

(1) The trustee is subject to the directions of a named fiduciary pursuant to ERISA section 403(a)(1); or

(2) Or the power to manage, acquire, or dispose of the relevant assets has been delegated by a named fiduciary to one or more investment managers pursuant to ERISA section 403(a)(2).

(B) Where the authority to manage plan assets has been delegated to an investment manager pursuant to section 403(a)(2), the investment manager has exclusive authority to vote proxies or exercise other shareholder rights appurtenant to such plan assets in accordance with this section, except to the extent the plan, trust document, or investment management agreement expressly provides that the responsible named fiduciary has reserved to itself (or to another named fiduciary so authorized by the plan document) the right to direct a plan trustee regarding the exercise or management of some or all of such shareholder rights.

(ii) An investment manager of a pooled investment vehicle that holds assets of more than one employee benefit plan may be subject to an investment policy statement that conflicts with the policy of another plan. Compliance with ERISA section 404(a)(1)(D) requires the investment manager to reconcile, insofar as possible, the conflicting policies (assuming compliance with each policy would be consistent with ERISA section 404(a)(1)(D)). In the case of proxy voting, to the extent permitted by applicable law, the investment manager must vote (or abstain from voting) the relevant proxies to reflect such policies in proportion to each plan's economic interest in the pooled investment vehicle. Such an investment manager may, however, develop an investment policy statement consistent with Title I of ERISA and this section, and require participating plans to accept the investment manager's investment policy, including any proxy voting policy, before they are allowed to invest. In such cases, a fiduciary must assess whether the investment manager's investment policy statement and proxy voting policy are consistent with Title I of ERISA and this section before deciding to retain the investment manager.

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(g) *Effective date.* This section shall be effective on [30 days after date of publication of final rule].

(h) *Severability.* Should a court of competent jurisdiction hold any provision(s) of this subpart to be invalid, such action will not affect any other provision of this subpart.

Signed at Washington, DC.

**Jeanne Klinefelter Wilson,**

*Acting Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 679 and 680

[Docket No.: 200811–0214]

RIN 0648–BJ73

#### Fisheries of the Exclusive Economic Zone Off Alaska; Central Gulf of Alaska Rockfish Program; Amendment 111

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule to implement Amendment 111 to the Fishery Management Plan for Groundfish of the Gulf of Alaska Management Area (GOA FMP) and a regulatory amendment to reauthorize the Central Gulf of Alaska (CGOA) Rockfish Program. This proposed rule would retain the conservation, management, safety, and economic gains realized under the existing Rockfish Program and make minor revisions to improve administration of the Rockfish Program. This proposed rule is necessary to continue the conservation benefits, improve efficiency, and provide economic benefits of the Rockfish Program that will expire on December 31, 2021 without this proposed rule. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the GOA FMP, and other applicable laws.

**DATES:** Submit comments on or before October 5, 2020.

**ADDRESSES:** You may submit comments, identified by NOAA–NMFS–2020–0086, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0086](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0086), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the Environmental Assessment and the Regulatory Impact Review (collectively referred to as the “Analysis”), the Social Impact Analysis, and the Finding of No Significant Impact prepared for this proposed rule may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted via mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Glenn Merrill; in person at NMFS Alaska Region, 709 West 9th Street, Room 401, Juneau, AK; via internet on [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Warpinski, 907–586–7228 or [Stephanie.warpinski@noaa.gov](mailto:Stephanie.warpinski@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Authority for Action

NMFS manages U.S. groundfish fisheries of the Gulf of Alaska (GOA) under the GOA FMP. NMFS manages vessels and License Limitation Program (LLP) licenses subject to sideboard limits under the Crab Rationalization Program under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, these FMPs under the authority of the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the GOA FMP are located at 50 CFR part 679. Regulations implementing the Crab FMP are located at 50 CFR part 680. General regulations governing U.S. fisheries also appear at 50 CFR part 600. The Council is authorized to prepare and recommend an FMP amendment for the conservation and management of a fishery managed under the FMP. NMFS conducts rulemaking to implement FMP amendments and regulatory amendments.

The Council recommended Amendment 111 to the GOA FMP to reauthorize the existing Rockfish Program that is scheduled to expire on December 31, 2021. The proposed reauthorized Rockfish Program would retain the net national conservation, management, safety, and economic benefits realized under the existing Rockfish Program as well as modify regulations to improve the management of the Rockfish Program.

The Rockfish Program is a type of limited access privilege program (LAPP) developed to enhance resource conservation and improve economic efficiency in the CGOA rockfish fisheries. LAPPs, also called catch share programs, are limited access systems in which Federal permits are issued to harvest a quantity of fish representing a portion of the total allowable catch (TAC). Under the Rockfish Program, participants exercise their exclusive harvest privileges when they join a rockfish cooperative. The Rockfish Program benefits CGOA fishermen, shoreside processors, catcher/processors, and communities by (1) providing greater security to harvesters in rockfish cooperatives, (2) allowing a slower-paced fishery to provide harvesters the ability to choose when to fish, (3) providing greater stability for processors by spreading production over a longer period of time, (4) allowing for a more stable workforce, (5) increasing product quality and diversity, and (6) allowing catcher/processors greater spatial and temporal flexibility to reduce bycatch and develop more stable markets. The proposed reauthorized Rockfish Program would continue LAPP management, and would seek to provide the same benefits established under the existing Rockfish Program.

