

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comment may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1988).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. For submitting comments, filers should follow the instructions provided on the website.

For ECFS filer, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filer must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

For Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rule making number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of

the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelope must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Government Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

##### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding McNary, Channel 249C1.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E9-26312 Filed 11-2-09; 8:45 am]

**BILLING CODE 6712-01-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0811201490-91372-03]

RIN 0648-AX42

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

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

**ACTION:** Final rule.

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

**DATES:** Effective December 3, 2009.

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

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

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the exclusive economic zone of Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The North Pacific Fishery Management Council (Council)

prepared both FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Amendment 68 to the GOA FMP implemented the Central GOA Rockfish Program (Rockfish Program). Amendment 80 to the BSAI FMP implemented the Amendment 80 Program. Regulations implementing the FMPs appear at 50 CFR part 679.

General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Rockfish Program is a limited access privilege program (LAPP) for the Central GOA rockfish fisheries because the participants can receive exclusive harvesting privileges for a portion of the total allowable catch (TAC) assigned to the Central GOA rockfish fisheries and species caught incidentally in the Central GOA rockfish fisheries if they a form fishery cooperative with other eligible participants.

A person is eligible to participate in the Rockfish Program and receive exclusive harvesting privileges if that person holds a License Limitation Program (LLP) license that has been associated with one or more vessels that made legal landings of Central GOA rockfish species using trawl catcher vessels and trawl catcher/processors during the rockfish fishing seasons from 1996 through 2002, and the landings were attributed to that LLP license. When the Rockfish Program was implemented, eligible LLP license holders who applied to NMFS received quota share (QS), which is the multi-year privilege to receive exclusive harvesting privileges under the Rockfish Program. NMFS calculated how much QS would be allocated to an LLP license based on the catch history of the associated vessels and modified LLP licenses to designate the calculated amount of QS on the license. Fishing began under the Rockfish Program in May 2007.

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

November. Once an LLP license and its associated QS are assigned for the fishing year, the rockfish harvester cannot reassign the LLP license or QS to a different Rockfish Program fishery during that fishing year.

The total amount of QS assigned to all members of a cooperative yields an amount of cooperative quota (CQ), which is a permit to a rockfish cooperative that provides an exclusive harvesting privilege for a specific amount of Central GOA rockfish, in specific fisheries, during a specific fishing year (50 CFR 679.2; 50 CFR 679.4(n)(1)). A cooperative also receives a specific amount of CQ that may be used for the incidental catch of a specific amount of other rockfish, groundfish species, or halibut. Incidentally caught halibut, called prohibited species catch (PSC), cannot be retained, processed, or sold, but the amount caught is subtracted from the CQ for halibut. NMFS tracks use of halibut PSC by the participants in GOA rockfish fisheries and closes the fisheries when halibut PSC limits are reached, even if the rockfish TACs are not harvested. Quota share holders participating in the limited access fishery are not assigned an exclusive harvest or PSC use privilege, but may compete to harvest the allocation of Central GOA rockfish species and PSC remaining after NMFS has assigned CQ to all cooperatives.

#### Previous Sideboard Limits

NMFS commonly establishes catch limits and other fishery participation restrictions, called sideboard limits, when implementing LAPPs. Sideboard limits are intended to prevent participants who benefit from receiving exclusive harvesting privileges in the LAPP from shifting effort into fisheries that are not managed by a LAPP and disadvantaging participants in those fisheries. The sideboard limits in the Rockfish Program are in effect only during the month of July. These sideboard limits restrict fishing by Rockfish Program participants during the historical timing of the Central GOA rockfish fisheries, but allow harvesters to participate in other fisheries in which they have historically fished.

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

submit an application to participate in the Rockfish Program.

Harvest sideboard limits cap the amount of primary species catch in the Western GOA and the West Yakutat District and the amount of halibut PSC that can be used in the Central GOA, Western GOA, and West Yakutat District groundfish fisheries by the Rockfish Program catcher vessel and catcher/processor sectors during the month of July.

