

DRAFT FOR INITIAL REVIEW

Proposed Amendment to the Fishery Management Plan for
Groundfish of the Bering Sea and Aleutian Islands to

To Adjust the 3rd Quarter Deep-Water Halibut PSC Sideboard Allocation for Amendment 80 Vessels

Regulatory Impact Review/Initial Regulatory Flexibility Analysis

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1 INTRODUCTION

The Amendment 80 (AM-80) program, implemented on September 14, 2006, includes a sideboard provision that regulates Gulf of Alaska (GOA) halibut PSC usage by AM-80 vessels. Halibut PSC is apportioned among five seasons and two species complexes: the shallow-water and the deep-water. Similarly, AM-80 halibut PSC sideboard limits are also apportioned among the five seasons and the two fishery complexes. Halibut PSC sideboard limits for AM-80 vessels were based on historic usage of halibut PSC by all AM-80 vessels¹ during the 1998 to 2004 time period. Any GOA halibut PSC usage by AM-80 vessels is deducted from the appropriate season and fishery complex sideboard limit.

The central GOA Rockfish Pilot Program (RPP), implemented on December 20, 2006, provides an opportunity for a person, who is not in a rockfish cooperative, but who holds a LLP license with rockfish quota share, to fish in a limited access fishery. The RPP also established sideboards to limit the ability of eligible participants to harvest fish in fisheries other than the Central GOA rockfish fisheries. Sideboards limit harvest in specific rockfish fisheries and the amount of halibut PSC that can be used in certain flatfish fisheries.

The intersection of halibut PSC usage for the 3rd season deep-water species among qualified AM-80 vessels and RPP CP vessels that are participants in the limited access fisheries has raised questions as to whether the apportionment of the 3rd season deep-water halibut PSC sideboard limit is sufficient to support directed fishing for deep-water species by all three groups. Specifically, halibut PSC usage by CP vessels in the RPP limited access fishery while targeting central GOA rockfish is counted toward the AM-80 3rd season deep-water halibut PSC sideboard limit, even though the AM-80 halibut PSC sideboard limit has already been reduced to account for halibut allocation to AM-80/RPP vessels while targeting central GOA rockfish.

The action under this amendment originated with a proposal to increase the AM-80 3rd season deep-water halibut PSC sideboard allocation to account for halibut usage while targeting central GOA rockfish by AM-80/RPP limited access vessels. 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 through 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 AM-80 program, and will not affect the overall harvest of GOA groundfish species, nor substantially change the timing or manner of groundfish removals.

¹ Except the F/V Golden Fleece, which qualified for an exemption from the GOA halibut sideboards since the vessel fished 80% of their weeks in the GOA flatfish fisheries from January 1, 2000 through December 31, 2003.

2 What is a Regulatory Impact Review?

The preparation of an RIR is required under 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 EEZ. The management of these marine resources is vested in the Secretary of Commerce (Secretary) and in the Regional Fishery Management Councils. The groundfish fisheries in the Gulf of Alaska (GOA) EEZ are managed under the FMP 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

Halibut PSC use while targeting central GOA rockfish by AM-80/RPP limited access vessels is counted toward the AM-80 3rd season deep water halibut PSC sideboard limit, despite the sideboard limit already being reduced to account for halibut quota allocation for AM-80 vessels in the RPP. The addition of halibut bycatch by AM-80/RPP limited access vessels, without including their RPP halibut allocation, could result in AM-80 vessels reaching their halibut sideboard limit prior the end of the 3rd season, thus unduly constraining AM-80 participants. Given that the AM-80 halibut PSC sideboard limit does not include the RPP halibut allocation for AM-80/RPP limited access vessels, the AM-80 halibut PSC sideboard limit for 3rd season deep-water species may need to be adjusted to accommodate additional halibut PSC usage by AM-80/RPP limited access vessels.

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 for Council consideration and revision.

Amendment 80/Rockfish Pilot Program CP limited access vessels participating in GOA 3rd season deep-water fisheries utilize halibut PSC. Currently, halibut PSC usage while targeting central GOA rockfish by this group of vessels is counted toward the GOA 3rd season deep-water species halibut PSC Amendment 80 sideboard limit even though the sideboard has already been reduced to account for halibut allocation for the Rockfish Pilot Program. In apportioning the Amendment 80 halibut PSC limit to the GOA 3rd season deep-water species, halibut PSC allocation by Amendment 80/Rockfish Pilot Program limited access vessels while targeting central GOA rockfish was not included in the sideboard calculation. Since the Amendment 80 halibut PSC sideboard limit for 3rd season deep-water species does not account for halibut PSC usage from Amendment 80/Rockfish Pilot Program limited access vessels, there is a potential that insufficient halibut PSC will be available during the 3rd season, resulting in premature closure of all deep-water fisheries for all Amendment 80 vessels qualified to fish in the GOA. The premature closure of the 3rd season deep-water fisheries may result in economic losses for these vessels.

3.2 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 GOA Pacific cod and GOA pollock 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 GOA Pacific cod and GOA pollock 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.

4 Description of Alternatives

There are two alternatives to the status quo that would address the problem articulated above. The Council specifically identified Alternative 2 upon initiation of this amendment package. Alternative 3 is offered for the Council consideration by staff as an option that may also meet the Council's intent.

Alternative 1: Status quo

Halibut PSC use while targeting central GOA rockfish by AM-80/RPP limited access vessels will continue to be counted toward the 3rd season deep water species AM-80 halibut PSC sideboard limit.

Alternative 2: Include an amount of halibut PSC in the AM-80 3rd season deep-water species halibut PSC sideboard limit equal to the halibut PSC available to the Rockfish Pilot Program CP limited access vessels that are also AM-80 vessels.

Alternative 3: Any 3rd season halibut PSC usage while targeting central GOA rockfish by AM-80/RPP CP limited access vessels would not be counted toward the AM-80 halibut sideboard limit for 3rd season deep water species.

5 Existing Conditions

5.1 Overview of the Amendment 80 Program

In 2005, Congress defined the non-AFA trawl catcher processor sector, also referred to as the AM-80 sector, and thus determined who might participate in the AM-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 AM-80 program, which started in 2008, 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 AM-80 sector. All of the allocations are managed as a hard cap. These allocations are issued annually, as quota share (QS) to owners of AM-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 AM-80 vessels) as aggregated cooperative quota. AM-80 QS holders who do not form a cooperative arrangement with others are placed in the AM-80 limited access fishery, and continue to compete with each other for catch and PSC.

During the development of AM-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 AM-80 sector. The timing of these amendments coincided so that the Pacific cod allocation was integrated with the AM-80 program as implemented beginning in 2008.

Allocations of target species to the AM-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 AM-80 sector and the BSAI trawl limited access sector (which includes all trawl vessels that are not in the AM-80 sector or fishing for CDQ groundfish). For the AM-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 AM-80 program), participants have formed one cooperative, the Best Use Cooperative, which includes 17 of the 24 vessels that received initial quota share.

5.2 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 RFP for managing trawl fisheries for major rockfish species in the central GOA. In June 2005, the Council adopted the RPP as Amendment 67 to the GOA Groundfish Fishery Management Plan. Although the RPP was originally established as a two year program (for 2007-2008), the Magnuson Stevens Reauthorization Act extended the program to 5 years.

The allocation to the RPP is divided between the catcher vessel sector and the catcher processor sector, based on historic catches of the participants in these respective sectors. In addition, each sector is allocated the important incidental catch species (i.e., sablefish, Pacific cod, and shortraker and rougheye rockfish and shortspine thornyheads) based on the historic harvests of the sector. Two exceptions are the Pacific cod is not allocated to catcher processor cooperatives and shortraker and rougheye rockfish is not allocated to catcher vessels cooperatives, but are instead managed under MRAs. These species are not allocated in the different cases because the sector has limited catch of the species, which could lead to allocations inadequate to support catch of target rockfish, but MRAs are set low relative to their historic levels to discourage harvests in excess of historic catch amounts. Each sector is also allocated halibut PSC based on historic catch of halibut in the target rockfish fisheries.

Specifically, 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 participants. The remaining 5% of the TAC for these species is set aside to support an entry level fishery for vessels not eligible to participate. The RPP 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 harvests 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 catch 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 LLP license used for at least one directed rockfish landing in the Central Gulf of Alaska between 1996 to 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 processor identified by its landing history from 1996 to 2000, inclusive.

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.

5.3 Amendment 80 Sideboards

AM-80 developed three types of GOA sideboard limits. The first is a GOA groundfish sideboard limit that restricts the maximum amount of pollock, Pacific cod, and rockfish that AM-80 vessels may harvest. The GOA groundfish sideboard limits the catch of AM-80 vessels to their average aggregate catch from 1998 through 1994. The second sideboard limit is a GOA halibut PSC limit that restricts the maximum amount of halibut PSC that all AM-80 vessels may use based on historic halibut PSC use during 1998 through 2004. The final sideboard is a GOA flatfish fishery prohibition, which restricts the number of AM-80 vessels that may be used for directed fishing for flatfish.

