

FINAL

Amendment 85 to the  
Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) to

**Exempt Catcher/Processors Participating in the GOA  
Rockfish Program from the July Stand Downs in the  
Bering Sea/Aleutian Islands**

Regulatory Impact Review/  
Final Regulatory Flexibility Analysis

September 2009

**Abstract:** This document contains a Regulatory Impact Review and a Final Regulatory Flexibility Analysis for Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska analyzing an action to exempt some or all catcher/processors that participate in the Central Gulf of Alaska Rockfish Program from the early July stand down period that prevents their participation in directed Bering Sea and Aleutian Islands groundfish fisheries during those dates. The analyses in this document address the requirements of Executive Order 12866 and the Regulatory Flexibility Act.

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## **Executive Summary**

The Central Gulf of Alaska Rockfish Program (Rockfish Program) includes a sideboard provision that regulates the participation of rockfish catcher/processor (CP) vessels in Bering Sea and Aleutian Islands (BSAI) groundfish fisheries. CP vessels that join a rockfish cooperative, or fish in the limited access fishery and hold more than 5 percent of the CP Central Gulf of Alaska (GOA) Pacific ocean perch (POP) history, are subject to a July stand down provision in the BSAI. This stand down restriction was put into place to prevent increased effort by rockfish participants in BSAI fisheries. At the time the Rockfish Program and its stand down restriction were being developed, only the pollock fishery of BSAI trawl fisheries was subject to a limited access privilege program; all the other directed BSAI trawl fisheries were subject to a managed open access race for fish.

Harvest data from 2003 through 2006 show that the BSAI fisheries historically targeted by trawl CP vessels from July 1 through July 14 were the Aleutian Islands (AI) POP and BSAI Pacific cod fisheries. In 2008, BSAI Amendment 80 became effective, creating sector allocations of AI POP and four other BSAI directed fisheries and the opportunity for cooperatives to form in the head-and-gut trawl CP sector, the sector of the BSAI trawl fleet that predominantly harvests these species. Also in 2008, BSAI Amendment 85 became effective, which allocates BSAI Pacific cod among sectors, including an exclusive allocation to the Amendment 80 sector. Consequently, the importance of the stand down as a protection measure for other fisheries has changed.

The North Pacific Fishery Management Council (Council) was prompted to reexamine the BSAI stand downs by participants in the Rockfish Program catcher/processor sector, who suggested that some Rockfish Program sideboard limits may be too restrictive. In April 2007, the Council initiated an analysis to examine the impacts of relieving certain Rockfish Program catcher/processors from the BSAI stand downs. In October 2008, the Council recommended a preferred alternative to remove the BSAI stand downs to the Secretary of Commerce, which is being proposed as Amendment 85 to the Fishery Management Plan for Groundfish of the GOA.

This document contains a Regulatory Impact Review (Chapters 1 to 6) and a Final Regulatory Flexibility Analysis (Chapter 7) analyzing four alternatives to remove the BSAI stand downs. Chapter 8 contains a discussion of the Magnuson-Stevens Fishery Conservation and Management Act National Standards and a fishery impact statement.

This analysis addresses the requirements for a categorical exclusion from detailed environmental review, under the requirements of Council on Environmental Quality regulations at 40 CFR Part 1500-1508 and NOAA Administrative Order NAO 216-6. The amendment addresses an allocative restriction for CP vessels participating in the Rockfish Program and will not affect the overall harvest of BSAI groundfish species or substantially change the timing or manner of groundfish removals.

### **Purpose and Need**

Catcher/processor vessels that participate in a Rockfish Program cooperative, and some CP vessels that participate in the Rockfish Program limited access sector, are restricted from directed groundfish fisheries in the BSAI for a period in July, beginning on the first of the month. This stand down period was put in place to prevent participants in the Rockfish Program from unfairly benefiting from their rockfish allocation by increasing their effort in BSAI fisheries. BSAI Amendments 80 and 85 were implemented subsequent to the implementation of the Rockfish Program. BSAI Amendments 80 and 85 allocate exclusive privileges for various BSAI groundfish species (Atka mackerel, AI POP, flathead sole, Pacific cod, rock sole, and yellowfin sole) to the head-and-gut trawl CP sector (the Amendment 80 sector) in the BSAI and allow vessels in that sector to form cooperatives. Most of the Rockfish Program CP vessels are also part of the BSAI Amendment 80 sector.

Given that, except for pollock, the species allocated under BSAI Amendments 80 and 85 comprise the major directed fisheries in the BSAI, and most CP participants in the Rockfish Program have already been allocated exclusive privileges for harvesting these BSAI species, it was determined that the July stand down no longer is required as a protection measure.

### **Description of Alternatives**

There are three alternatives to the status quo that would address the problem articulated above. They are described below. At its October 2008 meeting, the Council recommended Alternative 4 as its preferred alternative.

#### **Alternative 1:** Status quo.

Catcher/processors that participate in a Rockfish Program cooperative are restricted from the directed BSAI groundfish fisheries (except for pollock) from July 1 through 14. Catcher/processors that participate in the Rockfish Program limited access sector, and are allocated more than 5 percent of the CP allocation of Central GOA POP, are restricted from fishing in directed BSAI groundfish fisheries (except for pollock) from July 1 until such time as 90 percent of the Central GOA POP that is allocated to the limited access fishery for the CP sector has been harvested.

**Alternative 2:** Exempt CP vessels that are participants in the Rockfish Program cooperative or limited access sector and members of an Amendment 80 cooperative in the BSAI from the July stand down in the BSAI directed groundfish fisheries.

This alternative limits the exemption to CPs that annually choose to participate in an Amendment 80 cooperative.

**Alternative 3:** Exempt CP vessels that are participants in the Rockfish Program cooperative or limited access sector and members of the Amendment 80 sector in the BSAI from the July stand down in the BSAI directed groundfish fisheries.

This alternative extends the exemption to any CP that is part of the Amendment 80 sector.

**Alternative 4 (Preferred):** Amend the Rockfish Program to remove the provision that requires certain CP vessels to stand down from participating in directed BSAI groundfish fisheries for a period in July.

Alternative 4 would remove the BSAI stand down provision from the Rockfish Program.

### **Summary of Impact Analysis**

The following table lists the number of CP participants that would potentially be affected by the alternatives under consideration.

	<b>Alternative 1 – status quo</b>	<b>Alternative 2 – exempt Rockfish Program CPs in Amendment 80 cooperatives</b>	<b>Alternative 3 – exempt Rockfish Program CPs fishing in Amendment 80 sector</b>	<b>(Preferred) Alternative 4 – remove stand down provision from Rockfish Program</b>
<b>Maximum number of CP participants potentially affected</b>	0	10	10	15
<b>Number of CP participants affected in 2008</b>	0	3	5	8

The following table summarizes the effects of the exemption.

<b>Effects of exempting rockfish participants who are Amd 80 cooperative members (Alternatives 2, 3, and Preferred Alternative 4)</b>	<p>The exemption results in increased flexibility and efficiency for vessels to determine fishing patterns and potentially reduces costs of leaving the vessel idle. The benefit is greatest for vessels in a rockfish cooperative. The exemption would remove a disincentive to participate in the Rockfish Program, or if participating, to join a rockfish cooperative.</p> <p>There is no possibility of encroachment in allocated BSAI fisheries. There is an opportunity for exempted vessels to encroach in unallocated directed fisheries, but it is not specific to the July period of the BSAI stand down provision, as unallocated fisheries are open to Amendment 80 cooperatives year-round.</p>
<b>Effects of exempting rockfish participants who are Amd 80 limited access members (Alternative 3 and Preferred Alternative 4)</b>	<p>The exemption results in increased flexibility and efficiency for these vessels to determine fishing patterns and potentially reduces costs of leaving the vessel idle. The benefit is greatest for vessels in a rockfish cooperative.</p> <p>There is a possibility for exempted vessels to encroach in the Amendment 80 limited access fishery, as exempted vessels which would historically be participating in the GOA rockfish fisheries would now be able to compete for Amendment 80 target species. However, based on 2008 membership of the Amendment 80 limited access fishery, no unfair competition would result from the exemption.</p> <p>There are fewer unallocated fisheries open to directed fishing by the Amendment 80 limited access sector (than are open to Amendment 80 cooperatives); the exemption creates a low possibility of encroachment into unallocated fisheries as the exempted CP vessels would be fishing for target species during this time.</p>
<b>Effects of exempting rockfish participants who are non-Amd 80 participants (Preferred Alternative 4)</b>	<p>The exemption results in increased flexibility and efficiency for these vessels to determine fishing patterns and reduces costs of leaving the vessel idle. The benefit is smaller for these vessels, as they have less history in the BSAI.</p> <p>There are fewer unallocated fisheries open to directed fishing by the BSAI trawl limited access sector; the exemption creates a possibility of encroachment by vessels into unallocated fisheries, but it is capped by the small allocations to the BSAI trawl limited access sector, and exempted vessels have limited recent history fishing in the BSAI.</p> <p>There is a possibility of encroachment in Amendment 80 target fisheries, but exempted vessels have no recent history of processing in the BSAI or participation in these fisheries. The vessels have some history as catcher vessels (CVs) in the Pacific cod fishery, but any risk of encroachment is not specific to the early July period of BSAI stand down provision.</p>

### Effects on Small Entities

The proposed action directly regulates some or all CPs that qualify for the Rockfish Program. Qualified CPs must annually select whether they participate in a cooperative, in the limited access fishery, or whether they opt out of the Rockfish Program; their participation level affects whether and how the stand down provision applies.

There are a total of 15 CP License Limitation Program (LLP) licenses that qualify for the Rockfish Program, representing the maximum number of entities that might be regulated under the proposed action. In 2007, 5 CPs participated in rockfish cooperatives, 4 in the limited access fishery, and 6 opted out of the Rockfish Program. Of the 4 participating in the limited access fishery, the stand down period applied to only 2. Therefore, in 2007, there were 7 entities that would have been directly regulated, had the proposed action been implemented.

Vessels that would be considered large entities are either affiliated as owners of multiple vessels or by participating in a cooperative. Five of these entities participate in a rockfish cooperative; of the 2 remaining, both are part of the Amendment 80 cooperative. In 2008, there was one additional vessel to which the stand down period applied, but that vessel was also part of the Amendment 80 cooperative. Based on the information which is available, it does not appear that the proposed action has the potential to directly regulate any small entities.

## Table of Contents

Executive Summary .....	i
Table of Contents .....	v
List of Tables .....	vii
<b>1 INTRODUCTION .....</b>	<b>1</b>
<b>2 WHAT IS A REGULATORY IMPACT REVIEW? .....</b>	<b>2</b>
2.1 Statutory Authority .....	2
<b>3 PURPOSE AND NEED.....</b>	<b>2</b>
3.1 Problem Statement.....	3
3.2 OMB Statement of Compelling Public Need .....	3
<b>4 DESCRIPTION OF ALTERNATIVES .....</b>	<b>3</b>
4.1 Council’s Preferred Alternative.....	4
<b>5 EXISTING CONDITIONS .....</b>	<b>4</b>
5.1 Overview of the Rockfish Program .....	4
5.1.1 Rockfish Program Sideboards .....	6
5.2 BSAI stand down provision in the Rockfish Program.....	7
5.3 Rockfish Program CP sector .....	9
5.4 Participation of Rockfish Program CP vessels in BSAI fisheries .....	10
5.4.1 Overview of the Amendment 80 Program .....	11
5.4.2 Overlap between Rockfish Program CPs and Amendment 80 CPs .....	11
5.5 Groundfish fisheries available for directed fishing in the BSAI .....	12
5.5.1 Status of BSAI trawl fisheries .....	12
5.5.2 BSAI fleet participation in Amendment 80 fisheries and the Pacific cod fishery.....	15
5.5.3 BSAI fleet participation in unallocated directed fisheries .....	16
5.6 Value of BSAI fisheries.....	17
5.6.1 Value of Amendment 80 fisheries .....	17
5.6.2 Value of unallocated directed fisheries .....	17
5.6.3 Product Flows and Markets .....	17
<b>6 ANALYSIS OF THE ALTERNATIVES .....</b>	<b>19</b>
6.1 Affected participants .....	19
6.2 Impact of the BSAI stand down period on Rockfish Program participants.....	20
6.3 Impact in unallocated BSAI directed fisheries .....	21

