

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke  
Executive Director

DATE: November 29, 1999

SUBJECT: American Fisheries Act (AFA)

ESTIMATED TIME  
6 HOURS

**ACTION REQUIRED**

- (a) Review co-op performance reports and agreements.
- (b) Comment on proposed rule for 2000, particularly with regard to GOA vessel exemptions.
- (c) Update on analysis of excessive shares/groundfish processing sideboards.

**BACKGROUND**

Co-op performance reports and agreements

**Performance reports**

Regarding co-op performance reports, the Council approved a motion in October to require certain specific information from the co-ops regarding their internal allocations and actual catch of pollock, bycatch, and sideboard species. The Council's motion overlaps, but exceeds in some areas, the requirements specified in Section 210(a)(1) of the AFA. The Council's motion also overlaps to some degree with a request to NMFS, from the February 1999 meeting, which asked for an agency co-op performance report. A summary of these various co-op performance requests is contained under Item C-1(a)(1).

Following the October meeting we sent a letter to the representatives of the existing co-ops summarizing what we felt the Council wanted from the co-ops, based on the collective motions and requests to date (Item C-1(a)(2)). The points in that letter cover the existing requirements specified by the AFA and the points raised in the Council's October motion, as well as some of the issues raised in the earlier request to NMFS. We felt that many of the items in the request to NMFS were things that the co-ops were examining already, and that if they could be included in the performance report to be submitted by the co-ops this would avoid potential redundancy and unnecessary work by the agency. Because these are initial co-op performance reports, with final reports due in February, the Council may wish to provide feedback to both the co-ops and to the agency in terms of expectations for both, recognizing there may be a desire for some of this information to be verified by agency records.

The reports as submitted to the Council are included in your Supplemental Folder.

## Co-op agreements

The Council has requested that all co-op agreements be submitted by December 1 so that they can review the agreements prior to the start of the fishing season. As with the Council's request for co-op performance reports by December 1, this deadline is not in regulation, so co-op agreements are technically due 30 days prior to the start of fishing (or December 20). The agreements for the offshore sectors were submitted last year and, we understand, have not changed to any material degree, though they will still need to be submitted to the agency by December 20. For the onshore sector co-ops, the agreements have been developing but have been hampered by uncertainty in a couple of areas, most notably the pending Department of Justice legal opinion regarding participation in co-ops by processor owned catcher vessels. With an opinion expected by November 30, there has simply not been time for the agreements to be finalized and submitted by December 1. In our conversations with representatives working on these co-ops, we indicated that they should at least be prepared to inform the Council as to their progress at this meeting along with any details currently available. If the agreements are not finalized in time for Council review at this time, they could expect to follow up by way of written submittal (by December 20) to the Council, through our offices, for distribution to the Council later this month. In that way we could treat it much as we did with the offshore co-ops last year, and convene the Council by teleconference if necessary to further discuss details of the final agreements.

## Comment on proposed rule and GOA sideboard exemptions

At the time of the October meeting it was expected that a proposed rule would be published prior to the December meeting, which would allow the Council to comment on its own proposed rule. Specifically the Council noticed that it would be considering changes to the previously adopted sideboard exemptions for vessels fishing in the Gulf of Alaska (GOA), and provided a list of options for staff to analyze. It is now clear that the AFA will have to be implemented by an Emergency Rulemaking (ER) to be published shortly after this meeting (by mid to late December). We believe that this will still allow the Council to consider the proposed changes to the GOA sideboard exemptions, and if changes are made at this meeting they could be incorporated in the ER. The ER would be followed by a normal proposed and final rulemaking in early 2000. Item C-1(b)(1) is a discussion paper which contains the information requested by the Council with regard to the GOA exemptions.

There are still a couple of outstanding issues with regard to management and accounting for sideboards, relative to exempted vessels. These will be covered in the discussion paper. NMFS staff will update you on other aspects of the draft AFA rulemaking.

## Excessive share/groundfish processing sideboards

In October you took action regarding crab processing sideboards, as mandated by the AFA. Council action with regard to groundfish processing sideboards was postponed, to be combined with an analysis of excessive share caps for BSAI pollock processing (pollock harvest caps, at the entity level, are already mandated by the AFA). The Council's specific motion, with alternatives for pollock processing caps, is shown below:

The Council approved a motion that the subject of groundfish processing sideboards be combined with the pollock processing excessive share cap issue. That the Council move forward with an analysis of the following options and suboptions:

- A. Excessive share caps of 10, 20, and 30%  
Suboptions:
1. Include grandfather provisions
  2. Exclude CDQ pollock
  3. Apply "limited 10% rule"
  4. Apply at the Company level

and include impacts on competitive markets for catcher vessels to the extent possible, and bring both the groundfish recommendations of the AP (as modified) and the pollock excessive share cap analysis and alternatives to the February meeting for initial review and final action in April.

The Alternatives identified (by the AP in October 1999) for groundfish processing sideboards are:

1. Adopt a single aggregate processing cap that would apply to all processing facilities owned by inshore or mothership sector AFA entities.
  - A. NMFS will determine which processing facilities are owned by inshore or mothership AFA entities using the "limited 10% rule"
  - B. Owners of inshore or mothership AFA pollock facilities that process fish under the Council's jurisdiction would be required to identify to NMFS as part of their processing permit requirements any inshore or mothership AFA eligible processing facilities in which the owner has more than 10% interest using the limited 10% rule.
2. A processing facility is any plant or US documented vessel that processes fish under the jurisdiction of the North Pacific Fishery Management Council.
3. The limited 10% rule will be used in determining AFA entities for purposes of the historic processing cap.
4. AFA catcher processors would not be subject to additional processing sideboards, except as noted in 5C below.
5. The historic processing cap would be determined annually based on the average of the 1995-1997 processing history of US documented processing vessels and processing plants owned by inshore and mothership AFA entity at the start of the fishing year.
  - A. If an inshore or mothership AFA entity sells a non-pollock processing facility to a non-AFA entity, or if a processing vessel is no longer US documented, the 1995-1997 average processing history of that plant or vessel is removed from the historic processing cap. Likewise, if an inshore or mothership AFA entity buys a non-AFA processing plant or US documented vessel, then the 1995-1997 average processing history of that plant or vessel is added to the historic processing cap.
  - B. For fully utilized species, the historic processing cap would be determined based on the percentage of the TAC processed by inshore or mothership AFA entities.

- C. A processing cap for flatfish in the Bering sea would be based on each sector's aggregate landings from 1995-1997.
- D. The processing cap would apply to all facilities of AFA entities regardless of whether or not the AFA entity receive pollock from a cooperative.
- E. The cap would apply year around.
- F. NMFS would establish a phased-in cap to allow AFA entities to process bycatch after the directed fishing cap is reached. This phased approach should not allow the AFA entities to exceed the aggregate cap.

Additionally, exempt CDQ organizations and their non-pollock and crab investments from the AFA entity rule where the only ownership link is the CDQ organization between an AFA facility, company, or entity and other investments by the CDQ organization.

Council staff, with assistance from Northern Economics, will be completing this analysis for review by the Council in February, with final action scheduled for April 2000. Our interpretation of your October action is that, although the AP motion was specifically identified, the entire suite of alternatives and options for groundfish processing sideboards will be available for the Council. We intend to bring back the original Chapter 8 from the AFA analysis (modified as appropriate but including all of the original alternatives and options) along with the additional information we had at the October meeting, for Council review in February. A separate part of that revised document will include analysis of the specific alternatives identified by the Council for BSAI pollock processing caps. With regard to groundfish processing sideboards, the fundamental decision points remain:

1. Whether limits would be applied to individual plants, companies, or entities vs aggregated across all processors (or across sectors).
2. If applied at the individual level, whether the limits would apply at a facility level, company level, or entity level. Implicit is whether the sideboards would apply to all facilities owned by AFA companies/entities, or just to their pollock facilities.
3. Whether and how to apply the 10% ownership rule in defining entities.
4. Which base years to use for processing history.
5. Whether AFA catcher processors would be subject to the processing sideboards in addition to existing sideboards for that sector.

#### **Other**

A meeting of crab industry participants, facilitated by Dave Fluharty and Kevin O'Leary, was held in Ballard on November 22 to discuss potential development of cooperatives in the BSAI crab fisheries. Minutes from that meeting are included here as Item C-1 Supplemental.

## COOP DATA REQUIREMENTS

### AFA Section 210(a)(1):

(A) make available to the public such information about the contract, contract modifications, or fishery cooperative the Council and Secretary deem appropriate, which at a minimum shall include a list of parties to the contract, a list of the vessels involved, and the amount of pollock and other fish to be harvested by each party to the contract; and,

(B) make available to the public in such manner as the Council and Secretary deem appropriate information about the harvest by vessels under a fishery cooperative of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis.

### December 29, 1998 letter from Council to Secretary Daley:

1. Vessel by vessel data are missing from contract
2. Contract language is vague regarding sideboard species and PSC, and would not allow the Council to publish harvest levels of non-pollock groundfish or PSC on a member by member or vessel by vessel basis.
3. Does not specify how transfers within co-ops may affect harvest on vessel-by-vessel basis.

### February 1999

#### Request NMFS prepare COOP performance report:

1. Effectiveness of pollock coops in reducing bycatch (all species).
2. Effectiveness of management measures to protect other fisheries from adverse impacts caused by the AFA or pollock coops.
3. Discussion of how transfers within co-ops may affect issues 1 and 2 above.
4. Utilization and recovery rates by species and product categories.
5. Method of monitoring and enforcement.
6. Report should include the most specific catch and bycatch information available on an individual vessel level to help the coop and the Council realize the public disclosure requirements for such information envisioned in section 210(a)(1)(A).

### October 1999 Summary in Newsletter

1. Allowed catch and bycatch in pollock and all sideboards by whatever method is used to determine those allocations.
2. Actual catch and bycatch in pollock by vessel and sideboarded fisheries by whatever method is used to determine those sideboards.
3. Method used to monitor fisheries in which cooperative vessels participated.
4. Actions taken by cooperatives to enforce vessel or aggregate catches that exceed allowed catch and bycatch in pollock and all sideboarded fisheries.

# North Pacific Fishery Management Council

AGENDA C-1(a)(2)  
DECEMBER 1999

Richard B. Lauber, Chairman  
Clarence G. Pautzke, Executive Director



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November 1, 1999

Trevor McCabe  
At-Sea Processors Assn.  
4039 21<sup>st</sup> Avenue West, Suite 400  
Seattle, WA 98199

Dear Trevor:

This is to follow up on and clarify my letter of October 21 regarding Council expectations for reports from the co-ops. The four specific elements passed by the Council in October overlap considerably with the existing provisions of the AFA, and we noted that the Council motion was in addition to any existing requirements of the AFA. There is also overlap with the Council's specific request to NMFS (from the February 1999 meeting) regarding an agency performance report each year. I have summarized these various motions and AFA provisions in the attachment to this letter, including some of the primary comments we made to the Secretary of Commerce regarding the Council's review of the original co-op agreements.

Based on these provisions, and taking into account the discussions by the AP and Council at the October meeting, I believe the list below (in no particular order) summarizes the Council's expectations regarding the reports from the co-ops. This list includes some of the things identified for the NMFS report on co-ops. I believe the Council can review the preliminary co-op reports this December, and at that time provide direction with regard to further expectations from the agency, or from the co-ops.

1. As presented in the original co-op agreements, the report should contain the parties to the contract, the vessels involved and the specific percentages of pollock and other species, including PSC, to be harvested by each party. In the case of bycatch in pollock, and directed fishing for sideboard species, I realize this may not be specifically allocated by vessel but managed as a pool. The report should specify how the co-op approached the season with regard to these species, and how it was allocated among parties, if at all.
2. The Council would expect to see the actual catch and bycatch in the directed pollock fisheries on a vessel-by-vessel basis, and in total, at year's end to see how that compares to the original co-op plan. For sideboard species, a vessel-by-vessel accounting is also expected, as well as the total. While sideboards may have been managed in aggregate by the co-op going into the fishing year, we assume you have to have vessel-by-vessel information in order to maintain the overall catch within the sideboard limit.
3. A descriptive discussion of the internal workings of the co-ops in terms of how catch of all species is allocated, how it is managed by the co-ops to stay within limits, and how transfers within the co-ops occur in-season. This would include methods to monitor catch and actions taken by co-ops to enforce vessel or aggregate limits.
4. At least a qualitative description (quantitative to the extent possible) of the co-ops' effectiveness at reducing bycatch of non-target species, including PSC. This should include a discussion of how transferability within the co-ops affects these bycatch issues, and how transferability in general affects the co-ops' ability to stay within individual and overall catch limits.

5. A description of utilization and recovery rates, by species and product categories, relative to those experienced prior to co-ops.

I realize that some of this information is only officially verifiable through State of Alaska fish tickets, or through NMFS data sets. However, I assume that the individual vessels, and the co-op as a whole, must have this type of information for all co-op members in order to stay within the pollock allocations and the aggregate sideboard limits. Having this information will allow the Council to more fully understand the workings of the co-ops, including the effects of transfers of catch among co-op participants. As I noted in my previous letter, a final report is not due until February, but any information you can provide in the preliminary report in December will be much appreciated by the Council. This will also enable the Council to determine what additional information should appropriately be provided by NMFS. Please contact me if you have any questions.

Sincerely,



Chris Oliver  
Deputy Director

cc: Sue Salvesson, NMFS  
Joe Sullivan

## GOA Sideboard Exemption for Vessels with Limited BSAI Pollock Catch History

### DISCUSSION PAPER OF OPTIONS

December 1, 1999

#### Introduction

During the June 1999 meeting, the Council passed an AFA provision that would exempt catcher vessels from GOA sideboards if they had less than 1,700 mt of annual BSAI pollock landings, and participation history in the GOA fisheries. Concern has been expressed by members of the GOA fleet that too many vessels would qualify for that exemption. The exempt vessels would be allowed to participate in the GOA fisheries like any other non-AFA vessel.

Given industry concerns regarding the number of vessels that would qualify for the exemption, the Council requested that implementation of that provision be delayed until alternative participation histories could be examined. This discussion paper will provide background information on the new suite of alternatives being considered by the Council. With this information the Council could provide a comment to the SOC to change the final rule, and/or provide direction on the emergency rule required for the start of the 2000 fishery.

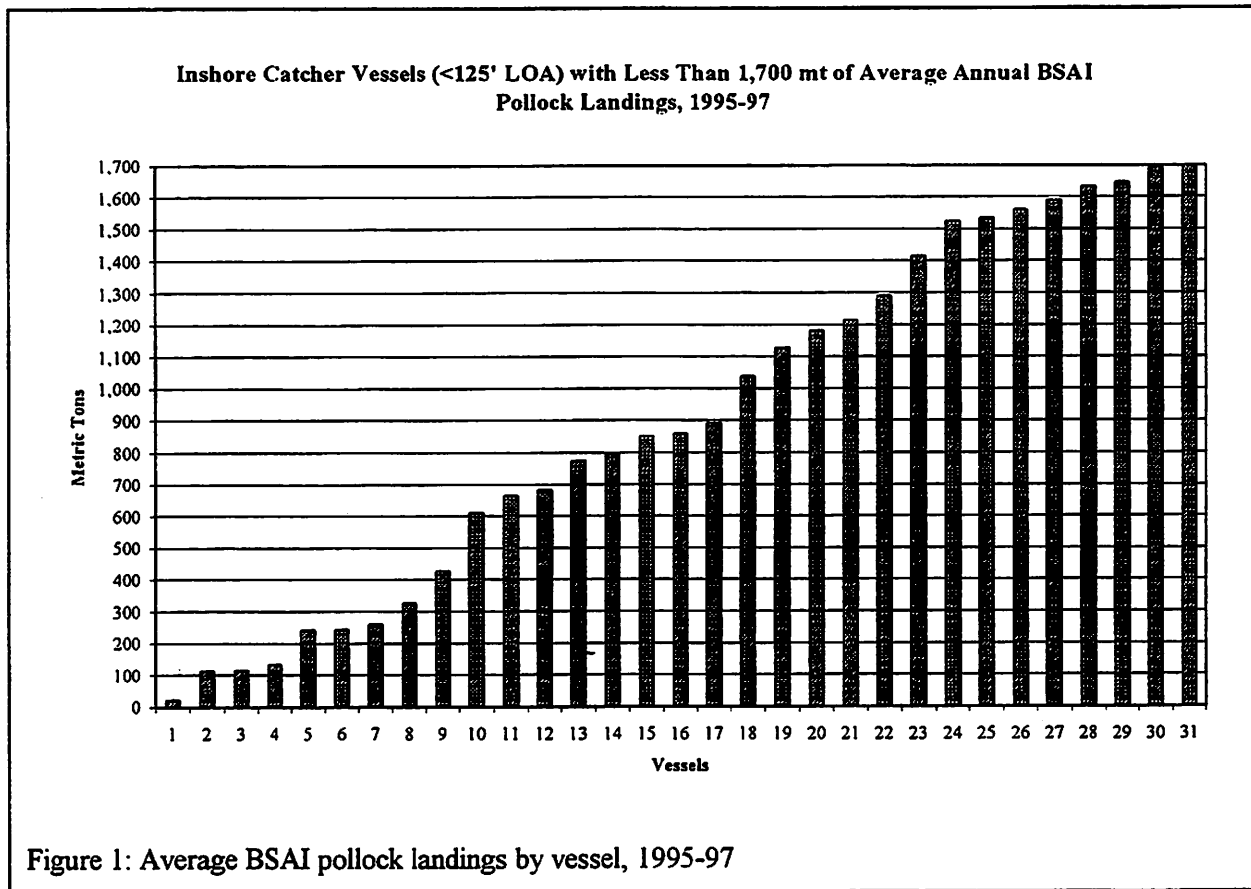
#### Alternatives Under Consideration

Several new alternatives are being considered by the Council relative to exempting vessels with limited BSAI pollock catch history from GOA sideboard restrictions. The alternatives include lowering the average BSAI pollock landing requirements from 1,700 mt to either 1,200 mt, 750 mt, or 500 mt. In addition to lowering the pollock landings threshold in the BSAI, a range of landings requirements in the GOA is also being considered for implementation. The number of GOA landings being considered includes 15, 20, 30, and 40, and could be based either on all groundfish landings or only landings in the Pacific cod target fishery. Vessels less than 125' LOA which meet these landings requirements would then be allowed to fish in the GOA without being constrained by AFA sideboard restrictions.