A notice of availability (NOA) for Amendment 111 was published in the **Federal Register** on July 28, 2020 (85 FR 45367), with comments invited through September 28, 2020. All relevant written comments received by September 28, 2020, whether specifically directed to the NOA or this proposed rule will be

considered by NMFS in the approval/disapproval decision for Amendment 111 and addressed in the response to comments in the final rule. Commenters do not need to submit the same comments on both the NOA and this proposed rule. Comments submitted on this proposed rule by the end of the comment period for this proposed rule (See **DATES**) will be considered by NMFS in our decision to implement measures proposed by the Council and addressed in the response to comments in the final rule.

### Background

The following background sections describe the Rockfish Program and the need for this proposed rule.

#### *The Rockfish Program*

This section provides a brief overview of the existing Rockfish Program. A detailed description of the Rockfish Program and its development is provided in the preamble to the proposed rule and the final rule implementing the Rockfish Program from 2012 through 2021 (76 FR 52147, August 19, 2011 and 76 FR 81248, December 27, 2011) and in Section 1.2 of the Analysis.

In 2003, Section 802 of the Consolidated Appropriations Act of 2004 (Section 802, Pub. L. 108–199) provided the Secretary of Commerce, in consultation with the Council, direction to establish a rockfish “Pilot Program” to recognize historic participation of fishing vessels and processors, a set-aside for participants not eligible to participate in the Rockfish Pilot Program, and catch limits of species incidentally harvested with northern rockfish, pelagic shelf rockfish (since redefined), and Pacific ocean perch. The Secretary of Commerce, in consultation with the Council, developed the Rockfish Pilot Program to meet the requirements of Section 802. The Council recommended the Rockfish Pilot Program to the Secretary on June 6, 2005 and NMFS published regulations implementing the Rockfish Pilot Program on November 20, 2006 (71 FR 67210).

Section 802 authorized the Rockfish Pilot Program for 2 years, from January 1, 2007, until December 31, 2008. Section 802 states that the program shall (1) include the Central GOA rockfish species of Pacific ocean perch, northern rockfish, and pelagic shelf rockfish; (2) recognize historical participation of fishing vessels in the Central GOA rockfish fisheries from 1996 to 2002; (3) recognize historical participation of processors in the Central GOA rockfish fisheries from 1996 to 2000; (4) establish

catch limits for non-rockfish species and non-target rockfish species harvested with the Central GOA rockfish species and base such allocations on historical harvesting of these incidentally caught species; (5) set aside up to 5 percent of the TAC of the Central GOA rockfish fisheries for catcher vessels that are not eligible to participate in the program; and (6) have a 2-year duration. The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, which became public law on January 12, 2007 (Pub. L. 109–479), extended the Rockfish Pilot Program for an additional 3 years, until December 31, 2011. NMFS implemented that regulatory extension on November 17, 2008 (73 FR 67809).

On June 14, 2010, the Council adopted the existing Rockfish Program to replace the Rockfish Pilot Program that was scheduled to expire on December 31, 2011. NMFS published regulations implementing the existing Rockfish Program on December 27, 2011 (76 FR 81248). The Council designed the Rockfish Program to meet the requirements for limited access privileges in section 303A of the Magnuson-Stevens Act.

The Rockfish Program provides exclusive harvesting privileges for vessels using trawl gear to harvest a specific set of “primary” rockfish species and associated “secondary” species incidentally harvested to the primary rockfish in the CGOA, an area from 147° W long. to 159° W long. The granting of exclusive harvesting is commonly called rationalization. The rockfish primary species rationalized under the Rockfish Program are northern rockfish, Pacific ocean perch, and dusky rockfish. The secondary species rationalized under the Rockfish Program include Pacific cod, rougheye rockfish, shortraker rockfish, and sablefish. In addition to these primary and secondary species, the Rockfish Program allocates a portion of the halibut bycatch mortality limit annually specified for the GOA trawl fisheries to Rockfish Program participants.

The Rockfish Program (1) assigns quota share (QS) and cooperative quota (CQ) to participants for primary and secondary species, (2) allows a participant holding an LLP license with rockfish QS to form a rockfish cooperative with other persons, (3) allows holders of catcher/processor LLP licenses to opt-out of rockfish cooperatives for a given year, (4) establishes a limited access fishery for participants who do not participate in a fishery cooperative for a given year, (5) includes an entry level longline fishery for persons who do not hold rockfish

QS, (6) establishes constraints, commonly known as sideboard limits, for other non-Rockfish Program fisheries that apply to vessels and LLP licenses eligible to participate in the Rockfish Program, and (7) includes monitoring and enforcement provisions.

As summarized in Sections 2 and 3.5 of the Analysis, the Rockfish Program provided greater security to harvesters through the formation of rockfish cooperatives. Fishing under cooperative management resulted in a slower-paced fishery that allows a harvester to choose when to fish. The Rockfish Program also provided greater stability for processors by spreading out production over a longer period. Overall, the Rockfish Program provides greater benefits to shoreside processors, catcher/processors, CGOA fishermen, and communities than were realized under the previous LLP management scheme.

For example, during the Rockfish Program, fishermen made more rockfish and non-rockfish shoreside deliveries over a more extended period of time than under only LLP management. This allowed for a more stable workforce and slower processing pace than the previous short periods of high volume rockfish processing. With a slower processing pace, product quality and diversity increased. CGOA fishermen and processors noted fewer conflicts with other fisheries, especially the salmon fishery which traditionally overlapped with rockfish efforts. Catcher/processors noted greater flexibility in preparation and execution of the fishery which resulted in lower bycatch numbers, more stable markets, and a more efficient distribution of fishery effort. This proposed rule would retain the management structure implemented under the Rockfish Program and revise specific provisions of the Rockfish Program, as described below, to improve operational efficiency. The Pilot Program created a structure for fishery participants to form cooperatives to efficiently manage harvesting activities, and the existing Rockfish Program continues to rely on cooperative formation.

