90, revise paragraphs (d)(2)(ii), (e)(ii), (e)(3), and (f) to read as follows:

**§ 679.90 Allocation, use, and transfer of Amendment 80 QS permits.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) *Amendment 80 LLP/QS license.* NMFS will issue an Amendment 80 QS permit as an endorsement on an Amendment 80 LLP license to the holder of an LLP license originally assigned to an Amendment 80 vessel listed in Column A of Table 31 to this part, under the provisions of § 679.4(k)(7), if that person submitted a timely and complete Application for Amendment 80 QS that was approved by NMFS under paragraph (a)(2)(ii) of this section.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) \* \* \*

(ii) If an Amendment 80 QS permit is assigned to an Amendment 80 LLP license originally assigned to an Amendment 80 vessel, that Amendment 80 LLP license is designated as an Amendment 80 LLP/QS license. A person may not separate the Amendment 80 QS permit from that Amendment 80 LLP/QS license.

\* \* \* \* \*

(3) *Transfers of Amendment 80 QS permits.* (i) A person holding an Amendment 80 QS permit assigned to an Amendment 80 vessel may transfer that Amendment 80 QS permit to another person, to the LLP license originally assigned to an Amendment 80 vessel, or to a vessel approved as an Amendment 80 replacement vessel approved by NMFS in accordance with

§ 679.4(o)(4) by submitting an application to transfer Amendment 80 QS permit that is approved by NMFS under the provisions of paragraph (f) of this section.

(ii) A person holding an Amendment 80 LLP license that is designated as an Amendment 80 replacement vessel by submitting an Application For Transfer License Limitation Program Groundfish/ Crab License that is approved by NMFS under the provisions of paragraph (f) of this section.

\* \* \* \* \*

(f) *Application to Transfer Amendment 80 QS.* A person holding an Amendment 80 QS permit who wishes to transfer the Amendment 80 QS permit to the LLP license originally assigned to the Amendment 80 vessel, or transfer the Amendment 80 QS permit to another person, or transfer the Amendment 80 QS permit to an Amendment 80 replacement vessel must submit to NMFS a complete Application to Transfer an Amendment 80 QS permit. The holder of an Amendment 80 LLP/QS license may designate the replacement vessel on the LLP license by using the Application for Transfer License Limitation Program Groundfish/ Crab License. An application must contain the information specified on the form, with all applicable fields accurately completed and all required documentation attached. This application must be submitted to NMFS

using the methods described on the application.

6. In § 679.92,

a. Revise paragraph (c); and

b. Add paragraphs (d)(2) and (e).

The additions and revisions read as follows:

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

\* \* \* \* \*

(c) *Sideboard restrictions applicable to Amendment 80 vessels directed fishing for flatfish in the GOA.* (1) *Originally Qualifying Amendment 80 Vessels.* An Amendment 80 vessel listed in column A of Table 39 to this part may be used to fish in the directed arrowtooth flounder, deep-water flatfish, flathead sole, rex sole, and shallow-water flatfish fisheries in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(2) *Amendment 80 Replacement Vessels.* (i) Any vessel that NMFS approves to replace an Amendment 80 vessel listed in column A of Table 39 to this part may be used to fish in the directed arrowtooth flounder, deep-water flatfish, flathead sole, rex sole, and shallow-water flatfish fisheries in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(ii) Any vessel that NMFS subsequently approves to replace an Amendment 80 replacement vessel that replaced an Amendment 80 vessel listed in column A or Table 39 to this part

may be used to fish in the directed arrowtooth flounder, deep-water flatfish, flathead sole, rex sole, and shallow-water flatfish fisheries in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(d) \* \* \*

(2) *Sideboard restrictions applicable to any vessel replacing the GOLDEN FLEECE.* (i) If the vessel replacing the GOLDEN FLEECE is of an LOA less than or equal to 124 ft (38.1 m) (the MLOA of the LLP license that was originally assigned to the GOLDEN FLEECE, LLG 2524), then the sideboard provisions at § 679.92(c) and (d)(1) apply.

(ii) If the vessel replacing the GOLDEN FLEECE is greater than 124 ft (38.1 m) (the MLOA of the LLP license that was originally assigned to the GOLDEN FLEECE, LLG 2524), then the sideboard provisions at § 679.92(b) and (c) apply.

(e) *Sideboard restrictions applicable to Amendment 80 vessel not assigned an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 QS/LLP license.* All Amendment 80 vessels not designated on:

(1) An Amendment 80 QS permit and an Amendment 80 LLP license; or

(2) An Amendment 80 QS/LLP license will be allocated a catch limit of 0 mt of groundfish in the BSAI and GOA.

[FR Doc. 2012-7867 Filed 4-3-12; 8:45 am]

BILLING CODE 3510-22-P