5.3.1 Amendment 80 GOA Groundfish sideboards

All AM-80 vessels are collectively limited to catching an amount of GOA groundfish no greater than the sideboard limits presented in Table 5-1. GOA sideboard restrictions are based on historic usage during the 1998-2004 qualifying period. Specifically, retained catch for non-exempt qualified H&G trawl CP vessels by GOA area as a percentage of total retained catch of all sectors in that area from 1998 to 2004. The sideboards are designed to limit participation in the pollock, Pacific cod, and directed rockfish fisheries (for species not allocated under the Rockfish Demonstration Program). The pollock and Pacific cod sideboards constrain the harvest of these species by limiting a vessel's incentives to join the inshore component of the GOA fleet. Rockfish sideboard limits are less restrictive, but provide some protections to the other GOA vessels operating in those rockfish fisheries. GOA groundfish sideboard percentages are provided in Table 5-1.

Table 5-1 Amendment 80 GOA sideboard limits for 2008

Species	Sideboard %	Estimated Sideboard (mt)
Pollock		
Pollock 610	0.30%	91
Pollock 620	0.20%	34
Pollock 630	0.20%	19
Pollock 640	0.20%	4
Central Gulf		
Pacific Ocean Perch	RDP	RDP
Pelagic Shelf Rockfish	RDP	RDP
Northern Rockfish	RDP	RDP
Pacific Cod	4.40%	1,355
Western Gulf		
Pacific Ocean Perch	99.40%	2,549
Pelagic Shelf Rockfish	76.40%	288
Northern Rockfish	100.00%	808
Pacific Cod	2.00%	314

Species	Sideboard %	Estimated Sideboard (mt)
West Yakutat		
Pacific Cod	3.40%	*
Pacific Ocean Perch	96.10%	808
Pelagic Shelf Rockfish	89.60%	182

Source: Sideboard percent was estimated using the retained catch of the 28 H&G trawl CP vessels (as estimated in the Council IR/IU and GOA Rationalization data base) divided by the total retained catch of all vessels in the GOA, as reported in the NOAA Fisheries catch and bycatch reports (1995-2003).

RPP - Indicates that species will be managed under the Rockfish Demonstration Program

*Not report to protect confidential data

In addition to the groundfish sideboard limits, the program also limits the number of AM-80 vessels that could be used for directed fishing in GOA flatfish fisheries (Table 5-2). GOA flatfish fishery participation is limited to vessels that had more than 10 weeks of participation in the GOA flatfish fisheries. Vessels with more than 10 weeks of participation may target GOA flatfish within current TAC and PSC regulations. Vessels that did not fish a sufficient number of weeks would not be allowed to harvest GOA flatfish in a directed fishery in the future.

The Council also included an exemption from the GOA halibut sideboards if a vessel had fished 80% of their weeks in the GOA flatfish fisheries from January 1, 2000 through December 31, 2003. The Golden Fleece is the only AM-80 vessels that qualified for this sideboard exempt. The historic halibut catch of the Golden Fleece does not contribute to the halibut sideboard limit calculations and the future catch of the vessel does not count against the halibut sideboard limits. The Golden Fleece is prohibited from directed fishing for all other sideboard species in the GOA (rockfish, Pacific cod, and pollock). Finally, the Golden Fleece may lease its BSAI AM-80 history.

Table 5-2 provides a list of AM-80 vessels and LLP licenses originally assigned to the AM-80 vessel, their GOA LLP area endorsements, and if the vessel is prohibited from targeting GOA flatfish.

Table 5-2 AM-80 vessels and their LLP with GOA area endorsements

LLP	AM-80 Vessel Name	GOA Endorsement			GOA Flatfish Prohibited
		CG	WG	SE	
2082	Alaska Juris		x		X
2118	Alaska Ranger		x		X
3043	Alaska Spirit	x	x		X
2080	Alaska Victory	x	x		X
2084	Alaska Voyager		x		X
2083	Alaska Warrior	x	x		X
2905	Alliance	x	x		
2028	American No. 1	x	x		
3895	Arctic Rose				X
2429	Arica		x		X
3744	Bering Enterprise				X
2432	Cape Horn				X
1147	Constellation	x	x		X
3217	Defender	x	x		
4831	Enterprise				X
2524	Golden Fleece ¹	x			
3741	Harvester Enterprise				X
3714	Legacy	x	x		
4360	Ocean Alaska	x			

		GOA Endorsement			
2138	Ocean Peace		x		
1802	Prosperity				X
3958	Rebecca Irene	x	x		X
2014	Seafisher	x	x		X
4692	Seafreeze Alaska		x		
2785	Tremont				X
3662	U.S. Intrepid	x	x		
3957	Unimak	x	x		
1402	Vaerdal	x	x		

Source: NMFS Restricted Access Management, License Limitation Program 2007 groundfish LLP licenses,
http://www.fakr.noaa.gov/ram/daily/llp_gf.csv.

¹The Golden Fleece is exempt from GOA AM-80 halibut PSC sideboards.

5.3.2 Amendment 80 GOA Halibut PSC Sideboards

The AM-80 program established halibut PSC sideboard limits in the GOA for all AM-80 vessels with the exception of the F/V Golden Fleece, which is exempt from these sideboard limits. These halibut PSC sideboard limits are apportioned among seasons (currently five²) and fishery complexes (shallow water and deep water species) through the annual specification process. The shallow water fishery complex includes pollock, flathead sole, Atka mackerel, and “other species.” The deep water complex includes all rockfish species, rex sole, deep water flatfish, sablefish, and arrowtooth flounder. The halibut PSC sideboard limit is based on the historic use of halibut PSC of all AM-80 vessels, except the F/V Golden Fleece, in each season and fishery complex during the period from 1998 through 2004. The halibut PSC sideboard limits for the 3rd season deep water species are slightly lower than historic halibut PSC use by AM-80 vessels to accommodate the allocation of halibut PSC catch quota under the Central GOA RPP. In addition, halibut PSC sideboard limits are reduced to account for the exemption of the F/V Golden Fleece from the sideboard restriction. Table 5-3 provides the halibut PSC sideboard limits by fishery complex and season as a percentage of the GOA trawl halibut PSC limit and the calculated metric ton amount of the halibut PSC sideboard limit based on the current 2,000 mt trawl halibut PSC limit.

Table 5-3 AM-80 sideboard limit for halibut PSC for the AM-80 sector

Fishery Complex	Season 1	Season 2	Season 3	Season 4	Season 5
Shallow water	0.48%	1.89%	1.46%	0.74%	2.27%
	9.6 mt	37.8 mt	29.2 mt	14.8 mt	45.4 mt
Deep water	1.15%	10.72%	5.21%	0.14%	3.71%
	23 mt	214.4 mt	104.2	2.8 mt	74.2 mt

The regulations related to GOA halibut PSC sideboard limits for AM-80 vessels are excerpted below from 50 CFR 679.

50 CFR 679.92 Amendment 80 Program use caps and sideboard limits.

(b) GOA sideboard limits

(2) GOA halibut PSC sideboard limits

All Amendment 80 vessels, other than the fishing vessel Golden Fleece as specified in paragraph (d) of this section, may not use halibut PSC in the fishery

² Season 1: January 20 – April 1; Season 2: April 1 – July 1; Season 3: July 1 – September 1; Season 4: September 1 – October 1; Season 5: October 1 – December 31.

complexes, management areas, and season greater than the amounts specified in Table 38 to this part during January 1 through December 31 of each year; except that:

- (i) An Amendment 80 vessel that uses halibut PSC CQ in the Central GOA subject to the regulations under subpart G to this part is not subject to the halibut PSC sideboard limit in Table 38 to this part while fishing under a Rockfish CQ permit.

Many of the AM-80 vessels are also RPP CP vessels. To account for the halibut PSC allocation in the RPP, the 3rd season deep water species halibut PSC sideboard limit for AM-80 vessels was reduced by the amount of halibut PSC that is available for allocation as halibut PSC catch quota under the RPP. Any halibut PSC usage in a RPP cooperative is not counted toward the AM-80 halibut PSC sideboard limit. Much of the halibut PSC that was historically used in the deep water species complex during the 3rd season was used for central GOA rockfish fisheries. This adjustment ensures that RPP vessels fishing under a cooperative will not be constrained by AM-80 GOA halibut PSC sideboard limits. AM-80 vessels not fishing under a RPP cooperative will continue to be subject to the halibut PSC AM-80 sideboard limit to include those vessels in the RPP limited access fishery.

The following flowcharts provide a picture of GOA trawl halibut PSC apportionment process for 3rd season deep water species. Figure 5-1 depicts trawl halibut PSC limit (2,000 mt) apportioned between shallow water species (900 mt) and deep water species (800 mt) by season.

