

## DRAFT FOR INITIAL COUNCIL REVIEW

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

# Exempt Certain Catcher Processors Participating in the GOA Rockfish Pilot Program from the July Stand Down in the Bering Sea/Aleutian Islands

Regulatory Impact Review/  
Initial Regulatory Flexibility Analysis

May 2008

**Abstract:** This document contains a Regulatory Impact Review (RIR) and an Initial Regulatory Flexibility Analysis (IRFA) analyzing an action to exempt some or all catcher processors that participate in the Central Gulf of Alaska rockfish pilot program from the early July stand down period that prevents their participation in directed BSAI groundfish fisheries during those dates. The analyses in this document address the requirements of Executive Order 12866, and the Regulatory Flexibility Act (RFA).

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## Executive Summary

The Central Gulf of Alaska (CGOA) Rockfish Pilot Program includes a sideboard provision that regulates the participation of rockfish catcher processor vessels (CPs) 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% of the CP CGOA 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 race for fish.

Harvest data from 2003-2006 show that the BSAI fisheries historically targeted by trawl CP vessels during July 1-14 were the Aleutian Islands (AI) Pacific ocean perch (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.

This document contains a Regulatory Impact Review (Chapters 1 to 6) and an Initial Regulatory Flexibility Analysis (Chapter 7) analyzing the two 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 CEQ regulations at 40 CFR Part 1500-1508 and NOAA Administrative Order NAO 216-6. The amendment addresses an allocative restriction for catcher processor vessels participating in the CGOA Rockfish Program, and will not affect the overall harvest of BSAI groundfish species, nor substantially change the timing or manner of groundfish removals.

## Purpose and Need

Catcher processors that participate in a CGOA rockfish pilot program cooperative, and some catcher processors that participate in the CGOA 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. 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 Pacific ocean perch, flathead sole, Pacific cod, rock sole, and yellowfin sole) to the head and gut trawl catcher processor sector (the Amendment 80 sector) in the BSAI, and allow vessels in the sector to form cooperatives. Most of the GOA rockfish program catcher processors 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 catcher processor participants in the CGOA 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.

## Description of Alternatives

There are three alternatives to the status quo that would address the problem articulated above. The Council specifically identified Alternative 2 upon initiation of this amendment package. The other alternatives are offered by staff as alternatives that may also meet the Council's intent.

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

Catcher processors that participate in a CGOA rockfish pilot program cooperative are restricted from the directed BSAI groundfish fisheries (except for pollock) from July 1-14. Catcher processors who participate in the CGOA rockfish program limited access sector, and are allocated more than 5% of the CP allocation of CGOA Pacific ocean perch, are restricted from fishing in directed BSAI groundfish fisheries (except for pollock) from July 1 until 90% of the CGOA POP that is allocated to the limited access fishery for the CP sector has been harvested.

### **Alternative 2:** Exempt catcher processors that are participants in the CGOA rockfish pilot 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 choose, on an annual basis, to participate in an Amendment 80 cooperative.

### **Alternative 3:** Exempt catcher processors that are participants in the CGOA rockfish pilot 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 CPs that are part of the Amendment 80 sector.

### **Alternative 4:** Amend the CGOA rockfish pilot program to remove the provision that requires certain catcher processors 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 CGOA rockfish pilot program.

## Summary of Impact Analysis

The following table lists the number of CPs 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>Alternative 4 – remove stand down provision from rockfish program</b>
<b>Maximum number of CPs potentially affected</b>	0	10	10	15
<b>Number of CPs 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, 4)</b>	<p>There is a distinct possibility of exempted vessels encroaching 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>There is no possibility of encroachment in allocated BSAI fisheries.</p> <p>The exemption results in increased flexibility and efficiency for vessels to determine fishing patterns, and reduces costs of leaving the vessel idle. The benefit is greatest for vessels in a rockfish cooperative (none of the 3 in 2008). The exemption would remove a disincentive to join a rockfish cooperative.</p>
<b>Effects of exempting rockfish participants who are Amd 80 limited access members (Alternatives 3, 4)</b>	<p>There are fewer unallocated fisheries open to directed fishing by the Amd 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>There is a possibility for exempted vessels to encroach in the Amendment 80 limited access fishery, as exempted vessels who 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>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 greatest for vessels in a rockfish cooperative (2 of 2 in 2008).</p>
<b>Effects of exempting rockfish participants who are non-Amd 80 participants (Alternatives 4)</b>	<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 nor participation in these fisheries. The vessels have some history as CVs in the Pacific cod fishery, but the risk of encroachment is specific to the early July period of BSAI stand down provision.</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 less for these vessels, as they have less history in the BSAI.</p>