A total of 31 vessels were less than 125' LOA and averaged less than 1,700mt of BSAI pollock landings from 1995-97. The average annual BSAI pollock landings of these vessels are presented in Figure 1. That figure also indicates that 20 vessels had less than 1,200mt of landings, 12 vessels less than 750mt, and nine vessels less than 500mt. Therefore, the number of vessels that would be exempt from the GOA sideboards range from 31 to nine give this one criteria. Providing the information on each vessel (Figure 1) also allows the reader to determine the number of vessels that would meet any other landings threshold (under 1,700 mt) that the Council may wish to consider.

The Council is also considering adding a requirement that vessels make a given number of landings in the GOA in order to be exempt from the GOA sideboards. Two different requirements are being considered. The first would count all GOA groundfish landings, and the second would only count landings where Pacific cod was the target species. Pacific cod was considered the target if the fishticket reported that more than 50 percent of landed catch was cod. Figure 2 adds information on the number of GOA landings to the information that





was reported in Figure 1. That allows the reader to determine the number of vessels that would be exempt from GOA sideboards under a wide variety of landings criteria.

The information from Figures 1 and 2, regarding the number of vessels meeting the explicit alternatives defined by the Council, is summarized in Table 1. Reading down the rows of the table changes the BSAI average annual pollock landings requirements, and reading across the top of the table changes the GOA landings requirements. Therefore, the cell that is the intersection of the < 1,700mt row and the 40+ GOA Groundfish Landings column shows that 20 of the original 31 vessels would be exempt from GOA sideboards if that alternative were selected by the Council. If the alternative selected by the Council was that the vessel must have averaged less than 500 mt of BSAI pollock annually between 1995-97 and must have had 30+ Pacific cod landings in the GOA, then only five vessels would be eligible for the sideboard exemption.

Table 1: Number of vessels meeting the GOA sideboard exemption requirements

Avg. Annual BSAI Pollock Landings 95-97	GOA Groundfish Landings				GOA Pacific Cod Landings			
	15+	20+	30+	40+	15+	20+	30+	40+
< 500 mt	6	6	6	6	6	6	5	0
< 750 mt	8	8	8	8	7	7	6	0
< 1,200 mt	13	13	13	13	11	11	9	0
< 1,700 mt	20	20	20	20	16	15	11	0

Source: Primarily ADF&G fishtickets, supplemented with NMFS Observer reports

In summary, the table shows that between 0 and 20 vessels would qualify for the GOA sideboard exemption depending on the alternative selected. The table also shows that the number of GOA groundfish landings would need to be increased before it has much of an impact. Figure 2 provides information on the actual number of landings that were made by each vessel.

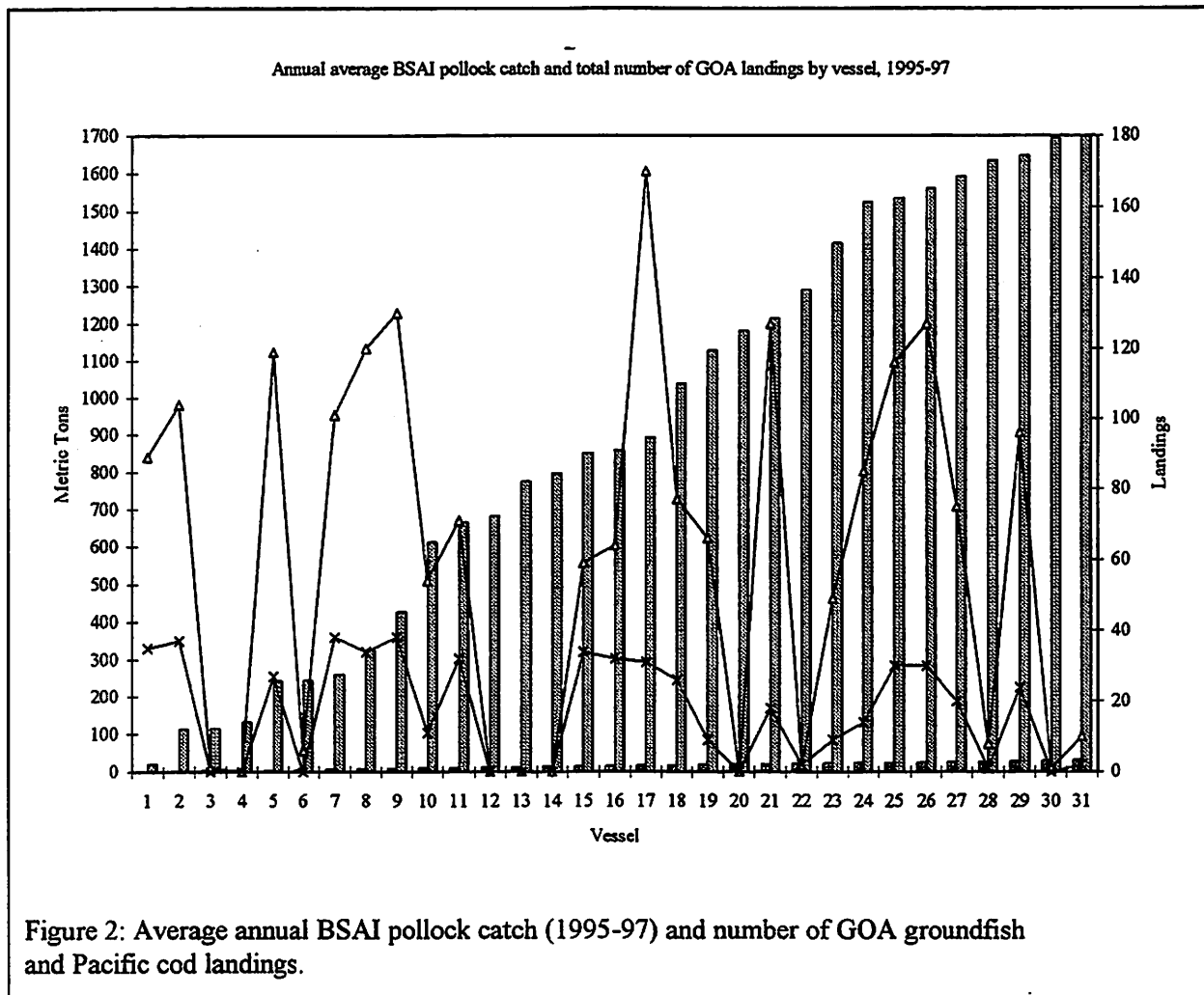


Figure 2: Average annual BSAI pollock catch (1995-97) and number of GOA groundfish and Pacific cod landings.

From the Table we can see that 11 of the original 31 vessels had <15 groundfish landings, while the 20 that had greater than 15 also had >40. Requiring > 40 landings of Pacific cod eliminates all of the 31 vessels.

In addition to the decision regarding GOA exemptions, the Council may wish to address the following issues which are generic to any exemption scenario.

#### **How should the sideboard exemption be accounted?**

In October NMFS reported their intent to manage the exemption as follows: All catch of all AFA vessels would go into the sideboard amount, and all catch by all AFA vessels would accrue to that sideboard, but only the non-exempt vessels would be closed down when the sideboard is reached; i.e., the anticipated catch of the exempt vessels would be taken into account relative to a directed fishery allowance for the non-exempt vessels. NMFS would only allow directed fishing for the non-exempt vessels to the extent the total catch of all AFA vessels is expected to remain within the overall limit. In essence, increased catch by the exempt vessels would come at the expense of the non-exempt vessels, unless co-op arrangements are able to manage the exempt vessels to not exceed their historical catch.

Alternatively, the fishery could be managed such that the exempt vessels are separate from the non-exempt sideboard limit, and are simply limited by the overall quota. This could allow the collective AFA vessels (exempt and non-exempt) to exceed their historical catch, which could be contrary to the provisions of the AFA. Council justification of this approach may be required as it could be construed as superceding the provisions of the AFA. The feasibility of either approach, in the GOA at least, may well depend on the Council's decision with regard to GOA exemptions and the final number of exempted vessels.

#### **Should the Vessels also be Exempt from PSC Sideboard Caps?**

Based on the motion passed by the Council in June 1998, the sideboard exemption is only applied to the target species in the GOA. If the Council wishes to also exempt these vessels from the PSC caps in the GOA (and the BSAI), they will need to signal their intention to NMFS. It may have been assumed that the sideboard exemption for groundfish included exemption from the AFA portion of the PSC (set aside as a cap), and that the exempt vessels would be operating on the 'open access' PSC cap; otherwise, the PSC accumulated by the non-exempt vessels would shut down fishing by the exempt vessels.

Without exempting the AFA vessels from the PSC sideboard caps, the groundfish sideboard exemption will likely have little impact. Other than pollock, all of the GOA trawl fisheries are typically closed because of halibut bycatch. This trend is likely to continue after AFA sideboards are implemented. Therefore, when the AFA fleet's bycatch of halibut is reached, all AFA vessels will be required to stop fishing. If the Council's intent is to allow these vessels to fish outside the AFA PSC caps, a motion stating that preference is required at this meeting. These vessels would then be subject to the *overall* PSC cap in place.



## U.S. Department of Justice

## Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

December 10, 1999

**MEMORANDUM FOR ANDREW J. PINCUS  
GENERAL COUNSEL  
DEPARTMENT OF COMMERCE**

From: Randolph D. Moss *ROM*  
Acting Assistant Attorney General  
Office of Legal Counsel

Re: Participation by Processor-Owned Catcher Vessels in Inshore Cooperatives Under the American Fisheries Act of 1998

You have requested our advice as to the appropriate construction of section 210(b) of the American Fisheries Act, Pub. L. No. 105-277, 112 Stat. 2681-616, 2681-629 (1998) ("AFA"). Specifically, you have asked whether catcher vessels owned by shoreside processors may participate in fishery cooperatives in the inshore sector of the Alaska pollock fishery, which are authorized under section 210(b) of the AFA, or whether participation in such cooperatives is limited to independently owned catcher vessels. Letter for Randolph Moss, Acting Assistant Attorney General, Office of Legal Counsel, from Andrew J. Pincus, General Counsel, Department of Commerce (Aug. 10, 1999) ("Commerce Letter"). As explained more fully below, we conclude that section 210(b) does permit processor-owned catcher vessels to join AFA-authorized fishery cooperatives.

**I. BACKGROUND****A. The BSAI Fishery**

The Bering Sea and Aleutian Islands ("BSAI") fishery, located in the Bering Sea off the coast of Alaska, is the largest single-species groundfish fishery in the world. In recent years, growing market demand for the Alaskan pollock -- a fish used in the United States primarily as an ingredient in breaded fish products and used worldwide for processing into the protein paste surimi -- has spurred tremendous growth in the BSAI fishery, with increasing numbers of vessels entering the fishery each year to compete for a share of the annual catch.

The pollock harvested in the BSAI fishery are processed by two competing sectors, inshore (including shoreside) and offshore processors. Inshore processors operate traditional land-based processing plants and floating processors that are moored in a single location for the entire year. They obtain fish either from catcher vessels that are independently owned ("independent catcher vessels") or from vessels in which they or other processors have an ownership interest ("processor-owned catcher vessels"). Offshore processing takes place on factory trawlers (also known as "catcher-processors") or motherships. Catcher-processors are large vessels that harvest pollock and process their own catch. They also purchase fish harvested by catcher vessels and process that catch. Mothership processors are vessels engaged solely in processing; they operate at sea by taking deliveries of fish harvested by catcher vessels and processing them.

The BSAI fishery is managed by the Secretary of Commerce ("Secretary") through the National Marine Fisheries Service ("NMFS") and the North Pacific Fishery Management Council ("Council"). The Council acts as an advisory board and recommends fishery management actions to the Secretary. See generally 16 U.S.C. § 1852 (1994). Among the Council's responsibilities is to recommend to the NMFS a "total allowable catch" ("TAC") for each species of fish in the BSAI fishery. See 50 C.F.R. § 679.20 (1998). The TAC represents the maximum amount of fish that can be harvested in any given fishing season.

Before 1998, the Council was responsible for recommending to the Secretary how the annual TAC for Alaskan pollock should be allocated between the offshore and inshore components of the BSAI fishing industry. In 1992, the Council recommended an allocation that permitted the offshore sector to harvest sixty-five percent of the pollock TAC, and the inshore sector to harvest thirty-five percent. See General Accounting Office, Fishery Management: Market Impacts of the American Fisheries Act on the Production of Pollock Fillets 3 (June 1999). Not surprisingly, that percentage allocation was the subject of bitter dispute each year between the offshore and inshore sectors. Moreover, although the Council's allocation formula limited the amount of pollock each sector could harvest, it did not regulate the amount of pollock that individual catcher vessels or catcher-processors could catch. As a result, a "race for fish" ensued within this open access system: each fishing season, vessels within each sector raced to catch as much pollock as possible until their allocation was reached and the season closed. Those vessels that caught the most fish made the most money. Over the years, as more and more vessels joined the race in response to increased market demand for pollock, the fishery suffered increasingly from overcapitalization and inefficiency.

#### B. The American Fisheries Act of 1998

In 1998, Congress enacted the AFA to address some of these problems. Senator Breaux, one of the AFA sponsors, described the legislation as "another major milestone in our long efforts to reserve U.S. fishery resources for bona fide U.S. citizens as well as take steps to substantially improve the conservation and management of our Nation's fishery resources through a reduction in the overcapitalization of our fishing fleets." 143 Cong. Rec. S10,299

(daily ed. Oct. 1, 1997) (statement of Sen. Breaux). The sponsors of the AFA thus sought to accomplish three goals -- "Americanization, decapitalization, and rationalization" of the BSAI fishery. See 144 Cong. Rec. S12,801 (daily ed. Oct. 21, 1998) (statement of Sen. Gorton); see also 144 Cong. Rec. S12,777 (daily ed. Oct. 21, 1998) (statement of Sen. Stevens).

Subtitle I of the AFA attempts to achieve "Americanization" by imposing new ownership requirements on U.S. flag vessels. See § 202. Subtitle I also partly addresses the problem of overcapitalization of the fishery by placing limits on the size of new vessels in U.S. waters. Id.

Subtitle II of the AFA advances the goals of "decapitalization" and "rationalization" through various provisions that reduce excess capacity in the fishery and substitute a comprehensive management scheme for the pre-existing open access system. Section 206 deals with the question of the appropriate allocation of the pollock TAC by establishing statutory allocations for the offshore and inshore sectors. After setting aside ten percent of the TAC as a directed fishing allowance for the western Alaska community development quota program, section 206 divides the remainder of the TAC equally between the inshore and offshore processing sectors. See § 206(a)-(b)(1). The offshore sector allocation is split further, with catcher-processors and the catcher vessels supplying them receiving forty percent of the TAC and the catcher vessels harvesting pollock for motherships receiving ten percent. See § 206(b)(2)-(b)(3).

Sections 207 through 209 aim to streamline and restructure the BSAI industry. Sections 207 and 209 provide for a buyout of nine predominantly foreign-owned catcher-processors that will henceforth be ineligible to participate in the BSAI fishery. Section 208 limits participation in the fishery by establishing strict eligibility requirements for vessels and processors in both the offshore and inshore sectors. See § 208(a) (eligibility requirements for catcher vessels delivering to shoreside processors); § 208(b) (listing eligible catcher vessels delivering to catcher-processors and eligibility criteria for other catcher vessels delivering to catcher-processors); § 208(c) (listing eligible catcher vessels delivering to motherships and eligibility criteria for other catcher vessels delivering to motherships); § 208(d) (listing eligible motherships); § 208(e) (listing eligible catcher-processors); § 208(f) (eligibility criteria for shoreside processors).

