

Navy's Cherry Point Range Complex for the period of May 2009 through May 2014. The **Federal Register** notice indicated that written comments were due by April 6, 2009, which allowed 21 days for public input. In response to a request from the Marine Mammal Commission, NMFS has decided to extend the public comment period by 7 days, to April 13, 2009, which allows 28 days for public input.

DATES: The public comment period for this action has been extended from April 6, 2009 to April 13, 2009. Written comments and information must be received no later than April 13, 2009.

ADDRESSES: You may submit comments, identified by 0648-AX10, by any one of the following comments methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Hand delivery or mailing of paper, disk, or CD-ROM comments should be addressed to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225.

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

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

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, 301-713-2289.

SUPPLEMENTARY INFORMATION: Background information concerning the proposed regulations can be found in the March 16, 2009 **Federal Register** notice (74 FR 11052), and is not repeated here. For additional information regarding the proposed regulations and the Navy's associated Environmental Impact Statement, please visit NMFS' website at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

Dated: March 31, 2009.

Tammy Adams, Ph.D.,

Acting Chief, Division of Permits, Conservation, and Education, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0811201490-9322-02]

RIN 0648-AX42

Fisheries of the Exclusive Economic Zone Off Alaska; Central Gulf of Alaska Rockfish Program; Amendment 85

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. The proposed regulations would amend the Central Gulf of Alaska Rockfish Program to remove a restriction that prohibits certain catcher/processors from participation in directed groundfish fisheries in the Bering Sea and Aleutian Islands Management Area in July. This action is necessary to improve flexibility and reduce operating costs for catcher/processors that participate in the Central Gulf of Alaska Rockfish Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Gulf of Alaska, and other applicable law.

DATES: Comments must be received no later than May 21, 2009.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-AX42," by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: 907-586-7557.

- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), the categorical exclusion prepared for this action, and the Environmental Assessment (EA), RIR, and Final Regulatory Flexibility Analysis (FRFA) prepared for the Central Gulf of Alaska Rockfish Program are available from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://www.alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907-586-7228 or Rachel Baker, 907-586-7425.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The North Pacific Fishery Management Council (Council) prepared both FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108-199) required that the Secretary of Commerce, in consultation with the Council, establish a program that recognized the historical participation of fishing vessels and fish processors for rockfish harvested in the Central GOA. Congress specified several aspects of the Central GOA Rockfish Program (Rockfish Program). Section 802 states

that the program shall (1) include the Central GOA rockfish species of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish; (2) recognize historical participation of fishing vessels in the Central GOA rockfish fisheries from 1996 to 2002; (3) recognize historical participation of processors in the Central GOA rockfish fisheries from 1996 to 2000; (4) establish catch limits for non-rockfish species and non-target rockfish species harvested with the Central GOA rockfish species and base such allocations on historical harvesting of these incidentally caught species; (5) set aside up to 5 percent of the total allowable catch (TAC) of the Central GOA rockfish fisheries for catcher vessels that are not eligible to participate in the program; and (6) have a two-year duration.

The Council developed the Rockfish Program to meet the requirements of Section 802 and improve economic efficiency in the Central GOA rockfish fisheries. The Council analyzed alternative methods to improve economic efficiency in the Central GOA rockfish fisheries. Following extensive public comment, the Council adopted the proposed Rockfish Program on June 6, 2005. Regulations implementing the Rockfish Program were published on November 20, 2006 (71 FR 67210), and are located at 50 CFR part 679. Section 802 of the Consolidated Appropriations Act of 2004 authorized the Rockfish Program for two years, from January 1, 2007, until December 31, 2008. The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, which became public law on January 12, 2007 (Public Law 109-479), extended the Rockfish Program for another three years, until December 31, 2011. Fishing began under the Rockfish Program on May 1, 2007.

The Rockfish Program is a limited access privilege program (LAPP) for the Central GOA rockfish fisheries. Participants receive exclusive harvesting privileges for a portion of the TAC assigned to the Central GOA rockfish fisheries and species caught incidentally in the Central GOA rockfish fisheries if they form cooperatives with other eligible participants. Before the Rockfish Program, harvesters competed in a limited access fishery for a portion of the Central GOA rockfish fisheries TACs by racing to maximize catch before the TAC was harvested and the fishery was closed. The limited access fishery required harvesters to hold a License Limitation Program (LLP) license to participate in the Central GOA rockfish fisheries, but did not allocate exclusive harvesting privileges.

The rapid pace of fishing reduced the ability of harvesters and processors to improve product quality and extract more value from the fishery by producing high-value products that require additional processing time. Exclusive harvesting privileges enable a harvester to choose when to fish and therefore adjust to market conditions, avoid dangerous fishing conditions, and improve overall harvesting efficiency.

The Rockfish Program allocates exclusive harvesting privileges to eligible participants for the primary species: northern rockfish; Pacific ocean perch; and pelagic shelf rockfish. Historically, the Central GOA primary species have been almost entirely harvested by trawl catcher vessels and trawl catcher/processors, and participation in the Rockfish Program is primarily limited to these two sectors. Participants in the Rockfish Program receive exclusive harvesting privileges for the primary species only if they join a Central GOA rockfish cooperative. The Rockfish Program is allocated 95 percent of the Central GOA primary species TACs. The remaining 5 percent of the primary species TACs are allocated to an entry level fishery for participants who have not traditionally participated in the Central GOA rockfish fisheries, including participants using non-trawl gear.