### Initial Regulatory Flexibility Analysis

The proposed action directly regulates some or all catcher processor vessels that qualify for the CGOA rockfish program. Qualified catcher processors must select on an annual basis whether they participate in a cooperative, in the limited access fishery, or whether they opt out of the program; their participation level affects whether and how the stand down provision applies.

There are a total of 15 catcher processor LLPs that qualify for the CGOA rockfish pilot 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 program, and 6 opted out of the program. Of the 4 participating in the limited access program, 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. 5 of these entities participate in a rockfish cooperative; of the 2 remaining, both are part of the Amendment 80 cooperative. Therefore, all of the directly regulated vessels in 2007 would be considered large entities.

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## 1 INTRODUCTION

The Central Gulf of Alaska (CGOA) Rockfish Pilot 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 program allocates exclusive harvesting and processing privileges of three rockfish species and associated incidental catch species to historic participants in the CGOA rockfish fisheries. As part of the program provisions, the Council established a suite of sideboard restrictions and stand down requirements to prevent participants from increasing effort in other fisheries.

One of the program provisions regulates the participation of catcher processor vessels (CPs) 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% of the CP CGOA Pacific ocean perch (POP) 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 to July 14. CPs participating in the limited access fishery are prohibited from directed fishing in BSAI groundfish fisheries from July 1 until 90% of the CGOA 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 1-14 were the Aleutian Islands (AI) Pacific ocean perch (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 CGOA rockfish pilot 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 following on from that discussion paper, initiated the present analysis.

This document contains a Regulatory Impact Review (Chapters 2 to 6) and an Initial 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 CEQ regulations at 40 CFR Part 1500-1508 and NOAA Administrative Order NAO 216-6. The amendment addresses an allocative restriction for catcher processor vessels participating in the CGOA Rockfish Program, and will not affect the overall harvest of BSAI groundfish species, nor substantially change the timing or manner of groundfish removals.

## 2 What is a Regulatory Impact Review?

The preparation of an 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 Act, the United States has exclusive fishery management authority over all marine fishery resources found within the exclusive economic zone (EEZ). 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 Gulf of Alaska EEZ are managed under the Fishery Management Plan for Groundfish of the GOA. Regulations implement the 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 processors that participate in a CGOA rockfish pilot program cooperative, and some catcher processors that participate in the CGOA 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 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 Pacific ocean perch, flathead sole, Pacific cod, rock sole, and yellowfin sole) to the head and gut trawl catcher processor sector (the Amendment 80 sector) in the BSAI, and allow vessels in the sector to form cooperatives. Most of the GOA rockfish program catcher processors 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 catcher processor participants in the CGOA 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 Draft Problem Statement**

The Council has yet to adopt a problem statement for this action. The paragraph below has been drafted by staff.

Most 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 so, its removal would allow the currently restricted catcher processors to more efficiently manage their harvest.

## **4 Description of Alternatives**

There are three alternatives to the status quo that would address the problem articulated above. The Council specifically identified Alternative 2 upon initiation of this amendment package. The other alternatives are offered by staff as alternatives that may also meet the Council’s intent.

**Alternative 1:** Status quo.

Catcher processors that participate in a CGOA rockfish pilot program cooperative are restricted from the directed BSAI groundfish fisheries (except for pollock) from July 1-14. Catcher processors who participate in the CGOA rockfish program limited access sector, and are allocated more than 5% of the CP allocation of CGOA Pacific ocean perch, are restricted from fishing in directed BSAI groundfish fisheries (except for pollock) from July 1 until 90% of the CGOA POP that is allocated to the limited access fishery for the CP sector has been harvested.

**Alternative 2:** Exempt catcher processors that are participants in the CGOA rockfish pilot 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 choose, on an annual basis, to participate in an Amendment 80 cooperative.