Section 210 of the AFA, the provision at issue here, seeks to eliminate the race for fish by providing a framework for the formation of fishery cooperatives in each of the BSAI processing sectors. See § 210(b) (cooperatives of catcher vessels delivering fish to shoreside processors), § 210(c) (cooperatives of catcher vessels delivering fish to catcher-processors), § 210(d) (cooperatives of catcher vessels delivering fish to motherships). Although certain types of fishery cooperatives were already authorized under the Fisherman's Collective Marketing Act of 1934, 15 U.S.C. § 521 (1994) ("FCMA"), section 210 provides a powerful incentive for the creation of fishery cooperatives: it reserves a certain percentage of the TAC for the members of each cooperative, thereby guaranteeing them a share of the fish that they

can harvest at their own pace.

The precise criteria for the establishment of AFA fishery cooperatives in the inshore processing sector are set out in subsection 210(b). Under those criteria, if eighty percent or more of the "qualified catcher vessels" that delivered pollock to a particular shoreside processor the previous year sign "a contract implementing a fishery cooperative under subsection (a)" — i.e., a contract under section 1 of the FCMA — and if these vessels further agree to deliver pollock only to that particular shoreside processor (and the processor agrees to process the pollock), then the Secretary of Commerce may establish a separate allocation for the cooperative. § 210(b)(1). That allocation would be equal to the average percentage of the TAC that the vessels in the cooperative caught during 1995, 1996 and 1997. Id. If a fishery cooperative is formed, section 210(b)(2) requires the cooperative to permit other catcher vessels that delivered most of their catch to that shoreside processor to join the cooperative under the same terms and conditions as member vessels. § 210(b)(2).

Catcher vessels that participate in a fishery cooperative under section 210(b) may harvest only the pollock that is allocated to them by the Secretary; they are not allowed to harvest any of the pollock that remains in the "open access" portion of the inshore allocation under section 206(b)(1). § 210(b)(5). The open access allocation is equivalent to that portion of the inshore allocation that has not been reserved by the Secretary for fishery cooperatives. Id.

## II. DISCUSSION

The question before us is whether catcher vessels that are owned by shoreside processors may participate in fishery cooperatives under section 210(b) of the AFA. Section 210(b)(1), which creates the entitlement of fishery cooperatives to a portion of the TAC, provides:

### (b) Catcher Vessels Onshore -

(1) **Catcher vessel cooperatives.** - Effective January 1, 2000, upon the filing of a contract implementing a fishery cooperative under subsection (a) which -

(A) is signed by the owners of 80 percent or more of the qualified catcher vessels that delivered pollock for processing by a shoreside processor in the directed pollock fishery in the year prior to the year in which the fishery cooperative will be in effect; and

(B) specifies, except as provided in paragraph (6), that such catcher vessels will deliver pollock in the directed pollock fishery only to such shoreside processor during the year in which the fishery cooperative will be in effect and

Further clarification of the scope of the term "catcher vessel" appears in subsections 208(a) and (c). Section 208 generally sets forth eligibility criteria for catcher vessels participating in the inshore and offshore sectors of the BSAI fishery. Under section 208(a), eligibility to harvest pollock for the inshore sector is limited to those catcher vessels that: (1) either have delivered at least 250 metric tons of pollock to a shoreside processor in 1996, 1997 or 1998, or are less than sixty feet long and have delivered at least forty metric tons of pollock to a shoreside processor in any of those years; (2) have an approved license to harvest pollock; and (3) are not listed in subsection 208(b) (which lists catcher vessels eligible to deliver pollock to catcher/processors). See § 208(a)(1). None of these eligibility criteria

ownership. motherhips (see § 205(8)) - but it does not, by its own terms, exclude vessels on the basis of excludes are boats that process fish onboard - catcher/processors (see § 205(2)) and used for harvesting fish and that does not process pollock onboard. What this definition based restriction. "Catcher vessel" is defined in section 205(3) of the AFA as "a vessel that is Not does the definition of the underlying term "catcher vessel" contain any ownership-

Nothing in this definition suggests an ownership limitation. Pursuant to section 210(b)(3), whether or not a catcher vessel is "qualified" under the AFA to participate in a fishery cooperative linked to a particular shoreside processor depends upon whether the vessel delivered the majority of its catch to that processor, not upon its ownership structure.

Qualified catcher vessel. - For the purposes of this subsection, a catcher vessel shall be considered a "qualified catcher vessel" if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock to the shoreside processor to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.

Taken by itself, the AFA does not restrict eligibility to independently owned catcher vessels. Section 210(b)(3) defines "qualified catcher vessel" as follows:

A Language and Legislative History of AFA

Section 210(b)(1) points to two possible statutory bases for limiting eligibility to independently owned vessels. First, the AFA by its own terms might impose the limitation. Second, the reference in section 210(b)(1) to "a contract implementing a fishery cooperative under subsection (a)" might effectively incorporate limits from the FCMA, since subsection (a) refers to "a contract implementing a fishery cooperative" under the FCMA.

the Secretary shall [set aside a fishing allowance from the inshore allocation of the TAC for that fishery cooperative].

that such shoreside processor has agreed to process such pollock,



relates in any way to ownership of the catcher vessel.

Subsection 208(c), which defines the eligibility of catcher vessels delivering pollock to motherships, also offers textual support for an interpretation of "catcher vessel" that makes no distinction based on ownership. Section 208(c) lists specifically named "catcher vessels" that remain eligible to harvest the portion of the TAC allocated to motherships. While some of the catcher vessels identified in section 208(c) are independently owned, many of those listed are owned wholly or in part by a mothership. See Robert Halvorsen et al., "Discussion Paper on Inshore Sector Catcher Vessel Cooperatives in the Bering Sea/Aleutian Islands Pollock Fisheries" at Appendix C (Sept. 13, 1999) ("University of Washington Discussion Paper") (listing vessels participating in BSAI fishery and their ownership structure). By including both independently owned vessels and mothership-owned vessels within the list of eligible "catcher vessels," section 208(c) extends the scope of that term to vessels owned by an entity within one of the processing sectors. Although none of the vessels listed in section 208(c) is owned by a shoreside processor,<sup>1</sup> section 208(c) makes clear that the term "catcher vessel" is not limited to non-processor-owned boats. Since there is nothing in the definition of "catcher vessel" to distinguish between different types of processor owners, it follows that the term "catcher vessel" should include boats owned by shoreside processors as well.

The overall purpose animating section 210(b), as revealed in the language and history of the provision, supports this inclusive definition. Rather than placing any ownership limitation on vessel participation in cooperatives, section 210(b) expressly encourages broad participation in inshore cooperatives by all vessels. Section 210(b)(2) provides that "[a]ny contract implementing a fishery cooperative under paragraph (1) must allow the owners of other qualified catcher vessels to enter into such contract after it is filed . . . under the same terms and conditions as the owners of the qualified catcher vessels who entered into such contract upon filing." The conference report to the AFA explains that this provision extends the authority to join cooperatives to all qualified catcher vessels "on a class-wide basis":

If a fishery cooperative is formed, other catcher vessels that delivered most of their catch to that shoreside processor would be required to be allowed to join the fishery cooperative under the same terms and conditions as other participants at any time before the calendar year in which fishing under the cooperative will begin. . . . The vessels eligible to harvest pollock allocated for processing by shoreside processors would continue to have the authority to form a fishery cooperative on a class-wide basis as well.

144 Cong. Rec. S12,780 (daily ed. Oct. 21, 1998).

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<sup>1</sup> This comes as no surprise, since a catcher vessel owned by a shoreside processor would likely be delivering the majority of its catch to that shoreside processor, not to a mothership.

Moreover, the manner in which Congress chose to structure fishery cooperatives for the inshore sector requires the participation of shoreside processor-owned catcher vessels in order to achieve the goal for which AFA cooperatives were being established: to end the race for fish. In order for a fishery cooperative to be formed under section 210(b), the owners of eighty percent or more of the qualified catcher vessels that delivered pollock to a particular shoreside processor in the previous year must agree to join the cooperative. See § 210(b)(1). In 1998, however, processor-owned vessels apparently made up over twenty percent of the total number of vessels delivering pollock to six out of seven shoreside processors. See University of Washington Discussion Paper, at 46. Thus, if processor-owned vessels were excluded from participating in AFA cooperatives, six out of seven of the potential cooperatives that might be formed under the AFA could not reach the eighty percent threshold for vessel participation. In other words, if participation in AFA cooperatives was limited to independently owned vessels, only one cooperative could be formed pursuant to the requirements of section 210(b). See Commerce Letter at 2.

Similarly, if processor-owned vessels were excluded from AFA cooperatives, none of the fishery cooperatives that Congress intended to create within the mothership sector pursuant to section 210(d) could be formed. Like section 210(b), section 210(d) permits "the filing of a contract implementing a fishery cooperative under [section 1 of the FCMA]." § 210(d)(1). These contracts must be entered into "by the owners of 80 percent or more of the catcher vessels eligible under 208(c)." Id. The latter provision lists 19 named vessels, 13 of which are processor-owned. Section 208(c) includes a provision allowing additional vessels to be added to this list, but only if the Secretary of Commerce makes certain factual findings and the new vessel is eligible to harvest pollock under a license limitation program recommended by the North Pacific Council. § 208(c)(20)(A), (B). Unless an additional 46 independently owned boats were added to this list by January 1, 2000, there would be no possibility that 80 percent of the catcher vessels eligible under section 208(c) could be independently owned. Because one of the central aims of the AFA was to reduce excess capacity in the fishery, it is obvious that Congress did not intend to authorize the creation of FCMA cooperatives within the mothership sector only if the number of catcher vessels within that sector more than tripled, from 19 to 65. Section 210(d), therefore, confirms that Congress expected processor-owned vessels to enter into contracts "implementing a fishery cooperative under" the FCMA.

Thus, interpreting the AFA to exclude processor-owned vessels would essentially defeat the primary purpose of the Act, which was to encourage the formation of fishery cooperatives in order to end the annual race for fish. As noted above, see supra at 4, under section 210(b)(5), catcher vessels that do not participate in a fishery cooperative may harvest pollock from that portion of the inshore allocation that is reserved for open access. If only a small number of catcher vessels join cooperatives, the percentage of the TAC set aside for cooperatives will also be small, leaving a correspondingly greater percentage of the TAC available for open access, with a large number of non-cooperative vessels competing for a portion of that catch. The race for fish would continue.

The legislative history of the AFA likewise confirms that Congress intended fishery cooperatives to play a critical role in ending the race for fish. As Senator Murray explained during the Senate debate on the AFA,

This bill relies in great measure on the ability and willingness of the North Pacific pollock fishery sectors to form fishery cooperatives. Fishery cooperatives, authorized under current law, are a privately negotiated allocation on a company-by-company or vessel-by-vessel basis of a portion of the total allowable catch. Similar to an individual fishing quota program, cooperatives provide fishery participants with the certainty they need to stop the race for fish, and harvest and process the fish on a more flexible schedule with greater attention to bycatch, efficiency, and safety. The existing fishery cooperative in the offshore sector of the Pacific Whiting fishery has shown tremendous benefits in these regards and has helped rationalize the fishery. It is hoped that cooperatives can do the same in the pollock fishery.

144 Cong. Rec. S12,708 (daily ed. Oct. 20, 1998) (statement of Sen. Murray).

It can reasonably be assumed that, in crafting cooperatives as a solution to the open access problem, Congress was familiar with the BSAI fishing industry and its various components. Cf. Rodriguez v. Peters, 63 F.3d 546, 567 (7<sup>th</sup> Cir. 1995). More particularly, it is clear that Congress was aware of the extent to which the shoreside processing sector was vertically integrated, and that Congress did not intend to omit processor-owned boats from the fishery cooperatives whose formation was essential to the purposes of section 210. The clear language of the AFA and its legislative history and purpose thus demonstrate a congressional intent to include processor-owned vessels in fishery cooperatives under section 210(b).<sup>2</sup>

**B. Section 210(b) Reference to FCMA Cooperatives**

We now turn to the question whether the reference in subsection 210(b) to "fishery cooperative[s] under subsection (a)," which refers to the fishery cooperative provision of the FCMA, 15 U.S.C. § 521, places any limitations on the formation of cooperatives under the AFA. The National Oceanographic and Atmospheric Administration ("NOAA") does not dispute the conclusion that the text and legislative history of the AFA indicate a congressional intent to include processor-owned vessels in cooperatives under section 210(b). However, NOAA argues that, by referring to FCMA fishery cooperatives under section 210(b), Congress necessarily incorporated into the AFA cooperatives those eligibility restrictions that apply to FCMA cooperatives. See Letter for Randolph Moss, Acting Assistant Attorney General,

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<sup>2</sup> To be sure, the purpose of section 210(b) could also be achieved if processors sold their catcher vessels to independent operators. The legislative history, however, makes no reference to such divestiture, and it seems unlikely that Congress, without even referring to divestiture, would make the entire success of section 210(b) rest on this contingency.

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Office of Legal Counsel, from Monica P. Medina, General Counsel, National Oceanographic and Atmospheric Administration (June 7, 1999) ("NOAA Letter"). And because NOAA interprets the FCMA to preclude the participation of processor-owned vessels, it concludes that, likewise, processor-owned vessels are ineligible to participate in cooperatives under § 210(b) of the AFA. *Id.* at 5.

Because the question of the interplay between the FCMA and the AFA is relevant to a proper interpretation of section 210(b), we will briefly discuss the antitrust exemption under the FCMA and the statute upon which it is modeled, the Capper-Volstead Act, 7 U.S.C. § 291 (1994), before returning to the AFA.

1. Integrated Processors under the FCMA and the Capper-Volstead Act

The FCMA grants an exemption from antitrust liability for certain collective activities in the fishing industry. Specifically, it provides:

Persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, . . . may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged. . . . Such associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes.

15 U.S.C. § 521. The FCMA exemption was patterned after a similar antitrust exemption for agricultural activities, set forth in section 1 of the Capper-Volstead Act, 7 U.S.C. § 291. In fact, the only court that has considered the scope of the FCMA exemption concluded that "though there are some differences between Capper-Volstead and the Fisherman's Act, the two Acts provide exemptions from antitrust liability for essentially the same activities." United States v. Hinote, 823 F. Supp. 1350, 1354 n.7 (S.D. Miss. 1993).

The Supreme Court considered the scope of the Capper-Volstead exemption in National Broiler Mktg. Ass'n v. United States, 436 U.S. 816 (1978) ("NBMA"). In NBMA, the United States brought a civil action against a nonprofit cooperative association of producers of broiler chickens -- the NBMA -- alleging a conspiracy in violation of section 1 of the Sherman Act. The question before the Court was whether a producer of broiler chickens, which did not own a breeder flock or hatchery, could nevertheless qualify as a "farmer" within the meaning of the Capper-Volstead Act. *Id.* at 817. After reviewing the legislative history of the Capper-Volstead Act, the Court concluded that it could not:

We, therefore, conclude that any member of NBMA that owns neither a breeder flock nor a hatchery, and that maintains no grow-out facility at which the flocks

to which it holds title are raised, is not among those Congress intended to protect by the Capper-Volstead Act. The economic role of such a member in the production of broiler chickens is indistinguishable from that of the processor that enters into a preplanting contract with its supplier, or from that of a packer that assists its supplier in the financing of his crops. . . . We hold that such members are not "farmers," as that term is used in the Act, and that a cooperative organization that includes them - or even one of them - as members is not entitled to the limited protection of the Capper-Volstead Act.

Id. at 827-29 (footnotes omitted).

In coming to this conclusion, the Court specifically reserved the question of the status of the integrated producer:

[W]e need not consider here the status under the Act of the fully integrated producer that not only maintains its own breeder flock, hatchery, and grow-out facility, but also runs its own processing plant. Neither do we consider the status of the less fully integrated producer that, although maintaining a grow-out facility, also contracts with independent growers for a large portion of the broilers processed at its facility.

Id. at 829 n.21. In a concurring opinion, Justice Brennan did address these questions reserved by the Court. He reviewed the legislative history of the Capper-Volstead Act, and asserted that "Congress' manifest purpose to protect the small, individual economic units engaged in farming," id. at 835 (Brennan, J., concurring), precluded automatic extension of the exemption to the integrated producer:

I seriously question the validity of any definition of "farmer" in § 1 which does not limit that term to exempt only persons engaged in agricultural production who are in a position to use cooperative associations for collective handling and processing - the very activities for which the exemption was created. At some point along the path of downstream integration, the function of the exemption for its intended purpose is lost, and I seriously doubt that a person engaged in agricultural production beyond that point can be considered to be a farmer . . . . Thus, in my view, the nature of the association's activities, the degree of integration of its members, and the functions historically performed by farmers in the industry are relevant considerations in deciding whether an association is exempt.

Id. at 835-36.

Only one court has actually ruled on the question whether an integrated producer is entitled to Capper-Volstead or FCMA exemption. In United States v. Hinote, 823 F. Supp.

1350 (S.D. Miss. 1993), the district court, relying largely upon Justice Brennan's concurrence, concluded that catfish processors could not take advantage of the antitrust exemption under the FCMA solely by purchasing or leasing some interest in a catfish farming operation. *Id.* at 1359. The court reasoned that if it were to come to the opposite conclusion,

large integrated agribusinesses organized to market and sell agricultural products could exempt themselves from the antitrust laws by the simple expedient of purchasing and/or leasing some interest in a farming operation, no matter how de minimis the interest. Such a result, however, would undermine Congress' express purpose in enacting both the Sherman and Capper-Volstead Acts.