Secondary species are incidentally harvested by vessels during rockfish fisheries in the Central GOA. The secondary species managed under the Rockfish Program include Pacific cod, roughey rockfish, shorttraker rockfish, sablefish, and thornyhead rockfish. Rockfish Program participants receive exclusive allocations of secondary species only if they join a rockfish cooperative.

Halibut also is caught and killed incidentally in the primary and secondary species fisheries. Halibut caught by trawl gear is considered prohibited species catch (PSC) and may not be retained or sold under regulations implementing the Northern Pacific Halibut Act of 1982 (73 FR 12280, March 7, 2008), and under regulations implementing the GOA FMP at 50 CFR 679.21. Limits on halibut PSC are established under authority of 50 CFR 679.21(d), which when reached, close GOA rockfish fisheries, even if the rockfish TACs are not harvested. The Rockfish Program allocates participants a fixed amount of the halibut PSC limit in the primary and secondary species fisheries. Rockfish Program participants receive a portion of the total GOA halibut PSC limit based on historical halibut mortality rates in the primary species fisheries. Only participants that

join a rockfish cooperative receive an exclusive allocation of the halibut PSC limit. Additional information on primary and secondary species allocations and halibut PSC limits is in the proposed rule for the Rockfish Program (71 FR 33040, June 7, 2006) and in the EA/RIR prepared for the Rockfish Program (see **ADDRESSES**).

A person is eligible to participate in the Rockfish Program and receive exclusive harvesting privileges if that person holds an LLP license that has been associated with one or more vessels that made legal landings of Central GOA primary species during the rockfish fishing seasons from 1996 to 2002, and the landings were attributed to that LLP license. When the Rockfish Program was implemented, eligible LLP license holders who applied to NMFS received quota share (QS), which is the multi-year privilege to receive exclusive harvesting privileges under the Rockfish Program. NMFS calculated how much QS would be allocated to an LLP license based on the catch history of the associated vessels and modified LLP licenses to designate the calculated amount of QS on the license.

Eligible harvesters must elect whether to participate in the Rockfish Program by March 1 each year. To participate, a rockfish harvester who received a QS allocation assigned to a specific LLP license must assign all QS associated with that LLP license to (1) a cooperative fishery, in which the harvester receives exclusive harvest privileges, or (2) a limited access fishery, in which eligible harvesters compete for a share of Central GOA rockfish TACs. Eligible harvesters in the catcher/processor sector may elect not to participate, or "opt out", of the Rockfish Program and most of its requirements. Harvesters with QS in the catcher vessel sector may not opt out of the Rockfish Program. Eligible harvesters can modify their fishery participation selection prior to each fishing year, but once an LLP license and its associated QS is assigned for the year, the rockfish harvester cannot reassign the LLP license or QS to a different fishery during that year.

Rockfish cooperatives submit an application to NMFS and receive a cooperative quota (CQ) permit, which specifies how much CQ the cooperative may harvest. CQ is an exclusive annual catch limit of primary species, secondary species, and halibut PSC that can be harvested by members of the rockfish cooperative. The CQ amount is based on the sum of the QS of all harvesters who have assigned their QS to the cooperative. Cooperatives may be formed only by eligible harvesters

holding LLP licenses within the same sector, either the catcher vessel sector or the catcher/processor sector.

Harvesters in the limited access fishery compete with other eligible harvesters for a portion of the primary species TACs assigned to the limited access fishery. The catcher vessel sector and the catcher/processor sector have separate limited access fisheries. The TAC assigned to the limited access fisheries for each primary species represents the percentage of the total QS allocated to the limited access fishery in each sector for that primary species fishery. Limited access fishery participants do not receive exclusive allocations of primary or secondary species based on the QS on the eligible LLP license, nor do they receive an exclusive halibut PSC allocation.

If a harvester in the catcher/processor sector opts out of the Rockfish Program, the harvester is precluded from directed fishing for the three primary species in the Central GOA.

Sideboard Limits

The Council anticipated that rockfish cooperatives could potentially use fewer vessels to harvest the same amount of fish at a lower cost, resulting in greater net profits for rockfish cooperative members. Harvesters could use economic efficiencies created by cooperative participation to offset operational costs in other fisheries, or expand into new fisheries in the GOA and BSAI. This could economically disadvantage harvesters in these other fisheries. NMFS commonly establishes catch limits and other fishery participation restrictions, called sideboard limits, when implementing LAPPs to prevent participants who benefit from receiving exclusive harvesting privileges in the LAPP from shifting effort into fisheries that are not managed by a LAPP. The sideboard limits in the Rockfish Program are in effect only during the month of July, to restrict fishing by Rockfish Program participants during the historical timing of the Central GOA rockfish fisheries, but allow harvesters to participate in other fisheries in which they have historically fished.

The Rockfish Program has two types of sideboard limits: (1) caps on the amount of harvest by Rockfish Program participants in specific areas and fisheries during July; and (2) directed fishing prohibitions in specific areas and fisheries in July. Sideboard limits apply to all LLP licenses and vessels that could have been used to generate QS, even if the holder of an LLP license or a vessel owner did not submit an

application to participate in the Rockfish Program.