Figure 5-2 shows halibut PSC apportioned to the 3rd season deep water species allocated between three user groups, the RPP CV cooperatives, RPP CP cooperatives, and the non-RPP cooperative participants. The amount of halibut PSC apportioned to the RPP CV and CP cooperatives represents the maximum halibut PSC limit that may be used by cooperative participants if all RPP qualified vessels join a cooperative. To accommodate for halibut PSC allocation to RPP CP vessels that join a CP cooperative, the AM-80 sideboard limit for the 3rd season deep water species was reduced based on historical halibut usage while targeting central GOA rockfish. Any halibut PSC catch by a RPP CP cooperative vessel that is also an AM-80 vessel will not be counted toward the AM-80 halibut sideboard limit.

Figure 5-3 provides the 2008 3rd season deep water species halibut PSC apportionment between the CV cooperatives (115 mt), CP cooperatives (55 mt), the CP vessels that join the limited access fishery (53 mt), and the non-rockfish portion (176 mt). As noted in the figure, the portion of halibut PSC associated with the rockfish CP vessels that joined the limited access fishery is deducted from the RPP CP cooperative apportionment and added to the non-rockfish limit, in this case 53 mt.

Figure 5-4 provides a picture of Alternative 1 (status quo) for the 3rd season deep water species halibut PSC, which demonstrates apportionment of halibut PSC limit and how halibut PSC catch for AM-80/RPP limited access vessels is counted towards the AM-80 sideboard. As seen in the figure, halibut PSC usage by AM-80/RPP limited access vessels is counted toward two accounts: non-rockfish halibut PSC limit and the AM-80 sideboard limit. As noted earlier, the 3rd season deep water halibut PSC sideboard limit has been reduced to accommodate halibut PSC allocated for RPP CP cooperatives. However, as depicted in Figure 5-4, halibut PSC catch while targeting central GOA rockfish by AM-80/RPP limited access vessels is counted toward the AM-80 sideboard limit. The counting of halibut PSC usage while targeting central GOA rockfish towards AM-80 sideboard limit by AM-80/RPP limited access vessels could be considered unfair by some AM-80 sector members. From a different perspective, the current rule could be argued to create an incentive for all eligible AM-80 vessels to join a RPP CP cooperative and for cooperatives to entice vessels to join.

Figure 5-5 provides a depiction of Alternative 2, again showing apportionments and deductions of halibut PSC. In this alternative, the halibut history associated with AM-80/RPP limited access vessels while targeting central GOA rockfish is credited to the AM-80 sideboard limit.

Finally, Figure 5-6 shows a flow chart of Alternative 3 as halibut PSC is apportioned among the different user groups and how halibut PSC while targeting central GOA rockfish by AM-80/RPP limited access vessels is only counted towards the non-RPP cooperative halibut limit.

Looking at 2007, the 3rd season deep water halibut PSC usage by AM-80/RPP limited access vessels combined with non-rockfish AM-80 vessels, only 79 percent of their sideboard limit was utilized (Table 5-4). Halibut usage while targeting central GOA rockfish by AM-80/RPP limited access vessels was 9 mt. All total, 82 mt of halibut PSC was utilized while targeting 3rd season deep water species during the 2007 by non-rockfish AM-80 vessels and AM-80/RPP limited access vessels, well short of the 104 mt sideboard limit. For 2008, 74 mt of halibut PSC was utilized while targeting 3rd season deep water species of which 22 mt was from AM-80/RPP limited access vessels targeting central GOA rockfish.

Figure 5-1 Flow chart of GOA trawl halibut PSC limits for shallow water and deep water species

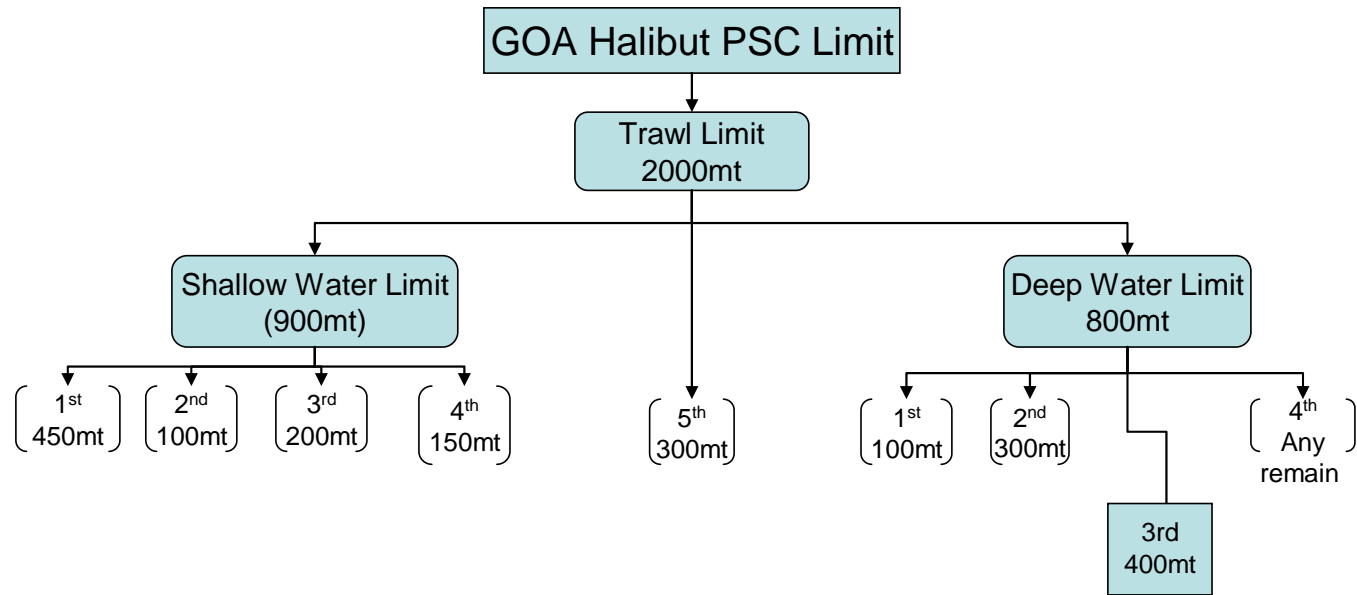


Figure 5-2 Flow chart of apportionment of 3rd season deep water species halibut PSC when all rockfish CV and CP vessels join a cooperative

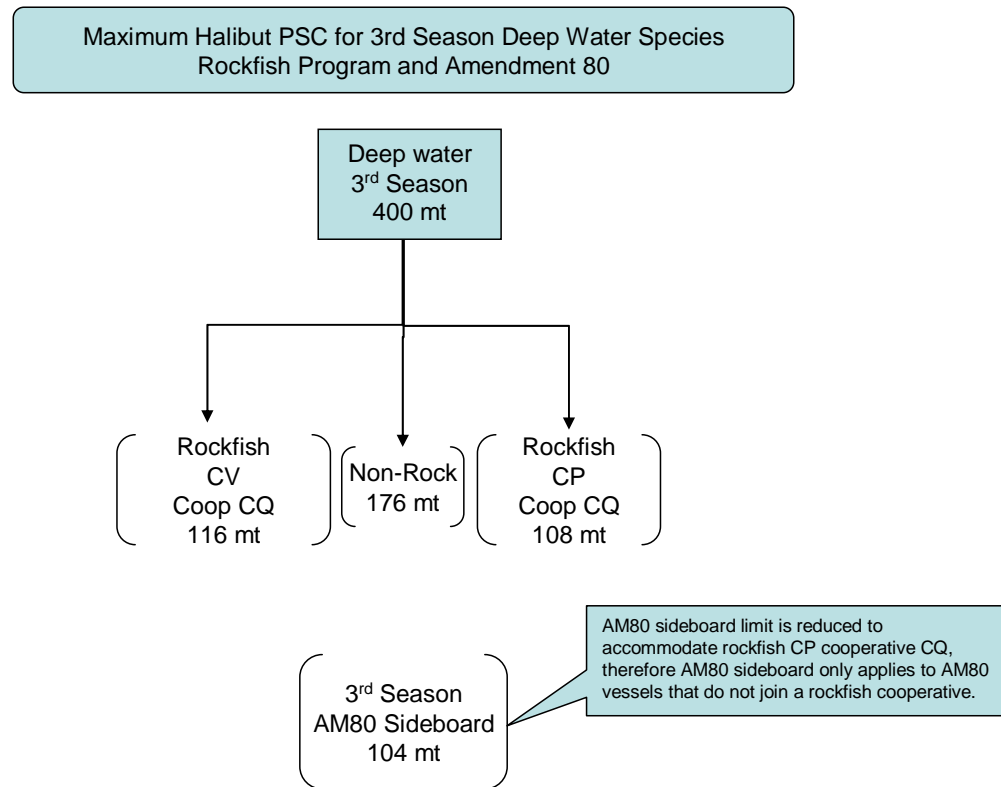


Figure 5-3 Flow chart of 2008 3rd season deep water species halibut PSC apportionment for CP vessel that join the limited access fishery