6.4	Impact in allocated BSAI directed fisheries .....	25
6.5	Summary of alternatives .....	26
<b>7</b>	<b>FINAL REGULATORY FLEXIBILITY ANALYSIS (FRFA).....</b>	<b>28</b>
7.1	Introduction .....	28
7.2	Definition of a Small Entity .....	29
7.3	Need for and objectives of the rule.....	30
7.4	Public comments .....	31
7.5	Number of Small Entities .....	31
7.6	Recordkeeping, reporting and other compliance requirements .....	32
7.7	Significant alternatives to the proposed rule .....	32
<b>8</b>	<b>NATIONAL STANDARDS AND FISHERIES IMPACT STATEMENT .....</b>	<b>32</b>
8.1	National Standards.....	32
8.2	Section 303(a)(9) – Fisheries Impact Statement.....	34
8.3	References .....	34
<b>9</b>	<b>APPENDIX 1. PROPOSED AMENDMENT TEXT FOR AMENDMENT 85 TO THE FISHERY MANAGEMENT PLAN FOR GROUND FISH OF THE GULF OF ALASKA.....</b>	<b>35</b>

## List of Tables

Table 1	Summary of Rockfish Program sideboard limits, for each sector .....	7
Table 2	July 1–14 BSAI harvest in metric tons (mt) from head-and-gut trawl CP vessels that participate in the Rockfish Program and are part of the Amendment 80 sector in the BSAI. ....	8
Table 3	Catcher processor LLP licenses that qualify for the Rockfish Program, the associated vessel, and type of participation in the Rockfish Program in 2007. ....	10
Table 4	Catcher processor LLP licenses that qualify for the Rockfish Program and their associated vessels, whether they were subject to the BSAI stand down in 2008, and the type of participation for that vessel in Amendment 80 in 2008. ....	12
Table 5	Status of trawl fisheries, January 1-April 28, 2008.....	14
Table 6	2007 and 2008 Halibut mortality PSC limits for trawl fisheries, by sector, target fishery, and season.....	15
Table 7	2006 catch history for Amendment 80 vessels in the five Amendment 80 species and Pacific cod.....	16
Table 8	Total catch in 2007, and distribution by gear type, and catch by the 15 Rockfish Program CPs as a proportion of total catch, of Alaska plaice, “other flatfish”, arrowtooth flounder, Greenland turbot, sablefish, and squid. ....	16
Table 9	Price per pound of at-sea product (dollars), in select BSAI fisheries, 2003–2006. ....	17
Table 10	Total catch (mt) during the three week period encompassing July 1-14 .....	23

# 1 Introduction

The Central Gulf of Alaska Rockfish Program (Rockfish Program) was implemented on December 20, 2006, as Amendment 68 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). The Rockfish Program allocates exclusive harvesting and processing privileges of three rockfish species and associated incidental catch species to historic participants in the Central GOA rockfish fisheries. As part of the Rockfish Program provisions, the Council established a suite of sideboard restrictions and stand down requirements to prevent participants from increasing their effort in other fisheries.

One of the Rockfish Program provisions regulates the participation of catcher/processor (CP) vessels in Bering Sea and Aleutian Islands (BSAI) groundfish fisheries. CPs that join a rockfish cooperative, or fish in the limited access fishery and hold more than 5 percent of the CP Central GOA Pacific ocean perch (POP) catch history, are subject to a July stand down provision in the BSAI. The CPs participating in a rockfish cooperative must refrain from participating in fisheries in the BSAI groundfish fisheries from July 1 through July 14. CPs participating in the limited access fishery are prohibited from directed fishing in BSAI groundfish fisheries from July 1, until 90 percent of the Central GOA POP that is allocated to the limited access fishery for the CP sector has been harvested.

This stand down restriction was put into place to prevent increased effort by rockfish participants in BSAI fisheries. At the time the Rockfish Program and its stand down restriction were being developed, only the pollock fishery, of BSAI trawl fisheries, was subject to a limited access privilege program; all the other directed BSAI trawl fisheries were subject to a race for fish. Harvest data from 2003-2006 show that the BSAI fisheries historically targeted by trawl CP vessels during July 1 through July 14 were the Aleutian Islands (AI) POP and BSAI Pacific cod fisheries. In 2008, BSAI Amendment 80 became effective, creating sector allocations of AI POP and four other BSAI directed fisheries and the opportunity for cooperatives in the head-and-gut trawl CP sector, the sector of the BSAI trawl fleet that predominantly harvests these species. Also in 2008, BSAI Amendment 85 became effective, which allocates BSAI Pacific cod among sectors, including an exclusive allocation to the Amendment 80 sector. Consequently, the importance of the stand down as a protection measure for other fisheries has changed.

The action under this amendment originated with a proposal to exempt CPs participating in the Rockfish Program from the July stand down requirement, if they also belong to a BSAI Amendment 80 cooperative. This issue was first raised by the Council as a part of a broader indication from public testimony in December 2006 that some GOA sideboard limits might need adjusting. The Council requested a comprehensive discussion paper on GOA sideboards, which was presented in April 2007, and initiated the present analysis. In October 2008, the Council recommended a preferred alternative to be transmitted to the Secretary of Commerce as proposed Amendment 85 to the GOA FMP.

This document contains a Regulatory Impact Review (Chapters 2 through 6) and a Final Regulatory Flexibility Analysis (Chapter 7) analyzing the alternatives under consideration. Chapter 8 contains a discussion of the Magnuson-Stevens Fishery Conservation and Management Act National Standards and fishery impact statement.

This analysis meets the requirements for a categorical exclusion from detailed environmental review, under the requirements of Council on Environmental Quality regulations at 40 CFR Part 1500-1508 and NOAA Administrative Order NAO 216-6. The amendment addresses an allocative restriction for CP vessels participating in the Rockfish Program and will not affect the overall harvest of BSAI groundfish species or substantially change the timing or manner of groundfish removals.

## 2 What is a Regulatory Impact Review?

The preparation of an Regulatory Impact Review (RIR) is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735; October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement:

*In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and Benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.*

E.O. 12866 requires that the Office of Management and Budget (OMB) review proposed regulatory programs that are considered to be “significant.” A “significant regulatory action” is one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

### 2.1 Statutory Authority

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the United States has exclusive fishery management authority over all marine fishery resources found within the exclusive economic zone. The management of these marine resources is vested in the Secretary of Commerce and in the Regional Fishery Management Councils. The groundfish fisheries in the GOA exclusive economic zone are managed under the GOA FMP. Regulations implement the GOA FMP at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

## 3 Purpose and Need

Catcher/processor vessels that participate in a Rockfish Program cooperative, and some CP vessels that participate in the Rockfish Program limited access sector, are restricted from directed groundfish fisheries in the BSAI for a period in July beginning on the first of the month. This stand down period was instituted in order to prevent participants in the Rockfish Program from unduly benefiting from their rockfish allocation by increasing their effort in BSAI fisheries. Since the implementation of the Rockfish Program, BSAI Amendments 80 and 85 have been implemented, which allocate exclusive privileges for various BSAI groundfish species (Atka mackerel, AI POP, flathead sole, Pacific cod, rock sole, and yellowfin sole) to the head-and-gut trawl CP sector (the Amendment 80 sector) in the BSAI and allow vessels in the

sector to form cooperatives. Most of the Rockfish Program CP vessels are also part of the BSAI Amendment 80 sector.

Given that the species allocated under BSAI Amendments 80 and 85 comprise the major directed fisheries in the BSAI, and most CP participants in the Rockfish Program have already been allocated exclusive privileges for harvesting these BSAI species, the July stand down may no longer be required as a protection measure.

### **3.1 Problem Statement**

The Council adopted the following problem statement for this action.

Many catcher processors participating in the CGOA rockfish pilot program are prohibited from entering directed groundfish fisheries in the BSAI for a period in July. This “stand down” period was instituted to prevent participants in the rockfish program from unduly benefiting from their rockfish allocation by increasing their effort in BSAI fisheries. Since the implementation of the rockfish program, the sector of trawl catcher processors that participates in both CGOA rockfish and BSAI groundfish fisheries (the Amendment 80 sector) has received exclusive allocations of the major BSAI directed groundfish fisheries. Consequently, the stand down period may no longer be necessary to provide protection to other BSAI fishery participants, and if not, its removal would allow the currently restricted catcher processors to more efficiently manage their harvest.

### **3.2 OMB Statement of Compelling Public Need**

E.O. 12866 requires that each agency identify the problem it intends to address as well as the significance of the problem. The following is a brief description of the problem. More information on the problem, its significance, and the proposed solution can be found throughout this analysis.

The proposed regulatory action under review in this RIR is initiated to remove a regulatory constraint that is no longer necessary. The action is intended to remove the stand down that was needed to address distributional concerns arising from the exclusive allocations under the Rockfish Program. Those limitations are no longer necessary because of the exclusive allocations made under Amendment 80.

## **4 Description of Alternatives**

There are three alternatives to the status quo that would address the problem articulated above. In October 2008, the Council identified Alternative 4 as their preferred alternative, and recommended it to the Secretary of Commerce as Amendment 85 to the GOA FMP.

### **Alternative 1: Status quo.**

Catcher/processors that participate in a Rockfish Program cooperative are restricted from the directed BSAI groundfish fisheries (except for pollock) from July 1 through July 14. Catcher processors that participate in the Rockfish Program limited access sector, and are allocated more than 5 percent of the CP allocation of Central GOA POP, are restricted from fishing in directed BSAI groundfish fisheries (except for pollock) from July 1 until 90 percent of the Central GOA POP that is allocated to the limited access fishery for the CP sector has been harvested.

**Alternative 2:** Exempt CP vessels that are participants in the Rockfish Program cooperative or limited access sector and members of an Amendment 80 cooperative in the BSAI from the July stand down in the BSAI directed groundfish fisheries.

This alternative limits the exemption to CPs that annually choose to participate in an Amendment 80 cooperative.

**Alternative 3:** Exempt CP vessels that are participants in the Rockfish Program cooperative or limited access sector and members of the Amendment 80 sector in the BSAI from the July stand down in the BSAI directed groundfish fisheries.

This alternative extends the exemption to all CPs that are part of the Amendment 80 sector.

**Alternative 4 (Preferred):** Amend the Rockfish Program to remove the provision that requires certain CP vessels to stand down from participating in directed BSAI groundfish fisheries for a period in July.

Alternative 4 would remove the BSAI stand down provision from the Rockfish Program.

#### **4.1 Council's Preferred Alternative**

In October 2008, the Council chose Alternative 4 as their preferred alternative for this action and recommended it to the Secretary of Commerce as Amendment 85 to the GOA FMP. The proposed GOA FMP amendment text is included as Appendix 1. The Council's rationale was that the stand down period was no longer needed to meet the purpose for which it had originally been implemented. The stand down was intended to prevent people who had benefited from participation in a rationalized fishery from being able to transfer their effort into fisheries on which other fishermen depended. Since that time, the implementation of Amendments 80 and 85 has allocated privileges to other fishermen, and the stand down period is no longer needed; however, it does impose costs on fishermen. Removing the stand down would result in management of the fisheries that more effectively reduces costs.

The Council discussed whether, regardless of Amendments 80 and 85, removing the stand down would still create an unwanted effect by giving the fishermen who benefit from the Rockfish Program an advantage by being able to compete in other BSAI fisheries. The likelihood of any meaningful competition seems low, as the available BSAI fisheries in July are not commercially viable. The Council clarified that by removing the stand down period entirely from the GOA FMP and the regulations, the restriction would be lifted from all participants, including those who participate in the Community Development Quota (CDQ) fisheries.

## **5 Existing conditions**

### **5.1 Overview of the Rockfish Program**

The U.S. Congress, through the Consolidated Appropriations Act of 2004 (Section 802), directed NOAA Fisheries (in consultation with the Council) to establish a two year pilot program for managing trawl fisheries for major rockfish species in the Central Regulatory Area of the GOA. In June 2005, the Council adopted the Rockfish Program as Amendment 68 to the GOA FMP. Although the Rockfish Program was originally established as a two year program (for 2007 and 2008), the Magnuson-Stevens Reauthorization Act extended it to 5 years.

Under the Rockfish Program, 95 percent of the directed fishery total allowable catches (TACs) of three target rockfish species (POP, northern rockfish, and pelagic shelf rockfish) are allocated to the Rockfish Program. The remaining 5 percent of the TAC for these species is set aside to support an entry level fishery (50 percent trawl / 50 percent non-trawl) for vessels not eligible to participate. The Rockfish Program apportions the directed fishery TAC into (1) exclusive shares that are allocated to cooperatives, (2) Rockfish Program limited access fisheries, and (3) entry level limited access fisheries. Eligible harvesters can choose to join a cooperative or fish in the limited access fishery, or opt-out of the Rockfish Program (only CP participants). Allocations to cooperatives are based on members' fishing histories. The allocations to the limited access fisheries are based on catch histories of eligible harvesters that choose to fish in the limited access fishery. The fishery is open for the harvest of cooperative allocations from May 1 to November 15. The limited access fisheries open July 1 and close for each target rockfish species upon the harvest of the TAC of that species.