**Alternative 3:** Exempt catcher processors that are participants in the CGOA rockfish pilot 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 CPs that are part of the Amendment 80 sector.

**Alternative 4:** Amend the CGOA rockfish pilot program to remove the provision that requires certain catcher processors 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 CGOA rockfish pilot program.

## 5 Existing conditions

### 5.1 Overview of the Rockfish Pilot Program

The US 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 Gulf of Alaska. In June 2005, the Council adopted the program as Amendment 68 to the GOA Groundfish Fishery Management Plan. Although the pilot program was originally established as a two year program (for 2007-2008), the Magnuson Stevens Reauthorization Act extended the program to 5 years.

Under the program, 95 percent of the directed fishery total allowable catches (TACs) of three target rockfish species (Pacific ocean perch, northern rockfish, and pelagic shelf rockfish) are allocated to the program. The remaining 5% of the TAC for these species is set aside to support an entry level fishery (50% trawl / 50% non-trawl) for vessels not eligible to participate. The demonstration 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 program (only catcher processors). Allocations to cooperatives are based on members' fishing histories. The allocation to the limited access fisheries are based on histories of eligible harvesters that choose to fish in the limited access. 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.

Persons who hold a License Limitation Program license used for at least one directed rockfish landing in the Central Gulf of Alaska between 1996 and 2002 are eligible for the program. Each eligible license, in turn, is credited with history, based on all target rockfish species landings during the directed fishery from 1996 to 2002. Catcher processor license holders are eligible to join a catcher processor cooperative, with any other catcher processor license holder. Each catcher vessel license is eligible for 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 shortraker and rougheye rockfish (for catcher processor 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 catch, 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 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% for catcher vessels, 20% for catcher processors) and cooperatives (30% for catcher vessel cooperatives, 60% for catcher processors) prevent excessive consolidation of the fleet. Shoreside processors are also subject to use caps (30%), 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 Central GOA Rockfish Pilot Program includes a suite of GOA groundfish sideboard limits for catcher processors 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, Pacific ocean perch, and northern rockfish) fisheries and halibut 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 to July 14. Catcher processors that elect to fish in the limited access fishery and have more than 5% of the sector’s qualified catch of central GOA Pacific ocean perch may not participate in the GOA or BSAI groundfish fisheries from July 1 until 90% of the Pacific ocean perch that is allocated to the limited access fishery has been harvested. Finally, catcher processors that opt-out of the rockfish pilot program altogether may only participate in a directed 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 Pilot 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 C/Ps, 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- July 14	From July 1 until 90% of CPs' CGOA POP is harvested	N/A
GOA groundfish (except pollock and IFQ sablefish)	N/A	N/A (assuming monitoring requirements are met)	(only for CPs with >5% of the total CP CGOA POP history)	July 1 - July 14 – unless past activity

## 5.2 BSAI stand down provision in the rockfish pilot 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 the time, already been rationalized: IFQ sablefish, and pollock.

Harvest data from 2003-2005 (Table 2) show that the BSAI groundfish fisheries historically targeted by head and gut trawl CP vessels during July 1-14 were the Aleutian Islands (AI) Pacific ocean perch (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 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.

**Table 2      July 1 – July 14 BSAI harvest (mt) from head and gut trawl CP vessels that participate in the rockfish pilot 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.

The regulations related to the BSAI stand down provision are excerpted below from 50 CFR 679, as well as the pertinent elements of the regulation defining ‘directed fishing’.

#### **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 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 catcher processor sector

There are 15 catcher processor LLP licenses that qualify for the rockfish pilot program. The 15 LLPs, and the vessels with which they are associated in 2007, are listed in Table 3. The table also identifies how each LLP and associated vessel chose to participate in the rockfish program in 2007.

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

LLP <sup>a</sup>	LLP Holder <sup>a</sup>	Vessel associated with LLP <sup>b</sup>	2007 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 Pilot Program 2007 LLP licenses, <http://www.fakr.noaa.gov/sustainablefisheries/goarat/07rockfishlicenses.xls>.

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

Because all vessels have the option annually to join a cooperative, all 15 LLPs and associated vessels may at some time be subject to the required BSAI stand down. If all the rockfish program CPs 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% or more of the CP's collective holdings of CGOA Pacific ocean perch 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 1-14. Of the 4 participants in the limited access fishery, only 2 held more than a 5% allocation of the total CP allocation of CGOA Pacific ocean perch. 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% of the CP limited access fishery's allocation of CGOA POP had been harvested.