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

Prior to Amendment 85 to the GOA FMP, vessels and LLP licenses assigned to a rockfish cooperative in the catcher/processor sector were required to stand down from BSAI groundfish fisheries, other than pollock and fixed-gear sablefish, from July 1 to July 14. In addition, vessels in the catcher/processor sector using an LLP license with greater than 5 percent of the Pacific ocean perch QS allocated to the catcher/processor sector and assigned to the Rockfish Program limited access fishery were required to stand down in BSAI groundfish fisheries, except pollock or fixed-gear sablefish, from July 1 until 90 percent of the Pacific ocean perch CQ assigned to the catcher/processor limited access fishery was harvested. Fixed-gear sablefish and pollock fisheries in the BSAI are managed under LAPPs. NMFS typically excludes fisheries managed under a LAPP from the sideboard limits imposed in other LAPPs. A LAPP allocates exclusive harvesting privileges to eligible participants. Sideboard limits are intended to protect participants only in non-LAPP fisheries because they may be disadvantaged by increased fishing effort from participants who benefit from a LAPP. Rockfish Program catcher/processors are also subject to July stand downs in the GOA.

Fifteen harvesters in the catcher/processor sector are eligible to participate in the Rockfish Program. In the first two years of the Rockfish Program, eight catcher/processor vessels were subject to the BSAI stand downs in July; five harvesters in the rockfish cooperative fishery and three harvesters in the limited access fishery. The BSAI stand downs adversely impacted fishing operations and increased vessel costs for the cooperative fishery participants. Although the BSAI stand downs likely did not adversely impact catcher/processors in the limited access fishery, the stand downs likely were a disincentive for eligible catcher/processors to participate in the Rockfish Program.

Prior to the Rockfish Program implementation, the Central GOA rockfish fisheries opened around July 1. At the conclusion of the Central GOA rockfish fisheries, participants in the catcher/processor sector of the Central GOA rockfish fisheries typically moved to the Western GOA and West Yakutat District to harvest rockfish and other flatfish species. After completing the Western GOA and West Yakutat District groundfish fisheries, some catcher/processor vessels moved to the BSAI, typically to harvest Pacific ocean perch in the Aleutian Islands. When the Rockfish Program was implemented, the Central GOA rockfish fisheries opening date shifted from July 1 to May 1 for vessels that are members of a cooperative. In the first year of the Rockfish Program, most cooperative participants in the catcher/processor sector had completed fishing in the Central GOA rockfish and other GOA fisheries in June, but all harvesters in the cooperative fishery were prohibited from participating in BSAI groundfish fisheries from July 1 to July 14 by the stand down. Some vessels were idle for approximately two weeks. Any stand down reduces efficiency because crew and fuel costs are still incurred while the vessel is idle, which adversely impacts the operators of these vessels.

The Rockfish Program did not shift the fishery opening dates for catcher/processors participating in the limited

access fishery, and these vessels cannot participate in the Central GOA rockfish fisheries before July 1, the historical fishery opening date. In 2007, the threshold to relieve the stand down (i.e., harvest of 90 percent of the Central GOA Pacific ocean perch allocated to the catcher/processor sector) was reached on July 5. In the years prior to the Rockfish Program implementation, vessels that participated in the GOA rockfish and flatfish fisheries did not complete the GOA fisheries and move on to the BSAI groundfish fisheries before July 5. Therefore, the five-day stand down period in 2007 likely did not negatively impact vessels in the Rockfish Program catcher/processor limited access fishery because it did not disrupt historical fishing patterns for these harvesters.

In January 2008, NMFS implemented Amendments 80 and 85 to the BSAI FMP. Amendment 80 allocated exclusive harvesting privileges for several BSAI directed trawl groundfish fisheries by allocating CQ for five groundfish species and halibut and crab PSC to eligible persons that join an Amendment 80 cooperative (50 CFR 679.2; 50 CFR 679.4(o)(2)). Amendment 85 to the BSAI FMP allocated Pacific cod, which is a directed fishery, among gear sectors in the BSAI. Prior to Amendment 85 to the BSAI FMP, the allocation of Pacific cod to the trawl catcher/processor sector was available to all trawl catcher/processors in the BSAI. Amendment 85 to the BSAI FMP recognized the differences between catcher/processors that primarily participate in the directed BSAI pollock fishery and catcher/processors that participate in the Amendment 80 sector by creating a separate allocation for each. Implementation of Amendments 80 and 85 to the BSAI FMP significantly reduced the likelihood that catcher/processors participating in the Central GOA Rockfish Program could increase effort in BSAI groundfish fisheries to the disadvantage of other groundfish fishery participants during the period in early July when the stand downs are in effect. The RIR/IRFA prepared for this action (see **ADDRESSES**) analyzed the effects of