A person is eligible to participate in the Rockfish Program and receive exclusive harvesting privileges if that person holds a License Limitation Program (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. Each year, eligible harvesters elect how to participate in Rockfish Program fisheries. 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 CP 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 CPs who hold LLP licenses credited with target rockfish history may join a CP cooperative with any other eligible CP license holder. Each eligible catcher vessel license may join a specific cooperative, which must be associated with a specific processor identified by its landings history from 1996 to 2000.

In addition to the allocation of target rockfish, cooperatives also receive allocations of valuable "secondary species," which include sablefish, shortspine thornyhead rockfish, Pacific cod (for catcher vessel cooperatives), and shorttraker and roughey rockfish (for CP cooperatives only). Allocations to each sector are based on the average percent of retained catch of the species in the target rockfish fisheries during the 1996 to 2002 qualifying period. The allocation is divided among cooperatives in a sector based on the share of the sector's target rockfish allocation received by the cooperative. The limited access fishery receives no allocation of these species, so catches are limited by regulatory maximum retainable amounts (which allow a certain percentage of incidental species to be retained with a target rockfish harvest). Each cooperative also receives an allocation of halibut prohibited species mortality, which is based on historic halibut bycatch in the target rockfish fisheries and the target rockfish allocation of the cooperative, in a manner similar to the secondary species allocations.

The Rockfish Program includes other important features. Cooperatives must file a cooperative membership agreement with NMFS containing a fishing plan, legal contractual obligations of members, and a monitoring program and must annually report to the Council. Full retention of allocated species is required to eliminate waste. Use caps for individual vessels (5 percent for catcher vessels, 20 percent for CP vessels) and cooperatives (30 percent for catcher vessel cooperatives, 60 percent for CP cooperatives) prevent excessive consolidation of the fleet. Shoreside processors are also subject to use caps (30 percent), unless grandfathered at a higher level based on processing history. Sideboard restrictions and

stand down requirements prevent those cooperative member vessels not fishing their allocations from increasing effort in other fisheries.

### **5.1.1 Rockfish Program Sideboards**

The Rockfish Program includes a suite of GOA groundfish sideboard limits for CP vessels and catcher vessels. The advent of a limited access privilege program, such as the Rockfish Program, has the potential to advantage participants by allowing increased flexibility and optimized efficiency. This flexibility may also allow participants to change their historic fishing patterns and gain a competitive advantage in other fisheries that previously had occurred concurrently. To protect the participants in these other fisheries, sideboard limits were established for Rockfish Program vessels.

There are two broad categories of sideboards in the Rockfish Program, which are summarized in Table 1. The first sideboard category establishes catch limits, which are in effect only during the month of July. They are designed to restrict fishing during the historical month of the rockfish fishery but to allow eligible rockfish harvesters to participate in other fisheries before and after that time period. Sideboards are in effect for federal fisheries and state waters “parallel” fisheries. Management of sideboard limits are similar to other sideboard programs in that once sideboard limits are reached, directed fisheries are closed. Sideboard limits apply to harvest in other GOA rockfish fisheries (pelagic shelf rockfish, POP, and northern rockfish) and halibut prohibited species catch (PSC), which limits participation in GOA flatfish fisheries.

In addition, there are also sideboards that prohibit directed fishing in other fisheries during the historic rockfish season. Catcher/processors that join a rockfish cooperative are restricted from participating in directed fisheries in the BSAI and adjacent state waters from July 1 through July 14. Catcher/processors that elect to fish in the limited access fishery and have more than 5 percent of the sector’s qualified catch of Central GOA POP may not participate in the GOA or BSAI groundfish fisheries from July 1 until 90 percent of the POP that is allocated to the limited access fishery has been harvested. Finally, CP vessels that opt-out of the Rockfish Program may only participate in a directed GOA fishery the license holder has historically participated in during the first week of July in at least two of the years from 1996 to 2002.

**Table 1 Summary of Rockfish Program sideboard limits, for each sector**

Sideboard limits for July	CV Sector	CP Cooperatives	CP Limited Access	CP Opt-out
<b>Catch limits:</b>				
Western GOA: POP, pelagic shelf rockfish, northern rockfish	A collective CV limit for each species in each region. Fisheries closed due to low sideboard limit.	Cooperative-specific limit for each species in each region	A collective limit for all non-cooperative CPs for each species in each region	
West Yakutat: POP, pelagic shelf rockfish, northern rockfish				
BSAI: Pacific cod	CV sector limit	N/A	N/A	N/A
<b>Halibut mortality PSC limits:</b>				
GOA shallow-water flatfish target	shallow-water flatfish closed in the GOA when limit reached	shallow-water flatfish closed in GOA when limit reached	shallow-water flatfish closed in GOA when limit reached	
GOA deep-water flatfish target	directed deep-water flatfish closed due to low halibut sideboard limit	directed deep-water flatfish closed due to low halibut sideboard limit	directed deep-water flatfish closed due to low halibut sideboard limit	
<b>Prohibited fishing:</b>				
BSAI groundfish (except pollock and IFQ sablefish)	July 1-31 directed fishing prohibited for most flatfish and rockfish	July 1-14	From July 1 until 90% of CP Central GOA POP is harvested  (only for CP participants with >5% of the total CP Central GOA POP history)	N/A
GOA groundfish (except IFQ sablefish)	N/A	N/A (assuming monitoring requirements are met)		July 1-14 – unless past activity

## 5.2 BSAI stand down provision in the Rockfish Program

The specific stand down restriction for CPs participating in the BSAI groundfish fisheries was put into place to prevent increased effort by rockfish participants in BSAI fisheries. At the time the Rockfish Program and its stand down restriction were being developed, only the pollock fishery, of BSAI trawl fisheries, was managed with a limited access privilege program; all the other directed BSAI trawl fisheries were subject to a race for fish. The stand down provision was written such that CPs are required to stand down from all directed fisheries except those that had, at that time, already been rationalized: Individual Fishing Quota (IFQ) sablefish and pollock.

The only allocated fishery that was not included in the regulation was the CDQ multispecies fishery. It is likely that not including the CDQ fishery as an exception to the regulation was an unintended omission, as it does not appear from the Council record that the Council proposed to treat the CDQ multispecies fishery differently from the fully-allocated pollock and IFQ sablefish fisheries. Because vessels that are hired to harvest CDQ allocations also participate in other fisheries, including the GOA rockfish fishery, the stand down provision may be triggered by such participation.

Harvest data from 2003 through 2005 (Table 2) show that the BSAI groundfish fisheries historically targeted by head-and-gut trawl CP vessels during July 1 through July 14 were the AI POP and BSAI Pacific cod fisheries. Prior to the implementation of the Rockfish Program, both the AI POP fishery and the GOA rockfish fisheries opened on July 1. Additionally, there is a July 1 seasonal opening date for BSAI Pacific cod, and there has been a seasonal release of halibut PSC in the BSAI on July 1, which is required for many of the flatfish fisheries to open. In 2008, BSAI Amendment 80 became effective, creating sector allocations of AI POP and four other BSAI directed fisheries and the opportunity for cooperatives in the sector of the BSAI trawl fleet (the Amendment 80 sector) that predominantly harvests these species. Also in 2008, BSAI Amendment 85 became effective, which allocates BSAI Pacific cod among sectors, including an exclusive allocation to the Amendment 80 sector. For those vessels

participating in the Amendment 80 cooperative, the cooperative manages an exclusive allocation of these species, as well as exclusive PSC allocations. The cooperative manages the catch of its member vessels in order to remain within its allocations on an annual basis and has no seasonal restrictions on its catch except for those vessels that are sideboarded from their participation in the Rockfish Program.

**Table 2 July 1–14<sup>1</sup> BSAI harvest in metric tons (mt) from head-and-gut trawl CP vessels that participate in the Rockfish Program and are part of the Amendment 80 sector in the BSAI.**

Species	2003	2004	2005
Atka mackerel	53	20	14
Arrowtooth flounder	35	*	29
Sablefish	3	*	*
Flathead sole	*	*	6
Northern rockfish	*		*
Squid and other	*	*	*
Pacific cod	182	56	132
Pollock	38	33	33
POP	816	*	453
Rock sole	*	*	6
Shortraker/Rougheye	*	*	*
Other rockfish	*	*	*
Turbot	*	0	
Yellowfin sole			*
<b>Total</b>	<b>1,228</b>	<b>989</b>	<b>696</b>
<b>Vessel Count</b>	<b>5</b>	<b>5</b>	<b>6</b>

\*Concealed for confidentiality.

<sup>1</sup>Data is for week-ending dates from July 1-14.

The regulations related to the BSAI stand down provision and the definition of “directed fishing” are excerpted below from 50 CFR 679.

**50 CFR 679.82 Rockfish Program use caps and sideboard limits.**

**(f) Sideboard provision--catcher/processor rockfish cooperative provisions**

(3) Prohibition from fishing in BSAI groundfish fisheries.

A vessel subject to a rockfish cooperative sideboard provision under this paragraph (f) may not participate in directed groundfish fisheries in the BSAI and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species between July 1 and July 14, except for sablefish harvested under the IFQ Program and pollock.

**(g) Sideboard provisions--catcher/processor limited access provisions**

(3) Prohibition from directed fishing in GOA and BSAI groundfish fisheries.

If a vessel named on an LLP license used in the rockfish limited access fishery has been assigned rockfish QS [quota share] 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:

- (ii) BSAI 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 sablefish harvested under the IFQ Program or pollock, from July 1 until 90 percent of the Central GOA Pacific ocean perch that is allocated to the rockfish limited access fishery for the catcher/processor sector has been harvested.

## § 679.2 Definitions

Directed fishing means:

- (1) Unless indicated otherwise, any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable amount for that species or species group as calculated under § 679.20.
- (2) With respect to license limitation groundfish species, directed fishing as defined in paragraph (1) of this definition.

### 5.3 Rockfish Program CP sector

There are 15 CP LLP licenses that qualify for the Rockfish Program. The 15 LLP licenses, and the vessels with which they are associated in 2007, are listed in Table 3. The table also identifies how each LLP license and the associated vessel chose to participate in the Rockfish Program in 2007.

Because all vessels have the annual option to join a cooperative, all 15 LLP licenses and the associated vessels may at some time be subject to the required BSAI stand down. If all of the Rockfish Program CP eligible harvesters participated in the limited access fishery, 8 of the 15 would be required to stand down in the BSAI based on the criteria that they hold 5 percent or more of the CP sector's collective holdings of Central GOA POP quota share.

In 2007, a total of 7 vessels were required to stand down in the BSAI for a period in July. The 5 cooperative participants could not participate in directed fisheries from July 1 through July 14. Of the 4 participants in the limited access fishery, only 2 held more than a 5 percent allocation of the total CP allocation of Central GOA POP. Therefore, these two vessels were required to stand down from participation in directed groundfish fisheries in the BSAI from July 1, when the rockfish POP fishery opened, until July 5, when 90 percent of the CP limited access fishery's allocation of Central GOA POP had been harvested.

As a point of comparison, in 2008, the vessels associated with the same 5 LLP licenses have opted to continue to participate in cooperatives, and the vessels associated with 7 LLP licenses have opted to participate in the limited access fishery, of which 3 are required to stand down in BSAI fisheries in July (for a total of 8 vessels required to stand down in 2008).

**Table 3 Catcher processor LLP licenses that qualify for the Rockfish Program, the associated vessel, and type of participation in the Rockfish Program in 2007.**

LLP license number <sup>a</sup>	LLP license holder <sup>a</sup>	Associated vessel <sup>b</sup>	2007 Central GOA rockfish participation <sup>a</sup>		
			Cooperative	Limited Access	Opt Out
1402	JUBILEE FISHERIES, INC.	Vaerdal			✓
1802	ALASKA LEGACY, LLC	Legacy			✓
2014	M/V SAVAGE, INC.	Seafisher			✓
2028	NORTH PACIFIC FISHING, INC.	American No. 1		✓	
2080	ALASKA VICTORY, INC.	Alaska Victory	✓		
2083	THE FISHING COMPANY OF ALASKA, INC.	Alaska Warrior			✓
2524	GOLDEN FLEECE, INC.	Golden Fleece			✓
2905	ALASKA ALLIANCE, LLC	Alliance			✓
3043	ALASKA SPIRIT, INC.	Alaska Spirit	✓		
3662	U.S. FISHING, L.L.C.	U.S. Intrepid		✓	
3740	SAN JUAN SEAFOODS, INC	Sovereignty	✓		
3741	B & N FISHERIES COMPANY	Intrepid Explorer	✓		
3744	SAN JUAN SEAFOODS, INC	Billikin	✓		
3838	AMERICAN SEAFOODS CO LLC.	Aleutian Challenger		✓	
3957	UNIMAK FISHERIES, LLC	Unimak		✓	

<sup>a</sup> Source: NMFS Restricted Access Management, Rockfish Program 2007 LLP licenses, <http://www.alaskafisheries.noaa.gov/sustainablefisheries/goarat/default>.