Harvest sideboard limits cap the amount of primary species catch in the Western GOA and the West Yakutat District and the amount of halibut PSC that can be used in the Central GOA, Western GOA, and West Yakutat District groundfish fisheries for each Rockfish Program sector during the month of July. The harvest sideboard limits for each area and fishery are based on the historical catch of primary species and use of halibut PSC in July by vessels subject to the harvest sideboard limits. NMFS manages the primary species sideboard limits by tracking the total harvest of primary species in July in the Western GOA and the West Yakutat District by the vessels subject to the harvest sideboard limits. Once a sector sideboard limit is reached for a specific primary species, the directed rockfish fisheries are closed to the vessels within that sector. NMFS also tracks total use of halibut PSC in the Central GOA, Western GOA, and West Yakutat District in July by vessels subject to the sideboard limits, and closes directed fishing for non-primary species groundfish fisheries in the GOA once the halibut PSC sideboard limit is reached. A detailed description of the harvest sideboard limits is in the proposed rule published for the Rockfish Program (71 FR 33040, June 7, 2006) and the EA/RIR prepared for the Rockfish Program (see **ADDRESSES**).

The second type of sideboard limit in the Rockfish Program prohibits directed fishing in specific fisheries by vessels subject to the sideboard limit. This type of restriction is commonly called a "stand down." Regulations at 50 CFR 679.2 define "directed fishing" as any activity that results in a vessel retaining an amount of a species or species group onboard that is greater than the maximum retainable amount; that is, the amount expected to be caught if the species or species group was harvested incidentally in another target fishery. Maximum retainable amounts of incidentally caught species are calculated for all groundfish species and species complexes in the GOA and BSAI and specified in the regulations at 50 CFR 679.20.

The Rockfish Program has three separate stand down restrictions for the catcher/processor sector, depending on whether the vessel owner or LLP license holder elects to participate in the cooperative fishery, the limited access fishery, or opt out of the Rockfish Program.

Catcher/Processor Cooperative Stand Downs

Vessels and LLP licenses assigned to a rockfish cooperative in the catcher/processor sector must stand down from BSAI groundfish fisheries, other than fixed-gear sablefish and pollock, from July 1 to July 14. Fixed-gear sablefish and pollock fisheries in the BSAI are managed under LAPPs that restrict participation in the fisheries and allocate exclusive harvesting allocations. Fisheries managed under a LAPP are typically excluded from sideboard limits in other LAPPs, because a LAPP allocates exclusive harvesting privileges only to eligible participants, and eliminates the possibility that ineligible harvesters can increase fishery participation to the detriment of LAPP participants.

Additionally, vessels and LLP licenses assigned to a rockfish cooperative in the catcher/processor sector must stand down from GOA groundfish fisheries, other than fixed-gear sablefish, in July. As in the BSAI, fixed-gear sablefish in the GOA is managed under a LAPP. Vessels and LLP licenses must stand down from GOA groundfish fisheries from July 1 to July 14 if the rockfish cooperative has harvested any CQ prior to July 1, or from July 1 until 90 percent of the rockfish cooperative's primary species CQ has been harvested if the rockfish cooperative has not harvested any CQ prior to July 1. However, the GOA stand down does not apply to vessels in the catcher/processor sector that participate in cooperatives that maintain a monitoring plan, as required by Rockfish Program regulations, during all fishing for CQ or any directed sideboard fishery in the GOA.

Catcher/Processor Limited Access Stand Downs

Vessels in the catcher/processor sector using an LLP license with greater than 5 percent of the Pacific ocean perch QS allocated to the catcher/processor sector and assigned to the limited access fishery are subject to a stand down in any BSAI groundfish fishery, except pollock or fixed-gear sablefish; and any GOA groundfish fishery, except fixed-gear sablefish, from July 1 until 90 percent of the CQ of Pacific ocean perch assigned to the catcher/processor limited access fishery has been harvested. The stand down was intended to preclude vessels with significant historical participation in GOA Pacific ocean perch fisheries from expanding their activities into other GOA and BSAI groundfish fisheries, specifically Aleutian Islands Pacific

ocean perch fisheries, during the historical Central GOA rockfish season.

Catcher/Processor Opt Out Stand Downs

Vessel owners and LLP license holders in the catcher/processor sector who opt out of the Rockfish Program must (1) stand down from all of the primary species fisheries in the Central

GOA during the year; and (2) stand down from any GOA groundfish fishery in which that vessel or LLP license does not have prior participation, except fixed-gear sablefish, from July 1 to July 14. Prior participation in a GOA groundfish fishery is defined as at least one landing in the directed GOA groundfish fishery during any two years from 1996 through 2002 during specific

time periods in early July, as specified in the regulations at 50 CFR 679.82. Vessels in the catcher/processor sector that opt out of the Rockfish Program are not subject to a stand down in the BSAI in July.

Table 1 summarizes the Rockfish Program directed fishing prohibitions for each sector.