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

## 5.4 Participation of GOA rockfish CPs in BSAI fisheries

Of the 15 LLPs 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. 10 LLPs are assigned to BSAI Amendment 80-qualified vessels that have received initial quota share in the Amendment 80 fisheries in the BSAI. One LLP is associated with a vessel that is eligible but has not applied for Amendment 80 quota share; the vessel predominantly fishes in the GOA. One other LLP 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 U.S. fishing vessels. Under the program, it may apply for and receive Amendment 80 quota share accrued to the original vessel, but only if the LLP is associated with a qualified Amendment 80 vessel, which is currently not the case. In 2007, the LLP 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 part of the Amendment 80 sector.

For the remaining three LLPs, one is associated with a vessel that, in 2003-2007, 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-AFA trawl catcher processor 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 catcher processor and have a valid limited license permit (LLP) with a BSAI catcher/processor endorsement, and have processed more than 150 mt of groundfish (other than pollock) during the period 1997 through 2002.

The BSAI Amendment 80 program was approved by the Council in June 2006. The program allocates a portion of total allowable catches (TACs) for Atka mackerel, Pacific ocean perch, and 3 flatfish species (yellowfin sole, rock sole, and flathead sole), along with an allocation of prohibited species catch (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 holders if the vessel is ‘lost’), based on the vessel’s catch history from 1998-2004. The QS can be fished within a cooperative (comprised of at least 3 separate entities with at least 30% 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 BSAI FMP, 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% of the TAC, depending on overall TAC)
- Rock sole (100%)
- Flathead sole (100%)

- Atka mackerel (90-100% of the TAC depending on subarea)
- Aleutian Islands Pacific ocean perch (90-98% depending on subarea)
- Pacific cod (13.4% 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 program was implemented at the start of the 2008 fishery.

For the 2008 fishing year (the first year of the Amendment 80 program), participants have formed one cooperative, the Best Use Cooperative, which includes 17 of the 24 vessels who 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 LLPs and their associated CP vessel received initial quota share for Amendment 80. As 2008 is the first year of the program, Table 4 provides information on whether each vessel joined a cooperative under Amendment 80 in 2008, as well as citing whether each vessel will be subject to the BSAI stand down.

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

LLP <sup>a</sup>	LLP Holder <sup>a</sup>	Vessel associated with LLP <sup>b</sup>	Subject to BSAI stand down under rockfish program in 2008 <sup>a,b</sup>	2008 Amendment 80 participation <sup>c</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 Pilot Program 2008 LLP licenses, <http://www.fakr.noaa.gov/sustainablefisheries/goarat/08rockfishlicenses.xls>.

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

<sup>c</sup> Source: Best Use Cooperative website, <http://bestusecooperative.org/members.html>.

<sup>d</sup> Vessel associated with these LLPs 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, as appropriate, seasons, for which TACs are apportioned. The table also reflects, for 2008 updated through April 28<sup>th</sup>, 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 belong 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 their 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. Halibut, salmon, crab, and herring must immediately 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, which are apportioned among gear types, sectors, and target fisheries, and the availability of PSC also factors into NMFS' 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/ sablefish fishery) 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 2003-2007.

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, sablefish, and arrowtooth flounder fisheries are open to directed fishing only by Amendment 80 cooperatives (Table 5).

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

**Table 5 Status of trawl fisheries, 2008 – through April 28<sup>th</sup>**

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

Source: NMFS website, Status of Trawl Gear Fisheries, updated 4/28/2008. <http://www.fakr.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 (mt)
2007	Trawl fisheries	Yellowfin sole	January 20–April 1	312
			April 1–May 21	195
			May 21–July 1	49
			July 1–December 31	380
		Rock sole/other flat/flathead sole	January 20–April 1	498
			April 1–July 1	164
			July 1–December 31	167
		Turbot/arrowtooth/sablefish		0
		Rockfish	July 1–December 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	January 20–July 1	214
			July 1–December 31	149
		Rock sole/other flat/flathead sole	January 20–April 1	180
			April 1–July 1	20
			July 1–December 31	24
		Turbot/arrowtooth/sablefish		0
		Rockfish		50
		Pacific cod		1
		Pollock/Atka mackerel/other		50
	BSAI trawl limited access	Yellowfin sole		162
		Rock sole/other flat/flathead sole		0
		Turbot/arrowtooth/sablefish		0
		Rockfish		3
		Pacific cod		585
		Pollock/Atka mackerel/other		125
		2008 Trawl Fishery TOTAL		3,400