the stand downs on fishery participants and the implementation of Amendments 80 and 85 to the BSAI FMP. Based on the RIR/IRFA and testimony from Rockfish Program participants, the Council determined in October 2008 that the BSAI stand down requirements for catcher/processors participating in the Rockfish Program are no longer necessary to protect participants in BSAI groundfish fisheries. The Council also determined that several participants in the Rockfish Program catcher/processor sector likely would benefit if the BSAI stand downs were eliminated.

**Effects of This Action**

The following briefly describes the effects of removing the BSAI groundfish fishery stand downs for all harvesters in the Rockfish Program catcher/processor sector. Additional discussion of the rationale for and effects of this action is provided in the preamble to the proposed rule published on April 6, 2009 (74 FR 15420), and is not repeated here.

This action will enable Rockfish Program catcher/processors to participate in BSAI groundfish fisheries in July. This action will most benefit harvesters in the catcher/processor sector that participate in BSAI groundfish fisheries and elect to join a Central GOA rockfish cooperative. These operators will be able to coordinate fishing activities in the GOA and BSAI and avoid the costs of idling a vessel during the BSAI stand down period in July.

This action does not affect other GOA groundfish fisheries because removing the BSAI stand downs for the catcher/processor sector will not change the allocations to or timing of the Central GOA rockfish fisheries. Participants in the Rockfish Program catcher/processor sector are subject to sideboard limits in other GOA fisheries, and this action does not change the existing GOA sideboard limits.

Table 1 summarizes the Rockfish Program directed fishing prohibitions for the catcher/processor sector with this final rule.

**TABLE 1. ROCKFISH PROGRAM DIRECTED FISHING PROHIBITIONS FOR THE CATCHER/PROCESSOR SECTOR**

Sideboard limits for July	Catcher/Processor Cooperatives	Catcher/Processor Limited Access Fishery	Catcher/Processor Opt Out
Prohibited fishing:			
BSAI groundfish	None	None	None

TABLE 1. ROCKFISH PROGRAM DIRECTED FISHING PROHIBITIONS FOR THE CATCHER/PROCESSOR SECTOR—Continued

Sideboard limits for July	Catcher/Processor Cooperatives	Catcher/Processor Limited Access Fishery	Catcher/Processor Opt Out
GOA groundfish	Directed fishing prohibited for all GOA groundfish except fixed-gear sablefish from July 1–July 14 if the rockfish cooperative has harvested any CQ prior to July 1. If the rockfish cooperative has not harvested any CQ prior to July 1, directed fishing is prohibited for all GOA groundfish except fixed-gear sablefish from July 1 until 90% of the rockfish cooperatives' primary species CQ has been harvested. Prohibition does not apply if the cooperative maintains a monitoring program, as required under the regulations, during all fishing for CQ or any directed sideboard fishery in the GOA.	Directed fishing prohibited from July 1 until 90% of the Pacific ocean perch assigned to the limited access fishery in the catcher/processor sector is harvested, for all GOA groundfish except fixed-gear sablefish.  Applies only to catcher/processors with >5% of the total Central GOA Pacific ocean perch QS assigned to the catcher/processor sector.	July 1–July 14, unless prior participation in two years from 1996 to 2002.

This final rule may encourage eligible harvesters to join a Rockfish Program cooperative because the BSAI stand downs likely were a significant disincentive for eligible catcher/processors to join a rockfish cooperative. NMFS anticipates that this action will benefit catcher/processors in the limited access fishery less than it will benefit catcher/processors in the cooperative fishery. Nonetheless, it is possible that the risk of a BSAI stand down of unknown length may have deterred some catcher/processors from participating in the limited access fishery in the first two years of the Rockfish Program, and more eligible harvesters may choose to participate in that fishery with this action.