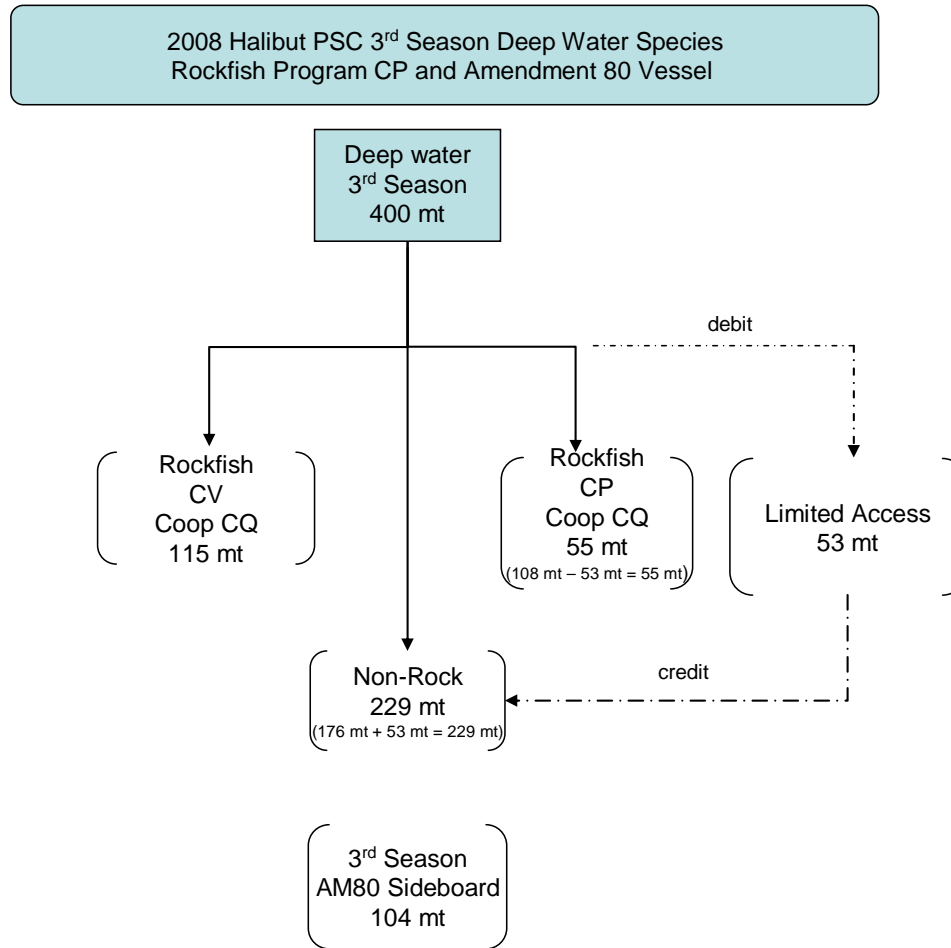


Figure 5-4 Flow chart of Alternative 1 (status quo)