As discussed in Section 5.4.2, many of the CP vessels in the rockfish program that participate in BSAI groundfish fisheries are part of the Amendment 80 sector. As such, they have already received a sector allocation for six of the possible target species in the BSAI. On the basis of Table 5, it appears that there are six directed fisheries in which the rockfish program or Amendment 80 participants have the potential to unduly compete with other fishery participants: Alaska plaice, ‘other flatfish’, arrowtooth flounder, Greenland turbot, sablefish, and squid.

### 5.5.2 BSAI fleet participation in Amendment 80 fisheries

The majority of the five Amendment 80 species is caught 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. 10 of these also participate in the rockfish pilot program. The remainder of the catch of is primarily taken by other trawl vessels. For Pacific cod, the Amendment 80 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>	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.fakr.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 available directed fisheries identified above, Table 8 illustrates the relative distribution of participation by gear type, and specifically by the Amendment 80 sector. The flatfish species are almost entirely caught with trawl gear, mostly by the Amendment 80 sector. 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. Trawl vessels receive a fixed allocation of sablefish (25% in the AI, 50% in the BS). Squid is almost exclusively incidentally caught in the midwater pollock fishery.

**Table 8 Total catch in 2007, and distribution by gear type, and catch by the 15 rockfish pilot program (RPP) CPs as a proportion of total catch, of Alaska plaice, ‘other flatfish’, arrowtooth flounder, Greenland turbot, sablefish, and squid.**

Species	Total catch	Retained catch	Distribution of total catch, by gear type				15 RPP CP vessels
			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.fakr.noaa.gov/2007/2007.htm>, except for data for the rockfish pilot 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% and 86% respectively), retention of squid and arrowtooth flounder is intermediate (58% and 44% respectively), and retention of Alaska plaice and ‘other flatfish’ is fairly low (20% and 27% 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 2003–2006.

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

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 for BSAI Flatfish Species

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 U.S., 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 U.S., 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, which is the fleshy fins 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 U.S. markets as inexpensive flounder. Some portion 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, by alternative, is listed in Section 6.1. Section 6.2 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 GOA fisheries, as the action does not change the timing or allocation of rockfish program participation, and rockfish CPs are already sideboarded in other GOA fisheries (and these GOA sidebar 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% of the CP CGOA Pacific ocean perch (POP) 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 to July 14. CPs participating in the limited access fishery are prohibited from directed fishing in BSAI groundfish fisheries from July 1 until 90% of the CGOA POP that is allocated to the limited access fishery for the CP sector has been harvested.

Chapter 5 describes existing conditions for the 15 CPs that qualify for the rockfish program, and which may be affected by this action. 7 of the CPs were required to stand down in BSAI directed fisheries beginning July 1<sup>st</sup> in 2007, and 8 will be in 2008. All 15, however, are eligible to join a cooperative, so on an annual basis, might be subject to the BSAI stand down. If all 15 vessels elected to fish in the limited access fishery, only 8 would be required to stand down in the BSAI in July.

#### Alternative 2, Exempt rockfish program CPs that are members of a BSAI Amendment 80 cooperative

Under Alternative 2, those rockfish program CPs which 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 LLPs that qualify for the rockfish program, the vessels associated with 10 of them received initial quota share in the Amendment 80 program for 2008. Of these 10, 7 have joined an Amendment 80 cooperative for 2008. Of the 8 rockfish program CPs to which the stand down period will apply in 2008, 3 are 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. 10 of the 15 rockfish program CPs have received initial quota share for the program in 2008. Of the 8 rockfish program CPs to which the stand

down period will apply in 2008, 5 fish in the Amendment 80 sector: 3 as part of a cooperative, and 2 in the limited access sector.