<sup>b</sup> Source: NMFS Restricted Access Management, License Limitation Program 2007 groundfish LLP licenses, [http://www.alaskafisheries.noaa.gov/ram/daily/llp\\_gf.csv](http://www.alaskafisheries.noaa.gov/ram/daily/llp_gf.csv).

#### 5.4 Participation of Rockfish Program CP vessels in BSAI fisheries

Of the 15 LLP licenses that qualify for the Rockfish Program CP sector, all are endorsed for fishing in the Bering Sea and most for fishing in both the Bering Sea and Aleutian Islands subareas. Ten LLP licenses are assigned to BSAI Amendment 80-qualified vessels that have received initial (2008) quota share in the Amendment 80 fisheries in the BSAI. One LLP license is associated with a vessel that is eligible but has not applied for Amendment 80 quota shares; that vessel predominantly fishes in the GOA. One other LLP license may also qualify for the Amendment 80 sector, as defined by Congress (see Section 5.4.1 below), since it was originally associated with a qualified Amendment 80 vessel, but the vessel is now ineligible to be documented as a U.S. fishing vessel. The LLP license holder may apply for and receive Amendment 80 quota share accrued to the original vessel, but only if the LLP license is associated with a qualified Amendment 80 vessel, which is currently not the case. In 2007, the LLP license was associated with a vessel that fished as a pot catcher vessel in the BSAI Pacific cod fishery between 2003 and 2007. For the purposes of this analysis, only the 10 vessels that received initial Amendment 80 quota share will be considered as part of the Amendment 80 sector.

For the remaining three LLP licenses, one is associated with a vessel that, from 2003 through 2007, has not fished in the BSAI and two with vessels that have fished as a catcher vessel in the BSAI Pacific cod and pollock fishery.

#### **5.4.1 Overview of the Amendment 80 Program**

In 2005, Congress defined the non-American Fisheries Act (AFA) trawl CP sector, also referred to as the Amendment 80 sector, and thus determined who might participate in the Amendment 80 Program. To qualify, vessels must have been a non-AFA trawl CP and have a valid LLP license with a BSAI CP endorsement, and have processed more than 150 mt of groundfish (other than pollock) between 1997 and 2002.

The BSAI Amendment 80 Program was approved by the Council in June 2006. The Amendment 80 Program allocates a portion of TACs for Atka mackerel, POP, and three flatfish species (yellowfin sole, rock sole, and flathead sole), along with an allocation of PSC quota for halibut and crab, to the Amendment 80 sector. All of the allocations are managed as a hard cap. These allocations are issued annually, as quota share (QS) to owners of Amendment 80 vessels (or LLP license holders, if the vessel is lost or is otherwise permanently ineligible to operate in U.S. waters), based on the vessel's catch history from 1998 through 2004. The QS can be fished within a cooperative (composed of at least three separate entities and with at least 30 percent of the Amendment 80 vessels) as aggregated cooperative quota. Amendment 80 QS holders who do not form a cooperative arrangement with others are placed in the Amendment 80 limited access fishery and continue to compete with each other for catch and PSC.

During the development of Amendment 80, the Council recommended a separate action, Amendment 85 to the Fishery Management Plan for the Bering Sea and Aleutian Islands Management Area, to revise allocations of Pacific cod among the many BSAI groundfish sectors. Amendment 85 allocates Pacific cod and additional PSC to nine harvesting sectors, including the Amendment 80 sector. The timing of these amendments coincided so that the Pacific cod allocation was integrated with the Amendment 80 Program as implemented beginning in 2008.

Allocations of target species to the Amendment 80 sector are as follows:

- Yellowfin sole (up to 93 percent of the TAC, depending on overall TAC)
- Rock sole (100 percent)
- Flathead sole (100 percent)
- Atka mackerel (90 – 100 percent of the TAC depending on subarea)
- Aleutian Islands Pacific ocean perch (90 – 98 percent depending on subarea)
- Pacific cod (13.4 percent of the TAC, allocated under Amendment 85)

Allocations of halibut and crab PSC are made to the Amendment 80 sector and the BSAI trawl limited access sector (which includes all trawl vessels that are not in the Amendment 80 sector or fishing for CDQ groundfish). For the Amendment 80 sector, these PSC limits are reduced annually over the first 5 years following implementation. The Amendment 80 Program was implemented at the start of the 2008 fishery.

For the 2008 fishing year (the first year of the Amendment 80 Program), participants formed one cooperative, the Best Use Cooperative, which includes 17 of the 24 vessels that received initial quota share.

#### **5.4.2 Overlap between Rockfish Program CPs and Amendment 80 CPs**

As described above, 10 of the 15 Rockfish Program-qualified LLP licenses and their associated CP vessels received initial quota share for Amendment 80. The first year of the Amendment 80 Program was 2008, and Table 4 provides information on whether each vessel joined a cooperative under Amendment 80 in 2008, and whether each vessel was subject to the BSAI stand down.

**Table 4 Catcher/processor LLP licenses that qualify for the Rockfish Program and their associated vessels, whether they were subject to the BSAI stand down in 2008, and the type of participation for that vessel in Amendment 80 in 2008.**

CP LLP license holders qualifying for the Rockfish Program			Subject to BSAI stand down under Rockfish Program in 2008 <sup>a,b</sup>	2008 Amendment 80 participation <sup>c</sup>	
LLP license number <sup>a</sup>	LLP license holder <sup>a</sup>	Associated vessel <sup>b</sup>		Cooperative	Limited Access
1402	JUBILEE FISHERIES, INC.	Vaerdal		✓	
1802	ALASKA LEGACY, LLC	Legacy		✓	
2014	M/V SAVAGE, INC.	Seafisher	✓	✓	
2028	NORTH PACIFIC FISHING, INC.	American No. 1	✓	✓	
2080	ALASKA VICTORY, INC.	Alaska Victory	✓		✓
2083	THE FISHING COMPANY OF ALASKA, INC.	Alaska Warrior			✓
2524	GOLDEN FLEECE, INC.	Golden Fleece			
2905	ALASKA ALLIANCE, LLC	Alliance		✓	
3043	ALASKA SPIRIT, INC.	Alaska Spirit	✓		✓
3662	U.S. FISHING, L.L.C.	U.S. Intrepid	✓	✓	
3740	SAN JUAN SEAFOODS, INC	Sovereignty	✓		
3741	B & N FISHERIES COMPANY	Epic Explorer <sup>d</sup>	✓		
3744	SAN JUAN SEAFOODS, INC	Ocean Harvester <sup>d</sup>	✓		
3838	AMERICAN SEAFOODS CO LLC.	Aleutian Challenger			
3957	UNIMAK FISHERIES, LLC	Unimak		✓	

<sup>a</sup> Source: NMFS Restricted Access Management, Rockfish Program 2008 LLP licenses, <http://www.alaskafisheries.noaa.gov/sustainablefisheries/goarat/default>.

<sup>b</sup> Source: NMFS Restricted Access Management, License Limitation Program 2008 groundfish LLP licenses, [http://www.alaskafisheries.noaa.gov/ram/daily/llp\\_gf.csv](http://www.alaskafisheries.noaa.gov/ram/daily/llp_gf.csv).

<sup>c</sup> Source: NMFS

<sup>d</sup> Vessel associated with these LLP licenses changed from 2007 to 2008.

## 5.5 Groundfish fisheries available for directed fishing in the BSAI

### 5.5.1 Status of BSAI trawl fisheries

Table 5 identifies all the target groundfish species and species categories in the BSAI for which total allowable catch (TAC) is allocated and the areas and seasons, as appropriate, for which TACs are apportioned. The table also reflects, for 2008 updated through April 28, which target species are open for directed fishing.

For some species, the Council has already put in place allocative programs which limit participation in directed fisheries to a certain class of participants. Pollock is allocated to vessels belonging to specific sectors defined under the American Fisheries Act (AFA). BSAI Amendments 80 and 85 allocated six additional species to a sector level (see Section 5.4.1).

NMFS inseason management determines whether to allow directed fishing for a target species, based on its ability to manage the resultant fishery in such a way as to meet the quota without exceeding the

overfishing limit for each target species. The directed fisheries in the BSAI cannot be prosecuted without bycatch of other species, so incidental catch needs as well as directed fishery needs are taken into account. For some species, the TACs are not large enough to support a directed fishery and can only be harvested incidentally to other target fisheries. This is the case for many rockfish species (Table 5).

Incidental catch needs are not limited to consideration of groundfish species; NMFS inseason management must also account for incidental catch of other species, such as those species whose catch is prohibited while fishing for groundfish. The regulations require halibut, salmon, crab, and herring immediately to be returned to the sea with a minimum of injury when caught in groundfish fisheries. The Council has established PSC limits for all these species in the BSAI, which are apportioned among gear types, sectors, and target fisheries, and the availability of PSC also factors into NMFS's decisions about whether to open a directed fishery for a particular species.

The trawl PSC limits are apportioned to Amendment 80 cooperatives and seasonally to seven target fishery categories: midwater pollock fishery, yellowfin sole fishery, rock sole/flathead sole/"other flatfish" fishery, Greenland turbot/arrowtooth flounder/sablefish fishery, rockfish fishery, Pacific cod fishery, and pollock/Atka mackerel/"other species" fishery. For the vessels of concern in this analysis, halibut PSC<sup>1</sup> is often the biggest constraint, and it has traditionally been allocated to the more valuable fisheries (Pacific cod, flatfish fisheries), while other fishery categories (e.g., Greenland turbot, arrowtooth flounder, and sablefish fisheries) are almost always underfunded (Table 6). For this reason, these latter fisheries are rarely open for directed trawl fishing, even if their TACs are large enough to support a directed fishery. None of the three targets were open for directed trawl fishing in the years 2003 through 2007.

As of 2008, vessels belonging to an Amendment 80 cooperative have a lot more flexibility in their use of halibut PSC. Instead of having the halibut PSC assigned to a specific target fishery, the cooperative receives a lump sum allocation of halibut PSC, which they can dedicate to whichever target fisheries they choose. Consequently, in 2008 the Greenland turbot, arrowtooth flounder, and sablefish fisheries were open to directed fishing but only by Amendment 80 cooperatives (Table 5).

Opportunities for competition in directed BSAI trawl fisheries exist (Table 5). There is a limited access fishery in the Amendment 80 sector in which vessels are actively participating. There is also provision for a non-Amendment 80 trawl limited access fishery for yellowfin sole, POP, and Atka mackerel. There are also six fisheries which are unallocated: Alaska plaice, "other flatfish," arrowtooth flounder, Greenland turbot, sablefish, and squid. The BSAI stand down provision does not apply to directed fishing for pollock.

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<sup>1</sup> Halibut PSC is not apportioned to the midwater pollock trawl fishery.