*Id.* There is certainly support in the legislative history of the Capper-Volstead Act for this conclusion, much of which is catalogued by Justice Brennan in his NBMA concurrence. However, as Justice White recognized in his dissent in NEMA, there is also conflicting evidence in the history and language of the statute that might lead to the opposite conclusion. 436 U.S. at 844-49.

While we understand that it is generally assumed that integrated producers and processors may not participate in exempted cooperatives, the sparse case law interpreting the scope of the FCMA and Capper-Volstead exemptions cannot be said to have dispositively resolved the question. However, as we discuss in the next section, we need not decide that question in order to determine whether processor-owned vessels may participate in the cooperatives authorized under section 210(b).

## 2. Reconciling the FCMA with the AFA

It is a well-established principle of statutory interpretation that the law favors rational and sensible construction. 2A Norman J. Singer, Sutherland Statutory Construction, § 45.12 (5<sup>th</sup> ed. 1992). Thus, if there exists some reasonable interpretation that reconciles two otherwise allegedly inconsistent statutes in a manner that does not destroy or hinder the intent or meaning of either one, that interpretation is favored. *Id.* Moreover, if a statute is capable of more than one interpretation, it should be construed to effectuate its underlying purpose. Norwest Bank of North Dakota, N.A. v. Doth, 159 F.3d 328, 332 (8<sup>th</sup> Cir. 1998); cf. United States Nat'l Bank of Oregon v. Independent Ins. Agents of Am., Inc., 508 U.S. 439 (1993) (in expounding statute, court must look to provisions of law as whole and to its object and policy). Applying these principles to the case before us, we must, if possible, construe the cross-reference to FCMA cooperatives in section 210(b) in a reasonable manner that is both consistent with the purposes of the AFA and compatible with section 1 of the FCMA.

Congress's primary purpose in enacting section 210 was to encourage the formation of as many fishery cooperatives as possible in order to rationalize the BSAI fishery and end the race for fish. See supra at 7-8. Congress chose to effectuate this purpose for the inshore sector of the BSAI fishery by creating "catcher vessel cooperatives" under section 210(b).

Congress chose also to define section 210(b) cooperatives by cross-referencing the FCMA. Because the participation of processor-owned vessels in section 210(b) cooperatives was critical to achieving Congress's purpose, Congress must have intended that such vessels would be included in cooperatives under the FCMA.<sup>3</sup> In interpreting section 210(b)'s cross-reference to the FCMA, therefore, we are presented with three possibilities: 1) Congress was mistaken about the scope of the FCMA, which excludes such integrated processors, and processor-owned vessels may not participate in cooperatives under § 210(b); 2) Congress correctly understood the FCMA, to include integrated processors, and processor-owned vessels may participate in cooperatives under § 210(b); or 3) Congress has in the AFA effectively declared that, regardless of the actual scope of the FCMA in other contexts, processor-owned vessels may participate in FCMA fishery cooperatives in the BSAI fishery. Of these three possible interpretations, we must reject the first because it so plainly frustrates the purpose of the AFA. We need not decide between the second and third possible interpretations, however, because, under either, it is clear that catcher vessels owned by shoreside processors may participate in the fishery cooperatives authorized by section 210(b) of the AFA.

The first of these interpretations assumes the conclusion reached by NOAA, namely that the FCMA does not permit integrated processors to participate in cooperatives under 15 U.S.C. § 521. To argue further, as NOAA does, that this cross-reference necessarily incorporates the limitations of FCMA cooperatives into the AFA scheme requires us to conclude that Congress mistakenly assumed that FCMA cooperatives could include integrated processors and, as a result, enacted a provision that cannot operate as Congress intended. Moreover, as we have already observed, if processor-owned vessels are excluded from participating in cooperatives under section 210(b), only one fishery cooperative could be formed under section 210(b), thereby thwarting the primary purpose of section 210. Thus if we accept this first interpretation, we render section 210(b) practically ineffective.<sup>4</sup>

We are reluctant to adopt a construction of a statute that presumes congressional error and that renders its provisions either ineffective or contrary to stated legislative objectives. The "unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce

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<sup>3</sup> Of course, it might be argued that Congress deliberately referred to the FCMA cooperatives in section 210(b) in order to exclude processor-owned boats from AFA cooperatives. However, there is nothing in the legislative history of the statute to support such an assertion, and there is significant evidence to the contrary. See supra at 4-8. Thus, we do not think this interpretation of the reference to the FCMA merits consideration.

<sup>4</sup> It might be argued that the fact that one cooperative of independently owned catcher vessels could be formed under the provisions of section 210(b) is sufficient to render this interpretation viable. However, in light of Congress's clear intent in section 210(b) to encourage the formation of cooperatives on a "class-wide basis," we think such an interpretation would in fact "thwart the obvious purpose of the statute." In Re Trans Alaska Pipeline Rate Cases, 436 U.S. 631, 643 (1978). Moreover, as noted above, see supra at 7, this interpretation would completely nullify section 210(d).

a reasonable result." 2A Singer, *supra* at § 45.12; see also American Tobacco Co. v. Patterson, 456 U.S. 63, 71 (1982) ("Statutes should be interpreted to avoid . . . unreasonable results whenever possible.").

We therefore look to the two other proposed interpretations to see if they offer a more reasonable result that achieves the AFA's underlying purposes. The second interpretation accomplishes these goals because it would allow processor-owned catcher vessels to join cooperatives under both the FCMA and the AFA. Of course, this interpretation would require us to determine that integrated processors may participate in fishery cooperatives under the FCMA, a conclusion that cannot be said to be settled under the case law and that we understand may have profound implications for both the fishing and other industries. We are therefore reluctant to rely upon this conclusion, and need not do so because, even if the FCMA exemption does not cover integrated processors, we believe Congress's intent to permit the formation of cooperatives under section 210(b) that include processor-owned vessels can still be given effect under the third interpretation.

The third interpretation posits that Congress declined to express or assume a view concerning the scope of the FCMA generally and instead decided that, regardless of whether processor-owned vessels are permitted to participate in all cooperatives under the FCMA, they should participate in the FCMA cooperatives authorized by the AFA. By referring to the FCMA in a statute that intended to include integrated processors in its fishery cooperatives, Congress effectively determined that, at least for the purpose of BSAI directed pollock fisheries, processor-owned vessels are entitled to participate in cooperatives that enjoy FCMA antitrust immunity.

"[W]here . . . Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute." Lorillard v. Pons, 434 U.S. 575, 581 (1978). Here, however, as noted above, there was no dispositive judicial interpretation of the scope of either the FCMA or the Capper-Volstead Act to guide Congress when it enacted the AFA in 1998. Moreover, because it was not actually amending the FCMA, Congress had no reason in the AFA to settle this far-reaching issue. Cf. Pierce v. Underwood, 487 U.S. 552, 567 (1988) ("it is the function of the courts and not the Legislature, much less a Committee of one House of the Legislature, to say what an enacted statute means"); Patsy v. Board of Regents of the State of Florida, 457 U.S. 496, 508-09 (1982) (according interpretive weight to views of a subsequent Congress where that Congress acted in light of settled rule that exhaustion is not required in section 1983 actions and imposed an exhaustion requirement for a discrete class of 1983 claims). Rather, all that was required was for Congress to determine that processor-owned vessels should be allowed to participate in AFA cooperatives that enjoy FCMA immunity.

The language of section 210 offers textual support for the view that Congress legislated



in this limited manner. Notably, while it authorized the execution of contracts "implementing a fishery cooperative under" the FCMA, Congress did not describe the signatories to such contracts by cross-reference to the FCMA. Thus, it did not authorize "fishermen, within the meaning of the FCMA, who own qualified catcher vessels" to enter into contracts under section 210. Nor did it authorize "owners of qualified catcher vessels otherwise eligible to form FCMA cooperatives" to do so. Indeed, Congress did not use any of the FCMA's operative terms -- "persons," "fishermen," "planters" -- in specifying who could participate in section 210(b) cooperatives entitled to antitrust immunity. Instead, Congress provided that FCMA contracts under section 210(b)(1) be signed by "owners" of "qualified catcher vessels," and nothing in the statutory definition of "qualified catcher vessels" suggests any limitation based on ownership or vertical integration. The text of the statute is thus entirely consistent with a congressional intent to permit integrated processors to participate in FCMA cooperatives for purposes of the AFA, whether or not such entities can participate in FCMA cooperative generally. Cf. Lorillard v. Pons, 434 U.S. at 582 (construing one statute in light of congressional "selectivity . . . in incorporating provisions and modifying certain . . . practices" under an earlier statute that Congress incorporated by reference in the subsequent statute).

Unlike the first interpretation we outlined above, the third interpretation effectuates Congress's underlying purpose in the AFA while simultaneously reconciling the AFA with the FCMA. It best gives effect to Congress's express intent: that all catcher vessels, both independently-owned and processor-owned, participate in FCMA fishery cooperatives under the AFA so that the race for fish in the BSAI fishery can be ended. Particularly in light of the fact that there is no clearly settled law on the question whether, and if so, under what circumstances, integrated processors can participate in FCMA cooperatives, that congressional intent should control here.<sup>5</sup>

This interpretation does not require us to accept or reject Justice Brennan's interpretation of the Capper-Volstead Act or the Himoto court's view concerning the scope of the FCMA. As we read section 210, Congress did not take any position on the scope of the FCMA -- a statute it left entirely undisturbed -- and instead effectively declared that, whatever the scope of that statute generally, processor-owned vessels could participate in pollock fishery cooperatives entitled to FCMA immunity.

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<sup>5</sup> In fact, as noted above, under this interpretation, the scope of the FCMA in other contexts is irrelevant to the result. If the FCMA permits integrated processors to participate in cooperatives in other contexts, then the AFA simply makes clear that this authority applies to all catcher vessels in the BSAI fishery, including those owned by processors, and encourages them to take advantage of the existing authority by offering catcher vessel cooperatives a guaranteed allocation of the TAC. If the FCMA does not permit integrated processors to participate in cooperatives in other contexts, Congress's intent that they be permitted to participate in FCMA cooperatives for the purpose of harvesting pollock in the BSAI fishery is a decision to extend FCMA immunity to a limited group of processor-owned vessels operating in a single fishery.

In any event, Justice Brennan's analysis in NBMA is simply inapplicable here. In his concurring opinion, Justice Brennan concluded that the Capper-Volstead exemption should not extend to those who are not "in a position to use cooperative associations for collective handling and processing, 436 U.S. at 835-36, presumably those who already have their own processing capacity. The purpose of cooperatives under the AFA, however, is not to facilitate collective processing – in fact, each cooperative that might be formed under section 210(b) is expressly tied to an existing shoreside processor that is responsible for processing the catch of the cooperative. Rather, cooperatives under the AFA are formed for the purpose of receiving a guaranteed allocation of the pollock TAC, thereby permitting members of the cooperative to fish more efficiently and safely. It thus makes no sense to evaluate the eligibility of participants in AFA cooperatives on the basis of their ability to use the cooperative only for purposes of collective processing.

We do not share NOAA's concern that this third interpretation is inconsistent with section 210(d), which expressly extends the antitrust exemption under the FCMA to processing activities by motherships. NOAA argues that, because Congress expressly extended the reach of the FCMA to include one type of processor in § 210(d), we should not read such an extension into § 210(b) on an implied basis. NOAA Letter at 4 n.4. However, the principle *expressio unius est exclusio alterius* is a canon of statutory construction, not a rule of law, and can be overcome by a showing of contrary legislative intent or policy: "[W]hether the specification of one matter means the exclusion of another is a matter of legislative intent for which one must look to the statute as a whole." 2A Singer, Sutherland Statutory Construction, at § 47.25 n.1 (citing Massachusetts Trustees of E. Gas & Fuel Assocs. V. United States, 312 F.2d 214 (9<sup>th</sup> Cir. 1963); see also United States v. Barnes, 222 U.S. 513, 519 (1912) ("The maxim invoked [*expressio unius*] expresses a rule of construction, not of substantive law, and serves only as an aid in discovering the legislative intent when that is not otherwise manifest. In such instances it is of deciding importance; in others, not."). Given the strong evidence in the AFA that Congress intended integrated processors to participate in all fishery cooperatives in the BSAI fishery, we do not find the maxim persuasive here.

NOAA also urges a narrower reading of section 210(b) based upon the rule that "[r]epeals of the antitrust laws by implication from a regulatory statute are strongly disfavored," United States v. Philadelphia Nat'l Bank, 374 U.S. 321, 350-51 (1963). This rule comes into play, however, only if the FCMA does not extend to processor-owned vessels, a question we need not decide. Moreover, even if we assume that the FCMA does not include such vessels, we believe that this is one of those unusual situations that presents a case of "plain repugnancy between the antitrust and regulatory provisions," *id.* at 351, a rare exception to the general rule. Where, as here, "Congress has made a judgment that [certain] restrictions on competition might be necessitated by the unique problems of" a particular industry, "the antitrust laws must give way if the regulatory scheme established" by that statute is to work. United States v. National Ass'n of Securities Dealers, Inc., 422 U.S. 694, 729-30 (1975). Congress's purpose in enacting the AFA was to increase efficiency by decreasing

excess capitalization and ending the race for fish, and its mechanism for achieving that purpose was the creation of fishery cooperatives that are necessarily exempt from antitrust liability.

Indeed, in the context of the BSAI fishery, where there is a fixed quota of fish in a highly regulated industry, the creation of fishery cooperatives does not undermine the goals of the antitrust laws. In the related context of the Pacific Whiting fishery, the Antitrust Division recognized that "reliance on an olympic race system to gather a fixed quota of fish 'is both inefficient and wasteful,'" and concluded that "eliminating the race will increase processing efficiency and concomitantly the output of [fish]." Letter for Joseph M. Sullivan, Esq., Mundt, MacGregor, Happel, Falconer, Zulauf & Hall, from Joel L. Klein, Acting Assistant Attorney General, Antitrust Division, at 3 (May 20, 1997). The Antitrust Division further determined that, in such a fixed quota setting, elimination of the race for fish was unlikely to have an anticompetitive effect: "[E]limination of the race to gather an input whose output is fixed by regulation seems unlikely to reduce output or increase price under any likely scenario." *Id.* Thus, from the perspective of antitrust principles, there is no reason to read section 210(b) narrowly; on the contrary, reading section 210(b) broadly to facilitate the formation of as many fishery cooperatives as possible would ultimately allow for greater efficiency in processing and might have procompetitive effects.<sup>6</sup> *Cf. id.* at 3-4 ("To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of the processed Pacific Whiting and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have procompetitive effects.").

In short, there exists at least one interpretation of section 210(b) that is consistent with its text and effectuates the purposes of the AFA. Because a statute should be interpreted whenever possible to effectuate Congress's purposes, and because it is possible to do so here, we conclude that processor-owned vessels may participate in section 210(b) cooperatives. In light of this conclusion, we need not resolve the further question whether the FCMA generally permits such vessels to participate in cooperatives that enjoy antitrust immunity.

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<sup>6</sup> Our conclusion that processor-owned vessels may participate in FCMA cooperatives under the AFA is therefore unlikely to lead to anticompetitive results. Nevertheless, to minimize the possibility of negative effects on the fishing industry, Congress included within the AFA several provisions designed to eliminate potentially adverse economic consequences. See, e.g., § 213(c)(1) (granting the North Pacific Council the authority to recommend conservation and management measures "that supersede the provisions of this title . . . to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by . . . fishery cooperatives in the directed pollock fishery"); see also 144 Cong. Rec. S12,708 (daily ed. Oct. 20, 1998) (statement of Sen. Murray) ("In the interest of ensuring that small, independent fishermen are the true beneficiaries of fishery cooperatives, the bill includes a number of requirements for fishery cooperatives in all three sectors which are designed to provide these small, independent fishermen with sufficient leverage in the negotiations to protect their interests."). Thus, should shoreside processors in the BSAI fishery affiliate with catcher vessels for no purpose other than to engage in anticompetitive conduct under the umbrella of antitrust exemption, the AFA would appear to give the Council the authority to check such abuses.

### CONCLUSION

The language and the legislative history of the AFA indicate that Congress intended processor-owned catcher vessels to participate in inshore cooperatives under the AFA. Because section 210(b) can be read in a manner consistent with that intention, we conclude that processor-owned catcher vessels may join fishery cooperatives under the AFA.

**Preliminary Joint Report of the  
Pollock Conservation Cooperative  
and  
High Seas Catchers' Cooperative  
1999**

**Presented to the  
North Pacific Fishery Management Council  
December 1, 1999**

\* 12/7/99

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# Preface

## General

In 1999, for the first time, the owners of catcher/processors and catcher vessels that deliver to catcher/processors in the Bering Sea and Aleutian Islands pollock fishery were able to form fishing cooperatives and coordinate harvest efforts, rather than race for fish. Catcher/processor owners formed the Pollock Conservation Cooperative (PCC), and catcher vessel owners formed the High Seas Catchers' Cooperative (HSCC). An agreement called the "Cooperative Agreement Between Offshore Pollock Catchers Cooperative and Pollock Conservation Cooperative" (Inter-cooperative Agreement) was formed to facilitate efficient management and accurate accounting between the HSCC and PCC. This report is intended to satisfy 1999 reporting requirements for the PCC and HSCC. The catch data in this report was provided by Sea State, Inc., and was largely obtained from the National Marine Fisheries Service (NMFS)<sup>1</sup>.