#### *Need for Amendment 111 and This Proposed Rule*

Without this proposed rule, the existing Rockfish Program is scheduled to expire on December 31, 2021. This proposed rule would continue the conservation benefits, improve efficiency, and provide economic benefits of the Rockfish Program that would otherwise expire. This proposed rule would reauthorize the Rockfish Program and make minor revisions to existing regulations to improve

administrative provisions of the Rockfish Program. This proposed rule would retain the conservation, management, safety, and economic benefits realized under the existing Rockfish Program.

Unless otherwise noted, the proposed reauthorized Rockfish Program would retain regulatory provisions established in the existing Rockfish Program. These include the current allocation of QS among the fishery participants, the process and requirements to fish in a cooperative, sideboard limitations, and monitoring and reporting requirements. The Council and NMFS considered a range of alternatives and potential changes to the existing Rockfish Program, including allowing the Rockfish Program to expire. Section 1.7 of the Analysis describes the alternatives considered and Section 1.10.2 provides the rationale for the reauthorized Rockfish Program proposed in this rule. The reader is referred to those sections for additional details.

Amendment 111 to the FMP and this proposed rule would reauthorize the Rockfish Program and address a variety of administrative and management issues associated with the existing Rockfish Program. The specific regulatory changes to the existing Rockfish Program under this proposed rule are discussed in Section 1.6.2 of the Analysis (see **ADDRESSES**) and include:

- Removing the Rockfish Program sunset date of December 31, 2021, with the effect of allowing the Rockfish Program to continue indefinitely;
- Specifying that only shoreside processors receiving Rockfish Program CQ must submit the Rockfish Ex-vessel Volume and Value Report;
- Modifying cooperative check-in notice timing from 48 to 24 hours;
- Removing requirements that an annual Rockfish Program cooperative report be submitted to NMFS. The Council requested that the Rockfish Program cooperatives continue to voluntarily provide annual reports to the Council;
- Removing requirements for a fishing plan to be submitted with a cooperative application for CQ;
- Requiring annual NMFS cost recovery reports;
- Allowing NMFS to reallocate unharvested Pacific cod allocated to Rockfish Program cooperatives to other non-Rockfish Program sectors after the Rockfish Program fisheries close on November 15, consistent with existing regulatory requirements;
- Allowing NMFS to reallocate unused rockfish incidental catch

allowances (ICA) to Rockfish Program cooperatives;

- Clarifying regulations regarding accounting for inseason use caps to specify that any transfer of unused rockfish ICAs or catcher/processor CQ to catcher vessel cooperatives does not apply to catcher vessel ownership, cooperative, harvester CQ, or shoreside processor CQ use caps;

- Exempting vessels from Crab Rationalization Program sideboard limits when fishing in the Rockfish Program;

- Removing catcher/processor rockfish program sideboard limits in the Western GOA rockfish fisheries;

- Removing the requirement for a trawl catcher vessel that has checked into and is participating in the Rockfish Program fishery to stand down for three days when transiting from the Bering Sea and Aleutian Islands Management Area (BSAI) to the GOA while Pacific cod or pollock is open to directed fishing in the BSAI;

- Removing requirements for shoreside processors under the Rockfish Program to provide an observer work station and observer communication standards; and

- Making minor technical corrections to clarify the season date for directed fishing for Pacific cod under the Rockfish Program, and updating references to dusky rockfish (*Sebastes variabilis*) throughout regulations in 50 CFR part 679.

The following section describes the proposed regulatory changes in greater detail.

#### **Proposed Rule**

This section describes the proposed changes to existing regulations and the anticipated effects of these changes.

This proposed rule would modify regulations at § 679.80(a)(2) to remove the expiration date for the authorization of the Rockfish Program. The existing Rockfish Program had a 10-year authorization to require the Council to review the Rockfish Program and make any necessary changes to management based on that review, or allow the Rockfish Program to expire. Removing the expiration date would allow the program to continue indefinitely. As noted in Section 3.7.1 of the Analysis, removing the expiration date for the Rockfish Program does not preclude the Council or NMFS from revising, revoking, or otherwise modifying the Rockfish Program at any point in the future. In addition, regular reviews of the Rockfish Program are required under the provision of section 303A(i) of the Magnuson-Stevens Act. Removing the expiration date for the Rockfish Program

would not preclude the regular review of the Rockfish Program. Eliminating the finite duration of the Rockfish Program is expected to provide a level of stability and predictability that would not be achieved by extending the sunset date. Specifically, harvesters and processors may not make the same level of investments to fishing operations if they anticipate the fishery may not be extended (see Section 3.7.1 of the Analysis for additional detail).