TABLE 1.—ROCKFISH PROGRAM DIRECTED FISHING PROHIBITIONS

Sideboard limits for July	Catcher Vessel Sector	Catcher/Processor Co-operatives	Catcher/Processor Limited Access Fishery	Catcher/Processor Opt Out
Prohibited fishing:				
BSAI groundfish	Directed fishing prohibited from July 1 – July 31 for Alaska plaice, arrowtooth flounder, flathead sole, other flatfish, Pacific ocean perch, rock sole and yellowfin sole.	Directed fishing prohibited from July 1 – July 14 for all BSAI groundfish except pollock and fixed-gear sablefish.	Directed fishing prohibited from July 1 until 90% of the Pacific ocean perch assigned to the limited access fishery in the catcher/processor sector is harvested, for all BSAI groundfish except pollock and fixed-gear sablefish, and all GOA groundfish except fixed-gear sablefish. Applies only to catcher/processors with >5% of the total Central GOA Pacific ocean perch QS assigned to the catcher/processor sector.	None
GOA groundfish	None	Directed fishing prohibited for all GOA groundfish except fixed-gear sablefish from July 1– July 14 if the rockfish cooperative has harvested any CQ prior to July 1. If the rockfish cooperative has not harvested any CQ prior to July 1, directed fishing is prohibited for all GOA groundfish except fixed-gear sablefish from July 1 until 90% of the rockfish cooperatives' primary species CQ has been harvested. Prohibition does not apply if the cooperative maintains a monitoring program, as required under the regulations, during all fishing for CQ or any directed sideboard fishery in the GOA.		July 1 – July 14, unless prior participation in two years from 1996 to 2002.

Since Rockfish Program implementation, NMFS implemented Amendment 80 to the BSAI FMP, which allocated exclusive harvesting privileges for several BSAI directed trawl groundfish fisheries. Additionally, Amendment 85 to the BSAI FMP was implemented to refine sector allocations

for Pacific cod in the BSAI. Implementation of Amendments 80 and 85 to the BSAI FMP has significantly reduced the likelihood that catcher/processors participating in the Rockfish Program could increase effort in BSAI groundfish fisheries to the disadvantage of other participants during the period

in early July when the stand downs are in effect.

Amendments 80 and 85 to the BSAI FMP

Regulations implementing Amendment 80 to the BSAI FMP were published on September 14, 2007 (72 FR

52668), and are located at 50 CFR part 679. Fishing began under Amendment 80 on January 1, 2008. Amendment 80 is an LAPP and allocates Aleutian Islands Pacific ocean perch, yellowfin sole, flathead sole, rock sole, and Atka mackerel (Amendment 80 species) to the sector of BSAI trawl catcher/processors that predominantly harvests these species (Amendment 80 sector). Of the 15 eligible harvesters in the catcher/processor sector of the Rockfish Program, 10 also qualified for the Amendment 80 sector and received initial QS for Amendment 80 species. Consequently, the implementation of Amendment 80 affected a significant number of catcher/processors that also participate in the Rockfish Program. Amendment 80 allocates exclusive harvesting privileges for Amendment 80 species only to participants that form cooperatives. A limited access fishery for Amendment 80 species is available for catcher/processors in the Amendment 80 sector that choose not to join a cooperative, and a separate allocation of Amendment 80 species is made to this limited access fishery. Aleutian Islands Pacific ocean perch, yellowfin sole, and Atka mackerel are also allocated separately to a BSAI trawl limited access fishery for non-Amendment 80 participants.

Amendment 80 significantly increased the number of BSAI directed groundfish fisheries managed under LAPPs for which participants can receive exclusive harvesting privileges. Six directed BSAI trawl groundfish fisheries remain unallocated among sectors and are managed as limited access fisheries following the implementation of Amendment 80: Alaska plaice, the "other flatfish" species complex, arrowtooth flounder, Greenland turbot, non-fixed gear sablefish, and squid. Although vessels in the Amendment 80 sector are the primary participants in these fisheries, these species were not included in Amendment 80 because they are considered to be relatively minor, low value fisheries, and are not an important target for any sector. Furthermore, none of the TACs for these six species is fully harvested on a consistent basis, and expanding effort in these fisheries would not pose management or conservation concerns at this time.

Amendment 80 allocates Amendment 80 species and halibut and crab PSC that are caught incidentally in BSAI trawl groundfish fisheries to the Amendment 80 sector. The sector allocations of Amendment 80 species and halibut and crab PSC are further allocated to the Amendment 80 cooperative fishery and the Amendment

80 limited access fishery. Exclusive allocations of Amendment 80 species and halibut and crab PSC are made only to eligible catcher/processors that join cooperatives. The halibut PSC allocation is important for Amendment 80 participants because it acts as a constraint on fully harvesting the TACs for all directed trawl fisheries in the BSAI. Prior to the implementation of Amendment 80, harvesters competed in limited access fisheries for all BSAI groundfish fisheries except pollock, fixed-gear sablefish, and the Community Development Quota multispecies fishery, and there was not enough halibut PSC for trawl participants to fully harvest the TACs for all of the directed groundfish fisheries in which they were eligible to participate. Participants in the Amendment 80 sector traditionally elected to reserve halibut PSC to target the more valuable Amendment 80 species, which did not leave enough halibut PSC for NMFS to open the unallocated groundfish fisheries for directed fishing, even if their TACs were large enough to support a directed fishery.

With the implementation of Amendment 80, participants in the Amendment 80 cooperative fishery gained a significant amount of flexibility from an exclusive allocation of halibut PSC since a cooperative can dedicate halibut PSC to the target fisheries of its choice. In addition to cost savings from vessel consolidation, cooperatives facilitate more efficient and less wasteful harvest through coordination of fishing activities and the ability to trade harvesting privileges within or between cooperatives. The increased certainty and flexibility in the use of halibut and crab PSC by Amendment 80 cooperatives enabled NMFS to open fisheries for all unallocated BSAI groundfish species for directed fishing only to Amendment 80 cooperative participants in 2008. Vessels in the Amendment 80 limited access fishery and the BSAI trawl limited access fishery continued to compete for catches of BSAI groundfish species under the halibut PSC limit and as in previous years, participants in these fisheries elected to reserve halibut PSC for the more valuable Amendment 80 species.