This action should not enable Rockfish Program participants to adversely affect non-Rockfish Program participants in BSAI groundfish fisheries by increasing effort in those fisheries in early July. Amendment 80 significantly increased the number of BSAI directed groundfish fisheries managed under LAPPs in which only designated participants can receive exclusive harvesting privileges and participate in the fishery. Amendments 80 and 85 to the BSAI FMP enable participants in the Amendment 80 cooperative fishery to manage most of their key target and incidental catch species within a cooperative. Cooperatives provide a significant amount of flexibility, in addition to cost savings from vessel consolidation and the ability to trade harvesting privileges within or between cooperatives. The halibut PSC allocation provided to the Amendment 80 cooperative fishery participants is particularly important because halibut PSC acts as a constraint

on fully harvesting the TACs for all directed trawl fisheries in the BSAI. Two-thirds of the eligible harvesters in the Rockfish Program catcher/processor sector are eligible to participate in the Amendment 80 program, and nearly 70 percent of all eligible harvesters participated in an Amendment 80 cooperative in 2008. Hence, this action should not affect a significant portion of Amendment 80 participants because they will receive exclusive harvesting privileges by joining a cooperative. In addition, seven of the 15 harvesters eligible to participate in the Rockfish Program also participated in an Amendment 80 cooperative and are expected to benefit from this action by gaining the ability to coordinate harvesting operations in the GOA and BSAI.

Trawl fisheries for non-Amendment 80 species (with the exception of Pacific cod, which is fully utilized), have had limited historical participation because market values are generally low for these species. Furthermore, trawl harvesters have few directed fishing opportunities during the early July time period owing to halibut PSC constraints and relatively small TAC specifications for these fisheries. Therefore, it is unlikely that Rockfish Program catcher/processors will increase participation in these fisheries in July to the detriment of other participants under this action.

#### Notice of Availability and Proposed Rule

NMFS published a notice of availability for Amendment 85 to the GOA FMP on March 24, 2009 (74 FR 12300), with a public comment period that closed on May 26, 2009. NMFS published the proposed rule to

implement Amendment 85 on April 6, 2009 (74 FR 15420). NMFS subsequently discovered an error in the proposed regulatory text, which incorrectly changed the GOA directed fishing prohibitions that would apply to catcher/processors in the Rockfish Program. This proposed change was inconsistent with Amendment 85, which only removes the BSAI directed fishing prohibitions for catcher/processor vessels that participate in the Rockfish Program. NMFS published a notice to correct the proposed regulatory text on May 13, 2009 (74 FR 22507). The notice corrected proposed regulatory text at 50 CFR 679.82(g)(3) to accurately reflect the intent of Amendment 85 to the GOA FMP and extended the public comment period on the proposed rule by 30 days from May 21, 2009, to June 22, 2009. NMFS received three public comments on Amendment 85 and the proposed rule from two individuals. One comment supported Amendment 85 and the proposed rule and one comment opposed Amendment 85. The third comment was not directly related to the action. These comments did not raise new issues or concerns that have not already been addressed in the RIR/IRFA prepared to support this action or the preamble to the proposed rule. After consideration of these comments, NMFS approved Amendment 85 to the GOA FMP on June 18, 2009.

#### Response to Comments

*Comment 1:* NMFS should not remove fishery management restrictions from the Rockfish Program just because it reduces operational costs for catcher/processors.