This proposed rule would modify Rockfish Program recordkeeping and reporting requirements to: (1) Clarify regulations at § 679.5(r)(10)(i) to clearly state that only shoreside processors taking deliveries of species harvested using Rockfish Program CQ must submit the Rockfish Ex-vessel Volume and Value Report; (2) modify cooperative check-in times from 48 to 24 hours at § 679.5(r)(8)(i)(A)(1); (3) remove the requirement for an annual Rockfish Program cooperative report to be submitted to NMFS at §§ 679.5(r)(6) and 679.81(i)(3)(xxv) and (xxvi); (4) remove the requirement for rockfish cooperatives to submit a fishing plan with its annual application for CQ at § 679.81(f)(4)(i)(D)(3); and (5) add a regulation at § 679.85(g) that states NMFS will annually publish a Rockfish Program cost recovery report.

These recordkeeping and reporting changes would provide several benefits. The requirement for the Rockfish Ex-vessel Volume and Value Report would clarify existing provisions to ensure that they are applied only to the persons required to meet management requirements; the change to cooperative check-in times would provide additional flexibility to harvesters while ensuring catch is properly accounted for; and removing the annual Rockfish Program cooperative report and the fishing plan with the annual application for CQ would remove reporting requirements that are not necessary. In addition, the proposed rule would add a requirement that NMFS publish a cost recovery report in regulations. NMFS already produces an annual cost recovery report, so codifying this requirement in regulation does not change the existing process. However, industry has requested that it be codified so that it is consistently produced annually. Additional detail describing the impact of these changes is included in Section 3.7 of the Analysis prepared for this proposed rule (See ADDRESSES).

This proposed rule would add regulations at § 679.81(j) to authorize NMFS to reallocate unharvested Pacific cod after directed fishing under the Rockfish Program closes on November

15, consistent with existing reallocation procedures for Pacific cod in the Gulf of Alaska. Regulations at § 679.20(a)(12)(ii) allow NMFS to consider reallocation of unused Rockfish Program Pacific cod, first to catcher vessels, then to the combined catcher vessel and catcher/processor pot sector, and then to all other catcher/processor sectors, taking into account the capability of a sector to harvest the reallocation. Section 3.7.2 of the Analysis notes that on average from 2011 to 2018 (the last year of complete data), 55 percent of the Pacific cod allocated to the Rockfish Program has remained unharvested. Allowing this reallocation could provide additional directed harvest opportunities (*e.g.*, for hook-and-line catcher vessels), or could be used to account for the incidental catch of Pacific cod in trawl fisheries that occur later in the year.

This proposed rule would, at § 679.81(j)(2), authorize NMFS to reallocate unharvested rockfish species ICAs to rockfish cooperatives. Annually, NMFS establishes ICAs for the three primary rockfish species to account for the catch of those species in other, non-Rockfish Program fisheries. NMFS establishes these ICAs conservatively so that the ICA amounts can accommodate anticipated incidental catch and the TACs will not be exceeded. Section 3.1.10 of the Analysis indicates that in some years a substantial portion of that ICA may remain unharvested by Rockfish Program participants. This proposed rule would provide NMFS with the authority to reallocate unused ICA amounts to Rockfish Program cooperatives to allow a more complete harvest of the TACs in those years when the ICAs are not fully used. Section 3.7.10 of the Analysis notes that, since 2012, the reallocation of ICAs could have resulted in substantial additional revenue (*e.g.*, \$852,000 in ex-vessel value in 2016) to harvesters and processors. NMFS would make its decision whether to reallocate ICAs after evaluating the anticipated ICA use in non-Rockfish Program fisheries and the ability for Rockfish Cooperatives to harvest the allocation. If NMFS determines there is not sufficient ICA to reallocate, then no reallocation would occur.

This proposed rule would specify that, if an amount of ICA is reallocated, catcher vessel rockfish cooperatives would have priority for receiving the reallocation. In most years, participants in the catcher vessel cooperatives fish later in the year than participants in the catcher/processor cooperatives, and the Council indicated a preference to provide additional opportunities to the catcher vessel sector first. This proposed

rule would specify that, if an ICA is rolled over to Rockfish Program cooperatives, each cooperative would receive a reallocation that is proportional to the amount of CQ initially issued to that cooperative for that sector. For example, if NMFS reallocated 100 metric tons (mt) of Pacific ocean perch to the catcher vessel sector, and one cooperative was initially issued 20 percent of the Pacific ocean perch catcher vessel CQ and another cooperative was issued 80 percent of the Pacific ocean perch catcher vessel CQ, then the first cooperative would receive 20 mt and the second cooperative would receive 80 mt. This reallocation process would ensure an equitable redistribution among all of the cooperatives.

This proposed rule would add regulations at § 679.82(a)(1)(vi) to clarify that any transfer of reallocated Rockfish Program ICAs or catcher/processor CQ to a catcher vessel cooperative does not apply when calculating catcher vessel use caps, including CV ownership, cooperative CQ, harvester QS, or shoreside processor caps. Use caps are established to limit consolidation. Currently, regulations at § 679.82(a) state that use caps are based on the amount of the CQ “initially issued” to the Rockfish Program catcher vessel sector. The proposed regulatory change would clarify the methods that should be used to calculate use caps that apply to catcher vessel cooperatives and, because these are the methods currently in use, would not modify existing annual processes. This proposed regulatory change would clarify the regulations consistent with the Council’s intended application of the use cap provisions under the Rockfish Program. (See Section 3.7.11 of the Analysis for additional detail on use cap provisions.)