**Table 5 Status of trawl fisheries, Jan 1 - Apr 28, 2008**

Species	Apportionments	Open for Directed fishing	Bycatch-only Status <sup>a</sup>
Pollock	BS, seasonal allocations, Jan 20, Jun 10	AFA sectors – Jan 20	<u>all other trawl</u> – Jan 1
	AI, seasonal allocations, Jan 20, Jun 10	---	Jan 1
Pacific cod	BSAI, seasonal allocations (Jan 20, April 1, Jun 10)	Amendment 80 cooperatives – Jan 20	<u>Amendment 80 limited access, AFA trawl catcher/processor, Trawl catcher vessel</u> : opened Jan 20, Apr 1; bycatch status by Mar 24, Apr 4 due to TAC
Sablefish	BS, AI	Amendment 80 cooperatives – Jan 20	<u>all other trawl</u> – Jan 1
Yellowfin sole	BSAI	Amendment 80 cooperatives – Jan 20 Amendment 80 limited access – Jan 20 BSAI trawl limited access – Jan 20	
Flathead sole	BSAI	Amendment 80 cooperatives – Jan 20 Amendment 80 limited access – Jan 20	<u>BSAI trawl limited access</u> – Jan 20
Rock sole	BSAI	Amendment 80 cooperatives – Jan 20 Amendment 80 limited access – Jan 20	<u>BSAI trawl limited access</u> – Jan 20
Arrowtooth flounder	BSAI; directed fishing begins May 1	Amendment 80 cooperatives – May 1	<u>All other trawl</u> – Jan 1
Alaska plaice	BSAI	Amendment 80 cooperatives – Jan 20 Amendment 80 limited access – Jan 20 BSAI trawl limited access – Jan 20	---
Other flatfish	BSAI	Amendment 80 cooperatives – Jan 20 Amendment 80 limited access – Jan 20 BSAI trawl limited access – Jan 20	---
Greenland turbot	BS, AI; directed fishing begins May 1	Amendment 80 cooperatives – May 1	<u>All other trawl</u> – Jan 1
Pacific ocean perch	BS	---	Jan 1
	Eastern AI (EAI), Central AI (CAI), Western AI (WAI)	Amendment 80 cooperatives – Jan 20 Amendment 80 limited access – Feb 26 BSAI trawl limited access, CAI, WAI – Feb 26	<u>BSAI trawl limited access, EAI</u> : opened Feb 26, Apr 18; bycatch status Mar 19, Apr 29 due to TAC
Northern rockfish	BSAI	---	Jan 1
Shortraker rockfish	BSAI	---	Jan 1
Rougheye rockfish	BSAI	---	Jan 1
Other rockfish	BS, AI	---	Jan 1
Atka mackerel	BS/EAI, CAI, WAI; seasonal allocations, Jan 20-Apr 15; Sep 1-Nov 1	Amendment 80 cooperatives – Jan 20 Amendment 80 limited access, CAI – Jan 20 BSAI trawl limited access, CAI, WAI – Jan 20	<u>Amendment 80 limited access, EAI, WAI</u> : EAI, opened Jan 20, bycatch status Feb 5 (EAI), Apr 4 (WAI) due to TAC <u>BSAI trawl limited access, EAI</u> : opened Jan 20, Apr 18; bycatch status Jan 20, Apr 20 due to TAC
	CAI, WAI Harvest Limitation Areas (specific opening times)	---	<u>Amendment 80 cooperatives</u> : CAI, opened Jan 22, Feb 13, closed Feb 5, Feb 27; WAI, opened Feb 7, closed Feb 21 <u>Amendment 80 limited access</u> : opened Jan 22, Feb 7; closed Feb 5, Feb 21 <u>BSAI trawl limited access</u> – Jan 1
Squid	BSAI	Jan 20	---

Source: NMFS website, Status of Trawl Gear Fisheries, updated Apr 28, 2008.  
<http://www.alaskafisheries.noaa.gov/2008/trawl2008.txt>

<sup>a</sup> Vessels may only retain the species incidentally while fishing in another directed fishery, up to a specified maximum retainable amount.

**Table 6 2007 and 2008 Halibut mortality PSC limits for trawl fisheries by sector, target fishery, and season**

Year	Gear and sector	Target fishery category	Season	Halibut mortality PSC limit (mt)
2007	Trawl fisheries	Yellowfin sole	Jan 20–Apr 1	312
			Apr 1–May 21	195
			May 21–Jul 1	49
			Jul 1–Dec 31	380
		Rock sole/other flatfish/flathead sole	Jan 20–Apr 1	498
			Apr 1–Jul 1	164
			Jul 1–Dec 31	167
		Greenland turbot/arrowtooth flounder/sablefish		0
		Rockfish	Jul 1–Dec 31	69
		Pacific cod		1,334
Pollock/Atka mackerel/other		232		
2007 Trawl Fishery TOTAL		3,400		
2008	Amendment 80 cooperatives			1,837
Amendment 80 limited access	Yellowfin sole	Jan 20–Jul 1	214	
		Jul 1–Dec 31	149	
		Jan 20–Apr 1	180	
		Apr 1–Jul 1	20	
	Rock sole/other flatfish/flathead sole	Jul 1–Dec 31	24	
		Greenland turbot/arrowtooth flounder/sablefish		0
		Rockfish		50
	Pacific cod		1	
	Pollock/Atka mackerel/other		50	
	BSAI trawl limited access	Yellowfin sole		162
Rock sole/other flatfish/flathead sole			0	
Greenland turbot/arrowtooth flounder/sablefish			0	
Rockfish			3	
Pacific cod			585	
Pollock/Atka mackerel/other			125	
2008 Trawl Fishery TOTAL			3,400	

### 5.5.2 BSAI fleet participation in Amendment 80 fisheries and the Pacific cod fishery

The majority of catch of the five Amendment 80 species are harvested by vessels in the Amendment 80 sector (Table 7). A total of 28 vessels qualified for Amendment 80, of which 24 applied for initial quota share. Ten of these also participate in the Rockfish Program. The remainder of the catch of Amendment 80 species is primarily taken by other trawl vessels. For Pacific cod, the Amendment 80 sector's portion of the catch represents only a small percentage of the total catch.

**Table 7 2006 catch history for Amendment 80 vessels in the five Amendment 80 species and Pacific cod.**

Species	Total catch <sup>a</sup> (mt)	Retained catch <sup>a</sup>	Distribution of total catch, by gear type <sup>a</sup>				Amendment 80 vessels <sup>b</sup>	
			Hook and line	Pot	Pelagic trawl	Non-pelagic trawl	Proportion of total catch	Number of vessels
Flathead sole	17,946	76%	3%	0%	16%	81%	76%	22
Pacific cod	188,176	99%	52%	10%	4%	33%	16%	22
Rock sole	36,451	78%	0%	0%	4%	96%	85%	22
Yellowfin sole	98,373	91%	0%	0%	0%	99%	80%	22
Atka mackerel	61,881	95%	0%	1%	1%	98%	88%	10-13 <sup>c</sup>
AI POP	12,855	83%	0%	0%	6%	94%	86%	10-14 <sup>c</sup>

<sup>a</sup> Source: NMFS 2006 BSAI retained catch and gear reports, <http://www.alaskafisheries.noaa.gov/2006/2006.htm>.

<sup>b</sup> Source: NMFS

<sup>c</sup> Number of vessels varies by Aleutian Islands district.

### 5.5.3 BSAI fleet participation in unallocated directed fisheries

For the six unallocated directed fisheries, Table 8 illustrates the relative distribution of participation by gear type and by the CP vessels that also participate in the Rockfish Program. The flatfish species are almost entirely caught with trawl gear, mostly by the Amendment 80 sector. At one time, these species were considered for allocation via the Amendment 80 Program but were disregarded because they represented only minor value fisheries. Greenland turbot and sablefish are desirable species, as is evident by their high retention rate. Greenland turbot is primarily taken in hook-and-line fisheries. For sablefish, trawl vessels can harvest up to a fixed percentage of the TAC (25 percent in the AI, 50 percent in the BS). Squid is almost exclusively caught incidentally in the midwater pollock fishery and not by Amendment 80 vessels.

**Table 8 Total catch in 2007, and distribution by gear type and catch by the 15 Rockfish Program CPs as a proportion of total catch, of Alaska plaice, "other flatfish," arrowtooth flounder, Greenland turbot, sablefish, and squid.**

Species	Total catch (mt)	Retained catch	Distribution of total catch, by gear type				15 Rockfish Program CP vessels (proportion of total catch)
			Hook and line	Pot	Pelagic trawl	Non-pelagic trawl	
Alaska plaice	19,507	20%	0%	0%	0%	100%	2%
Other flatfish	5,839	27%	1%	0%	9%	90%	44%
Arrowtooth flounder	11,914	44%	14%	1%	23%	62%	23%
Greenland turbot	1,980	86%	77%	1%	5%	16%	6%
Sablefish	2,280	98%	30%	64%	1%	5%	1%
Squid	1,188	58%	0%	0%	98%	2%	1%

Source: NMFS 2007 BSAI gear and retained catch reports, <http://www.alaskafisheries.noaa.gov/2007/2007.htm>, except for data for the Rockfish Program CPs, which comes from the catch accounting database.

## 5.6 Value of BSAI fisheries

### 5.6.1 Value of Amendment 80 fisheries

Relative to first wholesale value, the Amendment 80 sector is more diversified across fisheries than other sectors. Two primary fisheries have historically contributed relatively equal shares of the first wholesale value for the Amendment 80 fleet. Of the Amendment 80 species, yellowfin sole at \$73 million and Pacific cod at \$57 million were two of the largest contributors to sector's gross revenue in 2006. Other fisheries which have historically contributed a significant share of the total first wholesale value for the head-and-gut fleet are rock sole and Atka mackerel.

### 5.6.2 Value of unallocated directed fisheries

There is very little information available about the value of the six unallocated directed trawl fisheries in the BSAI, as they are currently not major target fisheries for trawl vessels. Some indication of their value can be gleaned from the degree to which catch of these species is retained; such information is included in Table 8. The table indicates that retention of sablefish and Greenland turbot is high (98 percent and 86 percent, respectively), retention of squid and arrowtooth flounder is intermediate (58 percent and 44 percent, respectively), and retention of Alaska plaice and "other flatfish" is fairly low (20 percent and 27 percent, respectively).

Table 9 provides information from the annual Economic SAFE report (Hiatt et al. 2007) that attributes a price per pound to CP products in each of the six fisheries, for 2003 through 2006.

**Table 9 Price per pound of at-sea product (dollars), in select BSAI fisheries, 2003–2006.**

Directed fishery	Product type	2003	2004	2005	2006
Alaska plaice & other flatfish	whole fish	\$.96	\$.97	\$1.15	\$1.08
	head and gut	\$.23	\$.43	\$.67	\$.48
	other products	\$.30	\$.32	\$.26	\$.29
	all products	\$.90	\$.92	\$1.09	\$.86
Arrowtooth flounder	whole fish	\$.25			
	head and gut	\$.39	\$.54	\$.72	\$.59
	other products	\$.15	\$.32	\$.25	\$.29
	all products	\$.38	\$.54	\$.72	\$.59
Greenland turbot	head and gut	\$1.29	\$1.46	\$1.83	\$1.71
	other products	\$.86	\$.77	\$.99	\$1.33
	all products	\$1.19	\$1.29	\$1.60	\$1.61
Sablefish	head and gut	\$3.67	\$3.41	\$3.75	\$4.20
	other products	\$1.30	\$1.63	\$1.70	\$1.67
	all products	\$3.58	\$3.35	\$3.68	\$4.10

Source: Hiatt et al. 2007.

### 5.6.3 Product Flows and Markets

The Amendment 80 sector currently produces, almost exclusively, high quality whole and head and gut products. Catch is typically processed quickly after it is brought on board, maintaining relatively high quality across the fleet. A large majority of the primary processed output of this fleet is shipped to Asia for reprocessing, while a small portion of the output remains in the United States going directly to domestic markets. Historically, much of the production that is Asia-bound has been shipped to Japan and

Korea. In recent years, however, China has played a more prominent role in the reprocessing of groundfish from the Amendment 80 sector. In particular, a large portion of the flatfish, Atka mackerel, and AI POP harvested from the BSAI is shipped to China, where it is reprocessed into finished products and then exported to final consumer markets around the world. In addition, some of the various groundfish species are reprocessed in Thailand and Vietnam. After reprocessing, production from the fisheries reaches a variety of markets, including the United States, Europe, Japan, and other Asian countries.

Historically, arrowtooth flounder has had limited value compared to many other groundfish species in the GOA. However, since 1997 markets for arrowtooth flounder have gradually been developing. Although arrowtooth flounder market prices fluctuate widely, this species now supports a viable target fishery. The principle buyers of arrowtooth flounder are China and Japan. The primary product for arrowtooth flounder is the frill: fleshy fins which are used for engawa, a type of sushi. Engawa, normally a premium sushi made from halibut or Greenland turbot, is more affordable using arrowtooth flounder. Unlike most other flatfish, the frill of the arrowtooth flounder is sufficiently sized to cover the rice on sushi, which is critical in sushi markets. The primary market for arrowtooth flounder engawa is Japan.

A secondary product for arrowtooth flounder is fillets. A large portion of the arrowtooth flounder fillets shipped to China are processed and exported to the United States markets as inexpensive flounder. Some portion of the arrowtooth flounder processed in Japan is also sold as fillets in the Japanese market. Recently, some arrowtooth flounder fillets have shown up in European markets.

While these production trends can be discerned, on the whole, it is difficult to assess the distribution of the sector's production among consumer markets, as much of the reprocessed fish enters the world market. As a consequence, effects of production of the fleet on consumer markets are far reaching and difficult to estimate.