The PCC and HSCC were formed during the final two months of 1998, taking effect for the fishing season that began on January 20, 1999. It is difficult to predict the long-term impacts of the cooperatives, or draw many conclusions from one year's experience. Because the cooperative agreements were entered into only four or five weeks before the opening of the fishing season, PCC and HSCC members had little time to adapt to the new regime. In addition, PCC and HSCC members had to adapt to significant revisions in the fishery management rules for the 1999 pollock fishery. Sweeping new measures intended to protect Steller sea lions were implemented in 1999 and new rules promoting improved retention and utilization of pollock and Pacific cod took effect just one year earlier.

Despite these complicating factors, the data from 1999 suggest that cooperative fishing was successful on many fronts. Daily catch rates declined significantly in the absence of a race for fish, complementing regulatory measures intended to disperse pollock fishing on a temporal as well as spatial basis. Preliminary figures indicate that the utilization of the pollock resource by catcher/processors increased by more than 20 percent in 1999. Fewer vessels were used to harvest and process the catch in 1999 as a result of the cooperatives, thereby easing long-term capacity pressures that had developed during the race for fish. And finally, the vessels that did participate in the fishery were able to remain at port when weather conditions would have made operating unsafe. While other observations can be made from the preliminary 1999 data, it will likely be years before the full impacts of the fishing cooperatives can be understood.

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<sup>1</sup> The NMFS database for the 1999 fishing year is still subject to revision as catch data and other information from the fishery is finalized. To the extent that information in this report is based on NMFS data, it must be considered "preliminary" and subject to revision between now and the submission of the final report on January 31, 2000. At this point, however, neither the PCC nor the HSCC are aware of any data discrepancies that would materially alter the substantive elements of this report.

## **Reporting Requirements**

Fishing cooperatives formed in the directed pollock fishery are subject to certain annual reporting requirements under the AFA. Section 210(a)(1)(B) of the AFA requires the NPFMC and Secretary to "make available to the public in such manner as the North Pacific Council and Secretary deem appropriate information about the harvest by vessels under a fishery cooperative of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis." In doing so, however, the NPFMC and Secretary must take into account "the interest of the parties to [a fishing cooperative] in protecting the confidentiality of proprietary information."

In October 1999, the NPFMC took action to implement section 210(a)(1)(B) of the AFA by recommending that cooperatives annually prepare a report (a preliminary report due by December 1 and a final report due by January 31) containing: (1) allowed catch and bycatch in pollock and all sideboard species by whatever method is used to determine those allocations; (2) actual catch and bycatch in the directed pollock fishery by vessel, and in sideboard fisheries by whatever method is used to determine those sideboards; (3) methods used to monitor fisheries in which cooperative vessels participated; and (4) actions taken by cooperatives to enforce vessel or aggregate catches that exceeded allowed catch and bycatch in pollock and all sideboard fisheries.

On October 21, 1999, the NPFMC sent a letter (see appendix) summarizing the NPFMC's four reporting recommendations and asking cooperatives to prepare 1999 reports even if the regulations to implement the reporting requirements were not in place before the due dates for the 1999 season. On November 1, 1999, the NPFMC sent a second letter (see appendix) expanding and clarifying the NPFMC's expectations for cooperative reports, providing much greater detail with respect to the information that should be provided in the reports.

## **Purpose of Report**

This report is intended to fully disclose all information required or identified in the AFA, in the NPFMC's October 1999 recommendation to the Secretary, and in the NPFMC's letters dated October 21, 1999 and November 1, 1999. The report is presented as a "preliminary" report in accordance with the NPFMC's October recommendation, and a "final" report will be presented to the NPFMC by January 31, 2000. The charts in the report are intended to be largely self-explanatory, though comments have been included with some of the charts to provide a more full perspective.



# Cooperative Members and Allocations

## Pollock Conservation Cooperative

The Pollock Conservation Cooperative (PCC) was formed in December 1998 in order to (among other things) promote the rational and orderly harvest of pollock by the catcher/processor sector of the Bering Sea and Aleutian Islands trawl fisheries off Alaska through the mutual cooperation of PCC members.

The PCC is made up of the nine companies that own the 20 catcher/processors eligible under section 208(e)(1)-(20) of the AFA to harvest and process pollock in the directed pollock fishery. Under the PCC, each company is contractually allocated a percentage of the directed fishery catch specified under section 206(b) of the AFA. The following chart shows the percentage of the annual directed pollock fishery (DPF) that each PCC member has been allocated under the PCC:

	<u>% DPF<sup>2</sup></u>	<u>% PCC</u>
Alaska Ocean Seafood, L.P.	2.891	≈7.90
Alaska Trawl Fisheries, Inc.	1.375	≈3.76
American Seafoods Company	15.949	≈43.58
Arctic Fjord, Inc.	1.725	≈4.71
Arctic Storm, Inc.	1.772	≈4.84
Glacier Fish Company, L.L.C.	3.097	≈8.46
Highland Light Seafoods, L.L.C.	1.698	≈4.64
Starbound Ltd. Partnership	1.525	≈4.17
Trident Seafoods	<u>6.568</u>	<u>≈17.95</u>
Totals	36.6 <sup>3</sup>	100.00

Changes occurred during 1999 (or are in the process of occurring) in the ownership of certain PCC members. Trident Seafoods acquired Tyson Foods, Inc. The Aleutian Pribilof Island Community Development Association acquired an ownership interest in Starbound Ltd. Partnership. A combination of PCC members will likely acquire the PCC fishing privileges of Alaska Trawl Fisheries, Inc. before fishing begins in 2000. Other changes may occur by 2000 and beyond as PCC members continue to adapt to new circumstances in the fisheries, including new U.S. controlling interest requirements for fishing vessels under the AFA.

<sup>2</sup> Under sections 205(4) (definition) and 206 (allocations) of the American Fisheries Act, the directed pollock fishery (DPF) is the amount of the total allowable catch remaining after 10 percent has been deducted for the western Alaska Community Development Quota program and an additional amount has been deducted for the incidental catch of pollock in other groundfish fisheries.

<sup>3</sup> Section 206(b)(2) of the American Fisheries Act allocates a total of 40 percent of the DPF to catcher/processors and catcher vessels that deliver to catcher/processors, and section 210(c) allocates 8.5 percent of this amount (3.4 percent of the DPF) to catcher vessels that deliver to catcher processors.

## High Seas Catchers' Cooperative

The High Seas Catchers' Cooperative (HSCC) (originally the Offshore Pollock Catchers Cooperative) was formed in December 1998 in order to (among other things) enable members of the HSCC to extract the maximum amount of value from fish that is available for harvest by cooperatively harvesting or arranging for the harvest of fish in the directed pollock fishery.

The HSCC is made up of the seven companies that own the seven catcher vessels eligible under section 208(b)(1)-(7) of the AFA to harvest pollock for processing by catcher/processors in the directed pollock fishery. Under the HSCC, each company is contractually allocated a percentage of the directed pollock fishery catch provided for under sections 206(b) and 210(c) of the AFA. The following chart shows the percentage of the annual directed pollock fishery (DPF) that each HSCC member has been allocated under the HSCC:

	<u>% DPF</u>	<u>% HSCC</u>
Forum Star, Inc.	.2441	≈7.18
American Seafoods Company	.3149	≈9.26
Harvester Enterprises	.4325	≈12.72
Muir Milach, Inc.	.4538	≈13.35
Tracy Anne, Inc.	.4642	≈13.65
Neahkahnne Fisheries, Inc.	.6679	≈19.64
Sea Storm, Inc.	<u>.8226</u>	<u>≈24.19</u>
Totals	3.4 <sup>4</sup>	100.00

## Inter-Cooperative Agreement Between HSCC and PCC

On January 21, 1999, a cooperative agreement was entered into between the HSCC and PCC to facilitate efficient management and accurate accounting between the two cooperatives (see appendix; the "Cooperative Agreement Between Offshore Pollock Catchers Cooperative and Pollock Conservation Cooperative"). Under the Inter-Cooperative Agreement, the PCC and HSCC established a Joint Harvest Schedule and agreed to retain the same independent quota monitoring service. Among other purposes, the Inter-Cooperative Agreement facilitates the harvest and processing of the HSCC members' share of the DPF and the transfer of pollock allocations between members of the two cooperatives.

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<sup>4</sup> See Footnote 2 for explanation of HSCC allocation of 3.4 percent of the directed pollock fishery.

# Monitoring and Enforcement

## PCC Monitoring

All data used in monitoring PCC pollock and non-pollock fishing was obtained from the NMFS observer program office. Information concerning the catch and bycatch of individual vessels is available on the NMFS password-protected web site 24 hours a day, and is generally accessible 20 minutes after transmission from the vessels. Sea State, Inc. is authorized by the PCC and its members to receive and process this observer data and report back to the members on the status of the harvest. Observer data are downloaded one or two times per day, processed to generate target catch and bycatch information, and then sent to a Sea State web site where company representatives can examine the data for their vessel or vessels.

Aboard the vessels, a direct weight reading from flow scales is taken for the total catch for each haul (though catcher/processors that did not participate in the CDQ program for pollock in 1999 are not required to have scales until the 2000 fishing season). The species composition of the catch is determined from observer sampling. Since two observers are required on AFA-eligible catcher/processors in the groundfish fisheries, the number of unsampled hauls is very low. In 1999, 98 percent (4,704 of 4,797) of the pollock hauls were sampled, and 96 percent (747 of 775) of the non-pollock groundfish hauls were sampled. For those hauls that were not sampled, species composition was determined as in the CDQ program, where species composition for an unsampled haul is presumed to be the same as the previous haul.

Once the catch and species composition is posted on the Sea State web site, it is available for review by vessel owners and representatives. Typically, either an operations manager or vessel operator checks into the site each day to make sure the vessel's harvest numbers are as expected. Companies with several vessels tended to have initial season allocations for each vessel in 1999, managing the vessels independently until late in the season. Late in the 1999 seasons, allocations from one vessel to another within a company and between companies began to occur, as economic efficiencies and other exigencies became obvious. For example, if a vessel needed to offload and thereafter had only 150 metric tons of pollock left to harvest under the cooperative, that quota was likely shifted to another vessel to avoid the necessity of steaming back to the grounds for such a limited amount of fish.

## PCC Enforcement

No enforcement actions were taken by the PCC, as members complied with the provisions of the PCC Membership Agreement.

## **HSCC Monitoring**

All data used in monitoring HSCC pollock and non-pollock fishing for delivery to offshore processors was obtained from the NMFS observer program office. Information is available on the NMFS password-protected web site 24 hours a day, and is generally accessible 20 minutes after transmission from the vessel. Sea State, Inc. is authorized by the HSCC and its members to receive and process this observer data and report back to the members on the status of the harvest. The process is identical to that described for PCC "Monitoring and Enforcement."

Additionally, for deliveries to shoreside processors, each company submitted copies of its ADF&G fish tickets to Sea State, Inc. for tabulation and the information was made available to all HSCC members. Member provided confidentiality waiver requests to ADF&G for release of the data directly to Sea State, Inc. in order that the completeness and accuracy of data submitted members could be verified.

The observer data for shoreside deliveries was not incorporated in the preparation of this report. Fish ticket data was used for shoreside deliveries, and observer data was used for off shore deliveries.

## **HSCC Enforcement**

No enforcement actions were taken by HSCC in either pollock or sideboard fisheries, as members complied with the provisions of the HSCC Membership Agreement.

## Table 1 – Cooperative Allocations and 1999 Directed Pollock Harvest

Coop.	Company	Vessel	Cooperative Shares			1999 Harvest		Over (Under) Allocation
			Coop. Amount	1999 Transfers	1999 Allocation	Vessel Harvest	Company Total	
PCC	Alaska Ocean	Alaska Ocean	24,410	-85	24,325	24,313	24,313	(12)
	Alaska Trawl	Endurance	11,610	-6,856	4,754	4,753	4,753	0
	American Seafoods		134,662	13,817	148,479		148,392	(86)
		Northern Hawk				28,794		
		American Triumph				29,165		
		Northern Jaeger				28,351		
		Ocean Rover				29,195		
		Katie Anne				4,856		
		Northern Eagle				28,031		
		American Dynasty				0		
	Arctic Storm	Arctic Storm	14,961	2,573	17,534	17,533	17,533	(1)
	Arctic Fjord	Arctic Fjord	14,565	6,220	20,785	20,784	20,784	(1)
	Glacier		26,149	2,115	28,264		28,256	(7)
		Northern Glacier				11,317		
		Pacific Glacier				16,940		
	Highland Light	Highland Light	14,337	5,541	19,878	19,865	19,865	(13)
	Starbound	Starbound	12,876	5,465	18,341	18,333	18,333	(8)
	Trident		55,455	-8,216	47,239		47,148	(91)
		Kodiak Enterprise				23,040		
		Island Enterprise				24,109		
		Seattle Enterprise				0		
		American Enterprise				0		
		U.S. Enterprise				0		
HSCC	Ocean Harvester	Ocean Harvester	3,652	-1,094	2,558	2,549	2,549	(9)
	Tracy Anne	Tracy Anne	3,919	-3,775	144	144	144	0
	Neahkahnie	Neahkahnie	5,639	-3,457	2,182	2,182	2,182	0
	Sea Storm	Sea Storm	6,945	-4,195	2,750	2,751	2,751	0
	Muir Milach	Muir Milach	3,832	-3,333	499	498	498	0
	Forum Star	Forum Star	2,061	-2,061	0	0	0	0
	American Challenger	American Challenger	2,659	-2,659	0	0	0	0
<b>Cooperative Totals</b>			<b>337,731</b>	<b>0</b>	<b>337,731</b>	<b>337,502</b>	<b>337,502</b>	<b>(229)</b>

## Table 1 Comments:

1. Catcher/processors and catcher vessels operating under the PCC and HSCC harvested almost exactly (and just under) the amount allocated in 1999.
2. Four eligible catcher/processors and two eligible catcher vessels did not participate in the 1999 directed pollock fishery.
3. As contemplated in the respective cooperative membership agreements, in-season transfers of cooperative allocations occurred within the PCC and the HSCC, and between PCC members and HSCC members. The allocation formulas in the membership agreements of the PCC and HSCC did not change.
4. PCC and HSCC enforcement penalties were established for 1999; however, no individual PCC or HSCC members exceeded their allowed harvest levels (as adjusted) for 1999, and therefore no enforcement penalties were assessed.
5. The vessel eligible under section 208(e)(21) of the AFA to harvest up to one-half percent of the directed pollock fishery allocation to catcher/processors (the F/T Ocean Peace) participated in the fishery in 1999, but was not a member of the PCC or HSCC.

Table 2 – 1999 Directed Pollock Fishing: Actual Catch and Bycatch

Coop.	Vessel	Pollock (mt)	Non - target Groundfish (mt)	Halibut mort. (mt)	Herring (mt)	Red King crab (N)	Bairdi (N)	Other Tanner (N)	Chinook (N)	Other salmon (N)
PCC	Alaska Ocean	24,313	351	0.96	46	0	6	0	493	78
	Endurance	4,753	70	0.74	0	0	0	1	12	0
	American Triumph	29,165	335	5.35	12	0	2	10	612	606
	Katie Anne	4,856	141	1.03	0	0	0	0	57	1
	Northern Eagle	28,031	210	0.94	0	0	17	57	431	105
	Northern Hawk	28,794	358	5.82	6	0	0	9	1,158	302
	Northern Jaeger	28,351	419	3.56	0	1	10	61	247	116
	Ocean Rover	29,195	590	4.58	0	0	0	103	60	262
	Arctic Storm	17,533	114	0.69	1	0	0	12	87	67
	Arctic Fjord	20,784	67	1.41	3	0	0	0	59	103
	Northern Glacier	11,317	198	1.49	34	0	8	0	161	286
	Pacific Glacier	16,940	224	2.02	32	0	0	0	164	76
	Highland Light	19,865	183	1.43	22	1	0	28	249	233
	Starbound	18,333	200	2.08	32	0	7	24	329	200
	Island Enterprise	24,109	168	1.33	0	0	0	3	94	34
Kodiak Enterprise	23,040	128	0.87	0	0	0	4	106	25	
HSCC	Ocean Harvester	2,549	25	0.06	0	0	0	0	16	0
	Tracy Anne	144	0	0.00	0	0	0	0	0	0
	Neahkahnne	2,182	11	0.08	0	0	0	0	7	0
	Sea Storm	2,751	9	0.12	0	0	0	0	5	0
	Muir Milach	498	4	0.03	0	0	0	0	3	0
<b>Totals</b>		<b>337,502</b>	<b>3,807</b>	<b>34.59</b>	<b>191</b>	<b>2</b>	<b>49</b>	<b>313</b>	<b>4,350</b>	<b>2,494</b>

## Table 2 Comments:

1. Significant changes in addition to the formation to the PCC and HSCC occurred in 1999 that likely affected the performance of the fishery. As with other sectors in the directed pollock fishery, PCC and HSCC members experienced differences in fishing in 1999 due to a combination of the new measures to protect Steller sea lions, the changes in 1999 in the water temperature and currents, and other factors.
2. Although still quite low (.0001 ton of halibut per ton of pollock in the catcher/processor sector for example), bycatch levels for halibut appear to have been higher throughout the pollock fishery in 1999 as compared to 1998. This is likely the result of a combination of the factors mentioned in comment 2.