Regulations implementing Amendment 85 to the BSAI FMP were published on September 4, 2007 (72 FR 50788), and are located at 50 CFR part 679. Amendment 85 to the BSAI FMP was effective on January 1, 2008, and allocated BSAI Pacific cod, a directed BSAI fishery, among several sectors, including an allocation to the Amendment 80 sector. Prior to

Amendment 85 to the BSAI FMP, the allocation of Pacific cod to the trawl catcher/processor sector was available to all trawl catcher/processors in the BSAI. Amendment 85 to the BSAI FMP recognized the differences between catcher/processors that primarily participate in the directed BSAI pollock fishery and catcher/processors that participate in the Amendment 80 sector by creating a separate allocation for each. Amendment 80 further divides the allocation of Pacific cod to the Amendment 80 sector between the Amendment 80 cooperative fishery and the Amendment 80 limited access fishery. Each Amendment 80 cooperative receives an exclusive allocation based on the aggregated historical Pacific cod harvest by its member vessels. Vessels that participate in the Amendment 80 limited access fishery do not receive an exclusive allocation of Pacific cod and must compete for a share of the TAC in the Amendment 80 limited access fishery.

The cooperative-level allocation of BSAI Pacific cod and the allocations of Amendment 80 species and halibut and crab PSC allow Amendment 80 cooperatives to manage most of their key target and incidental catch species within a cooperative. In contrast, participants in the Amendment 80 limited access fishery and the BSAI trawl limited access fishery must compete for a share of the groundfish TACs, subject to incidental catch and PSC constraints. This restricts the number of directed groundfish fisheries that are available to participants in the Amendment 80 limited access fishery and the BSAI trawl limited access fishery. In the first year of fishing under Amendment 80, participants in the Amendment 80 limited access and the BSAI trawl limited access fisheries concentrated effort in the Pacific cod, Aleutian Islands Pacific ocean perch, Atka mackerel, and yellowfin sole fisheries in the BSAI.

The Proposed Action

Following implementation of the Rockfish Program in December 2006, participants in the catcher/processor sector testified to the Council that some sideboard limits in the Rockfish Program may be too restrictive. The Council did not receive testimony from participants in the catcher vessel sector proposing to modify stand downs applicable to that sector, and the proposed action would not change those stand downs. The Council initiated an analysis in April 2007 to examine alternatives for exempting certain vessels in the catcher/processor sector

from the BSAI groundfish fishery stand downs in July.

In October 2008, the Council recommended removing the BSAI groundfish fishery stand downs for all harvesters in the catcher/processor sector. The Council based its recommendation on information received through public testimony, review of the potential effects of exempting certain vessels from the stand downs, and a review of the effects of completely removing the BSAI groundfish fishery stand downs from the Rockfish Program. The Council determined that (1) the BSAI stand down requirements for catcher/processors participating in the Rockfish Program are no longer necessary to protect participants in BSAI groundfish fisheries; and (2) several participants in the Rockfish Program catcher/processor sector would likely benefit if the BSAI stand downs were eliminated.

Effects of the Proposed Action

The proposed action would remove BSAI groundfish fishery stand downs in July that apply to certain catcher/processors that also participate in the Rockfish Program. The proposed action would not affect other GOA fisheries, because removing the BSAI stand downs would not change the allocations to or timing of the Central GOA rockfish fisheries. Participants in the Rockfish Program catcher/processor sector are subject to sidebar limits in other GOA fisheries, and the proposed action would not change the existing GOA sidebar limits.

The following sections describe the Council's rationale for the proposed action to permanently remove the BSAI groundfish fishery stand downs in July for harvesters in the catcher/processor sector of the Rockfish Program and the effects of removing the BSAI stand downs from the Rockfish Program.

Effects of the proposed action on catcher/processors participating in the Rockfish Program. The effects of removing the BSAI stand downs from the Rockfish Program would vary for individual participants in the catcher/processor sector, depending on whether they participate in the Central GOA rockfish cooperative fishery, limited access fishery, or choose to opt out of the Rockfish Program.

Fifteen vessels and LLP licenses are eligible to participate in the catcher/processor sector in the Rockfish Program. Under the current regulations, all harvesters in the catcher/processor sector that elect to participate in a rockfish cooperative are prohibited from directed fishing in BSAI groundfish fisheries, except pollock and fixed-gear

sablefish, for the first two weeks in July. A maximum of 15 harvesters would be subject to the BSAI stand down if all eligible harvesters elected to join a rockfish cooperative. In the first two years of the Rockfish Program, five harvesters participated in the rockfish cooperative fishery in the catcher/processor sector and were subject to the BSAI stand down in July.