## 6 Analysis of the alternatives

The original purpose of the BSAI stand down measure was to prevent Rockfish Program participants from encroaching on other fisheries as a result of the increased flexibility gained through the Rockfish Program. The net effect of the provision, as regulated, is to prevent certain Rockfish Program participants from directed groundfish fishing in the BSAI for a portion of July. In this action, the alternatives would create exemptions to, or deletion of, the stand down provision. The analysis of these alternatives focuses on the effect such exemptions or deletion would have on Rockfish Program participants and participants in BSAI directed groundfish fisheries. The number of affected participants and impacts on participants, by alternative, are listed in Sections 6.1 and 6.2. Section 6.3 examines the impact of the alternatives on unallocated BSAI directed fisheries; Section 6.4 looks at the alternatives' effects on allocated BSAI directed fisheries. The alternatives will not affect other GOA fisheries, as the action does not change the timing or allocation of Rockfish Program participation, and Rockfish Program CPs are already sideboarded in other GOA fisheries (and these GOA sideboard provisions are unaffected by the alternatives under consideration).

No effects are expected on the physical or biological environment, or components of that environment, as a result of this action.

### 6.1 Affected participants

#### Alternative 1, Status Quo

Under the status quo, CPs that join a rockfish cooperative, or fish in the limited access fishery and hold more than 5 percent of the CP Central GOA POP history, are subject to a July stand down provision in the BSAI. Chapter 5 describes existing conditions for the 15 CPs that qualify for the Rockfish Program and which may be affected by this action. All 15 CPs would be subject to the BSAI stand down if they joined a rockfish cooperative. If all 15 CPs elected to fish in the limited access fishery, only 8 would be required to stand down in the BSAI in July based on their Central GOA POP history.

In 2007, a total of 7 vessels were required to stand down in the BSAI for a period in July. All 5 cooperative participants were subject to the stand down. Of the 4 participants in the limited access fishery, only 2 held more than a 5 percent allocation of the total CP allocation of Central GOA POP, for a total of 7 CPs subject to the BSAI stand down.

In 2008, the vessels associated with the same 5 LLP licenses opted to continue to participate in cooperatives. Vessels associated with 7 LLP licenses opted to participate in the limited access fishery, of which 3 were required to stand down in BSAI fisheries in July (for a total of 8 vessels required to stand down in 2008).

#### Alternative 2, Exempt Rockfish Program CPs that are members of a BSAI Amendment 80 cooperative

Under Alternative 2, Rockfish Program CPs that are members of a BSAI Amendment 80 cooperative will no longer be required to adhere to the BSAI stand down provision. This would parallel the other exceptions to the stand down regulation where directed fishing for fully rationalized pollock and IFQ sablefish is permitted during the stand down period. Of the 15 CP LLP licenses that qualify for the Rockfish Program, the vessels associated with 10 of them received initial quota share in the Amendment 80 Program for 2008. If all 15 eligible CP licenses joined a Rockfish cooperative, the 10 CPs that are eligible for the Rockfish Program and the Amendment 80 sector would be exempt from the BSAI stand down under this alternative only if they joined an Amendment 80 cooperative. Seven of these 10 CPs

joined an Amendment 80 cooperative in 2008. The remaining 5 CPs that are not eligible for the Amendment 80 sector would still be subject to the BSAI stand down under this alternative.

If all 15 eligible Rockfish Program CPs chose to participate in the limited access sector, 8 of the 15 would be subject to the stand down, based on their allocation of rockfish POP quota share. Of these 8 CPs, 6 are also part of the Amendment 80 sector in the BSAI and would be exempt from the BSAI stand down under this alternative if they joined an Amendment 80 cooperative.

In 2008, 8 Rockfish Program CPs were subject to the stand down period (5 in Rockfish Program cooperatives and 3 in the limited access fishery). Of those 8 CPs, 3 were members of an Amendment 80 cooperative.

### **Alternative 3, Exempt Rockfish Program CPs that fish in the BSAI Amendment 80 sector**

Under Alternative 3, the exemption to the BSAI stand down provision will apply to any Rockfish Program CP which is a member of the BSAI Amendment 80 sector. Ten of the 15 Rockfish Program CPs received initial quota share for the Amendment 80 Program in 2008. If all 15 Rockfish Program CPs join cooperatives, all 10 CPs that qualify for the Amendment 80 sector would be exempt from the BSAI stand down under this alternative.

If all 15 Rockfish Program CPs participated in the Rockfish Program limited access fishery, 8 Rockfish CPs would be subject to the BSAI stand down. Of these 8 CPs, six are also part of the Amendment 80 sector in the BSAI and would be exempt from the BSAI stand down under this alternative, whether or not they elected to join and Amendment 80 cooperative.

In 2008, 8 Rockfish Program CPs were subject to the stand down period (5 in Rockfish Program cooperatives and 3 in the limited access fishery). Of those 8 CPs, 5 fished in the Amendment 80 sector: 3 as part of a cooperative, and 2 in the limited access sector.

### **Alternative 4 (Preferred), Remove from the Rockfish Program the BSAI stand down provision for CPs**

Under Alternative 4, the preferred alternative, the BSAI stand down requirement would be deleted from the Rockfish Program. The stand down provision would no longer be required for any of the 15 Rockfish Program CPs.

## **6.2 Impact of the BSAI stand down period on Rockfish Program participants**

The BSAI stand down period in 2007 prevented seven Rockfish Program CP participants from participating in BSAI directed groundfish fisheries for a period in early July. In 2007, without the stand down, these vessels might have contributed to a race for fish in the AI POP fishery, which opened on July 1, or Bering Sea flatfish fisheries, which would have received a seasonal allocation of halibut PSC beginning July 1, or BSAI Pacific cod. In 2008, however, BSAI Amendments 80 and 85 were implemented, which provides sector allocations to vessels fishing for AI POP, Pacific cod, three flatfish species, and Atka mackerel. The pattern of fishing by head-and-gut trawl vessels participating in the Amendment 80 Program will change substantially as a result.

Under **Alternative 1**, the status quo, the BSAI stand down provision constrains those vessels to which it applies. Rockfish CPs that form cooperatives can fish their GOA rockfish allocation beginning May 1. In 2007, the rockfish cooperatives' allocations were mostly harvested in June (S. Whitney, personal communication, May 14, 2008). During July 1 through July 14, these vessels were restricted from all directed fishing in the BSAI and GOA, except in the IFQ sablefish and BSAI pollock fisheries. The stand

down requirement adversely impacts vessel owners, as vessels resting idle can be economically inefficient and costly. At the same time, 5 vessels still chose to belong to cooperatives in 2007 and 2008, so the benefit of the cooperative clearly outweighed the cost of the stand down period for these vessels.

It is possible that the existence of the stand down provision may be an important factor for each vessel in deciding whether and how to participate in the Rockfish Program. In 2007, the first year of the Rockfish Program, 6 vessels opted out of the Rockfish Program (40 percent of CP vessels), and in the second year, 4 opted out. The stand down provision is much more constraining for those choosing to participate in rockfish cooperatives (a two week stand down), and only 5 of the 15 eligible CPs formed cooperatives. For the 4 vessels participating in the rockfish limited access fishery in 2007, only 2 qualified for the stand down, which applied from July 1 through July 5, when 90 percent of the Central GOA POP allocation to the limited access fishery was harvested. In 2007, the stand down did not appear to have a major impact on participating limited access vessels because the 90 percent threshold was crossed early in the fishery, and the restriction caused little delay for these vessels. However, the risk of a stand down of unknown length may have deterred some vessels from entering the limited access fishery. Because the threshold requires 90 percent of the quota of all limited access vessels to have been harvested before the restriction is lifted, the degree to which the restriction will be constraining for an individual vessel is variable from year to year.

If the stand down provision is a reason for CPs to opt out of the Rockfish Program, this benefits all Rockfish Program participants that do choose to participate, as their rockfish quotas will be proportionally larger.

**Alternatives 2, 3, and Preferred Alternative 4** would benefit some or all Rockfish Program participants by freeing them from the constraints of the stand down restriction. The constraint is most severe for members of a rockfish cooperative who have a regulated two week stand down and less so for vessels fishing in the limited access fishery (in 2007, the stand down period ended on July 5). Removing the stand down restriction may serve to remove a disincentive for CPs to participate in the Rockfish Program, or if they do, could remove the disincentive to join a cooperative. As each CP may annually choose whether or not to join a cooperative, fish in the limited access fishery, or opt out of the Rockfish Program altogether, the degree to which vessels will benefit can vary from year to year. Additionally, vessels that have historical participation in the BSAI groundfish fisheries will receive the most benefit from the exemption to or deletion of the stand down provision. The vessels with the most historical participation in BSAI fisheries are those CPs that also participate in the Amendment 80 fisheries in the BSAI.

To the extent that the stand down provision has been a disincentive either to participate in the Rockfish Program, or at least to join a cooperative under the Rockfish Program, the removal of the stand down restriction for some or all eligible CPs would remove this disincentive. Consequently, it is possible that once such a change goes into effect, there may be more Rockfish Program CPs that join cooperatives. To the extent that this change brings into the Rockfish Program some of the CPs who have previously opted out of the fishery, this will affect annual allocations for all Rockfish Program participants to some degree.

### **6.3 Impact in unallocated BSAI directed fisheries**

As described in Section 5.5, there were six BSAI directed groundfish fisheries that were unallocated and open for directed fishing in 2008 to some portion of the BSAI trawl fleet. These were the following: Alaska plaice, “other flatfish,” arrowtooth flounder, Greenland turbot, sablefish, and squid. Table 8 describes the total BSAI catch in each of those fisheries and how that catch was apportioned among sectors in 2007. To date, these species have primarily been caught incidentally in other target fisheries. The vessels participating in the Rockfish Program in 2007 caught a relatively significant proportion of “other flatfish” and arrowtooth flounder, but very little of the other species.

The proposed alternatives would potentially allow the Rockfish Program CP vessels to fish in these BSAI directed fisheries in early July. Table 10 demonstrates the importance of this period for catch of these species, as compared to catch during the rest of the year. Catch during this particular time period is often influenced by fishery openings in the target fisheries in which these incidental species are caught: for example, the AI POP fishery historically opened on July 1 and a seasonal apportionment of halibut PSC for the BSAI flatfish trawl fisheries was also released on July 1. Table 10 shows catch of the 6 species during the three week period encompassing July 1 through 14, as compared to total annual catch, for the years 2003 through 2007. The July period was relatively unimportant for catch of Alaska plaice, “other flatfish,” Greenland turbot, and squid (except for 2006), and of slight importance for sablefish. A much higher percentage of the arrowtooth flounder was caught during the July period in all years. Arrowtooth flounder was predominantly caught incidentally in flathead sole, AI POP targets, although with some catch in an arrowtooth flounder target fishery, and incidental catch in Pacific cod and “other flatfish” target fisheries. Trawl-caught Greenland turbot and sablefish were mainly caught incidentally in the AI POP fishery. Alaska plaice was caught primarily in the flathead sole directed fishery, and “other flatfish” was distributed between flatfish and Pacific cod targets, except in 2007, where the majority of catch was in the “other flatfish” directed fishery. As is to be expected, the vessels participating in the Rockfish Program contributed relatively little to the catch of these BSAI species in July (as this is when they would have been participating in the GOA rockfish fishery, or, in 2007 subject to the BSAI stand down).

Under **Alternative 1**, the stand down provision would continue in place, and vessels subject to the stand down would continue to be restricted from participating in BSAI directed fisheries in early July.

**Table 10 Total catch (mt) during the three week period encompassing July 1-14**

Species	Year	Total annual catch	Total catch during 3 week period	3 week period as % of annual catch	Catch during 3 week period			
					Fixed gear total	Trawl total	Amendment 80 total	15 RPP vessels
Alaska plaice	2003	9,673	34	0%	0	34	34	0
	2004	7,889	63	1%	0	63	62	*
	2005	11,195	127	1%	0	127	127	*
	2006	17,310	215	1%	0	215	215	5
	2007	19,507	208	1%	0	208	208	15
Other flatfish	2003	3,458	147	4%	2	145	131	56
	2004	2,219	160	7%	*	160	148	97
	2005	2,560	220	9%	0	219	187	32
	2006	1,962	110	6%	0	110	25	9
	2007	1,980	247	12%	*	247	235	204
Arrowtooth flounder	2003	2,873	2,426	84%	122	2,303	2,149	352
	2004	4,993	1,676	34%	77	1,599	1,514	319
	2005	4,591	1,343	29%	59	1,284	1,255	249
	2006	3,157	1,193	38%	291	901	847	301
	2007	5,839	1,137	19%	105	1,031	1,011	435
Greenland turbot	2003	12,900	1,062	8%	670	393	391	27
	2004	18,236	568	3%	461	106	106	7
	2005	14,231	945	7%	755	191	190	*
	2006	13,309	675	5%	590	85	83	*
	2007	11,914	633	5%	577	55	55	7
Sablefish	2003	1,936	284	15%	199	85	84	13
	2004	1,993	157	8%	101	55	50	9
	2005	2,551	272	11%	115	157	156	10
	2006	2,184	212	10%	150	63	61	*
	2007	2,280	184	8%	150	35	35	15
Squid	2003	1,282	89	7%	*	89	16	10
	2004	1,014	9	1%	0	9	6	2
	2005	1,185	108	9%	0	108	6	2
	2006	1,416	677	48%	0	677	6	41
	2007	1,188	6	1%	0	6	5	*

Source: NMFS catch accounting database.