**Alternative 4, Remove from the rockfish program the BSAI stand down provision for CPs**

Under Alternative 4, the BSAI stand down requirement would be deleted from the rockfish pilot program. The stand down provision would no longer be required for any of the 15 rockfish program CPs, and all 8 of the CPs required to stand down in the BSAI in 2008 would have no restriction on their BSAI directed groundfish fishing resulting from their participation in the rockfish program.

## **6.2 Impact of the BSAI stand down period on rockfish program participants**

The BSAI stand down period in 2007 had the effect of preventing seven rockfish program CP participants from participating in BSAI directed groundfish fisheries for a period in early July. In 2007, without the exemption, 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 have been 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, pers. comm. 5-14-08). During July 1-14, these vessels must consequently stand down from all directed fishing in the BSAI and GOA, except in the IFQ sablefish and pollock fisheries. The stand down requirement adversely impacts vessel owners, as vessels resting idle is 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 outweighs the cost of the stand down period.

The rockfish limited access fishery in 2007 opened on July 1, and the CPs participating in the fishery (4 vessels) had harvested 90% of their allocation by July 5<sup>th</sup>. At this time, the 2 limited access vessels who were required to stand down in the BSAI groundfish fisheries were free from the restriction. The stand down restriction in 2007 did not have a major impact on vessels, because the 90% threshold was crossed early in the fishery, and the restriction caused little delay for the vessels. Because the threshold requires both the cooperative and limited access vessels to have harvested their CGOA POP quota before the restriction is lifted on the limited access vessels, the degree to which the restriction is constraining will be variable from year to year.

**Alternatives 2, 3, and 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; less so for vessels fishing in the limited access fishery (in 2007, the stand down period ended on July 5<sup>th</sup>). As each CP may choose, on an annual basis, whether or not to join a cooperative, fish in the limited access fishery, or opt out of the 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. These vessels are best represented by Alternatives 2 and 3, which exempt CPs that also participate in the Amendment 80 fisheries in the BSAI.

### **6.3 Impact of the stand down period on the ability of rockfish program CPs to compete against other fishery participants in unallocated BSAI directed fisheries**

As described in Section 5.5, there are six BSAI directed groundfish fisheries that are unallocated, and are open for directed fishing in 2008 to some portion of the BSAI trawl fleet. These are 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 of 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-July 14, as compared to total annual catch, for the years 2003-2007. 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 was predominantly caught incidentally in flathead sole, AI Pacific ocean perch targets, with some catch in directed arrowtooth, Pacific cod, and ‘other flatfish’ target fisheries. Trawl-caught Greenland turbot and sablefish were mainly caught incidentally in the AI Pacific ocean perch 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 GOA 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 qualifying for the stand down would continue to be restricted from participating in BSAI directed fisheries in early July.

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<sup>th</sup>. Directed fisheries for Greenland turbot and arrowtooth flounder are open to cooperative participants from May 1<sup>st</sup> (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.

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

Species	Year	Total annual catch	Total July catch	July as % of annual	July catch			
					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

**Alternative 3** expands the group of vessels exempted from the BSAI stand down to include all participants in the Amendment 80 sector. 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, and 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 rocksole/’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 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<sup>th</sup>, and there are 1-2 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 able to 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, **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 2003-2007; one participated only in one year, and 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. There is no indication that implementing Alternative 4 would have any adverse effect by allowing these vessels to unduly increase their participation in unallocated BSAI directed groundfish fisheries.

#### **6.4 Impact of the stand down period on the ability of rockfish program CPs to compete against other participants in allocated BSAI directed fisheries**

Trawl fisheries in the BSAI that are all or partly allocated are the pollock fishery, and the Amendment 80 (and 85) fisheries: yellowfin sole, rock sole, flathead sole, AI Pacific ocean perch, 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. 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% allocated to the Amendment 80 sector, the other three Amendment 80 species are over 90% allocated to the sector; and the sector receives a 13.4% allocation of Pacific cod (Amendment 85).

**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 in fisheries for which they receive a dedicated allocation.

Under **Alternative 3**, the additional participants that are exempt from the stand down are those that participate in the Amendment 80 limited access sector. 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 fish 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 are owned by the same company, three of those six also participate in the GOA rockfish fishery. The final Amendment 80 limited access vessel does 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.

**Alternative 4** adds five other affected vessels, by removing the stand down provision altogether from the rockfish program. As none of these vessels are part of the Amendment 80 program, 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, Alaskan ocean perch, 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. 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 four vessels appears to be low.