This proposed rule would make several changes to regulations governing the sideboards established to protect other Gulf of Alaska fisheries. Sideboards are limitations on the ability of harvesters to harvest in fisheries other than the CGOA rockfish fisheries. The proposed changes include: (1) Exempting Rockfish Program vessels from sideboard limits implemented under the Crab Rationalization Program at § 680.22(a)(1); (2) removing both Western GOA directed fishing prohibitions specified at § 679.82(e)(2) and rockfish sideboard ratios at § 679.82(e)(4) for Rockfish Program catcher/processors; and (3) removing the requirement at § 679.23(h)(1) for a trawl catcher vessel checked into and participating in the Rockfish Program fishery to stand down for three days

when transiting from the BSAI to the GOA while Pacific cod or pollock is open to directed fishing in the BSAI. Because of the proposed revisions to § 679.82(e)(4) to remove Western GOA directed fishing prohibitions, NMFS also proposes a further clarifying technical revision to the remaining information in § 679.82(e)(4) to remove the table and reorganize the West Yakutat District rockfish sideboard ratios.

These proposed changes improve the operational efficiency of the Rockfish Program by removing operational limitations on vessels operating in the Rockfish Program that would be limited by the existing sideboards. These proposed changes would not reduce the fishery protections in the Rockfish Program but would slightly improve the efficiency and harvest flexibility for vessels participating in these fisheries. These changes to GOA fishery protections would not be expected to result in increased catch in non-Rockfish Program fisheries because fishery participants have successfully coordinated harvests within existing cooperatives across sideboarded vessels, and removing them would provide slight operational efficiency as explained in Section 3.7 of the Analysis.

Section 3.7.3 of the Analysis describes the existing management of sideboards established under the Crab Rationalization Program. Rockfish Program participants who also hold LLP licenses or own vessels that are subject to Crab Rationalization Program sideboard restrictions could be limited from harvesting Rockfish Program CQ. The proposed change to exempt Rockfish Program vessels from Crab Rationalization Program sideboards would apply only when vessels are participating in the Rockfish Program. This proposed change would effectively provide additional harvest opportunities for vessels and LLP license holders in the Rockfish Program but would not remove the sideboard limits when participating in non-Rockfish Program fisheries.

Section 3.7.13 of the Analysis describes the sideboard limits on the amount of dusky rockfish, northern rockfish, and Pacific ocean perch that may be harvested in the Western GOA by catcher/processors that are eligible to participate in the Rockfish Program. Currently, catcher/processors harvest more than 98 percent of all of these three rockfish species (Section 3.7.13 of the Analysis). All of the catcher/processors that participate in the Western GOA rockfish fisheries are also participants in the Amendment 80 Program and are subject to sideboard

measures established under the Amendment 80 Program (see Table 37 to part 679). Some of the catcher/processors are also subject to Rockfish Program sideboard limits in the Western GOA, and this limitation can impose operational challenges on vessels that must manage harvests within two separate sideboard limits. The Council recommended, and NMFS is proposing, relieving the Rockfish Program sideboard limits because all of the participants in the Amendment 80 sector have successfully coordinated fishing operations in the Western GOA rockfish fisheries and the Rockfish Program sideboard limits are unnecessary and duplicate other restrictions. Given the very limited harvests by catcher vessels, this proposed change would not be expected to impact other fishery participants.

Section 3.7.14 of the Analysis describes the existing “stand down” provisions that apply to catcher vessels that move from the BSAI to GOA. Stand down regulations are implemented to slow the flow of effort moving from the BSAI into the GOA to help protect participants that primarily operated in the GOA by reducing competition on the fishing grounds and extending the season length. Removing the 3-day stand down would allow vessels to enter the CGOA rockfish fishery immediately, since additional protections are not needed in a LAPP program. Regulations at § 679.23(h)(1) state that the owner or operator of a trawl catcher vessel fishing for groundfish in the BSAI while pollock or Pacific cod are open to directed fishing in the BSAI are prohibited from deploying trawl gear in the Central and Western GOA until the third day after the landing or transfer of all groundfish on board the vessel harvested in the BSAI. This regulation can constrain vessels that are moving from the BSAI to participate in the Rockfish Program. The Council recommended and NMFS proposes modifying § 679.23(h)(1) to remove the 3-day stand down requirement when a vessel moves from the BSAI and is checked-in and participating in a Rockfish Program cooperative. This proposed revision would remove a regulatory limitation on vessels moving into the Rockfish Program but would not increase potential harvests in other non-Rockfish Program fisheries. Vessels that participate in the Rockfish Program cooperative would be limited by the amount of CQ allocated to the cooperative and would not be expected to result in increased competition among Rockfish Program participants.

Vessels that are not participating in the Rockfish Program would still be subject to the 3-day stand down.

This proposed rule would modify regulations at § 679.84(f)(1) to remove unnecessary requirements for shoreside processors to maintain an observer workstation and communications equipment. These requirements were originally implemented under the Rockfish Pilot Program, which required that fisheries observers be stationed at shoreside processors participating in the Rockfish Pilot Program. Observer requirements for shoreside processors were removed with the implementation of the Rockfish Program in 2012, making these equipment requirements no longer necessary.

This proposed rule includes two additional technical corrections to regulations to clarify the season date for directed fishing for Pacific cod under the Rockfish Program and to update references to dusky rockfish throughout the regulations. This proposed rule would clarify the season dates for directed fishing for Pacific cod with trawl gear at § 679.23(d)(3)(ii) by cross-referencing the Rockfish Program season dates in § 679.84(g).