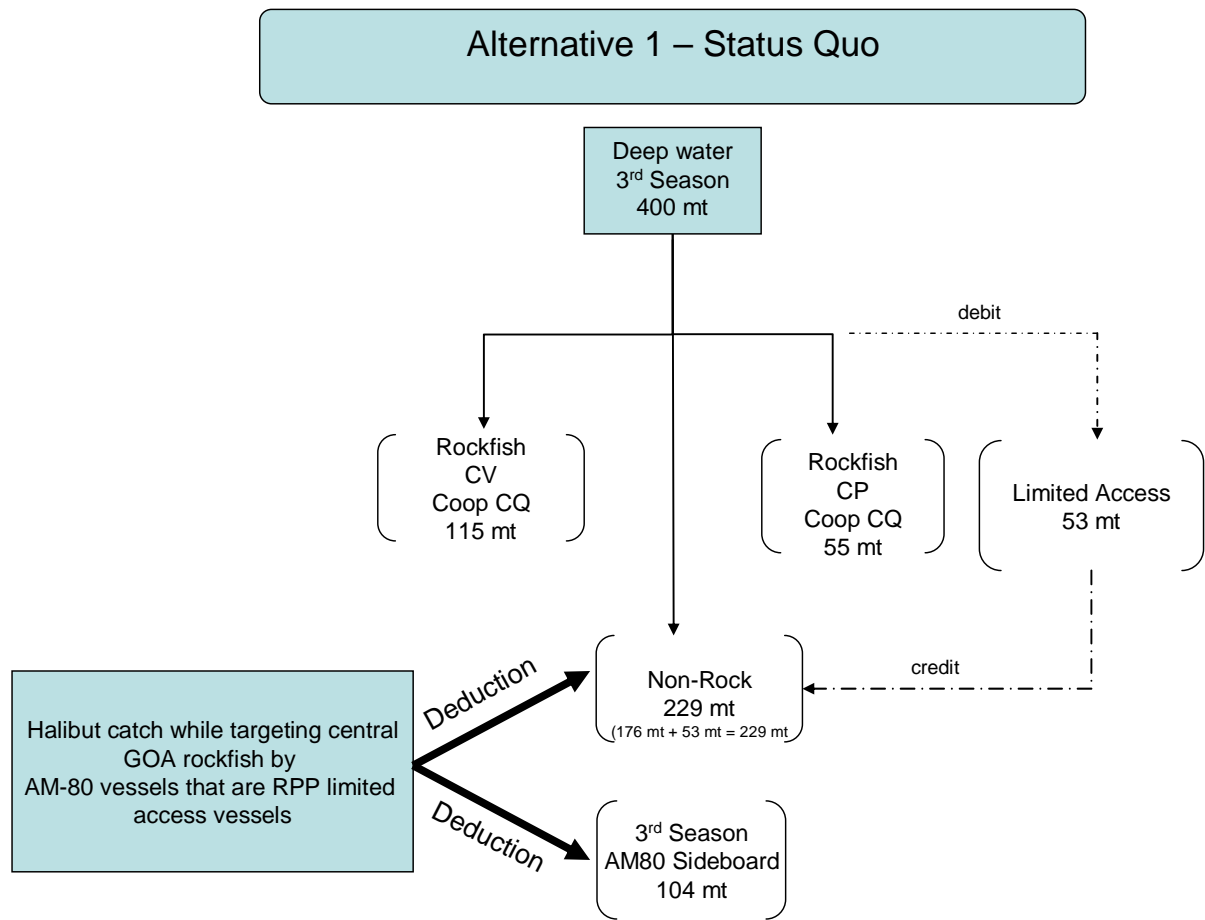


Figure 5-5 Flow chart of Alternative 2

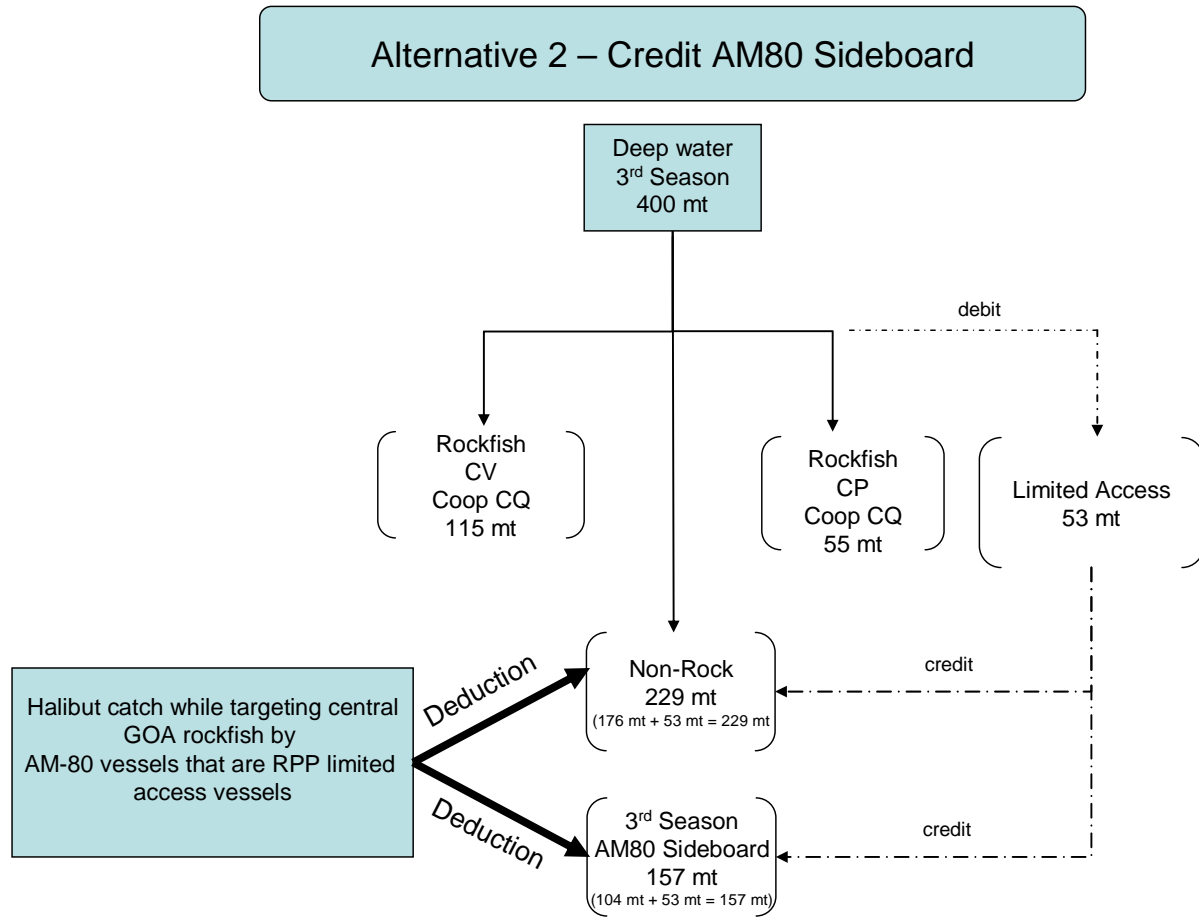


Figure 5-6 Flow chart of Alternative 3

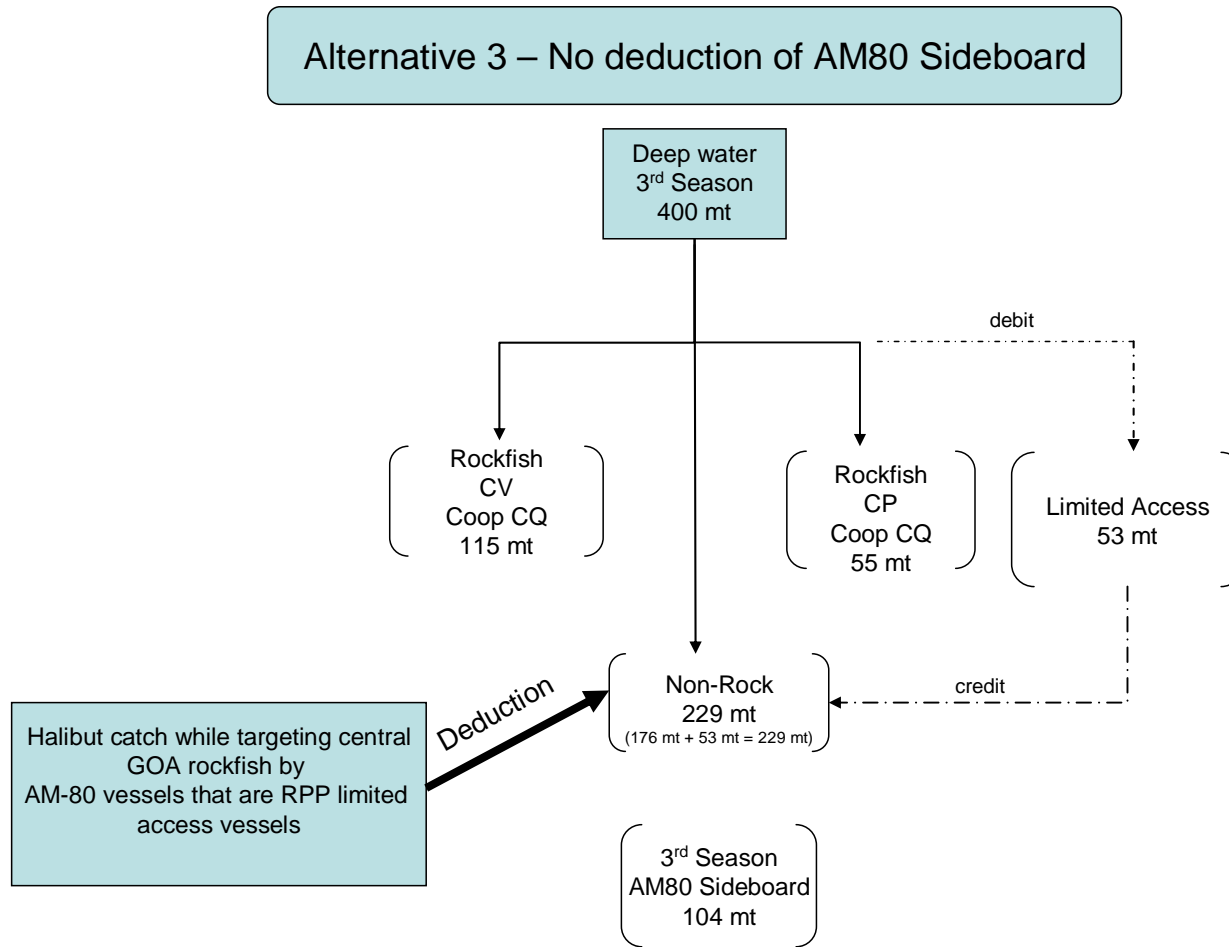


Table 5-4 Total 3rd season deep water halibut PSC used in the Rockfish Program in 2007

Total 3 rd season deep-water trawl halibut PSC limit (July 1 – Sep. 1)	Halibut PSC CQ issued to Rockfish Cooperatives (CV)	Halibut PSC CQ issued to Rockfish Cooperatives (CP)	Amount available for non-Rockfish CQ fishing	Halibut PSC used in the Rockfish Limited Access Fishery (CP)	Halibut PSC used by AM-80 vessels outside of the Rockfish Program ³	Total Halibut PSC used by AM-80 vessels subject to AM-80 sideboard ⁴	Halibut PSC used by non-AM-80 vessels, Rockfish CVs using halibut PSC not assigned as Rockfish CQ, Rockfish Entry Level Fishery & F/V GOLDEN FLEECE ⁵	Total non-CQ halibut PSC used
400 mt	115 mt	61 mt	224 mt	9 mt	73 mt	82 mt	8 mt	90 mt
Total amount of 3 rd season non-Rockfish Program CQ deep-water trawl halibut PSC remaining				134 mt (224 mt – 90 mt)				
Total amount of 3rd season AM-80 halibut PSC sideboard limit remaining				22 mt (104 mt – 82 mt)				

³ This amount includes all non-Rockfish Program halibut PSC used by all Amendment 80 vessels (except the F/V GOLDEN FLEECE). This amount includes halibut PSC used by Amendment 80 vessels in non-Rockfish Program fisheries (e.g., deep water flatfish in the GOA, and Western GOA or Western Yakutat District Rockfish). No Rockfish Program halibut PSC CQ or Rockfish Limited Access Fishery Halibut PSC included in this amount.

⁴ This amount excludes halibut PSC used by the F/V GOLDEN FLEECE and halibut PSC CQ used by CPs in the Rockfish Program.

⁵ Note that NMFS did not open a Rockfish Limited Access Fishery for Rockfish catcher vessels, and no halibut PSC was used. Any halibut PSC used by Rockfish CVs in non-Rockfish CQ fishing (e.g., deep water flatfish) during the 3rd season is included in this amount. Any halibut PSC used by the F/V GOLDEN FLEECE in non-rockfish fisheries (e.g., arrowtooth flounder) would be included in this amount.

Table 5-5 Total 3rd season deep water halibut PSC used in the Rockfish Program in 2008

Total 3 rd season deep-water trawl halibut PSC limit (July 1 – Sep. 1)	Halibut PSC CQ issued to Rockfish Cooperatives (CV)	Halibut PSC CQ issued to Rockfish Cooperatives (CP)	Amount available for non-Rockfish CQ fishing	Halibut PSC used in the Rockfish Limited Access Fishery (CP)	Halibut PSC used by AM-80 vessels (No Rockfish CQ or Rockfish Limited Access Fishery Halibut PSC included)	Total Halibut PSC used by AM-80 vessels subject to AM-80 sideboard	Halibut PSC used by non-AM-80 vessels, Rockfish CVs using halibut PSC not assigned as Rockfish CQ, Rockfish Entry Level Fishery & F/V GOLDEN FLEECE	Total non-CQ halibut PSC used
400 mt	115 mt	55 mt	229 mt	22 mt	52 mt	74 mt	82 mt	156 mt
Total amount of 3 rd season non-Rockfish Program CQ deep-water trawl halibut PSC remaining				73 mt (229 mt – 156 mt)				
Total amount of 3rd season AM-80 halibut PSC sideboard limit remaining				30 mt (104 mt – 74 mt)				

5.4 Amendment 80 Vessels Qualified for Rockfish Pilot Program

There are currently 11 qualified AM-80 vessels with LLPs that qualify for the RPP in the GOA. Of these 11 qualified vessels, 10 applied for and received 2008 AM-80 quota share. The remaining vessel did not apply for 2008 AM-80 quota shares; the vessel predominantly fishes in the GOA and is exempt from AM-80 GOA halibut PSC sideboard limit. Not included among the 11 qualified AM-80 vessels, is an LLP that may also qualify for AM-80 quota, but the originating vessel that created the LLP is ineligible to be an AM-80 vessel. Under the AM-80 program, it may apply for and receive AM-80 quota share accrued to the originating vessel, but only if the LLP is assigned to a qualified AM-80 vessel, which is currently not the case. In 2007, the LLP was assigned to 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 AM-80 quota share will be considered part of the AM-80 sector that qualify for the RPP. Table 5-6 identifies how each of the 10 AM-80 vessels and their LLPs participated in the RPP for 2008.