\* data concealed for confidentiality

Under **Alternative 2**, vessels participating in Amendment 80 cooperatives would be exempt from the stand down restriction. Directed fisheries for sablefish, Alaska plaice, “other flatfish,” and squid fisheries are open to Amendment 80 cooperative participants from January 20. Directed fisheries for Greenland turbot and arrowtooth flounder are open to cooperative participants from May 1 (Table 5). In all cases, participants in the Amendment 80 cooperatives have ample opportunity to conduct directed fisheries for these unallocated species and to increase their historic catch of these species, at times other than during the early July period. Amendment 80 cooperative participants have discretion over their own halibut PSC allocation, so there is no seasonal release of halibut PSC that would affect their ability to participate in directed fisheries at any time of the fishing year.

Directed trawl fisheries for arrowtooth flounder, Greenland turbot, and sablefish are only open to Amendment 80 cooperative participants (Table 5), so there is no possibility that other trawl vessels could be disadvantaged by removing the exemption for these vessels. There is a gear allocation between trawl

and fixed gear for sablefish, so other gear sectors would not be disadvantaged by increased participation in the sablefish fishery by the Rockfish Program/Amendment 80 cooperative participants. Greenland turbot is predominantly taken by the hook-and-line fleet (Table 8), so while an increase in the trawl fishery's annual catch might affect hook-and-line participants, Table 10 does not indicate that the July period is a particularly important period for the turbot fishery. The flatfish species are predominantly caught by the non-pelagic trawl fishery (Table 8), especially during the July period (Table 10). Squid is caught pelagically, and has not been of interest to the head-and-gut trawl fleet.

Based on this information, it does not appear that Alternative 2 would provide any adverse impact on other participants in unallocated BSAI directed fisheries. Because Amendment 80 cooperative participants have the flexibility to fish for these unallocated species during other times of the year, the July stand down does not protect other participants in the unallocated fisheries.

**Alternative 3** expands the group of vessels exempted from the BSAI stand down to include all participants in the Amendment 80 sector. The discussion of Amendment 80 cooperative members (under Alternative 2) also applies under this alternative. The number of directed fisheries open to Amendment 80 limited access participants is fewer than those for Amendment 80 cooperatives, as halibut PSC for trawl vessels other than those in Amendment 80 cooperatives is allocated by target fishery; consequently, the PSC is allocated to more valuable target fisheries. As a result, of the unallocated species, only the Alaska plaice, "other flatfish," and squid fisheries are open to directed fishing (Table 5). As noted above, the head-and-gut trawl fleet has no history with squid catch (Table 8). The Alternative 3 exemption would allow additional vessels to enter BSAI directed fisheries in early July, which would coincide with a seasonal release of halibut PSC for the yellowfin sole and rock sole/"other flatfish"/flathead sole target fisheries. Traditionally, vessels have concentrated on fishing their allocations of these more valuable target species starting on July 1, so it is likely that this fishing pattern would be the same if the Rockfish Program limited access participants were allowed to fish in the BSAI starting July 1. There is some possibility that the rockfish participants could unduly increase their catch of "other flatfish" during this period, however they are still fishing in an Amendment 80 limited access fishery and will be racing to fish their allocations. In the past, this fleet has not been able to unduly target Alaska plaice and "other flatfish" due to halibut constraints (which is why these species were not included in the Amendment 80 Program); for those vessels not fishing in a cooperative, the same constraints continue. Additionally, the fisheries open on January 20, and there are seasonal releases of halibut PSC before this time period, so the July period is not the only opportunity for these vessels to change their harvest patterns for these species, if they are so enabled under the Amendment 80 Program changes.

As a result, the exemption provided under Alternative 3 does not appear to provide any undue impact on other fishery participants in the unallocated BSAI directed fisheries.

The last alternative, **Preferred Alternative 4**, would remove the stand down restriction entirely from the Rockfish Program. The discussion for the vessels affected under Alternatives 2 and 3 applies here. Five additional vessels would no longer have the potential to be restricted from fishing in the BSAI in early July. The vessels in question do not participate as CPs in the BSAI. One of the vessels has not participated in BSAI fisheries in 2003 through 2007; one participated only in one year but not in July; two others participated only in the early part of the year. The last vessel has in the past participated as a CV in the pollock fishery during the July time period. The unallocated fisheries are low-value fisheries without established markets, and these vessels all have the opportunity to fish in these fisheries throughout the year, not just in the July time period. Consequently, there is no indication that implementing Alternative 4 would result in any adverse effect from these vessels.

## 6.4 Impact in allocated BSAI directed fisheries

Trawl fisheries in the BSAI that are all or partly allocated are the pollock fishery, the CDQ multispecies fishery, and the Amendment 80 (and Amendment 85) fisheries: yellowfin sole, rock sole, flathead sole, AI POP, Atka mackerel, and Pacific cod. The pollock fishery is completely allocated for CPs and CVs, and as no encroachment on this fishery is possible, the BSAI stand down provision does not apply to directed fishing for pollock. The CDQ multispecies fishery is also fully allocated to the BSAI CDQ groups. As described in section 5.4.1, the Amendment 80 species are predominantly allocated to the vessels that fish in the Amendment 80 sector. Rock sole and flathead sole are 100 percent allocated to the Amendment 80 sector, the other three Amendment 80 species are over 90 percent allocated to the sector; and the sector receives a 13.4 percent allocation of Pacific cod (Amendment 85).

Under **Alternative 1**, the Amendment 80 cooperative members are hampered from using their allocation efficiently because the vessels that also participate in the Rockfish Program are prohibited from harvesting their exclusive allocation in the Bering Sea during the period in July. This inefficiency also affects the vessels harvesting the CDQ allocations for all species except pollock. The extent of the adverse impact resulting from this inefficiency is difficult to quantify.

**Alternative 2** exempts Rockfish Program CPs that are members of an Amendment 80 cooperative from the BSAI July stand down restriction. Amendment 80 H&G trawl CP vessels that form a cooperative in the BSAI manage their allocations, both of target species and halibut PSC, as hard caps. Under hard cap management, when the cooperative's allocation of one species is fully harvested, all directed fishing by the cooperative for that species, as well as any directed fisheries in which the species could be caught incidentally, closes. This means that vessels participating in an Amendment 80 cooperative will not be able to encroach upon fisheries for which they receive a dedicated allocation. Alternative 2 benefits Amendment 80 cooperative members by allowing them to fish their allocation more efficiently. Additionally, for those vessels that are also hired to fish the CDQ allocation for the CDQ groups, but are also part of the Amendment 80 cooperative, this alternative would also restore flexibility to that fishery.

Under **Alternative 3**, the additional participants that are exempt from the stand down are those that participate in the Amendment 80 limited access sector. The discussion of impacts for Amendment 80 cooperative members is captured above under Alternative 2. Although Amendment 80 cooperative and limited access membership can vary from year to year, for 2008, Table 4 demonstrates the relative participation of the Amendment 80 vessels: 7 in cooperatives and 3 in the limited access fishery.

In 2008, 7 of 24 vessels fished in the Amendment 80 limited access fishery: six vessels owned by one company and a single vessel with little aggregate quota share that is owned by a company whose other vessels participate in the cooperative. The Amendment 80 limited access sector receives a separate allocation of target species and also receives seasonal allocations of halibut PSC (including on July 1) for flatfish species (Table 6). Unfair competition could result from this alternative if there are vessels in the Amendment 80 limited access fishery that are not also in the Rockfish Program. The rockfish vessels would have the opportunity to catch their quota earlier in the year, in a rockfish cooperative, and then compete in early July in the BSAI.

In 2008, of the six Amendment 80 limited access fishery vessels that were owned by the same company, three of those six also participated in the GOA rockfish fishery. The final Amendment 80 limited access vessel did not qualify for the Rockfish Program. The Alternative 3 exemption might have allowed the exempted rockfish vessels to disadvantage the single vessel in the Amendment 80 limited access fishery, except that the single vessel in fact has little historical participation in the Amendment 80 target fisheries. Based on this understanding, the exemption would create no unfair competitive advantage. In fact,

Alternative 3 may decrease the possibility that the other vessel will encroach on the company's catch history.

**Alternative 4 (the preferred alternative)** adds five other affected vessels, by removing the stand down provision altogether from the Rockfish Program. The discussion of impacts for BSAI Amendment 80 participants is captured above under Alternatives 2 and 3. None of five additional vessels are part of the Amendment 80 Program, and they would only be able to encroach on BSAI fisheries as part of the BSAI trawl limited access fishery, which is open to directed fishing for yellowfin sole, AI POP, and Atka mackerel, but whose allocations for these fisheries is capped at a low percentage of overall TAC (see Section 5.4.1). The vessels could also fish as trawl catcher vessels in the Pacific cod fishery, but early July is not a productive time period for Pacific cod fishing. In all cases, these fisheries are open to these vessels during other periods than just the July stand down period, so the restriction is not the only obstacle to encroachment. However, none of these vessels have fished in the given target fisheries at any time other than in the early part of the year, so there is no history of participation that might be expanded with the removal of the restriction. The probability of an adverse impact from removing the restriction for these five vessels appears to be low.

## 6.5 Summary of alternatives

Table 11 lists the number of CPs that would potentially be affected by the alternatives under consideration.

**Table 11 Number of CPs affected by alternatives to remove the BSAI stand down**

	<b>Alternative 1 – status quo</b>	<b>Alternative 2 – exempt Rockfish Program CPs in Amendment 80 cooperatives</b>	<b>Alternative 3 – exempt Rockfish Program CPs fishing in Amendment 80 sector</b>	<b>(Preferred) Alternative 4 – remove stand down provision from Rockfish Program</b>
<b>Maximum number of CPs potentially affected</b>	0	12	12	15
<b>Number of CPs affected in 2008</b>	0	3	5	8

Table 12 summarizes the effects of the exemption.

**Table 12 Effects of alternatives to exempt Rockfish Program participants from the BSAI stand down**

<p><b>Effects of exempting rockfish participants who are Amd 80 cooperative members (Alternatives 2, 3, and Preferred Alternative 4)</b></p>	<p>The exemption results in increased flexibility and efficiency for vessels to determine fishing patterns and potentially reduces costs of leaving the vessel idle. The benefit is greatest for vessels in a rockfish cooperative. The exemption would remove a disincentive to participate in the Rockfish Program, or if participating, to join a rockfish cooperative.</p> <p>There is no possibility of encroachment in allocated BSAI fisheries. There is an opportunity for exempted vessels to encroach in unallocated directed fisheries, but it is not specific to the July period of the BSAI stand down provision, as unallocated fisheries are open to Amendment 80 cooperatives year-round.</p>
<p><b>Effects of exempting rockfish participants who are Amd 80 limited access members (Alternative 3 and Preferred Alternative 4)</b></p>	<p>The exemption results in increased flexibility and efficiency for these vessels to determine fishing patterns and potentially reduces costs of leaving the vessel idle. The benefit is greatest for vessels in a rockfish cooperative.</p> <p>There is a possibility for exempted vessels to encroach in the Amendment 80 limited access fishery, as exempted vessels which would historically be participating in the GOA rockfish fisheries would now be able to compete for Amendment 80 target species. However, based on 2008 membership of the Amendment 80 limited access fishery, no unfair competition would result from the exemption.</p> <p>There are fewer unallocated fisheries open to directed fishing by the Amendment 80 limited access sector (than are open to Amendment 80 cooperatives); the exemption creates a low possibility of encroachment into unallocated fisheries as the exempted CP vessels would be fishing for target species during this time.</p>
<p><b>Effects of exempting rockfish participants who are non-Amd 80 participants (Preferred Alternative 4)</b></p>	<p>The exemption results in increased flexibility and efficiency for these vessels to determine fishing patterns and reduces costs of leaving the vessel idle. The benefit is smaller for these vessels, as they have less history in the BSAI.</p> <p>There are fewer unallocated fisheries open to directed fishing by the BSAI trawl limited access sector; the exemption creates a possibility of encroachment by vessels into unallocated fisheries, but it is capped by the small allocations to the BSAI trawl limited access sector, and exempted vessels have limited recent history fishing in the BSAI.</p> <p>There is a possibility of encroachment in Amendment 80 target fisheries, but exempted vessels have no recent history of processing in the BSAI or participation in these fisheries. The vessels have some history as catcher vessels in the Pacific cod fishery, but any risk of encroachment is not specific to the early July period of BSAI stand down provision.</p>

A minor overall net benefit to the Nation may arise from this action. Exempting the CP vessels from the BSAI July stand down period has the potential to increase efficiency and decrease costs for these vessels. Progressively under each alternative, more vessels are exempted from the stand down constraint. Based on the analysis, there appears to be little incentive for the exemption to result in a race for fish, which could be disadvantageous for net benefits to the Nation.