*Response:* The Council determined, and NMFS concurs, that the BSAI stand

downs for catcher/processors that participate in the Rockfish Program are overly restrictive and impose unnecessary costs on the operations to which they apply. Pursuant to the procedural and analytical requirements of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), NMFS prepared an RIR for this action (see **ADDRESSES**) to analyze the economic effects of alternatives to relieve catcher/processors from the BSAI stand downs, in contrast to taking no action (status quo). The RIR is intended to assist the Council and NMFS in selecting the regulatory approach that maximizes net benefits to the Nation (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The RIR analyzed the status quo and three alternatives to remove the BSAI stand downs for certain catcher/processors that participate in the Rockfish Program. The RIR indicated that a minor overall net benefit to the Nation may arise from the preferred alternative, which is implemented by this final rule, because it has the potential to increase efficiency and decrease costs for vessels subject to the BSAI stand downs without negatively impacting other BSAI groundfish fishery participants. The preferred alternative also may increase the number of catcher/processor vessels that participate in the Rockfish Program cooperative fishery, which could increase resource conservation. The Council reviewed the Rockfish Program one year after implementation to assess the impacts on participants and resource conservation. The most notable effect of Rockfish Program implementation was a reduction in discards and halibut mortality among cooperative fishery participants. The Council's Rockfish Program review is available at [http://www.fakr.noaa.gov/npfmc/current\\_issues/groundfish/RPPreview508.pdf](http://www.fakr.noaa.gov/npfmc/current_issues/groundfish/RPPreview508.pdf). Although NMFS could not prepare a quantitative cost-benefit analysis with existing information, based on the best available information NMFS believes that the benefits of this action exceed the costs when compared to the status quo.

*Comment 2:* The commenter raises general concerns about NMFS's management of fisheries, asserting that fishery policies have not benefited American citizens. The commenter also asserts that NMFS is biased and should not be allowed to manage fisheries.

*Response:* This comment is not specifically related to the proposed rule. The comment recommends broad changes to fisheries management and provides opinions of the Federal

Government's general management of marine resources that are outside of the scope of this action. The comment did not raise new relevant issues or concerns that have not been addressed in the RIR/FRFA prepared to support this action or the preamble to the proposed rule.

*Comment 3:* The BSAI stand downs for catcher/processors in the Rockfish Program are too restrictive because they potentially create higher maintenance and crew costs for vessel operators due to idle time in waiting out the stand down period. Moreover, the BSAI stand downs are no longer needed to protect other BSAI groundfish fishery participants and should be removed from the Rockfish Program.

*Response:* NMFS concurs.

As described in detail above and in the RIR/FRFA prepared for this action (see **ADDRESSES**), this final rule modifies the Rockfish Program regulations to remove all instances in which Central GOA rockfish catcher/processors are required to stand down from BSAI directed fisheries in July. These references occur in regulatory text at 50 CFR 679.82.

#### **Changes From the Proposed Rule**

NMFS did not make any changes from the corrected proposed rule published on May 13, 2009 (74 FR 22507), to the final rule.

#### **Classification**

The Assistant Administrator for Fisheries, NMFS, has determined that Amendment 85 to the GOA FMP is necessary for the conservation and management of GOA rockfish fisheries and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

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

The FRFA for this action describes the action, why this action is being

proposed, the objectives and legal basis for the final rule, the type and number of small entities to which the final rule applies, and projected reporting, recordkeeping, or other compliance requirements of the final rule. It also identifies any overlapping, duplicative, or conflicting federal rules; and describes any significant alternatives to the final rule that accomplish the stated objectives of the Magnuson-Stevens Fishery Conservation and Management Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the final rule on small entities.

The description of this action, its purpose, and its legal basis are described in the preamble and are not repeated here. The proposed rule for this action was published on April 6, 2009 (74 FR 15420), and a notice to correct an error in the proposed regulatory text was published on May 13, 2009 (74 FR 22507). An IRFA was prepared and summarized in the classification section of the preamble to the proposed rule. The correction notice extended the public comment period on the proposed rule from May 21, 2009, to June 22, 2009. NMFS received three public submissions on Amendment 85 to the GOA FMP and the proposed rule. These comments did not address the IRFA.

For purposes of a FRFA, the U.S. Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and has combined annual gross 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, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply the SBA's fish harvesting criterion for those businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, 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. NMFS currently is reviewing its small entity size classification for all catcher/processors in the United States. However, until

new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors.