Table 5-6 AM-80 catcher processors and their assigned LLPs that qualify for the RPP and type of participation in the RPP in 2008

LLP ^a	LLP Holder ^a	Vessel associated with LLP ^b	2008 Rockfish participation ^a		
			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			✓
2905	ALASKA ALLIANCE, LLC	Alliance		✓	
3043	ALASKA SPIRIT, INC.	Alaska Spirit	✓		
3662	U.S. FISHING, L.L.C.	U.S. Intrepid		✓	
3957	UNIMAK FISHERIES, LLC	Unimak		✓	

^a Source: NMFS Restricted Access Management, RPP 2007 LLP licenses, <http://www.fakr.noaa.gov/sustainablefisheries/goarat/07rockfishlicenses.xls>.

^b Source: NMFS Restricted Access Management, License Limitation Program 2007 groundfish LLP licenses, http://www.fakr.noaa.gov/ram/daily/llp_gf.csv.

5.5 Catch and Value of 3rd Season Deep Water Species by Amendment 80 vessels

The deep water species complex includes deepwater flatfish, rex sole, arrowtooth flounder, rockfish, and sablefish. The deep water flatfish complex is composed of three species: Dover sole, Greenland turbot, and deep-sea sole. Table 5-7 provides total catch of central and western GOA 3rd season deep water species by AM-80 vessels from 2003 to 2007. Of the rockfish species, POP shows the highest catch in both the central and western GOA. Other rockfish species with significant catch numbers are northern and pelagic shelf rockfish. Of the flatfish fisheries, arrowtooth flounder and rex sole have the highest catch during the 2003 to 2007 period. Table 5-8 provides first wholesale revenue of the 3rd season deep water species harvested by the AM-80 vessels from 2003 to 2007.

Table 5-7 Total catch (mt) of GOA 3rd season deep water species by Amendment 80 vessels from 2003 to 2007

Species	Subarea	2003	2004	2005	2006	2007
Pacific Ocean Perch	CG	2,168	3,268	3,349	3,659	1,311
	WG	1,581	2,167	2,278	3,987	4,252
Northern Rockfish	CG	1,809	1,407	1,986	1,921	673
	WG	306	876	549	869	1,052
Pelagic Shelf Rockfish	CG	715	753	688	559	598
	WG	89	244	104	523	562
Shortraker/Rougheye Rockfish	CG	551	137			
	WG	44	117			
Rougheye Rockfish	CG			51	22	24
	WG			38	36	61
Shortraker Rockfish	CG			141	152	44
	WG			34	51	163
Other Rockfish	CG	486	390	431	398	138
	WG	112	212	64	215	231
Rex Sole	CG	320	181	381	945	323
	WG	218	134	64	31	56
Thornyhead Rockfish	CG	364	185	183	170	53
	WG	63	118	81	65	203
Arrowtooth Flounder	CG	1,943	1,352	3,344	5,339	1,300
	WG	2,066	470	238	243	837
Deep Water Flatfish	CG	224	61	140	128	59
	WG	18	3	2	5	6
Sablefish	CG	499	306	419	315	151
	WG	90	159	72	121	204

Source: Catch accounting database

Shortraker/rougheye catch are combined for 2003 and 2004. For 2005-2007, catch for Shortraker/Rougheye are separate.

Table 5-8 First wholesale revenues of GOA 3rd season deep water species by Amendment 80 vessels from 2003 to 2007

Species	Subarea	2003	2004	2005	2006	2007
Pacific Ocean Perch	CG	\$2,714,032	\$5,100,164	\$7,573,761	\$9,757,218	\$2,554,019
	WG	\$1,978,768	\$3,381,136	\$5,151,275	\$10,632,782	\$8,283,886
Northern Rockfish	CG	\$1,263,828	\$1,485,117	\$3,515,133	\$4,321,940	\$1,125,859
	WG	\$213,455	\$924,212	\$970,408	\$1,954,335	\$1,759,772
Pelagic Shelf Rockfish	CG	\$704,088	\$1,062,208	\$1,390,371	\$1,342,803	\$1,061,479
	WG	\$87,797	\$343,651	\$209,854	\$1,256,026	\$997,576
Shortraker/Rougheye Rockfish	CG	\$1,444,961	\$437,907			
	WG	\$115,555	\$375,000			
Rougheye Rockfish	CG			\$131,319	\$56,099	\$43,254
	WG			\$97,505	\$91,963	\$108,337
Shortraker Rockfish	CG			\$498,854	\$572,790	\$134,489
	WG			\$121,181	\$191,700	\$499,621
Other Rockfish	CG	\$684,878	\$645,374	\$1,064,293	\$1,088,932	\$285,798
	WG	\$157,692	\$350,327	\$159,005	\$588,256	\$478,062
Rex Sole	CG	\$649,598	\$411,829	\$998,584	\$2,227,818	\$748,468
	WG	\$442,600	\$303,111	\$167,996	\$72,156	\$130,465

Thornyhead Rockfish	CG	\$1,182,492	\$631,523	\$507,792	\$539,782	\$173,569
	WG	\$205,915	\$404,236	\$223,745	\$206,740	\$663,499
Arrowtooth Flounder	CG	\$1,627,585	\$1,608,587	\$5,307,222	\$6,942,106	\$1,597,775
	WG	\$1,730,170	\$559,637	\$378,058	\$316,531	\$1,028,263
Deep Water Flatfish	CG	\$157,682	\$42,815	\$95,854	\$90,417	\$41,402
	WG	\$12,773	\$2,107	\$1,089	\$3,177	\$4,244
Sablefish	CG	\$3,933,845	\$2,256,278	\$3,397,678	\$2,848,318	\$1,220,458
	WG	\$712,520	\$1,174,987	\$587,962	\$1,090,721	\$1,650,172

Catch data is from Catch accounting database

¹Price data from GOA Rockfish Pilot Program Review, May 19, 2008, Table 26

²Price data for combined shortraker/rougheye rockfish from average of 2003 and 2004 prices for separate shortraker and rougheye rockfish prices in the GOA Rockfish Pilot Program Review, May 19, 2008, Table 26

³Price data from 2006 Economic SAFE

⁴Price data for deep water flatfish was average of 2003 and 2005 prices from the 2006 Economic SAFE

6 Expected Effects of the Alternatives

This section identifies the expected effects of the alternatives under consideration by the Council. There are three alternatives. Alternative 1 (status quo) will continue to deduct halibut PSC utilized by AM-80/RPP limited access vessels while they target central GOA rockfish from the AM-80 halibut PSC sideboard limit. Alternative 2 would adjust the AM-80 halibut PSC sideboard limit for the 3rd season deep water species to accommodate historical usage by AM-80/RPP limited access vessels while targeting central GOA rockfish. Finally, Alternative 3 would not deduct halibut PSC usage by AM-80/RPP limited access vessels while targeting central GOA rockfish from AM-80 halibut PSC sideboard limit.

6.1 Alternative 1 - Status Quo

Under Alternative 1, there would be no change to the AM-80 3rd season deep water species halibut PSC limit. As demonstrated in Figure 5-4, 3rd season deep water halibut PSC usage while targeting central GOA rockfish by AM-80/RPP limited access vessels will continue to be deducted from the non-rockfish halibut PSC limit and the AM-80 sideboard limit. As demonstrated in Table 6-1, catch of halibut PSC while targeting deep water species during the 3rd season from 2003 - 2006 by AM-80 vessels suggests that halibut PSC sideboards could have been constraining for these vessels. Of the halibut PSC caught by the AM-80 vessels, on average 27 percent of the halibut was caught by AM-80 vessels that are also qualified to participate in the RPP while they targeted central GOA rockfish. Based on this past halibut usage by the AM-80 fleet, there is some potential that future 3rd season deep water fisheries could be constrained by the halibut sideboard limit in the future thereby creating economic hardship for the AM-80 fleet. However, the success of the RPP concerning halibut PSC usage indicates that the 3rd season deep water species sideboard limit could be less constraining in the future. As noted in Table 5-4, the 2007 3rd season deep water halibut PSC usage by RPP limited access vessels while targeting central GOA rockfish was 9 mt. AM-80 vessels that were not members of a RPP cooperative utilized 73 mt of halibut PSC. In total, 82 mt of halibut PSC was used by AM-80 vessels that were not members of a RPP cooperative, falling well short of the sideboard limit of 104 mt. In 2008, halibut PSC usage by AM-80/RPP limited access vessels while targeting central GOA rockfish was 22 mt, while AM-80 vessels that were not RPP vessels utilized 52 mt of halibut PSC. All total, 74 mt of halibut PSC was utilized by these vessels during the 3rd season while targeting deep water species, also well shy of the 104 mt sideboard limit (Table 5-5).