**Table 3 – 1999 C/P Aggregate Catch of Sideboard Species**

Species	1999 C/P Catch	1999 C/P Limits <sup>1</sup>	Over (Under) 1999 Limits
Pacific Cod	6,561	10,119	(3,558)
Sablefish - BS	0	3	(3)
Atka Mackerel - Eastern	23	0	NA
Atka Mackerel - Central	567	2,383	(1,816)
Atka Mackerel - Western	12	4,995	(4,983)
Yellowfin sole	11,713	41,190	(29,477)
Rock sole	995	7,446	(6,451)
Greenland Turbot - BS	24	51	(27)
Greenland Turbot - AI	3	13	(10)
Arrowtooth flounder	209	2,398	(2,189)
Flathead sole	1,221	2,234	(1,013)
Other flatfish	979	17,148	(16,169)
Pacific Ocean Perch - BS	110	12	98
Pacific Ocean Perch - EAI	17	57	(40)
Pacific Ocean Perch - CAI	6	53	(47)
Pacific Ocean Perch - WAI	0	167	(167)
Other Red Rockfish - BS	20	6	14
Sharpchin/Northern - AI	57	305	(248)
Shorthead/Rougheye - AI	1	15	(14)
Other rockfish - BS	1	12	(11)
Other rockfish - AI	9	29	(20)
Squid	206	3	203
Other species	651	1,508	(857)
Halibut mortality	116	293	(177)
Herring	191	20	171
Chinook	4,823		
Other salmon	2,487		
Red King crab	612	1,295	(683)
Other King Crab	396		
Other Tanner Crab	62,103	636,863	(574,760)
Bairdi Zone 1	17,989	97,125	(79,136)
Bairdi Zone 2	28,718	86,858	(58,140)

<sup>1</sup> The 1999 C/P sideboard limits were established at the December 1998 NPFMC meeting, and only reflected catch history in non-pollock groundfish fisheries.

**Table 4 -- 1999 C/P Directed Cod Fishing**

Vessel	Cod (mt)	Non - target Groundfish (mt)	Hallbut mort. (mt)	Herring (mt)	Red King crab (N)	Bairdi (N)	Other Tanner (N)	Chinook (N)	Other salmon (N)
Katie Anne	1,305	79	2	0	45	76	77	62	0
Ocean Rover	280	80	9	0	0	11	0	98	0
Northern Glacier	1,020	282	8	1	0	399	1,671	68	0
Pacific Glacier	764	199	7	0	0	68	92	211	0
Highland Light	1,680	98	6	0	98	219	296	34	3
<b>Totals</b>	<b>5,048</b>	<b>737</b>	<b>32</b>	<b>1</b>	<b>143</b>	<b>773</b>	<b>2,136</b>	<b>473</b>	<b>3</b>
<b>Catch Rates</b>	<b>0.87</b>	<b>0.13</b>	<b>0.01</b>	<b>0.00</b>	<b>0.02</b>	<b>0.13</b>	<b>0.37</b>	<b>0.08</b>	<b>0.00</b>

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**Table 4 Comments:**

1. The PCC Membership Agreement provides that "Members shall annually allocate among themselves the amount of non-pollock groundfish allocations available for directed harvest...in direct proportion to the catch history...in the Base Years [meaning 1995-1997 as identified in the AFA], or during such other year(s) as all Members may agree." (PCC Membership Agreement 1b(i)) At a PCC meeting on January 11, 1999, PCC members agreed that only PCC members who had traditionally participated in the directed cod fishery (American Seafoods, Glacier Fish Company, and Highland Light) would participate in the 1999 directed cod fishery.
2. The AFA "sideboard" on directed cod fishing only establishes a cap, but does not guarantee that AFA-eligible catcher/processors will be able to harvest any amount of cod. Nevertheless, two of the three companies that participated in the 1999 cod fishery harvested roughly their traditional portion of the cod harvested by catcher/processors.

**Table 5 – 1999 C/P Directed Yellowfin Sole Fishing**

Vessel	Yellowfin sole (mt)	Non - target Groundfish (mt)	Halibut mort. (mt)	Herring (mt)	Red King crab (N)	Bairdi (N)	Other Tanner (N)	Chinook (N)	Other salmon (N)
Endurance	2,241	768	24	0	405	17,900	23,440	0	0
Northern Eagle	3,093	467	6	0	0	756	2,254	0	0
Northern Hawk	2,187	321	8	0	0	1,176	2,429	0	0
Northern Jaeger	2,162	313	1	0	61	927	941	0	0
Arctic Storm	1,948	481	11	0	0	25,556	30,584	0	0
<b>Totals</b>	<b>11,631</b>	<b>2,351</b>	<b>50</b>	<b>0</b>	<b>466</b>	<b>46,314</b>	<b>59,649</b>	<b>0</b>	<b>0</b>
<b>Catch Rates</b>	<b>0.83</b>	<b>0.17</b>	<b>0.00</b>	<b>0.00</b>	<b>0.03</b>	<b>3.31</b>	<b>4.27</b>	<b>0.00</b>	<b>0.00</b>

**Table 5 Comments:**

15

1. The PCC Membership Agreement provides that “Members shall annually allocate among themselves the amount of non-pollock groundfish allocations available for directed harvest...in direct proportion to the catch history...in the Base Years [meaning 1995-1997 as identified in the AFA], or during such other year(s) as all Members may agree.” (PCC Membership Agreement 1b(i)) At a PCC meeting on January 11, 1999, PCC members agreed that PCC members who had traditionally participated in the directed yellowfin sole fishery (American Seafoods, Alaska Trawl Fisheries, and Arctic Storm) would participate in the 1999 directed yellowfin sole fishery.
2. The AFA “sideboard” on directed yellowfin sole fishing establishes a cap, but does not guarantee that AFA-eligible catcher/processors will be able to harvest any amount of yellowfin sole.
3. The disparity in crab bycatch levels among catcher/processors in the yellowfin sole fishery was likely the result of a difference in the areas being fished. The 1999 crab bycatch rates for the catcher/processor fleet as a whole are below the fishery-wide averages.

**Table 6 – 1999 C/P Directed Atka Mackerel Fishing**

Vessel	Mackerel (mt)	Non - target Groundfish (mt)	Halibut mort. (mt)	Herring (mt)	Red King crab (N)	Bairdi (N)	Other Tanner (N)	Chinook (N)	Other salmon (N)
American Triumph	564	81	0	0	0	0	0	0	0
Catch Rates	0.87	0.13	0.00	0.00	0.00	0.00	0.00	0.00	0.00

**Table 6 Comments:**

1. The PCC Membership Agreement provides that “Members shall annually allocate among themselves the amount of non-pollock groundfish allocations available for directed harvest...in direct proportion to the catch history...in the Base Years [meaning 1995-1997 as identified in the AFA], or during such other year(s) as all Members may agree.” (PCC Membership Agreement 1b(i)) At a PCC meeting on January 11, 1999, PCC members agreed that PCC members that had traditionally fished for mackerel would later advise the PCC of their plans for the fishery. This was the extent of any agreement under the PCC with respect to Atka mackerel.
2. The closure of the Aleutian Islands to pollock fishing was a disincentive for some PCC catcher/processors to go to the Aleutians Islands, where they might otherwise have fished for Atka mackerel as well as pollock.

Table 7 – 1999 C/P Vessel-By-Vessel Catch of All Non-Pollock Species

Vessel Name	Pacific Cod	Sablefish BS	Mackerel CAI	Mackerel EAI	Mackerel WAI	Yellowfin sole	Rock sole	Turbot AI	Turbot BS	Arrow- tooth	Flathead sole	Other flatfish
Alaska Ocean	62					23	22		4	17	71	0
American Triumph	162		567	2	12	10	9	2	11	24	60	1
Arctic Fjord	25			0		0	10		0	2	24	0
Arctic Storm	73	0		0		1,948	77		1	3	45	275
Endurance	72					2,241	168		0	0	61	206
Highland Light	1,754			19		13	44		0	23	54	1
Island Enterprise	50			0		0	49		0	1	42	0
Katie Anne	1,350	0		2		0	104		0	9	18	1
Kodiak Enterprise	37			0		1	30		0	3	48	0
Northern Eagle	63	0		0		3,093	125		1	2	82	223
Northern Glacier	1,086	0		0		9	66	0	0	25	111	1
Northern Hawk	139	0		0		2,195	62		2	34	67	146
Northern Jaeger	161			0		2,164	92		1	8	155	121
Ocean Rover	591			0		10	45	0	2	30	190	2
Pacific Glacier	854			0		4	77	0	1	21	92	1
Starbound	74					0	14		0	6	88	1
<b>Total</b>	<b>6,561</b>	<b>0</b>	<b>567</b>	<b>23</b>	<b>12</b>	<b>11,713</b>	<b>995</b>	<b>3</b>	<b>24</b>	<b>209</b>	<b>1,221</b>	<b>979</b>

Table 7 – Continued (2 of 3)

Vessel Name	POP CAI	POP EAI	POP WAI	POP BS	Other Red Rock - BS	SC/NO AI	SR/RE AI	Other rock BS	Other rock AI	Squid	Other species
Alaska Ocean				77	8				0	45	22
American Triumph	6	10	0	1	6	45	1	2	0	67	37
Arctic Fjord									0	0	6
Arctic Storm				0	0				0	0	36
Endurance									0		64
Highland Light	0	1		0		7	0	3	0	1	32
Island Enterprise				17					0	0	8
Katie Anne		3		0	0	3	0	4	0		29
Kodiak Enterprise				0					0	0	9
Northern Eagle				4	0				0	5	76
Northern Glacier		0		1	1	2		1	0	5	40
Northern Hawk				1	2				0	67	55
Northern Jaeger				0	0				0	3	117
Ocean Rover		2		4	2	0		0		5	40
Pacific Glacier		0		1	0	0			0	8	62
Starbound				4	0				0	0	14
Total	6	17	0	110	20	57	1	9	1	206	651

Table 7 – Continued (3 of 3)

Vessel Name	Halibut mortality	Herring	Chinook	Other salmon	Red king crab	Other King Crab	C. bairdi Zone 1	C. bairdi Zone 2	C. opilio Tanner
Alaska Ocean	1	46	493	78				6	
American Triumph	5	12	612	606				2	10
Arctic Fjord	1	3	59	103					
Arctic Storm	11	1	87	67			3,041	22,515	30,596
Endurance	25	0	12		405		13,343	4,509	23,441
Highland Light	8	22	283	235	100		24	67	323
Island Enterprise	1	0	94	34					3
Katie Anne	3	0	119	1	45	378			77
Kodiak Enterprise	1	0	106	25					4
Northern Eagle	7	0	431	105			541	232	2,311
Northern Glacier	10	35	230	286				263	1,671
Northern Hawk	14	5	1,157	294			328	848	2,444
Northern Jaeger	4	0	247	116	62		712	225	1,002
Ocean Rover	14	0	158	262				11	103
Pacific Glacier	9	32	375	76		18		35	92
Starbound	2	32	329	200				7	24
<b>Total</b>	<b>116</b>	<b>191</b>	<b>4,808</b>	<b>2,487</b>	<b>612</b>	<b>396</b>	<b>17,989</b>	<b>28,718</b>	<b>62,103</b>

# Catcher Vessel Sideboard Limitations -- General

## Summary of AFA Requirements

Two sections of the AFA deal with 1999 sideboard provisions for catcher vessels in the offshore sector.

With respect to crab fisheries, AFA section 211(c)(2)(C) states that "catcher vessels eligible under section 208(b) are prohibited from participating in a directed fishery for any species of crab in the Bering Sea and Aleutian Management Area unless the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997 and is eligible under the license limitation program recommended by the North Pacific Council and approved by the Secretary."

With respect to fisheries other than crab, AFA section 210(c) states "such catcher vessels may participate in a fisheries cooperative that will be in effect during 1999 only if the contract implementing such a cooperative establishes penalties to prevent such vessels from exceeding in 1999 the traditional levels harvested by such vessels in all other fisheries in the exclusive economic zone of the United States."

## HSCC Sideboard Provisions

The HSCC Membership Agreement contains the following section concerning sideboard fisheries participation:

**a. Limitation on Participation in Fisheries Other Than Pollock:** Each Member agrees to identify its traditional fisheries and its historical level of participation in those fisheries. The board shall then determine which vessels and to what extent each Member may participate in each fishery so that the traditional levels of harvest, as defined in Section 205(5) of the Act, by the Members in 1999 does not exceed the traditional levels harvested by section 208(b) vessels in other fisheries in the exclusive economic zone of the United States. The board shall then assign entitlement to participate in a fishery based upon prior participation. Priority shall be based on the extent of prior participation.

Upon the Board of Directors or two or more Members in good standing concluding that a Member may have participated in a fishery in which he was not entitled, Section 4.4 of the Bylaws shall be implemented for a determination of whether there has been an unauthorized participation, and if so, the penalty to be assessed. To determine the proper penalty, the forum shall be guided by the penalties assessed by judicial forums for illegal participation in similar fisheries. All revenue resulting from the assessment of penalties shall be used as determined by the Board of Directors.



While the AFA used a variety of time windows for various purposes, it did not specifically define "traditional." The NPFMC considered a variety of time windows for CV sideboards, and at the June 1999 meeting ultimately chose 1995-1997 for groundfish, 1992-1997 for crab, and 1996 or 1997 for scallops.

Lacking fore-knowledge of how the Council would define specific sideboard restrictions, in January 1999 the HSCC met to engage in a dialogue with other industry associations about fulfilling our AFA sideboard obligations, and to seek their concurrence that our plans provided adequate protection, while allowing us to continue in our traditional efforts in non-pollock fisheries. At the February NPFMC meeting that followed this dialogue, the HSCC made the following statement concerning participation in North Pacific non-pollock fisheries in 1999.

General Statement

- a) Our members will not participate at a greater level of effort in any concurrent fishery in 1999, than the level at which they participated in 1995-1998.
- b) Our members will not enter any fishery in 1999, in which they did not participate during 1995-1998, whether the fishery is concurrent or not."

Additionally, HSCC informed the NPFMC that we would manage concurrent fisheries and non-concurrent fisheries. Concurrent fisheries limits would be based on catch history tonnage during the period of overlap with the normal pollock season (similar to the P. Cod sideboards adopted at the June meeting for mothership sector vessels). Non-concurrent fisheries would be managed based on effort ("days at sea") or an "in/out" test (similar to the opilio sideboard provisions). The fishing plan developed by HSCC was well within the range of sideboard options considered by the NPFMC.

## Table 8 – Proposed Catcher Vessel Sideboards

Species	% of '99 TAC	EA/RIR	Average Catch 95-97
Atka Mackerel - Central AI	-	-	-
Atka Mackerel - Eastern AI	0.01%	1	2
Atka Mackerel - Western AI	-	-	-
Arrowtooth Flounder - BSAI	0.72%	822	89
Other Flatfish - BSAI	0.31%	406	94
Flathead Sole - BSAI	0.44%	289	129
Greenland Turbot - Aleutian Islands	0.15%	4	3
Greenland Turbot - Bering Sea	0.26%	13	15
Other Species - BSAI	0.39%	109	87
Pacific Cod (Fixed Gear) - BSAI	0.05%	42	65
* P.Cod (Trawl CVs)-BSAI (97 only)	7.49%	2,882	4899
Pacific Ocean Perch - Bering Sea	0.16%	2	3
* POP - Central AI (96-97 only)	-	-	-
*POP - Eastern AI (96-97 only)	0.05%	1	2
*POP - Western AI (96-97 only)	-	-	-
Other Rockfish - Aleutian Islands	0.21%	1	1
Other Rockfish - Bering Sea	0.58%	2	2
Rock Sole - BSAI	0.36%	367	245
Sablefish (Trawl Gear) - AI	0.35%	2	1
Sablefish (Trawl Gear) - Bering Sea	-	-	-
Sharpchin/Northern Rockfish - AI	0.05%	2	2
Squid - BSAI	0.38%	6	5
Shortraker/Rougheye Rockfish - AI	-	-	-
Other Red Rockfish - Bering Sea	0.36%	1	4
Yellowfin Sole - BSAI	0.18%	318	312

**Table 9 – 1999 C/V BSAI Directed Cod Fishing**

Species	Catch - All Vessels	Muir Milach	Ocean Harvester	Sea Storm	Tracy Anne
Cod mt	3,470	1,255	335	107	1,773.0
Non target Groundfish mt	217	37	80	0	100.0
Halibut mort. Mt	10	2	5	0	3.0
Herring (mt)	0	0	-	0	0
Red King Crab (N)	0	0	-	0	0
Bairdi (N)	146	0	-	0	146
Other Tanner (N)	45	30	-	0	15
Chinook (N)	0	0	-	0	0
Other Salmon (N)	0	0	-	0	0

**Table 9 Comments:**

Four vessels landed cod in the BSAI directed cod fishery. Under an agreement reached with MTC and UCB, fishing prior to March 1<sup>st</sup> was limited to less than 192 mt of cod. Fishing after March 1<sup>st</sup> was to be treated as an open access fishery (similar to the NPFMC's recommended mothership sector exemption). Had the NPFMC's June recommendation been in effect, the sideboard guideline would have been 2,882 mt. This compares to their 1997 catch history of 4,899 mt. or 7.49% of the CV allocation. Total landings of BSAI cod for 1999 were 3,473 mt.