Currently, existing regulations include conflicting season dates for when directed fishing for Pacific cod is authorized in the Western and Central Gulf of Alaska regulatory areas. Regulations at 50 CFR 679.24(d)(3) specify that directed fishing for Pacific cod with trawl gear in the Western and Central Regulatory Areas is authorized in the Pacific cod B season only until 1200 A.L.T., November 1 each year. Regulations at 50 CFR 679.80(a)(3)(ii) specify that fishing by vessels participating in a rockfish cooperative is authorized from 1200 hours, A.L.T., May 1 through 1200 hours, A.L.T., November 15. Because Pacific cod is an allocated species under the Rockfish Program, this creates conflicting season dates for authorized directed fishing for Pacific cod. To clarify this, NMFS proposes to modify regulations at 50 CFR 679.24 to reference the specific season dates authorized under the Rockfish Program.

This proposed rule changes references to “pelagic shelf” rockfish to “dusky” rockfish throughout regulations in 50 CFR part 679 to update regulations consistent with changes that have occurred to species categories since 2012 and the implementation of the Rockfish Program. In 2012, the pelagic shelf rockfish assemblage consisted of three species: dusky, widow (*S. entomelas*), and yellowtail rockfish (*S. flavidus*). Following recommendations by rockfish stock assessment scientists, the Council’s GOA Groundfish Plan

Team, and the Council's Scientific and Statistical Committee, dusky rockfish were assessed separately starting in 2012. The other two species that were included in the "pelagic shelf" rockfish group (widow and yellowtail rockfish) have been included in the "other rockfish" species category and stock assessment. Revising the references from pelagic shelf rockfish to dusky rockfish within the regulations and FMP is consistent with existing protocols for the annual stock assessment and harvest specifications of dusky rockfish.

### Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the GOA FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

This proposed rule is expected to be an Executive Order 13771 deregulatory action.

A Regulatory Impact Review was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended and NMFS proposes Amendment 111 and these regulations based on those measures that maximize net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

### Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this proposed rule is proposed; the objectives and legal basis for this proposed rule; the number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and that would minimize any significant

economic impact of this proposed rule on small entities. The description of the proposed action, its purpose, and the legal basis are explained in the preamble and are not repeated here.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. A shoreside processor primarily involved in seafood processing (NAICS code 311710) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment, counting all individuals employed on a full-time, part-time, or other basis, not in excess of 750 employees for all its affiliated operations worldwide.

### Number and Description of Small Entities Regulated by This Proposed Rule

This proposed rule would directly regulate the owners and operators of catcher vessels, catcher/processor vessels, and shoreside processors eligible to participate in the CGOA Rockfish Program. In 2019 (the most recent year of complete data), 54 vessel owners participated in the Rockfish Program, 19 of which are considered small entities based on the \$11 million threshold. No catcher/processor vessels are classified as small entities because their combined gross income through affiliation with the Amendment 80 cooperative exceeds the \$11 million first wholesale value threshold. In 2018 and 2019, six shore-based cooperatives were associated with a unique shoreside processor under the Rockfish Program. Reliable information is not available on ownership affiliations between individual processing operations or employment for the fish processors directly regulated by this proposed rule. Therefore, NMFS assumes that all of the processors directly regulated by this proposed rule could be small. Additional detail is included in Sections 3.5.5 and 3.9 in the Analysis prepared for this proposed rule (see **ADDRESSES**).

In addition to the main program, this proposed rule also maintains the "entry level" fishery for the longline sector. Since participation in that fishery is

voluntary, the number of small entities participating in future years cannot be reliably predicted. From 2012 to 2019, an average of 4 vessels targeted CGOA rockfish in the entry level longline sector. Participation in this fishery has typically included vessels using jig gear and are considered small entities. Therefore, it is likely that a substantial portion of the entry level longline fishery participants would be small entities.

### Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The proposed rule builds upon the Rockfish Pilot Program and previously implemented Rockfish Program. The Rockfish Pilot Program was originally enacted through congressional direction to address economic inefficiencies in the fishery which primarily affected small entities. In recommending this proposed rule, the Council considered two alternatives, with multiple elements as it evaluated the potential for the continued rationalization of the CGOA rockfish fisheries, including the "no action" alternative (Alternative 1) to allow the Rockfish Program to expire on December 31, 2021; and an action alternative (Alternative 2) to reauthorize the Rockfish Program with numerous alternative elements to address a suite of potential management revisions. The Council considered alternatives that would modify the duration of the Rockfish Program: (1) Remove the sunset date, or (2) implement a new sunset date of 10 to 20 years; and select from numerous alternative elements to revise administrative provisions of the Rockfish Program. The Council selected Alternative 2 with the suite of elements included in this proposed rule to remove the sunset date and modify specific provisions of the Rockfish Program proposed in this proposed rule.

Based upon the best available scientific data, and in consideration of the Council's objectives of this action, it appears that there are no significant alternatives to the proposed rule that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the proposed rule on small entities. After public process, the Council concluded that the proposed Rockfish Program would best accomplish the stated objectives articulated in the preamble for this proposed rule, and in applicable statutes, and would minimize to the extent practicable adverse economic

impacts on the universe of directly regulated small entities.

#### *Duplicate, Overlapping, or Conflicting Federal Rules*

NMFS has not identified any duplication, overlap, or conflict between this proposed rule and existing Federal rules.