## 6.5 Summary of alternatives

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

	Alternative 1 – status quo	Alternative 2 – exempt rockfish program CPs in Amendment 80 cooperatives	Alternative 3 – exempt rockfish program CPs fishing in Amendment 80 sector	Alternative 4 – remove stand down provision from rockfish program
<b>Maximum number of CPs potentially affected</b>	0	11	11	15
<b>Number of CPs 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, 4)</b>	<p>There is a distinct possibility of exempted vessels encroaching 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>There is no possibility of encroachment in allocated BSAI fisheries.</p> <p>The exemption results in increased flexibility and efficiency for vessels to determine fishing patterns, and reduces costs of leaving the vessel idle. The benefit is greatest for vessels in a rockfish cooperative (none of the 3 in 2008). The exemption would remove a disincentive to join a rockfish cooperative.</p>
<b>Effects of exempting rockfish participants who are Amd 80 limited access members (Alternatives 3, 4)</b>	<p>There are fewer unallocated fisheries open to directed fishing by the Amd 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>There is a possibility for exempted vessels to encroach in the Amendment 80 limited access fishery, as exempted vessels who 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>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 greatest for vessels in a rockfish cooperative (2 of 2 in 2008).</p>
<b>Effects of exempting rockfish participants who are non-Amd 80 participants (Alternatives 4)</b>	<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 nor participation in these fisheries. The vessels have some history as CVs in the Pacific cod fishery, but the risk of encroachment is specific to the early July period of BSAI stand down provision.</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 less for these vessels, as they have less history in the BSAI.</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 Initial Regulatory Flexibility Analysis (IRFA)

### 7.1 What is an IRFA?

#### 7.1.1 What is the purpose of an IRFA?

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 “universe” of entities to be considered in an IRFA 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.

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 Regulatory Flexibility Analysis (IRFA) 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, a formal IRFA has been prepared and is included in this analytical package.

### **7.1.2 What is required in an IRFA?**

Under 5 U.S.C., Section 603(b) of the RFA, each IRFA is required to contain:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and the legal basis for, the proposed rule;
3. A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
4. A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule;
6. A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
  - a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
  - b. The clarification, consolidation or simplification of compliance and reporting requirements under the rule for such small entities;
  - c. The use of performance rather than design standards;
  - d. An exemption from coverage of the rule, or any part thereof, for such small entities.

### 7.1.3 What is 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 dominate 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 U.S., 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 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.

## 7.2 Reason for considering the proposed action

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

Catcher processors that participate in a CGOA rockfish pilot program cooperative, and some catcher processors that participate in the CGOA 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 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 Pacific ocean perch, flathead sole, Pacific cod, rock sole, and yellowfin sole) to the head and gut trawl catcher processor sector (the Amendment 80 sector) in the BSAI, and allow vessels in the sector to form cooperatives. Most of the GOA rockfish program catcher processors 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 catcher processor participants in the CGOA 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 catcher processors to more efficiently manage their harvest.

## 7.3 Objectives of, and the legal basis for, the proposed rule

The objective of the proposed action is to remove (by exemption or deletion) the restriction governing some or all catcher processors that participate in the CGOA rockfish pilot program, which prevents those vessels from directed fishing in the BSAI groundfish fisheries during a period in July. Once the Council has selected a preferred alternative, a proposed rule will be prepared.

NMFS manages the U.S. groundfish fisheries of the GOA and the BSAI under the Fishery Management Plans (FMPs) for those areas. The Council prepared the FMPs under the authority of the Magnuson-

Stevens Fishery Conservation and Management Act. Regulations implement the FMPs at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

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

The proposed action directly regulates some or all catcher processor vessels that qualify for the CGOA 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% of the Pacific ocean perch quota share allocated to the catcher processor sector. Qualified catcher processors must select on an annual basis whether they participate in a cooperative, in the limited access fishery, or whether they opt out of the program.

There are a total of 15 catcher processor LLPs that qualify for the CGOA rockfish pilot 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 program, and 6 opted out of the program. Of the 4 participating in the limited access program, 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. 5 of these entities participate in a rockfish cooperative; of the 2 remaining, both are part of the Amendment 80 cooperative. Therefore, all of the directly regulated vessels in 2007 would be considered large entities.