Under principles established by the SBA at 13 CFR 121.03, business concerns are affiliated when they have identical or substantially identical business or economic interests, or are economically dependent through contractual or other relationships. The interests of affiliated individuals or firms are aggregated when measuring whether the entity is a small business under the Regulatory Flexibility Act.

The FRFA contains a description and estimate of the number of small entities to which the final rule will apply. The FRFA estimates that none of the directly regulated entities are small businesses. However, current empirical data on cost structure, affiliation, operational procedures and strategies in the fishing sectors subject to this regulatory action are incomplete.

This final rule directly regulates all catcher/processor vessels and LLP licenses that qualify for the Rockfish Program. The number of directly regulated entities depends on the annual choice made by catcher/processors whether to participate in the Rockfish Program cooperative fishery or limited access fishery. There are a total of 15 catcher/processor vessels and LLP licenses that qualify for the Rockfish Program, representing the maximum number of entities that could be directly regulated under this action in any given year. If all 15 catcher/processors choose to join a rockfish cooperative, this action to remove the BSAI stand down will apply to all Rockfish Program catcher/processors. Available catch and earnings data suggest that cooperatives created under the Rockfish Program were large entities because they likely have aggregate gross receipts, from all sources, including affiliated worldwide, in excess of the \$4 million threshold specified by the SBA.

If all 15 catcher/processors choose to participate in the limited access sector, eight of the 15 will be subject to the BSAI stand down and represent the maximum number of entities that could be directly regulated under this action. Of these eight catcher/processors, six are also part of the Amendment 80 sector in the BSAI. Four of these vessels were part of an Amendment 80 cooperative in 2008, and were considered affiliated by their membership in the cooperative. The remaining four Amendment 80 vessels are also affiliated because they are owned by two companies that each own two vessels. Hence all eight catcher/processors were considered large entities for purposes of the RFA.

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

The Council analyzed and considered four alternatives to relieve restrictions for the specific participants and fisheries subject to the July BSAI stand down periods. These alternatives included the status quo (Alternative 1), exempting Amendment 80 cooperative participants from the BSAI stand downs (Alternative 2), exempting all Amendment 80 sector participants from the BSAI stand downs (Alternative 3), and removing the BSAI stand downs for all catcher/processors in the Rockfish Program (Alternative 4). The RIR prepared for this final rule determined both Amendment 80 and non-Amendment 80 catcher/processors participating in the Rockfish Program likely will be unable to increase effort in BSAI groundfish fisheries to the disadvantage of other participants in early July when the stand downs are in effect. Hence, there is little benefit to retaining the July BSAI stand downs for any subset of the Rockfish Program catcher/processor sector as considered in Alternatives 2 and 3. Alternative 4 (implemented by this rule) has the greatest potential to reduce operating costs and increase flexibility for participants in the catcher/processor sector of the Rockfish Program.

This final rule will not change existing reporting, recordkeeping, or other compliance requirements. This final rule does not contain a collection-of-information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act.

NMFS has posted a small entity compliance guide on its website at <http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm> to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996 requirement for a plain language guide to assist small entities in complying with this rule.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: October 28, 2009

**James W. Balsiger,**

*Acting Assistant Administrator For Fisheries,  
National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

#### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108—447.

■ 2. In § 679.82, paragraph (f)(3) is removed, paragraph (f)(4) is redesignated as paragraph (f)(3), and newly redesignated paragraphs (f)(3)(i)(A), (f)(3)(ii)(A), and paragraph (g)(3) are revised to read as follows:

#### § 679.82 Rockfish Program use caps and sideboard limits.

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(i) \* \* \*

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

\* \* \* \* \*

(ii) \* \* \*

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

\* \* \* \* \*

(g) \* \* \*

(3) *Prohibition from directed fishing in GOA groundfish fisheries.* Except for the rockfish limited access fishery and sablefish harvested under the IFQ Program, a vessel may not participate in any GOA groundfish fishery and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species, 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, if:

(i) The vessel is named on an LLP license used in the rockfish limited access fishery; and

(ii) The vessel 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.

\* \* \* \* \*

[FR Doc. E9–26456 Filed 11–2–09; 8:45 am]

**BILLING CODE 3510–22–S**