## 7 Final Regulatory Flexibility Analysis (FRFA)

### 7.1 Introduction

The Regulatory Flexibility Act (RFA), first enacted in 1980, and amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601-612), was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either, (1) “certify” that the action will not have a significant adverse effect on a substantial number of small entities, and support such a certification declaration with a “factual basis,” demonstrating this outcome, or, (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial and a Final Regulatory Flexibility Analysis (an IRFA and a FRFA) that describes the impact of the proposed rule on small entities.

Data on cost structure, affiliation, and operational procedures and strategies in the fishing sectors subject to the proposed regulatory action are insufficient, at present, 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 those terms are defined under RFA). Based upon all available information it is not possible to “certify” the outcome of the proposed action. Therefore, this FRFA has been prepared and is included in this analytical package.

Section 604(a) of the Regulatory Flexibility Act describes the requirements for a FRFA:

When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain--

- (1) a succinct statement of the need for, and objectives of, the rule;
- (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- (3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- (4) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the

requirement and the type of professional skills necessary for preparation of the report or record; and

(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

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

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

## **7.2 Definition of a Small Entity**

The RFA recognizes and defines three kinds of small entities: (1) small businesses; (2) small non-profit organizations; and (3) and small government jurisdictions.

**Small businesses.** Section 601(3) of the RFA defines a “small business” as having the same meaning as a “small business concern,” which is defined under Section 3 of the Small Business Act. A “small business” or “small business concern” includes any firm that is independently owned and operated and not dominant in its field of operation. The U.S. Small Business Administration (SBA) has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States, or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor. A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust, or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business “involved in fish harvesting” is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates) and employs 500 or fewer persons, on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to

another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when (1) a person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) if two or more persons each owns, controls, or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners control the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor or subcontractor is treated as a participant in a joint venture if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such a relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

**Small organizations.** The RFA defines "small organizations" as any nonprofit enterprise that is independently owned and operated and is not dominant in its field.

**Small governmental jurisdictions.** The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

### 7.3 Need for and objectives of the rule

The proposed action considers alternatives for exempting certain CP vessels that are subject to a July stand down in the BSAI directed groundfish fisheries from this restriction, or removing the restriction altogether.

The objective of the proposed action is to remove the restriction governing some or all CP vessels that participate in the Rockfish Program, which prevents those vessels from directed fishing in the BSAI groundfish fisheries during a period in July. This action would implement the Council's preferred alternative by amending the Rockfish Program regulations by deleting the BSAI directed fishing prohibitions for CP vessels.

The July BSAI stand down period was instituted in order to prevent participants in the Rockfish Program from unduly benefiting from their rockfish allocation by increasing their effort in BSAI fisheries. Since the implementation of the Rockfish Program, BSAI Amendments 80 and 85 have been implemented, which allocate exclusive privileges for various BSAI groundfish species (Atka mackerel, AI POP,

flathead sole, Pacific cod, rock sole, and yellowfin sole) to the head-and-gut trawl CP sector (the Amendment 80 sector) in the BSAI, and allow vessels in the sector to form cooperatives. Most of the Rockfish Program CP vessels are also part of the BSAI Amendment 80 sector.

Given that the species allocated under BSAI Amendments 80 and 85 comprise the major directed fisheries in the BSAI, and most CP participants in the Rockfish Program have already been allocated exclusive privileges for harvesting these BSAI species, the July stand down may no longer be required as a protection measure. Removing the stand down restriction may allow the currently restricted CP vessels to more efficiently manage their harvest.

#### **7.4 Public comments**

The proposed rule for this action was published on April 6, 2009. NMFS subsequently discovered an error in the proposed regulatory text and published a notice to correct the error on May 13, 2009. The correction notice also extended the public comment period on the proposed rule by 30 days from May 21, 2009, to June 22, 2009. An IRFA was prepared and summarized in the classifications section of the preamble to the proposed rule. NMFS received three public comments on the proposed rule. These comments did not address the IRFA.

#### **7.5 Number of Small Entities**

The proposed action directly regulates some or all CP vessels that qualify for the Rockfish Program. Under the status quo, the stand down period only applies to qualified CPs that participate in a rockfish cooperative, or participate in the rockfish limited access fishery and hold rockfish quota share that is greater than 5 percent of the POP quota share allocated to the CP sector. Qualified CP participants must select, on an annual basis, whether they participate in a cooperative, in the limited access fishery, or whether they opt out of the Rockfish Program.

The proposed action directly regulates all CP vessels that qualify for the Rockfish Program. There are a total of 15 such CP LLP licenses representing the maximum number of entities that could be directly economically impacted under the proposed action in any given year. That is, in the case that all 15 CPs chose to join a rockfish cooperative, the action's BSAI stand down exemption would apply to all.

Vessel operators that would be considered large entities, for RFA purposes, are either affiliated (e.g., as owners of multiple vessels) or participate in a cooperative and meet the gross receipts test. In either instance, they are "large entities" if they have aggregate gross annual receipts, from all sources, worldwide, exceeding \$4.0 million. If all 15 CPs 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 purposes of the RFA. Available catch and earnings data suggest that cooperatives created under this program would likely have aggregate gross receipts, from all sources, including affiliates worldwide, in excess of the \$4.0 million threshold, specified by the Small Business Administration.

If all 15 CPs chose to participate in the limited access sector, 8 of the 15 would be subject to the stand down, based on their allocation of rockfish POP quota share, using the threshold formula described above. Of these eight CPs, six are also part of the Amendment 80 sector in the BSAI. Four of these vessels are part of the Amendment 80 cooperative, and the other two are affiliated, as they are owned by the same company. The remaining two vessels are also affiliated by common ownership. Hence, all eight CPs would be considered large entities for purposes of the RFA.

In 2007, five CPs participated in rockfish cooperatives, four in the limited access fishery, and six opted out of the Rockfish Program. Of the four participating in the limited access fishery, the stand down period applied to only two, for reasons detailed in the RIR. Therefore, in 2007, there were seven entities that would have been directly regulated, had the proposed action been in effect in that fishing year. In 2008, there was one additional vessel to which the stand down period applied. In 2007 and 2008, all of the vessels that would have experienced some direct impact from the proposed regulation, had it been in place, would be considered large entities for the purposes of RFA.

At present, empirical data on affiliations in this sector, available to the analysts, are incomplete. Based upon the information which is available, it does not appear that the proposed action has the potential to directly regulate any small entities. Nonetheless, it is not possible to certify this outcome, as provided under the RFA. Therefore, an IRFA and a FRFA were prepared as required.

## **7.6 Recordkeeping, reporting and other compliance requirements**

Implementation of the proposed action to remove the July stand down requirement in BSAI directed groundfish fisheries would not change the overall reporting structure and recordkeeping requirements of the vessels in the Rockfish Program.

## **7.7 Significant alternatives to the proposed rule**

The preferred alternative removes the July stand downs that apply to CPs that participate in the Rockfish Program. The Council considered three alternatives that would accomplish the stated objective. These alternatives are listed in the RIR (Section 4). It does not appear that any of the alternatives would directly regulate small entities; therefore, there are no alternatives that minimize significant impacts of the proposed rule on small entities.

# **8 National Standards and Fisheries Impact Statement**

## **8.1 National Standards**

Below are the 10 National Standards as contained in the Magnuson-Stevens Act, and a brief discussion of the consistency of the proposed alternatives with each of those National Standards, as applicable.

### ***National Standard 1***

Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery

Nothing in the proposed alternatives would undermine the current management system that prevents overfishing.

### ***National Standard 2***

Conservation and management measures shall be based on the best scientific information available.

The analysis draws on the best scientific information that is available, concerning the BSAI groundfish fisheries for CP vessels that participate in the Rockfish Program.

### ***National Standard 3***

To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The proposed action is consistent with the management of individual stocks as a unit or interrelated stocks as a unit or in close coordination.

***National Standard 4***

Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The proposed alternatives would treat all participants the same, regardless of their residence. The proposed change would be implemented without discrimination among participants and is intended to contribute to the fairness and equity of the Rockfish Program by allowing participants to make full use of landed catch within the share allocations made under the Rockfish Program. The action will not contribute to an entity acquiring an excessive share of privileges.

***National Standard 5***

Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

This action will improve efficiency in utilization of the resource. The action does not allocate shares, but simply removes a restriction for some or all qualified members of Rockfish Program that currently prevents them from participating in directed groundfish fisheries in the BSAI in July.

***National Standard 6***

Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

None of the alternatives would be expected to affect changes in the availability of BSAI groundfish resources each year. Any such changes would be addressed through the annual allocation process, which is not affected by the alternatives.

***National Standard 7***

Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

This action does not duplicate any other measure and does not increase costs of enforcement actions in the fisheries.

***National Standard 8***

Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

This action will not have adverse effects on communities or affect community sustainability.

### **National Standard 9**

Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

This action will have no effect on bycatch beyond what has already been considered in previous analyses.

### **National Standard 10**

Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The alternatives considered under this action do not affect safety of human life at sea.

## **8.2 Section 303(a)(9) – Fisheries Impact Statement**

Section 303(a)(9) of the Magnuson-Stevens Act requires that any plan or amendment include a fishery impact statement which shall assess and describe the likely effects, if any, of the conservation and management measures on (a) participants in the fisheries and fishing communities affected by the plan or amendment; (b) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants taking into account potential impacts on the participants in the fisheries, as well as participants in adjacent fisheries.

The alternative actions considered in this analysis are described in Chapter 4 of this document. The impacts of these actions on participants in the fisheries are evaluated in Chapter 6.

## **List of Preparers, Persons Consulted, and References**

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## **8.3 References**

Hiatt, T., R. Felthoven, M. Dalton, B. Garber-Yonts, A. Haynie, K. Herrmann, D. Lew, J. Sepez, C. Seung, L. Sievanen, the staff of Northern Economics. 2007. Economic Status of the Groundfish Fisheries off Alaska, 2006. AFSC, NMGS, NOAA. Seattle, WA. October 23, 2007.

## 9 Appendix 1. Proposed Amendment Text for Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska

1. In Appendix A, add the following in numerical order to the list of history of amendment changes:

Amendment 85 implemented \_\_\_\_\_, revised Amendment 68:

Removed the BSAI July stand down sideboard provision that applied to catcher processors participating in the Central GOA Rockfish Demonstration Program.

2. In Section 3.7.2.3.2, modify the ninth paragraph, as marked below, where text to be deleted is marked with strikethrough.

Additionally, each catcher processor participant would be required to abide by a stand-down in all the ~~Bering Sea and Aleutian Islands~~ Gulf of Alaska ~~non-pollock~~ groundfish fisheries. The stand-down would start on the July opening of the rockfish fishery and end on the earlier of two weeks or on the harvest of 90 percent of the participant's cooperative allocation, if the harvest of the allocation began on the traditional July opening. The maximum stand-down would allow participants to begin at a time other than early July, provided they are willing to abide by the two week stand-down.

3. In the same Section 3.7.2.3.2, modify the 11<sup>th</sup> and 12<sup>th</sup> paragraphs as follows:

Participants that choose to fish in the limited access fishery and who account for less than 5 percent of the allocated catcher processor history of Pacific Ocean perch, would be subject to no sideboard or stand-down, beyond the aggregate sector sideboards. Limited access fishery participants that account for 5 percent or more of the sector's Pacific Ocean perch would be required to stand-down in Gulf of Alaska, ~~as well as in the Bering Sea and Aleutian Islands non-pollock~~ groundfish fisheries, until 90 percent of the limited access Pacific Ocean perch is harvested.

Eligible catcher processors could also choose to "opt-out" of the program, forgoing the opportunity to fish CGOA rockfish. Participants that choose to opt-out would be subject to two week stand-downs in the Gulf of Alaska, ~~Bering Sea, and Aleutian Islands~~ fisheries in which they have less than two years of participation during the first week of July in the qualifying years. History of vessels that "opt-out" of the pilot program would be reallocated within the catcher processor sector, based on history to persons that elect to remain in the fishery.

Rbaker  
Gaberle 6/4/09  
Updated to FRFA, rbaker 7/29/09  
Gaberle 9/9/09  
JLepore 9/29/09

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