Table 6-1 Catch of GOA halibut PSC by Amendment 80 vessels and Amendment 80 vessels that are also RPP qualified vessels while targeting central GOA rockfish during the 3rd season from 2003 to 2006

YEAR	Halibut PSC catch while targeting deep water species by all AM-80 vessels	Halibut PSC catch for AM-80 vessels qualified to participate in the RPP	% of AM-80 halibut PSC catch by AM-80/RPP vessels while targeting CGOA rockfish
2003	130	49	37.7%
2004	154	48	31.1%
2005	199	65	32.7%
2006	237	34	14.3%

Source: Catch accounting database

The reduction in halibut PSC bycatch during the 3rd season was reported in the Gulf of Alaska RPP Review. As noted in the review, in the years leading up to the RPP, vessels in the rockfish fishery averaged in excess of 20 pounds of halibut mortality for each ton of primary rockfish species. In the first year of the RPP, vessels fishing in cooperatives and the limited access fishery under the program cut halibut mortality rates substantially. Vessels in the catcher processor limited access fishery reduced their catch to approximately 13 pounds of halibut per ton of primary rockfishes.

The drastic reduction in halibut mortality likely arises from several factors. First, vessels in the RPP limited access that have an allocation of central GOA rockfish and when the participants cooperate amongst one another this allows them to move from areas of high halibut catch without risking loss of catch in the fishery. Note that in assessing the change in halibut PSC mortality for catcher processor limited access fishery, it should be noted that (although not fishing as a cooperative) the vessels fishing in that fishery did not compete for the allocations of pelagic shelf rockfish, reducing the pressure to race for fish. Second, this allocation to the limited access also increase the incentive for participants to communicate with each other concerning catch rates, improving information concerning areas of high halibut incidental catch in the fleet and preventing repeated high halibut mortality among vessels exploring fishing grounds. Third, several vessels have begun employing new pelagic gear that limits bottom contact and halibut incidental catch. The primary motivation for these changes in gear types is constraining halibut allocations and sideboards, which could jeopardize catches in the event that halibut bycatch exceeds allocations and sideboards. The incentive for halibut mortality reductions is increased by the rollover of saved halibut mortality to other fisheries late in the year, allowing the trawl sector as a whole (including vessels that did not qualify for the RPP) to benefit from these halibut mortality reductions.

In summary, the alternative would not change the AM-80 3rd season deep water species halibut PSC limit. Halibut PSC usage in the 3rd season while targeting central GOA rockfish by AM-80/RPP limited access vessels will continue to be deducted from the non-rockfish halibut PSC limit and the AM-80 sideboard limit. Based on historical halibut PSC usage by the AM-80 vessels during the 3rd season while targeting deep water species, there is some potential that fishing for deep water species during the 3rd season could be constrained in the future by the halibut PSC sideboard limit thereby creating economic hardship for the AM-80 vessels. During those years when the halibut sideboard limit constrains the AM-80 fleet due to halibut usage from AM-80/RPP vessels while targeting central GOA rockfish, all other trawl vessels would benefit from the sideboard triggered closure. A sideboard triggered closure for AM-80 vessels would reduce the number of trawl vessels that could potential utilize the halibut PSC apportioned to the 3rd season deep water species, thereby allowing for a longer 3rd season for those trawl vessels targeting deep water species.

6.2 Alternative 2 - Adjust the Amendment 80 3rd season deep water halibut PSC sideboard limit

Under Alternative 2, the 3rd season deep water halibut PSC sideboard limit would be adjusted to include RPP halibut quota from AM-80 vessels that joined the RPP limited access fishery (Figure 5-5). When the AM-80 sideboard limit was calculated, the sideboard limit was reduced to account for halibut allocation to AM-80 vessels that participate in RPP cooperatives targeting central GOA rockfish. However, as noted in Figure 5-4, halibut PSC usage by AM-80/RPP limited access vessels while targeting central GOA rockfish is counted toward the AM-80 sideboard. For example, in 2008, 53 mt of halibut PSC that could have been assigned as halibut PSC quota for CP cooperatives in the RPP was later assigned to the non-rockfish halibut PSC limit to account for RPP limited access vessels. Since all RPP limited access vessels were also AM-80 vessels, the entire 53 mt would be added to the sideboard limit under this alternative.

Adjusting the AM-80 sideboard limit for 3rd season deep water halibut PSC appears to benefit all AM-80 vessels restricted by the sideboard limit. Although halibut PSC usage fell well short of the 104 mt sideboard limit in 2007 and 2008, the additional halibut PSC from AM-80/RPP limited access could be useful during periods of high halibut usage by allowing the non-rockfish cooperative AM-80 vessels to continue fishing for deep water species. Table 6-1 provides GOA 3rd season deep water species halibut PSC catch for AM-80 vessels from 2003 to 2006. From 2003 to 2006, halibut PSC catch suggests that deep water fisheries by AM-80 vessels could have been constrained. Supporting this suggestion, Table 6-2 shows that halibut bycatch has sometimes caused deep water fisheries to close before the end season. However, during the RPP (2007 and 2008) thus far, halibut PSC catch by AM-80 vessels has fallen below the 104 mt sideboard limit.

Table 6-2 Opening and closing dates for GOA 3rd season deep water species and reason for closures

Year	Opened	Closed	Reason for closure
2003	29-Jun	16-Aug	TAC
2004	4-Jul	25-Jul	Halibut
2005	5-Jul	24-Jul	Halibut
2006	1-Jul	31-Aug	End of Season
2007	1-Jul	10-Aug	Halibut
2008	1-Jul	31-Aug	End of Season

Source: NMFS Sustainable Fisheries, Catch Reports, Status of the Fisheries, <http://www.fakr.noaa.gov/sustainablefisheries/catchstats.htm>

One potential effect of increasing the AM-80 sideboard limit could be a reduced incentive for AM-80/RPP limited access vessels to join a RPP cooperative. A potential benefit of the RPP is realized efficiencies in the rockfish fisheries and other fisheries from the use of cooperative managed allocation of rockfish and halibut PSC bycatch mortality. Vessels in the RPP limited access fishery, although not fishing as a cooperative, do not compete for the allocations of pelagic shelf rockfish, reducing the pressure to race for fish. Nevertheless, the race for fish the AM-80/RPP limited access vessels do experience could limit their ability to reduce halibut bycatch mortality thereby increasing their chance of shortened season due a sideboard restriction. Recognizing that a race for fish could limit their ability to control halibut bycatch and cooperatives are apportioned halibut PSC quota, these vessels have an incentive to join a RPP cooperative. In addition, if all qualified vessels joined a RPP cooperative, there would be no RPP limited access vessels, which would reduce the management burden to NOAA Fisheries.

One difficulty of this alternative is the timing of the harvest specification process and the deadline application for RPP. The harvest specification process begins later the previous year with final harvest specifications published early the following year. The RPP application deadline is March 1 of the same

year. Prior to the March 1 deadline, it is not known who of the RPP qualified CP vessels will join a cooperative or be in the limited access fishery. Once it is determined which RPP vessels will join the limited access fishery, NOAA Fisheries announces the RPP cooperative rockfish and halibut allocations. At that same time, NOAA Fisheries adjusts the non-rockfish halibut PSC limit for the 3rd season deep water species to account for halibut PSC associated with the RPP limited access vessels via announcement. Given the time difference, changing the AM-80 sideboard limit to reflect halibut PSC history associated with AM-80/RPP limited access vessels is not possible from NOAA Fisheries perspective.

Given the difficulty of this alternative, NOAA Fisheries has suggested that the RPP application deadline be moved to November of the previous year to allow the AM-80 3rd season deep water species sideboard limit to be adjusted during the harvest specification process. With a RPP application deadline of November, NOAA Fisheries will be able to calculate the AM-80 sideboard limit for 3rd season deep water species to account for the additional halibut PSC from AM-80/RPP limited access vessels. One potential drawback in moving the RPP application deadline to November is cooperative formation could be hampered. Currently, the application deadline is only 4 months before the July rockfish fishery. Under a November RPP deadline application, RPP participants would be required to form cooperatives 9 months before the July fishery opens. This lengthy period between cooperative formation and the beginning of the rockfish fishery could result in some participants being reluctant to join a cooperative given changing market conditions for North Pacific fisheries resources.