#### *Recordkeeping, Reporting, and Other Compliance Requirements*

This proposed rule would modify recordkeeping and reporting requirements under the Rockfish Program to: (1) Clarify that only shoreside processors receiving Rockfish Program CQ must submit the Rockfish Ex-vessel Volume and Value Report; (2) modify cooperative check-in times from 48 to 24 hours; (3) remove the requirement for an annual Rockfish Program cooperative report to be submitted to NMFS; (4) remove the requirement for rockfish cooperatives to submit a fishing plan with its annual application for cooperative quota; and (5) require NMFS to annually publish a Rockfish Program cost recovery report. These recordkeeping and reporting changes would clarify existing provisions of the program and remove unnecessary reporting requirements, slightly reducing the reporting burden for all directly regulated entities including small entities. The impact of these changes are described in more detail in Section 3.7 of the Analysis prepared for this proposed rule (See **ADDRESSES**).

#### *Collection-of-Information Requirements*

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS has submitted these requirements to OMB for approval under Control Numbers 0648–0678 (Alaska Council Cooperative Annual Reports) and 0648–0545 (Alaska Rockfish Program: Permits and Reports).

#### *OMB Control Number 0648–0678*

Due to this rule, this collection is revised to remove the requirement for an annual Rockfish Program cooperative report to be submitted to NMFS. A second revision, which is not covered by this proposed rule, removes the American Fisheries Act (AFA) Catcher Vessel Intercooperative Agreement as a separate component of this collection because this is already included as an appendix to the AFA Annual Catcher Vessel Intercooperative Report, which is approved under OMB Control Number 0648–0678.

#### *OMB Control Number 0648–0545*

This rule proposes to revise and extend by three years OMB Control Number 0648–0545. This collection contains three applications and reports used by Rockfish Program cooperatives to apply for cooperative fishing permits, transfer cooperative quota, and manage cooperative fishing activity. This collection is necessary for NMFS to effectively administer and monitor compliance with the management provisions of the Rockfish Program.

Due to this proposed rule, this collection is revised to remove the requirement for a rockfish cooperative to submit a fishing plan with its Application for Rockfish Cooperative Fishing Quota. Subject to public comment, no change is made to the estimated reporting burden for this application as the estimate allows for differences in the time needed to complete and submit the application. This collection is also revised to reduce the time for a Rockfish Program catcher vessel to submit a cooperative check-in report from 48 hours to 24 hours before the start of a fishing trip. This does not change the estimated reporting burden for this report. These changes are necessary to remove unnecessary reporting requirements.

The respondents are the eight Rockfish Program cooperatives; the estimated total annual burden hours are 40 hours; and the estimated total annual cost to the public for recordkeeping and reporting costs are \$40.

Public reporting burden per individual response is estimated to average 2 hours for the Application for Rockfish Cooperative Fishing Quota; 10 minutes for the Application for Inter-Cooperative Transfer of Rockfish Cooperative Quota; and 10 minutes for the Rockfish Program Vessel Check-In/Check-Out and Termination of Fishing Report.

#### *Public Comment*

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region (see **ADDRESSES**), or to the

Office of Information and Regulatory Affairs (OIRA) by visiting [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at <https://www.reginfo.gov/public/do/PRASearch>.

#### **List of Subjects**

##### *50 CFR Part 679*

Alaska, Fisheries, Reporting and recordkeeping requirements.

##### *50 CFR Part 680*

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 13, 2020.

**Samuel D. Rauch, III,**

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

For the reasons set out in the preamble, 50 CFR parts 679 and 680 are proposed to be amended as follows:

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

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

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

##### **§ 679.2 [Amended]**

■ 2. In § 679.2, in paragraph (1) of the definitions for “Rockfish Program species” and “Rockfish sideboard limit”, remove the words “pelagic shelf rockfish” and add in their place the words “dusky rockfish”.

■ 3. In § 679.5, remove and reserve paragraph (r)(6) and revise paragraphs (r)(8)(i)(A)(1) and (r)(10)(i) to read as follows:

##### **§ 679.5 Recordkeeping and reporting (R&R).**

*	*	*	*	*
(r)	*	*	*	
(8)	*	*	*	
(i)	*	*	*	
(A)	*	*	*	



(1) At least 24 hours prior to the time the catcher vessel begins a fishing trip to fish under a CQ permit; or

\* \* \* \* \*

(10) \* \* \*

(i) *Applicability.* A rockfish processor (as defined at § 679.2) that receives and purchases landings of rockfish CQ groundfish must submit annually to NMFS a complete Rockfish Ex-vessel Volume and Value Report, as described in this paragraph (r)(10), for each reporting period for which the rockfish

processor receives rockfish CQ groundfish.

\* \* \* \* \*

#### § 679.20 [Amended]

■ 4. In § 679.20(d)(1)(vi)(C)(1), remove the words “pelagic shelf rockfish” and add in their place the words “dusky rockfish.”

■ 5. In § 679.23, revise paragraphs (d)(3)(ii) introductory text and (h)(1) to read as follows:

#### § 679.23 Seasons.

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(ii) *Trawl gear.* Subject to other provisions of this part, directed fishing for Pacific cod with trawl gear in the Western and Central Regulatory Areas is authorized only during the following two seasons except as authorized in subpart G of this part under the Rockfish Program:

\* \* \* \* \*

(h) \* \* \*

If you own or operate a catcher vessel and fish for groundfish with trawl gear in the \* \* \*

You are prohibited from subsequently deploying trawl gear in the \* \* \*

Until \* \* \*

(1) BSAI while pollock or Pacific cod is open to directed fishing in the BSAI. Western and Central GOA regulatory areas. 1200 hours A.I.T. on the third day after the date of landing or transfer of all groundfish on board the vessel harvested in the BSAI, unless you are engaged in directed fishing for Pacific cod in the GOA for processing by the offshore component or if checked-in and participating in a CGOA Rockfish Program cooperative.