In the years prior to the Rockfish Program implementation, the Central GOA rockfish fisheries opened around July 1. Participants in the catcher/processor sector of the Central GOA rockfish fisheries typically moved to the Western GOA and West Yakutat District to harvest rockfish and other flatfish species at the conclusion of the Central GOA rockfish fisheries. After completing the Western GOA and West Yakutat District groundfish fisheries, some catcher/processor vessels moved to the BSAI, typically to harvest Pacific ocean perch in the Aleutian Islands. When the Rockfish Program was implemented, the Central GOA rockfish fisheries opening date shifted from July 1 to May 1 for vessels that are members of a cooperative. In the first year of the Rockfish Program, most cooperative participants in the catcher/processor sector had completed fishing in the Central GOA rockfish and other GOA fisheries in June, but all five harvesters in the cooperative fishery were prohibited from participating in BSAI groundfish fisheries from July 1 to July 14 by the stand down, and some vessels rested idle for approximately two weeks. The disruption in harvesting operations adversely impacted vessel owners subject to the BSAI stand down. Any stand down reduces efficiency because crew and fuel costs are still incurred while the vessel is idle. Consequently, the BSAI stand down requirement may act as a disincentive for harvesters in the catcher/processor sector to join a rockfish cooperative. Five out of 15 eligible harvesters (33 percent) elected to participate in the cooperative fishery in the catcher/processor sector in the first two years of the Rockfish Program, which may reflect the disincentive to join a rockfish cooperative created by the BSAI stand down. The Council received testimony from owners of catcher/processor vessels eligible to participate in the Rockfish Program that the BSAI stand down adversely impacted fishing operations and increased vessel costs in the first year of the Rockfish Program. Removing the BSAI stand down from the Rockfish Program would relieve these adverse impacts and would most benefit harvesters in the catcher/

processor sector that participate in BSAI groundfish fisheries and elect to participate in a Central GOA rockfish cooperative.

Harvesters in the Rockfish Program catcher/processor limited access fishery with greater than 5 percent of the Central GOA Pacific ocean perch QS assigned to the catcher/processor sector are subject to a stand down in any BSAI groundfish fishery, except pollock or fixed-gear sablefish, from July 1 until 90 percent of the Central GOA Pacific ocean perch assigned to the catcher/processor limited access fishery has been harvested. Of the 15 eligible harvesters in the catcher/processor sector, 8 (53 percent) hold more than 5 percent of the Central GOA Pacific ocean perch QS allocated to the catcher/processor sector and would be subject to the BSAI stand down if they elected to participate in the Rockfish Program limited access fishery. In 2007, two participants in the limited access fishery in the catcher/processor sector were subject to the BSAI stand down and in 2008, three participants were subject to the BSAI stand down.

The BSAI stand down did not likely have a negative impact on these vessels, however. In 2007, the threshold to relieve the stand down (i.e., harvest of 90 percent of the Central GOA Pacific ocean perch allocated to the catcher/processor sector) was reached on July 5. Prior to Rockfish Program implementation, the Central GOA rockfish fisheries opened around July 1. The Rockfish Program did not shift the fishery opening dates for catcher/processors participating in the limited access fishery, and these vessels currently cannot participate in the Central GOA rockfish fisheries before July 1. In the years prior to the Rockfish Program implementation, vessels that participated in the GOA rockfish and flatfish fisheries did not complete the GOA fisheries and move on to the BSAI groundfish fisheries before July 5. Therefore, the five-day stand down period in 2007 did not disrupt historical fishing patterns for these vessels. This suggests that removing the stand down may not benefit catcher/processors in the limited access fishery as much as catcher/processors in the cooperative fishery. Nonetheless, it is possible that the risk of a BSAI stand down of unknown length may have deterred some vessels from participating in the limited access fishery in the catcher/processor sector, and more eligible harvesters may choose to participate in the Rockfish Program if the BSAI stand down is removed.

Harvesters in the catcher/processor sector who opt out of the Rockfish

Program are not subject to a BSAI stand down and would not be affected by the proposed action. In 2007, six harvesters in the catcher/processor sector opted out of the Rockfish Program. Three catcher/processors elected to opt out of the Rockfish Program in 2008.

In summary, while the BSAI stand downs have a minimal effect on non-Rockfish Program operations for catcher/processors that do not elect to join a cooperative, they may be important factors for harvesters in the catcher/processor sector when determining whether to participate in the Rockfish Program. The BSAI stand downs likely are a significant disincentive for eligible catcher/processors to join a rockfish cooperative. Although the proposed action would most benefit harvesters in the catcher/processor sector who elect to participate in the Rockfish Program cooperative fishery, it is possible that more catcher/processors would choose to participate in the Rockfish Program if the BSAI stand downs were removed.

Effects of the proposed action on participants in fisheries with species-specific allocations under Amendments 80 and 85 to the BSAI FMP. The effects of removing the BSAI stand downs for Rockfish Program catcher/processors on non-Rockfish Program participants in BSAI groundfish fisheries would vary according to the fishery in which they participate: Amendment 80 cooperative fishery, Amendment 80 limited access fishery, or the BSAI trawl limited access fishery. There is a low probability that removing the stand downs would have an adverse effect on participants in any of these fisheries.

The Amendment 80 species allocations are defined in Amendment 80, and Rockfish Program catcher/processors cannot participate in these fisheries unless they are eligible for the Amendment 80 sector. Participants in the Amendment 80 cooperative fishery receive exclusive allocations of Amendment 80 species, Pacific cod, and halibut and crab PSC. There are 24 vessels in the Amendment 80 sector, and 17 vessels participated in an Amendment 80 cooperative in 2008. If this level of participation continues, the proposed action would not affect approximately 70 percent of the Amendment 80 sector participants, because Rockfish Program participants could not increase effort in Amendment 80 cooperative fisheries. Additionally, 7 of the 15 eligible harvesters (46 percent) in the catcher/processor sector of the Rockfish Program also participated in an Amendment 80 cooperative. Removal of the BSAI stand downs would benefit these catcher/processors by enabling

them to coordinate fishing activities in the GOA and BSAI and avoid the costs of idling a vessel during the BSAI stand down period in July.