In summary, this alternative would adjust the 3rd season deep water halibut PSC sideboard limit by including RPP halibut quota from AM-80 vessels that joined the RPP limited access fishery. The increased halibut sideboard limit would benefit all AM-80 vessels restricted by the sideboard by allowing vessels to continue fishing for deep water species longer during periods of high halibut usage. The increase halibut sideboard does raise the trigger for a closure of deep water species for AM-80 vessels which may not benefit all other trawlers targeting deep water species. Finally, the difficulty of this alternative due the timing of harvest specification process and the application deadline for RPP makes this alternative not possible. One solution is to move the application deadline for the RPP to November of the previous year. However, this may hamper cooperative formation due to the large length of time between a November application deadline and the start of the July 1 fishery.

6.3 Alternative 3 - Limited access and opt-out halibut PSC is not deducted from Amendment 80 3rd season deep water halibut PSC limited

Under Alternative 3, halibut PSC usage while targeting central GOA rockfish by AM-80/RPP limited access vessels would not be deducted from the 3rd season deep water halibut PSC sideboard limit (Figure 5-6). In other words, AM-80/RPP limited access vessels would not be restricted by AM-80 3rd season deep water species halibut PSC sideboard limit while targeting central GOA rockfish. All other targeting of deep water species by AM-80/RPP limited access vessels will continue to be deducted from the AM-80 sideboard limit. As an example of this alternative, in 2008, 22 mt of halibut PSC used by the AM-80/RPP limited access vessels would not count towards the AM-80 sideboard limit as is currently done. The 22 mt would still be account towards the non-rockfish halibut PSC limit.

One potential effect of this alternative is that AM-80/RPP limited access vessels would be released from the AM-80 halibut PSC sideboard limit while targeting central GOA rockfish and this could impact fishing in 3rd season deep water fisheries for other trawl vessels. Unfortunately, it is not possible to determine with any certainty future halibut PSC usage under this alternative, there are indications that halibut usage by AM-80 vessels is declining and therefore could be less of factor in halibut closures for the 3rd season deep water fisheries in the future. Halibut bycatch limits, developed to manage halibut mortality, often constrain harvests of species assigned to the deep water fishery complex. Deep water

fisheries include rex sole, arrowtooth flounder, deep water flatfish, other flatfish, and western and west Yakutat GOA Pacific ocean perch, northern rockfish, and pelagic shelf rockfish. Recognizing that the ability to form cooperatives would allow AM-80 vessels increased flexibility in planning their fishing year, the Council established sideboards to restrict AM-80 vessels competitive advantage over other participants in the GOA that are unable to rationalize their fishing operation. These sideboards allow cooperative members to catch up to their “historic” amount of halibut PSC.

Similar to Alternative 2, one potential effect of this alternative could be a reduced incentive for AM-80/RPP limited access vessels to join a RPP cooperative. In fact, the absence of AM-80 sideboards while targeting central GOA rockfish under this alternative could create an incentive for AM-80 vessels to join the limited access fishery. As noted above, one of the potential benefits of the RPP is realized efficiencies in the rockfish fisheries and other fisheries from the use of cooperative managed allocation of rockfish and halibut PSC bycatch mortality. AM-80 vessels that select the RPP limited access fishery are compelled to race for fish against other catcher processors, as well as non-rockfish CQ catcher vessels⁶. A race for fish could limit their ability to reduce halibut bycatch mortality, thereby increasing their chance of shorten season due a sideboard restriction. However, absent an AM-80 sideboard limit while targeting central GOA rockfish, the only halibut restriction would be the non-rockfish halibut PSC limit, which may not be a sufficient restriction to encourage cooperative formation. In addition, if all qualified vessels joined a RPP cooperative, there would be no RPP limited access vessels, which would reduce the management burden to NOAA Fisheries.

In summary, under this alternative, halibut PSC usage while targeting central GOA rockfish by AM-80/RPP limited access vessels would not be deducted from the 3rd season deep water halibut PSC sideboard limit. By not counting halibut bycatch while targeting central GOA rockfish by AM-80/RPP limited access vessels, towards the AM-80 sideboard limit, the AM-80 vessels benefit from a potentially longer deep water species fishery. A drawback of this alternative is that AM-80/RPP limited access vessels would be released from the AM-80 halibut PSC sideboard limit while targeting central GOA rockfish and this could impact fishing in 3rd season deep water fisheries for other trawl vessels.

6.4 Net Benefits

There appears to be limited net benefit to the Nation from this action. Adjusting the 3rd season deep water species sideboard to account for halibut PSC usage by AM-80/RPP limited access while targeting central GOA rockfish could result in increase efficiency and decrease costs for AM-80 vessels operating in the GOA 3rd season in the deep water fisheries. However, any benefit to the Nation from increased efficiency and decreased costs of adjusting the sideboard could be reduced from the potential disincentives of cooperative formation created under Alternatives 2 and 3, and the potential impacts to trawl vessels fishing in the deep water fisheries if AM-80/RPP limited access vessels are released of halibut PSC sideboards while targeting central GOA rockfish. In addition, the need to move the RPP application deadline to November to address the inability to adjust the AM-80 3rd season deep water species sideboard limit under Alternative 2 and its potential effect of reducing cooperative formation also could reduce any benefits from costs and efficiency of this action.

⁶ Note that vessels in the RPP limited access fishery, although not fishing as a cooperative, do not compete for the allocations of pelagic shelf rockfish, reducing the pressure to race for fish.

7 Initial Regulatory Flexibility Analysis (IRFA)

7.1 Introduction

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 600-611, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: 1) to increase agency awareness and understanding of the impact of their regulations on small business; 2) to require that agencies communicate and explain their findings to the public; and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

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

Based upon a preliminary evaluation of the proposed program alternatives, it appears that “certification” would not be appropriate. Therefore, this IRFA has been prepared. Analytical requirements for the IRFA are described below in more detail.

The IRFA must 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.

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.

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

7.2 Definition of a Small Entity

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

Small businesses: Section 601(3) of the RFA defines a “small business” as having the same meaning as a “small business concern,” which is defined under Section 3 of the Small Business Act. A “small business” or “small business concern” includes any firm that is independently owned and operated and not 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% 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 have the power to control less than 50% 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 and subcontractor are treated as joint venturers 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.

7.3 Reason for considering the proposed action

The proposed action considers alternatives to address the accounting of halibut PSC usage while targeting central GOA rockfish by AM-80/RPP limited access vessels from the AM-80 3rd season deep water halibut PSC sideboard limit. The additional halibut usage by the AM-80 /RPP limited access vessels on the AM-80 sideboard without including their RPP limited access halibut PSC allocation could result in AM-80 vessels reaching the halibut sideboard limit prior the end of the 3rd season, thus unduly constraining other AM-80 vessels. Given that the AM-80 halibut PSC sideboard limit does not include the halibut PSC allocation associated with the AM-80/RPP limited access vessels, the AM-80 halibut PSC sideboard limit for 3rd season deep-water species may need to be adjusted to accommodate additional halibut bycatch by AM-80/RPP limited access vessels.

7.4 Objectives of, and the legal basis for, the proposed rule

The objective of the proposed action is to address the counting of halibut PSC usage while targeting central GOA rockfish by AM-80/RPP limited access vessels towards the AM-80 3rd season deep water halibut PSC sideboard limit.

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.

7.5 Number and Description of Small Entities Regulated by the Proposed Action

The proposed action directly regulates those AM-80/RPP limited access vessels that operate in the 3rd season deep water fisheries. There are a total of 10 catcher processor vessels that qualify for AM-80 program that also have GOA LLPs that qualify for the CGOA RPP, representing the maximum number of entities that might be directly regulated under the proposed action. One vessel, the Golden Fleece, also meets these conditions, but is exempt from GOA halibut PSC sideboards. As a result, this vessel is excluded from the list of regulated vessels. Vessel operators that would be considered large entities are either affiliated (e.g., as owners of multiple vessels) or participate in a cooperative. All of the vessels directly regulated by this action participate in a rockfish cooperative or an Amendment 80 cooperative. Therefore, all of the directly regulated vessels in 2008 would likely be considered large entities for purposes of RFA.

7.6 Recordkeeping and Reporting Requirements

Implementation of the proposed action to address halibut PSC usage in the 3rd season deep water fisheries by AM-80/RPP limited access vessels would not change the overall reporting structure and record keeping requirements of these vessels.

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 could minimize any significant (implicitly adverse) economic impact of the proposed rule on small entities.” The alternatives that would accomplish the stated objective are listed in the RIR (Section 5). 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 re-evaluated once the Council has taken further action.

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 GOA groundfish fisheries and halibut PSC for catcher processors that participate in the CGOA RPP and AM-80 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 addresses the 3rd season deep water species sideboard limit for AM-80 vessels.

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 GOA 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 Section 4 of this document. The impacts of these actions on participants in the fisheries are evaluated in the RIR, Section 6.

9 List of Preparers, Persons Consulted, and References

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