\* \* \* \* \*

\* \* \* \* \*

■ 6. In § 679.80, revise paragraph (a) heading and remove and reserve paragraph (a)(2) to read as follows:

#### § 679.80 Allocation and transfer of rockfish QS.

\* \* \* \* \*

(a) *Applicable areas and seasons*

\* \* \*

\* \* \* \* \*

■ 7. In § 679.81:

■ a. Add the word “and” at the end of paragraph (f)(4)(i)(D)(2);

■ b. Remove and reserve paragraph (f)(4)(i)(D)(3);

■ c. Remove paragraphs (i)(3)(xxv) and (xxvi); and

■ d. Add paragraph (j).

The addition reads as follows:

#### § 679.81 Rockfish Program annual harvester privileges.

\* \* \* \* \*

(j) *Reallocations.* Annual reallocation of Central Gulf of Alaska rockfish species—

(1) *Pacific cod.* After the Rockfish Program fisheries close on November 15, the Regional Administrator may reallocate any unused amount of Pacific cod from the Rockfish Program to other sectors through notification in the **Federal Register** consistent with regulations at § 679.20(a)(12)(ii).

(2) *Rockfish incidental catch allowances (ICAs)*—(i) *General.* The Regional Administrator may reallocate a portion of a Central GOA rockfish ICAs to rockfish cooperatives if the amounts

assigned to the Central GOA rockfish ICAs are projected not to be harvested or used. The timing of a reallocation will be at the discretion of the Regional Administrator.

(ii) *Reallocation of Central Gulf of Alaska rockfish ICA species.* If, during a fishing year, the Regional Administrator determines that a reallocation of a portion of the ICAs of Central Gulf of Alaska rockfish species to rockfish cooperatives is appropriate, the Regional Administrator will issue a revised CQ permit to reallocate that amount of Central Gulf of Alaska rockfish species to rockfish cooperatives according to the following:

(A) Catcher vessel rockfish cooperatives will be given priority for reallocation; and

(B) The amount of additional CQ issued to each rockfish cooperative = Amount of Central Gulf of Alaska rockfish species available for reallocation to rockfish cooperatives × (Amount of CQ for that Central Gulf of Alaska rockfish species initially assigned to that rockfish cooperative/Σ CQ for that Central Gulf of Alaska rockfish species initially assigned to all rockfish cooperatives in the respective sector).

■ 8. In § 679.82:

■ a. Add paragraph (a)(1)(vi);

■ b. In paragraph (d)(3), remove the words “pelagic shelf rockfish” and add in their place the words “dusky rockfish;” and

■ c. Revise paragraphs (e)(2) and (4).

The addition and revisions read as follows:

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

(a) \* \* \*

(1) \* \* \*

(vi) Any transfer of reallocated rockfish ICA (as authorized under § 679.81(j)(2)) or catcher/processor CQ to a catcher vessel cooperative does not apply to catcher vessel ownership, cooperative, harvester CQ, or shoreside processor CQ use caps.

\* \* \* \* \*

(e) \* \* \*

(2) *Prohibition for directed rockfish fishing in the West Yakutat District by non-Amendment 80 vessels assigned to the catcher/processor sector.* Any vessel that meets the criteria established in paragraph (e)(1) of this section and that is not an Amendment 80 vessel is prohibited from directed fishing for northern rockfish, Pacific ocean perch, and dusky rockfish in the West Yakutat District (or in waters adjacent to the West Yakutat District when northern rockfish, Pacific ocean perch, and dusky rockfish by that vessel is deducted from the Federal TAC as specified under § 679.20) from July 1 through July 31.

\* \* \* \* \*

(4) *West Yakutat District rockfish sideboard ratios.* The rockfish sideboard ratio for each rockfish fishery in the West Yakutat District is an established percentage of the TAC for catcher/processors in the directed fishery for



dusky rockfish and Pacific ocean perch. These percentages are confidential.

\* \* \* \* \*

■ 9. In § 679.84, revise paragraph (f)(1) to read as follows:

**§ 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.**

\* \* \* \* \*

(f) \* \* \*

(1) *Catch monitoring and control plan (CMCP)*. The owner or operator of a shoreside processor receiving deliveries from a catcher vessel described in § 679.51(a)(2) must ensure the shoreside processor complies with the CMCP requirements described in § 679.28(g) except the requirements for an observer workstation and communication with

observer as specified in § 679.28(g)(7)(vii) and (viii).

\* \* \* \* \*

■ 10. In § 679.85, add paragraph (g) to read as follows:

**§ 679.85 Cost recovery.**

\* \* \* \* \*

(g) *Annual report*. Each year, NMFS will publish a report describing the rockfish program cost recovery fee program.

**PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

■ 11. The authority citation for 50 CFR part 680 continues to read as follows:

**Authority:** 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 12. In § 680.22, revise paragraph (a)(1) introductory text to read as follows:

**§ 680.22 Sideboard protections for GOA groundfish fisheries.**

\* \* \* \* \*

(a) \* \* \*

(1) *Vessels subject to GOA groundfish sideboard directed fishing closures*. Any vessel that NMFS has determined meets one or both of the following criteria is subject to GOA groundfish sideboard directed fishing closures issued under paragraph (e) of this section except when participating in the Rockfish Program authorized under subpart G of part 679 of this chapter.

\* \* \* \* \*

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