#### **7.5 Recordkeeping and Reporting Requirements**

Implementation of the proposed action to change the July stand down requirement in BSAI directed groundfish fisheries would not change the overall reporting structure and record keeping requirements of the vessels in the CGOA rockfish pilot program.

#### **7.6 Relevant Federal rules that may duplicate, overlap, or conflict with proposed action**

There do not appear to be any Federal rules that duplicate, overlap, or conflict with the proposed action. Some current Federal regulations will need modification to implement the proposed action, specifically the regulations implementing the July stand down in BSAI directed fisheries at 50 CFR 679.82(f)(3) and 50 CFR 679.82(g)(3)(ii).

#### **7.7 Description of Significant Alternatives**

An IRFA should include “a description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that would minimize any significant (implicitly adverse) economic impact of the proposed rule on small entities.” The alternatives that would accomplish the stated objective are listed below. It does not appear that any of the alternatives would directly regulate small entities. At the time of the preparation of this draft IRFA, the Council has not identified a preferred alternative. This section will be reevaluated once the Council has taken further action.

There are three alternatives to the status quo that would address the problem articulated above. The Council specifically identified Alternative 2 upon initiation of this amendment package. The other alternatives are offered by staff as alternatives that may also meet the Council’s intent.

**Alternative 1:** Status quo.

Catcher processors that participate in a CGOA rockfish pilot program cooperative are restricted from the directed BSAI groundfish fisheries (except for pollock) from July 1-14. Catcher processors who participate in the CGOA rockfish program limited access sector, and are allocated more than 5% of the CP allocation of CGOA Pacific ocean perch, are restricted from fishing in directed BSAI groundfish fisheries (except for pollock) from July 1 until 90% of the CGOA POP that is allocated to the limited access fishery for the CP sector has been harvested.

**Alternative 2:** Exempt catcher processors that are participants in the CGOA rockfish pilot 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 choose, on an annual basis, to participate in an Amendment 80 cooperative.

**Alternative 3:** Exempt catcher processors that are participants in the CGOA rockfish pilot 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 CPs that are part of the Amendment 80 sector.

**Alternative 4:** Amend the CGOA rockfish pilot program to remove the provision that requires certain catcher processors 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 CGOA rockfish pilot program.

## **8 Consistency with Applicable Law and Policy**

### **8.1 National Standards**

Below are the ten 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 upon the best scientific information available.

The analysis draws on the best scientific information that is available, concerning the BSAI groundfish fisheries for catcher processors that participate in the CGOA rockfish pilot 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 program by allowing participants to make full use of landed catch within the share allocations made under the 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 CGOA rockfish pilot 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.

**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.

**8.3 OMB Market Failure Rationale**

OMB guidelines for preparation of an economic analysis under E.O. 12866 state, in relevant part, that, “*... in order to establish the need for the proposed action, the analysis should discuss whether the problem constitutes a significant market failure. If the problem does not constitute a market failure, the analysis should provide an alternative demonstration of compelling public need, such as improving governmental processes or addressing distributional concerns. If the proposed action is a result of a statutory or judicial directive, that should be so stated.*”

The proposed regulatory action under review in this RIR is proposed in response to the inherent *common property* attributes of the BSAI groundfish in question. These attributes, in turn, result in market failure, interfering with society’s ability to optimally and efficiently allocate resources among competing users and uses (including “non-use”).

The terms “*common property*” has a precise technical meaning in economics. A common property resource is one held in common, by all members of a “community” (e.g., all citizens of the United States). As a common asset, private property rights institutions do not appertain, and these assets tend (in the absence of governance) to become sub-optimally managed, imposing uncompensated externalities on society. Because the BSAI groundfish assets under consideration in this action inherently possess these attributes, under prevailing management rules, the way society regards their stewardship and exploitation is fundamentally different than, say, an asset to which private property rights and institutions apply. For these reasons, private behavior will tend to exploit these public assets at rates, and in ways, that are not socially optimal. That is, when common property is converted to private use, all

relevant production costs (including rents to the resource) tend not to be accounted for by the individual user, resulting in imposition of external costs on society. Resolution of this market failure necessitates regulatory intervention.

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

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### **9.3 References**

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