**Table 10 – C/V GOA Groundfish Fishing**

Species	Catch - All Vessels	Forum Star	Tracy Anne	Muir Milach
Arrowtooth flounder	28.2	28.2		
Pacific cod	0.9		0.9	
Flathead sole	1.4		1.4	
Rock sole	0.9	0.9		
Dover sole	3.2	2.3	0.9	
Petrals sole	0.0		0.0	
Rex sole	0.0	0.0		
Unidentified rockfish	0.2		0.2	
Pacific ocean perch	14.2		14.2	
Thornyhead rockfish	2.7	0.5	2.2	
Yelloweye rockfish	0.3	0.2	0.1	
Rougheye rockfish	0.6		0.6	
Shortraker rockfish	0.9	0.2	0.7	
Dusky rockfish	38.2		38.2	
Silvergray rockfish	4.3		4.3	
Redstripe rockfish	3.5		3.5	
Sablefish	2.3	0.2	2.2	
Other species	0.9			0.9
Pollock	204.8	176.8		28.1
Squid	0.7			0.7
Halibut	0.7			0.7

**Table 10 Comments:**

**GOA Pollock**

Two HSCC vessels landed pollock in the GOA directed pollock fishery. Had the NPFMC's June recommended sideboards been in effect, the sideboard guideline would have been 297 mt. However, one of the two vessels would have been exempt under the 1700 mt criteria. Total pollock landings were 205 mt.

**GOA Flatfish**

One HSCC vessel landed flatfish in the GOA directed flatfish fishery. This vessel would be exempt under the 1700 mt criteria. Total flatfish landings were 35 mt.

**GOA Rockfish**

One HSCC vessel landed rockfish in the directed rockfish fishery. Total rockfish landings were 65 mt. This amount is within the catch history constraints that were recommended by the NPFMC in June.

**Table 11 – 1999 C/V Bristol Bay Red King Crab**

Species	Catch - All Vessels	Muir Milach	Ocean Harvester	Sea Storm
Bristol Bay Red King Crab	87438	26,527	32,810	28,101

**Table 11 Comments:**

Three vessels participated in the 1999 Bristol Bay Red King Crab fishery, making one delivery apiece. This was the only crab fishery in which HSCC members participated in 1999. This was a one-delivery fishery with a pre-season GHL of 10,127,000 lbs. The 41 AFA vessels will be limited to 12.8% under the NPFMC's June recommendation. This would have been 1,296,256 lbs, or 31,616 lb per vessel if managed on an equal trip limit basis. The combined trip limits for the three HSCC vessels would have been 94,848 lbs. Total landings for the three vessels were 87,438 lbs.

## Table 12 – 1999 C/V Scallop Fishing

Species	Catch - All Vessels	Forum Star
Scallops	62,881.0	62,881.0

### Table 12 Comments:

One HSCC vessel landed scallops in 1999. The preferred alternative recommended by the NPFMC in June would limit the one AFA catcher vessel that also participated in the scallop fishery to the 7.6 percent it harvested of the 1997 scallop fishery. That percentage will be multiplied by the upper end of the state-wide guideline harvest level to determine the actual amount of scallops it will be allowed to harvest under a cap. A projected 860,000 pound GHF would result in the vessel being capped at 65,600 pounds. Total landings of scallops were 62,881 lbs.

Table 13 – VIP Rates: Observed Shoreside Deliveries

VIP rates - Observed  
Shoreside Deliveries

NAME	GEAR	ZONE	TARGET	PRICE	SP. RATE	KING RATE	QUIN RATE	HAPE RATE	MIAN RATE	OBS. HAULS
OCEAN HARVESTER	TRW	BSA	C	22.31	0.00	0.00	0.00	0.00	0.00	3
TRACY ANNE	TRW	GOA	K	9.64	0.00	0.00	0.00	0.00	0.00	1

**Table 14 – 1999 C/V Vessel-By-Vessel Catch of All Species**

Species	Catch - All Vessels	Muir Milach	Neahkanie	Ocean Harvester	Sea Storm	Tracy Anne
Atka Mackerel - Central AI						
Atka Mackerel - Eastern AI	20.7	8.1		0.0		12.6
Atka Mackerel - Western AI						
Arrowtooth Flounder - BSAI	2.5	1.5	0.0	0.1	0.1	0.8
Other Flatfish - BSAI	38.9	0.0	0.0	38.8	0.0	0.0
Flathead Sole - BSAI	25.2	0.7	4.9	15.0	4.1	0.5
Greenland Turbot - Aleutian Islands						
Greenland Turbot - Bering Sea	0.0			0.0		
Other Species - BSAI	41.1	17.4	0.5	10.0		13.2
Pacific Cod (Fixed Gear) - BSAI						
* P.Cod (Trawl CVs)-BSAI (97 only)	3,489.1	1,261.9	2.2	342.2	109.8	1,772.9
Pacific Ocean Perch - Bering Sea	2.0	0.0	0.3	0.0	1.4	0.3
* POP - Central AI (96-97 only)						
*POP - Eastern AI (96-97 only)	2.9	0.4		0.0		2.6
*POP - Western AI (96-97 only)						
Other Rockfish - Aleutian Islands	7.0	2.6		0.0	0.2	4.2
Other Rockfish - Bering Sea	1.5	0.3	0.4	0.0	0.7	0.0
Rock Sole -- BSAI	70.8	10.7	3.9	1.1	2.0	53.2
Sablefish (Trawl Gear) - AI						
Sablefish (Trawl Gear) - Bering Sea	0.5	0.1	0.1	0.0	0.2	
Sharpchin/Northern Rockfish - AI	18.3	4.3		0.0		14.0
Squid - BSAI	0.2	0.1	0.0	0.0	0.1	0.0
Shortraker/Rougheye Rockfish - AI	0.0	0.0		0.0		
Other Red Rockfish - Bering Sea	0.1	0.0	0.0	0.0	0.0	0.0
Yellowfin Sole - BSAI	0.0		0.0	0.0	0.0	
Pollock - bycatch - AI	0.9	0.5		0.0		0.4
Total Pollock - A1/A2	7,049.9	498.5	2,182.2	1,474.2	2,750.9	144.1
Total Pollock - B/C	1,074.7	0.2		1,074.5		
Chinook	248.1	141.8	49.0	15.6	41.4	0.4
Halibut mortality	9.6	1.8	0.2	4.9	0.1	2.5
Herring	0.0	0.0	0.0	0.0	0.0	-
Other King Crab	60.8	-	-	0.0	-	60.8
Other salmon	57.2	9.0	22.9	0.0	25.3	-
Other Tanner Crab	66.0	29.9		20.0	0.8	15.3
Bairdi Crab	-	-	-	-	-	-



**Table 15 – 1999 Product Mix and Total Product Recovery**

<b>Product Forms</b>	<b>1998 Product Form Percentage by Weight</b>	<b>1999 Product Form Percentage by Weight</b>
Surimi	42.5 %	46.6%
Deep-Skin Fillets	19.5%	27.8%
Mince	10.5%	5.9%
Fillets	12.9%	3.2%
Roe	5.9%	5.8%
Fish Meal	8.7%	10.7%
<b>Total</b>	<b>100%</b>	<b>100%</b>

**Table 15 Comments:**

1. Percentages represent product mix by weight for AFA-eligible catcher/processors in 1998 and 1999.
2. Processing of all pollock allocated to HSCC members was done by AFA-eligible catcher/processors in 1999.
3. Preliminary data indicates that total product recovery increased by more than 20 percent per ton of pollock in 1999 as compared to 1998.

# APPENDIX A

## MEMBERSHIP AGREEMENT

This MEMBERSHIP AGREEMENT is entered into as of December 18, 1998 by and among ALASKA OCEAN SEAFOOD, L.P., a Washington limited partnership, ALASKA TRAWL FISHERIES, INC., a Washington corporation, AMERICAN SEAFOODS COMPANY, a Washington corporation ("American"), ARCTIC FJORD, INC., a Washington corporation, ARCTIC STORM, INC., a Washington corporation, GLACIER FISH COMPANY LLC, a Washington limited liability company, HIGHLAND LIGHT SEAFOODS, L.L.C., a Washington limited liability company, STARBOUND LTD. PARTNERSHIP, a Washington limited partnership, TYSON FOODS, INC., a Delaware corporation and any other members admitted pursuant to this Agreement (together, the "Members") and POLLOCK CONSERVATION COOPERATIVE, a Washington nonprofit corporation (the "Cooperative").

### RECITALS

A. The American Fisheries Act (Div. C, Title II of Public Law 105-277) (the "Act") allocates the annual quota for the Bering Sea pollock fishery among three harvesting sectors for the years 1999 through 2004 and defines the classes of vessels eligible to harvest within each sector. Under Sections 206(b) and 208(e) of the Act, 40% of the Bering Sea pollock resource (net of a 10% allocation to the Community Development Quota program, and net of certain amounts reserved for incidental catch in non-pollock fisheries) is allocated to the catcher/processor sector (the "Catcher/Processor Allocation"), and the class of catcher/processor vessels eligible to harvest the Catcher/Processor Allocation is limited to certain named vessels and such replacement vessels as may be permitted by the Act (the "Vessels") and any catcher/processor qualifying under Section 208(e)(21) of the Act. (The Vessels are identified on Exhibit B to this Agreement.) Pursuant to Section 210(c) of the Act, not less than 8.5% of the Catcher/Processor Allocation is to be made available to be harvested by certain catcher vessels (the "Catcher Vessels").

B. American is the bareboat charterer and manager of Vessels 1 through 7 on Exhibit B. The other Members own Vessels 8 through 20.

C. The Bering Sea pollock fishery has traditionally been managed on an "open access" or "Olympic competition" basis. Under this management regime, each fishery participant has an incentive to harvest as much resource as possible as quickly as possible, because when the common pool of the relevant sector's pollock quota is consumed, that sector is required to cease fishing.

D. Because it promotes a "race for the fish", open access management encourages wasteful fishing and processing practices (as participants have an incentive to maximize harvest rather than optimize utilization of their catch), and creates a strong disincentive to employ careful fishing practices that have been demonstrated to reduce incidental catch of non-target species and increase product recovery rates.

E. The Members believe that by reaching agreement concerning the amount of the Catcher/Processor Allocation each of them will harvest, it will be feasible for them to reduce the pace of their harvesting activities, increase the amount of product produced per ton of fish harvested, and modify their fishing operations to reduce their incidental catch of non-target species.

F. To promote their compliance with the Magnuson-Stevens Fishery Conservation and Management Act standards promoting reduction of waste, discards and incidental catch of non-target species in the fisheries of the United States, and to reduce the incidental catch of non-target species in the Bering Sea fisheries, the Members desire to enter into an agreement regarding certain fish harvesting activities.

Now, therefore, the parties agree as follows:

1. Harvesting Plan. Each Member hereby agrees, subject to the terms and conditions of the Act, this Membership Agreement, the Articles of Incorporation and the Bylaws of the Cooperative, and applicable restrictions under U.S. antitrust law, to harvest an annual percentage of the Bering Sea and Aleutian Islands resources no greater than provided under this Agreement.

a. Pollock. Each Member agrees to harvest an annual percentage of the Bering Sea/ Aleutian Islands directed pollock fishing allowance no greater than that Member's percentage as set forth on the harvest schedule attached hereto as Exhibit A, (the "Harvest Schedule").

b. Non-Pollock Groundfish. Each member agrees to harvest an annual percentage of Bering Sea/ Aleutian Islands non-pollock groundfish no greater than the percentages determined in accordance with Subsections 1.b.(i) and 1.b.(ii), below

(i) Directed Catch. Section 211(b) of the Act prohibits the Vessels from, in the aggregate, exceeding the percentage of the Harvest available to the offshore component of any non-pollock Bering Sea and Aleutian Islands groundfish fishery, that is equivalent to the total harvest by the Vessels and certain named ineligible vessels (listed in Section 209 of the Act) (collectively, the "Contributing Vessels") in such fishery in 1995, 1996 and 1997 (the "Base Years"), relative to the total amount available to have been harvested by the offshore component in such fishery in the Base Years. To facilitate compliance with the limit described in this Section, all Members shall annually allocate among themselves the amount of non-pollock groundfish allocations available for directed harvest by the Vessels in direct proportion to the catch history of the Contributing Vessels in the Base Years, or during such other year(s) as all Members may agree. The provisions of Section 3 shall apply to any Member's failure to comply with such allocation.

(ii) Incidental Catch. All amounts of non-pollock groundfish reserved by NMFS for bycatch purposes shall be made available to the Vessels as a group. Each Member agrees to prevent its Vessels from harvesting at bycatch rates substantially in excess of their historical levels.

c. Management Measures. Each Member's allocation of pollock and other groundfish species shall be subject to all management measures generally applicable to the Catcher/Processor Allocation and the other groundfish allocated under Section 1.b., above (including but not limited to seasonal apportionments and area harvest restrictions) on a discreet, individual basis; i.e., each Member shall be restricted to harvesting no greater percentage of such Member's allocation in any season or area than the aggregate percentage of the Catcher/Processor Allocation permitted to be harvested in such season or area. Each Member shall have the individual authority to carry over from season to season a percentage of that Member's seasonal apportionment for each species no greater than the carry-over percentage generally applicable to the Catcher/Processor Allocation.

d. Prohibited Species Catch Allocations. Prohibited species catch ("PSC") apportionments for the fisheries in which the Members participate shall be made in a manner that will allow each Member, to the maximum extent possible, to prosecute pollock and non-pollock groundfish fisheries at a level equal to the Member's average harvest level during the Base Years. Initially, PSC will be apportioned among the pollock and non-pollock fisheries in the same proportion, on a PSC to target species ratio, as PSC limits established by the Council and NMFS for the Base Years. Any change in these initial apportionments will require the approval of all Members.

e. Annual Fishing Plan. The Members agree to meet each January prior to the opening of the trawl fishery to prepare an annual fishing plan that allocates the incidental catch referenced in Section 1.b.(ii), above and the PSC allocations referenced in Section 1.d., above among the directed fisheries in which the Members are eligible to participate. The Members agree to meet regularly to review the annual fishing plan and make appropriate adjustments.

f. Scope of Agreement. The Members agree that the Harvest Schedule and the provisions of Subsection 1.b., above govern only the harvesting activities of the Members, and, pursuant to Section 10, below, nothing in this Agreement shall be construed as limiting any Member's production from the fish it harvests (which each Member is encouraged to maximize, within the terms of this Agreement), or limiting in any respect each Member's ability to market such products on a fully competitive basis.

g. Vessel Use. Members with more than one Vessel eligible to harvest under the Catcher/Processor Allocation may elect to harvest their Harvest Schedule and non-pollock groundfish percentages with any number of Vessels.

h. Acquisition or Transfer of Harvesting Allocation. Notwithstanding the provisions of Section 1.a and 1.c. above, and subject to limits imposed by law, each Member shall have the right to transfer some or all of such Member's pollock and other groundfish allocation(s) to one or more other Members, and shall have the right to acquire pollock and other groundfish and/or the rights to harvest pollock and groundfish from the Catcher Vessels, or any of them, or an association they may form, on any terms each Member may agree upon. Members doing so shall notify the Cooperative and Sea State, Inc. or such other independent quota monitoring service as the Cooperative may retain from time to time (the "Monitoring Service") within seven (7) days, and in any case, prior to the harvest of any portion of a transferred allocation. Upon providing such notice, the relevant Members' Harvest Schedules and/or non-pollock allocation percentages shall be considered to be amended accordingly for the term of the transfer agreement.

2. Catch Monitoring. To enable each Member and the Cooperative to monitor other Members' compliance with the Act and this Agreement, each Member hereby agrees to carry the number and type of NMFS-certified observers required by law aboard each of its Vessels participating in the Bering Sea/ Aleutian Islands fisheries during the term of this Agreement, and to report each Vessel's catch on a daily basis to both the NMFS Observer Program and the Monitoring Service. Each Member agrees that absent manifest error, the catch data produced for the Cooperative by the Monitoring Service shall be presumed accurate, and that each Member's obligations under this Agreement and all related documents may be enforced to their fullest extent on the basis of such data.