Seven catcher/processors participated in the Amendment 80 limited access fishery in 2008. Six of these vessels are owned by one company, and three of the six catcher/processors with common ownership also participated in the Rockfish Program in 2008. As with participants in the Amendment 80 cooperative fishery, removing the BSAI stand down would likely benefit the company with multiple vessels that participates in the Rockfish Program and the Amendment 80 limited access fishery by providing more flexibility to coordinate harvesting operations. The seventh participant in the Amendment 80 limited access fishery did not qualify for the Rockfish Program and could potentially be disadvantaged by the proposed action if the six other Amendment 80 limited access fishery participants were able to increase effort in the Amendment 80 limited access fisheries in July to the detriment of the other participant. However, based on historical catch data analyzed in the RIR for this proposed rule (see **ADDRESSES**), the Amendment 80 catcher/processor that did not qualify for the Rockfish Program has little historical participation in the Amendment 80 target fisheries at any time of the year, and thus has no history of dependence on the Amendment 80 fisheries in July that could be affected by removal of the BSAI stand down. In addition, if the Amendment 80 catcher/processor that does not participate in the Rockfish Program wishes to increase participation in the Amendment 80 limited access fisheries, directed fishery openings for species in the Amendment 80 limited access fishery occur outside of the early July time period in January, February, and September.

Participants in the BSAI limited access trawl fisheries for Pacific cod, yellowfin sole, Atka mackerel and Aleutian Islands Pacific ocean perch could be negatively impacted by the removal of the stand down if the five catcher/processors that participate in the Rockfish Program, but do not qualify for the Amendment 80 sector, increased effort in these fisheries in July. This is unlikely, however, because the BSAI limited access trawl fisheries are allocated a relatively small portion of the species TACs, which reflects the historically low level of participation by non-Amendment 80 vessels. The low TACs in the BSAI limited access trawl groundfish fisheries, combined with halibut PSC constraints, significantly limit the amount of fish available for a

directed fishery. For most species and areas the BSAI limited access trawl directed fishery either (1) remains closed to directed fishing because the TAC is not sufficient to support a directed fishery, or (2) opens in January or February, but is closed to directed fishing prior to July in order to prevent participants from exceeding the seasonal TAC. In 2008, only the yellowfin sole and Western Aleutian Islands Atka mackerel fishery were open to the BSAI limited access trawl participants for directed fishing in early July. Consequently, the Rockfish Program catcher/processors would be unlikely to increase participation in July in BSAI limited access trawl fisheries. Rockfish Program participants could potentially increase participation in these fisheries at other times during the year, but the BSAI stand down is limited to July 1 through July 14 and does not protect non-Rockfish Program participants in the BSAI limited access trawl fisheries from increased competition outside of that time period.

Effects of the proposed action on participants in unallocated BSAI fisheries. Removal of the July BSAI stand down for Rockfish Program catcher/processors is unlikely to adversely affect non-Rockfish Program participants in unallocated BSAI groundfish fisheries. These fisheries have had limited historical participation owing to low market values. In practice, the most desirable unallocated BSAI groundfish fisheries will likely open for directed fishing only to participants in the Amendment 80 cooperative fishery, because only these participants have sufficient control over halibut PSC use to enable directed fisheries for these species. Rockfish Program participants relieved from the BSAI stand downs under the proposed action likely could not participate in fisheries for unallocated BSAI species unless they were also participants in the Amendment 80 cooperative fishery. Even if participants in the Amendment 80 limited access fishery and the BSAI trawl limited access fishery were not constrained by halibut PSC and could undertake directed fishing for the unallocated groundfish species in July, the current BSAI stand protects participants in these limited access fisheries from increased effort by Rockfish Program participants who are also Amendment 80 cooperative participants only from July 1 to July 14. These Rockfish Program and Amendment 80 cooperative participants could still use the benefits of cooperative harvest management to increase participation in the unallocated

BSAI groundfish fisheries at other times during the year.

As described in detail above and in the RIR/IRFA prepared for this action (see **ADDRESSES**), the proposed rule would permanently remove the BSAI stand downs that apply to Rockfish Program participants in the catcher/processor sector in July.

NMFS is proposing to modify the Rockfish Program regulations to remove all instances in which Central GOA rockfish catcher/processors are required to stand down from BSAI directed fisheries in July. These references occur in regulatory text at 50 CFR 679.82.

Classification

The Assistant Administrator for Fisheries, NMFS, has determined that this proposed rule is consistent with Amendment 85 to the GOA FMP, the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

An RIR was prepared for this action that assesses all costs and benefits of available regulatory alternatives. The RIR describes the potential size, distribution, and magnitude of the economic impacts that this action may be expected to have. Additionally, an IRFA was prepared that describes the impact this proposed rule would have on small entities. Copies of the RIR/IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**). The RIR/IRFA prepared for this proposed rule incorporates by reference an extensive RIR/IRFA prepared for Amendment 68 to the GOA FMP that detailed the impacts of the Rockfish Program on small entities.

The IRFA for this proposed action describes in detail the reasons why this action is being proposed; describes the objectives and legal basis for the proposed rule; describes and estimates the number of small entities to which the proposed rule would apply; describes any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; identifies any overlapping, duplicative, or conflicting Federal rules; and describes any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Fishery Conservation and Management Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities.

The description of the proposed action, its purpose, and its legal basis

are described in the preamble and are not repeated here. The proposed rule directly regulates all catcher/processor vessels and LLP licenses that qualify for the Rockfish Program. There are a total of 15 catcher/processor LLP licenses that qualify for the Rockfish Program, representing the maximum number of entities that could be directly regulated under the proposed action in any given year. If all 15 catcher/processors chose to join a rockfish cooperative, the proposed action to remove the BSAI stand down would apply to all Rockfish Program catcher/processors.

Under principles established by the U.S. Small Business Administration at 13 CFR 121.03, business concerns are affiliated when they have identical or substantially identical business or economic interests, or are economically dependent through contractual or other relationships. The interests of affiliated individuals or firms are aggregated when measuring whether the entity is a small business under the Regulatory Flexibility Act. If all 15 catcher/processors chose to participate in cooperatives and were thus subject to the stand down under the status quo, they would all be considered large entities for the purposes of the Regulatory Flexibility Act. Available catch and earnings data suggest that cooperatives created under the Rockfish Program would likely have aggregate gross receipts, from all sources, including affiliated worldwide, in excess of the \$4 million threshold specified by the Small Business Administration.

If all 15 catcher/processors chose to participate in the limited access sector, 8 of the 15 would be subject to the BSAI stand down. Of these eight catcher/processors, six are also part of the Amendment 80 sector in the BSAI. Four of these vessels were part of an Amendment 80 cooperative in 2008, and would be considered affiliated by their membership in the cooperative. The other two Amendment 80 vessels are also affiliated because they are owned by the same company. The remaining two vessels are also affiliated by common ownership, and all eight catcher/processors would be considered large entities for purposes of the Regulatory Flexibility Act.

Based upon available information, it does not appear that the proposed action has the potential to directly regulate any small entities. However, current empirical data on cost structure, affiliation, operational procedures and strategies in the fishing sectors subject to the proposed regulatory action are incomplete. The available information is insufficient to permit preparation of a

“factual basis” upon which to certify that the preferred alternative does not have the potential to result in “significant economic impacts on a substantial number of small entities,” as defined under Regulatory Flexibility Act. Therefore, a formal IRFA was prepared and is included in this analytical package.

The proposed rule would not change existing reporting, recordkeeping, and other compliance requirements. The analysis revealed no Federal rules that would conflict with, overlap, or be duplicated by the alternatives under consideration.

All of the directly regulated entities would be expected to benefit from this action relative to the status quo alternative because it would relieve restrictions that limit their ability to participate in directed BSAI groundfish fisheries in early July.

The Council analyzed and considered four alternatives for the specific participants and fisheries subject to the July BSAI stand down periods. These alternatives included the status quo, exempting Amendment 80 cooperative participants from the BSAI stand downs, exempting all Amendment 80 sector participants from the BSAI stand downs, and removing the BSAI stand downs for all catcher/processors in the Rockfish Program. The RIR prepared for this proposed rule determined both Amendment 80 and non-Amendment 80 catcher/processors participating in the Rockfish Program likely would be unable to increase effort in BSAI groundfish fisheries to the disadvantage of other participants during the short period in early July when the stand downs are in effect. Based on this information, the Council determined there was little benefit to retaining the July BSAI stand downs for any subset of the Rockfish Program catcher/processor sector. The Council recommended removing the BSAI stand downs for all catcher/processors in the Rockfish Program. Compared with the status quo, the proposed action recommended by the Council would have the greatest potential to reduce operating costs and increase flexibility for participants in the catcher/processor sector of the Rockfish Program, and would have a low likelihood of negatively impacting other participants in BSAI groundfish fisheries in early July.

Collection-of-Information

This proposed rule does not contain a collection-of-information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: March 30, 2009.

Samuel D. Rauch III

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

For the reasons set out in the preamble, 50 CFR part 679 is 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 § 679.82, paragraph (f)(3) is removed, paragraph (f)(4) is

redesignated as paragraph (f)(3), and newly redesignated paragraphs (f)(3)(i)(A), (f)(3)(ii)(A) and paragraph (g)(3) are revised to read as follows:

§ 679.82 Rockfish Program use caps and sideboard limits.

* * * * *

(f) * * *

(3) * * *

(i) * * *

(A) Any vessel in the rockfish cooperative does not meet monitoring standards established under paragraph (f)(3)(iii) of this section; and

* * * * *

(ii) * * *

(A) Any vessel in the rockfish cooperative does not meet monitoring standards established under paragraph (f)(3)(iii) of this section; and

* * * * *

(g) * * *

(3) *Prohibition from directed fishing in GOA groundfish fisheries.* If a vessel named on an LLP license used in the rockfish limited access fishery has been assigned rockfish QS greater than an amount equal to 5 percent of the Pacific ocean perch rockfish QS allocated to the catcher/processor sector, then that vessel may not participate in any GOA groundfish fishery and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species other than the rockfish limited access fishery and sablefish harvested under the IFQ Program.

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[FR Doc. E9-7557 Filed 4-3-09; 8:45 am]

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