3. Allocation Enforcement. Each Member acknowledges and agrees that the benefits associated with the Members' mutual harvest agreement will only accrue to the Members if each of them strictly complies with the Harvest Schedule and the non-pollock groundfish allocations determined in accordance with Section 1.b., above. Each Member acknowledges that all other Members will be taking certain significant operational and financial actions based on this Agreement, and that a breach of this Agreement by any Member would have significant adverse consequences. Therefore, to facilitate enforcement of this Agreement, each Member agrees to the procedure set forth in this Section 3.

a. Forfeiture Amount Calculation. Not less than thirty (30) days before each first annual Bering Sea trawl fishery opening for the catcher/processor sector, the Cooperative Board of Directors shall set a forfeiture amount for an unprocessed metric ton of each species covered by this Agreement (the "Forfeiture Amounts").

b. Bonding or Alternative Security. Not more than ten (10) days following announcement of the Forfeiture Amounts by the Board of Directors, each Member shall provide the Cooperative with such security as the Board may require (if any), which may include either:

(i) a bond (the "Harvest Bond") securing that Member's performance under this Agreement, in an amount equal to (i) the relevant Forfeiture Amount, multiplied by (ii) ten percent (10%) of such Member's percentage for the relevant species, multiplied by (iii) the number of tons of such species allocated for harvesting by catcher/processors; or

(ii) an alternative form of security acceptable to the Board of Directors (the "Alternative Security").

c. Overharvest Forfeiture. Following the close of the Bering Sea/ Aleutian Islands trawl fisheries to the catcher/processor sector, the Board of Directors shall review the seasonal harvest data from the Monitoring Service, and report to the Members concerning the Members' compliance with the harvest allocations made under this Agreement. Upon the Members determining in accordance with the organization's Bylaws that a Member harvested in excess of that Member's percentage, the Cooperative shall have the right to collect from such Member an amount equal to the Forfeiture Amount multiplied by the number of metric tons by which such Member's harvest exceeded that Member's allocation.

d. Voluntary Compliance. The Members and the Cooperative agree that upon the Cooperative's Members determining that a Member has overharvested any of its allocations, the Cooperative shall not enforce its rights to collect against an overharvesting Member's Harvest Bond or other collateral without first providing the overharvesting Member with fifteen (15) days advance notice of its intent to exercise its rights of collection, during which period the Member may request reconsideration of the enforcement action or may propose an alternative method of compensating the remaining Members and the Cooperative. The remaining Members may grant or deny any request for reconsideration and may approve or disapprove any alternative form of compensation in their sole discretion.

e. Enforcement. Each Member agrees to take all actions and execute all documents necessary or convenient to give effect to the enforcement procedure contemplated under this Section 3. Each Member waives all rights of legal or equitable defense, counterclaim or offset related to any enforcement action taken in compliance with this Section 3. Each Member agrees that the Cooperative shall be entitled to actual damages in addition to forfeited amount, which shall be distributed in accordance with Section 3.f., below upon award. Each overharvesting Member against whom an enforcement action is brought shall pay all costs, fees and expenses, including attorneys fees, incurred by the Cooperative in enforcing the provisions of this Section 3.

f. Distribution of Bond Proceeds and Damages. All funds forfeited or awarded to Members and or the Cooperative under this provision in excess of the costs of enforcement shall be distributed pro-rata among the Members who harvested less than their allocation of the relevant species, with each Member receiving a fraction of such funds the numerator of which is the amount by which such

Member's catch of the relevant species was less than such Member's allocation, and the denominator of which is the sum of all Members' catch shortfalls.

4. Vessel Transfer Restrictions. Each Member acknowledges that the other Members will make investments in equipment and vessel modifications designed to improve their utilization of the Bering Sea resources in reliance on this Agreement, and that a breach of this Agreement during its term by any of them may cause the remaining Members to suffer substantial adverse economic consequences. In addition, each Member acknowledges that one of the primary purposes of this Agreement is to improve all Members' abilities to avoid certain non-target species, and that failure to constrain such incidental catch could result in premature closure of certain Bering Sea or Aleutian Islands fisheries, at substantial cost to all Members.

a. Restrictions. Each Member agrees that so long as this Agreement remains in effect, no Member shall have the authority to sell, charter or transfer operating authority over a Vessel to a party not bound by this Agreement, regardless of whether such transfer is temporary or permanent, and regardless of whether such transfer is effected as part of a vessel sale or otherwise, unless (i) the proposed transferee first assumes all of the transferring Member's obligations under this Agreement with regard to the rights transferred, in which case, the transferring Member shall be released therefrom, or (ii) the transferring Member either retains the Vessel's Bering Sea/Aleutian Islands fishing rights, or transfers such rights to the Cooperative or another Member of the Cooperative. All Members agree to negotiate in good faith to create a reasonable mechanism to prevent any transfer in violation of this Section. Each Member further agrees that should a Vessel that it owns, charters or manages be transferred to a party not bound by this Agreement, all Bering Sea/Aleutian Islands groundfish harvested outside of this Agreement by such Vessel shall be deducted from such Member's allocation(s) under this Agreement. Any attempted or purported transfer of a Vessel or its fishing rights other than in compliance with this Section shall be void.

5. Purchase of Catcher Vessel Reserve. Section 210(c) of the Act provides that not less than 8.5% of the Catcher/Processor Allocation (the "Catcher Vessel Reserve") shall be available for harvest by the Catcher Vessels. To insure compliance with the Act, the pollock directed fishing allowance percentages reflected on the Harvest Schedule are net of the Catcher Vessel Reserve; i.e., the 36.6% total reflected in the Harvest Schedule reflects a reserve of 3.4% of the total pollock directed fishing allowance, which is 8.5% of the 40% allocated to the catcher/processor sector. To insure a competitive market for Catcher Vessel Reserve quota, each Member shall independently determine the amount of the Catcher/Processor Allocation it will purchase from Catcher Vessels, and shall conduct all related price and purchase terms negotiations independently of all other Members. To insure that the combined amounts of Members direct pollock harvest and Catcher Vessel Reserve quota purchases do not exceed the percentage of the pollock directed fishing allowance allocated to the catcher/processor sector, each Member shall report the amount of its Catcher Vessel purchases to the Monitoring Service on a daily basis, and the Cooperative shall arrange

for the Monitoring Service to issue notice to all Members when the Catcher Vessel Reserve has been fully harvested, but not before. Thereafter, quota purchases from Catcher Vessels shall be counted against the Harvest Schedule amounts of the Members making such purchases. Should the Catcher Vessels form a qualifying marketing association or cooperative, the terms and conditions of an agreement between the Catcher Vessel association and the Cooperative may supersede the provisions of this Section.

6. Term and Termination. This Agreement shall take effect as of its execution by all Members, and may be terminated by any two (2) Members upon the occurrence of any of the following events. For purposes of this Section 6, any two Members with common ownership or control of 10% or more of their equity interest shall be considered one Member. A Member whose Vessel is transferred as the result of the proceedings in Subsection b., below, shall not be counted as a terminating Member.

a. a determination by any government agency of competent jurisdiction or a reasonable determination by the Cooperative that this Agreement violates either State or Federal antitrust or unfair competition law, or unreasonably exposes any Member or the Cooperative to civil anti-trust or unfair competition litigation;

b. if, as the result of: (i) filing a petition or answer seeking reorganization, liquidation or dissolution pursuant to Chapter 7 or Chapter 11 of the U.S. Bankruptcy Code as amended from time to time, or comparable State law; (ii) becoming the subject of an order for relief in proceedings of the nature described in (i) of this Subsection; (iii) filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed in a proceeding of the nature described in (i) of this Subsection; or (iv) seeking, consenting to or acquiescing in the appointment of a liquidator or receiver of all or substantial part of that Member's property, a Member's Vessel is transferred to a party not bound by this Agreement;

c. termination or modification of the inshore/offshore allocation specified in Section 206(b) of the Act;

d. as of December 31st of any of the calendar years 2000 and thereafter, upon two (2) or more Members delivering a notice of termination to all other Members on or before September 1<sup>st</sup> of such year, if such notice of termination is not rescinded by any of the terminating Member(s) on or before September 15<sup>th</sup> of such year.

Termination of this Agreement shall not relieve any Member of its obligations to pay the damages set forth in Section 3 in connection with a pre-termination overharvest.

7. Landing Tax. Pursuant to Section 210(f) of the Act, the Members agree to make payments to the State of Alaska for any pollock harvested in



the Bering Sea/ Aleutian Islands pollock fishery which is not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. If a Member fails to make a payment in lieu of tax due under this Section, the Cooperative or any of the other Members may make such payment, and the non-paying Member shall be obligated to reimburse the paying parties within thirty (30) days. Any balance outstanding beyond such date shall bear interest in favor of the paying parties at the per annum rate equal to the prime rate of Bank of America, N.A., Seattle Branch, as the same may be announced from time to time, plus five percent (5%). Payments and interest due under this Section may be collected or reimbursed from the defaulting Member's bond or alternate security pursuant to Section 3, hereof.

8. Community Development Quota Program "Sideboards".

The Members that participate in Community Development Quota ("CDQ") program ventures agree to take such actions and execute such documents as may be necessary to insure that their CDQ group counterparts will not be disadvantaged by the cooperative harvesting arrangements such Members are entering into hereunder.

9. Responsible Fishing Practices. The Members acknowledge

that a primary objective of the Cooperative is to reduce bycatch and improve resource utilization. The Members further acknowledge that fishing practices can affect bycatch and utilization rates. The Members therefore agree to exercise all reasonable efforts to conduct their fishing practices responsibly, in a manner consistent with the overall goals and purposes of the Cooperative.

10. Competitive Production and Marketing. To promote the

maximum benefit to consumers of the products produced from the groundfish harvested under this Agreement, and to comply with the intents and purposes of federal and state consumer protection law, each Member hereby agrees to: (i) exercise all commercially reasonable efforts to maximize production from the resources it harvests under this Agreement; (ii) to conduct all processing, marketing and sales activities (other than those conducted jointly through the United States Surimi Commission in compliance with its Certificate of Review) on a fully independent, fully competitive basis; and (iii) to the extent that such Member purchases any resources for harvesting or processing by the Vessels (including but not limited to quota purchased from Catcher Vessels), to do so on a fully independent and fully competitive basis. The Members and each of them agree to hold no joint discussions, take no joint actions, and to exchange no information concerning such purchasing, processing, marketing and sales activities, other than as appropriate in connection with meetings of the North Pacific Fishery Management Council and National Marine Fisheries Service fishery policy and management regulation development process, and as permitted within the Certificate of Review of the United States Surimi Commission.

11. Public Interest Research and Publication. The Members

acknowledge that the primary purposes of the harvesting arrangement contemplated hereunder are improving their utilization of resources harvested in the Bering Sea and

Aleutian Islands pollock fisheries, reducing the incidental catch of non-target species, and promoting the adoption and continued support of resource utilization and conservation arrangements such as those contemplated under this Agreement. The Members therefore agree to contribute a per-ton amount determined by the Cooperative Board of Directors from time to time in support of such activities. All research and publication funded by the Cooperative is to be conducted in the public's interest, and the results of all such research shall be made available to the general public at no charge.

12. Membership Agreement Enforcement. Each Member agrees that the Cooperative and/or any other Member(s) may enforce this Membership Agreement on behalf of the Cooperative and/or any of its Members. The procedure for doing so shall be as provided in the Cooperative's Bylaws.

13. Remedies and Attorneys' Fees. In addition to any of the remedies provided in this Agreement, each Member and the Cooperative shall have the right to have any provision of this Agreement specifically enforced through injunction, restraining order or any other form of equitable relief. Subject to the provisions of Sections 3 and 4, above, in connection with any legal proceeding related to this Agreement, the non-prevailing party shall pay the prevailing party's reasonable costs and fees associated with the proceeding. For purposes of this Agreement, "legal proceedings" shall include arbitration, administrative, bankruptcy and judicial proceedings, including appeals therefrom.

14. Miscellaneous.

a. This Agreement contains the entire understanding of the parties as to the matters addressed herein, and supersedes all prior agreements related to the same. No amendment to this Agreement shall be effective against a party hereto unless in writing and duly executed by such party.

b. This Agreement shall be governed by and construed in accordance applicable federal law and the laws of the State of Washington.

c. This Agreement may be executed in counterparts which, when taken together, shall have the same effect as a fully executed original. Delivery of a signed copy of this Agreement by telefacsimile shall have the same effect as delivering a signed original.

d. The parties agree to execute any documents necessary or convenient to give effect to intents and purposes of this Agreement.

e. All notices to be given hereunder shall be in writing and shall be deemed given when received addressed as follows:

Alaska Ocean Seafood, L.P.  
Post Office Box 190  
Anacortes, Washington 98221  
Attn: Mr. Jeff Hendricks  
Fax: (360) 293-6232

Alaska Trawl Fisheries, Inc.  
100 Second Avenue South, Suite 200  
Edmonds, Washington 98020  
Attn: Mr. Craig Cross  
Fax: (206) 771-6570

American Seafoods Company  
Market Place Tower  
2025 First Avenue, Suite 900  
Seattle, Washington 98121  
Attn: Mr. Michael J. Hyde  
Fax: (206) 448-0202

Arctic Fjord, Inc.  
400 North 34<sup>th</sup> Street, Suite 306  
Seattle, Washington 98103  
Attn: Mr. Doug Christensen  
Fax: (206) 547-3165

Arctic Storm, Inc.  
400 North 34<sup>th</sup> Street, Suite 306  
Seattle, Washington 98103  
Attn: Mr. Doug Christensen  
Fax: (206) 547-3165

Glacier Fish Company LLC  
1200 Westlake Avenue North, Suite 900  
Seattle, Washington 98109  
Attn: Mr. John Bundy  
Fax: (206) 298-4750

Highland Light Seafoods, L.L.C.  
3600 15<sup>th</sup> Avenue West, Suite 300  
Seattle, Washington 98119  
Attn: Mr. Alan Chaffee  
Fax: (206) 216-0988

Starbound Ltd. Partnership  
5470 Shilshole Avenue N.W., Suite 500  
Seattle, Washington 98107

Attn: Mr. Cary Swasand  
Fax: (206) 784-5500

Tyson Foods, Inc.  
12131 113<sup>th</sup> Avenue N.E., Suite 203  
Kirkland, Washington 98034  
Attn: Mr. Doug MacLeod  
Fax: (425) 202-4004

The parties may from time to time change their address for notice purposes by written notice to the other parties.

f. Except for the transfer of any rights pursuant to Section 1(h) or Section 4 hereof, which transfers shall be governed by such Sections, no party may assign its rights hereunder without the prior written consent of the other parties hereto, which consent shall not be unreasonably withheld. Such consent may be conditioned upon execution of an adherence agreement by the party to whom such rights are proposed to be assigned. This Agreement shall be binding on the successors and assigns of all parties hereto.

g. This Agreement shall be construed as a whole according to its fair meaning, without a presumption that it shall be more strictly construed against the person who drafted it, as each party has participated in its preparation with the assistance of counsel.

h. The effectiveness of the Percentages of Annual Allowances set forth herein, and specifically on Exhibit A hereof, is contingent upon this Agreement being timely filed in compliance with Section 210(a) and Section 207(d)(2)(A) of the Act. If the Secretary of Commerce determines that the owner of the Vessels identified in paragraphs 10 through 14 of Section 208(e) of the Act is not entitled to the payment to be made under Section 207(d)(2)(A) of the Act, and such party does not receive equivalent compensation from the other Members within ten (10) business days of the distribution of such funds to the parties entitled to such alternative distribution under Section 207(d)(2)(B) of the Act, then the Members shall undertake, in good faith, to renegotiate such Percentages of Annual Allowances.

i. Each Member warrants that each Vessel under that Member's ownership, control or management shall be operated in accordance with this Agreement, regardless of whether such Vessel(s) remain under such Member's ownership, control or management.

j. In the event that any provision of this Agreement is held to be invalid or unenforceable, such provision shall be deemed to be severed from this Agreement, and such holding shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

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EXHIBIT A

POLLOCK CONSERVATION COOPERATIVE

BERING SEA/ALEUTIAN ISLANDS POLLOCK FISHERY  
HARVEST SCHEDULE

<u>Members</u>	<u>Percentage of Annual Bering Sea/ Aleutian Islands Directed Pollock Fishery Allowance</u>
Alaska Ocean Seafood, L.P.	2.891%
Alaska Trawl Fisheries, Inc.	1.375%
American Seafoods Company	15.949%
Arctic Fjord, Inc.	1.725%
Arctic Storm, Inc.	1.772%
Glacier Fish Company, LLC	3.097%
Highland Light Seafoods, L.L.C.	1.698%
Starbound Ltd. Partnership	1.525%
Tyson Foods, Inc.	6.568%
<b>TOTAL</b>	<b>36.600%</b>

EXHIBIT B  
LIST OF VESSELS

1. AMERICAN DYNASTY (Official No. 951307);
2. KATIE ANN (Official No. 518441);
3. AMERICAN TRIUMPH (Official No. 646737);
4. NORTHERN EAGLE (Official No. 506694);
5. NORTHERN HAWK (Official No. 643771);
6. NORTHERN JAEGER (Official No. 521069);
7. OCEAN ROVER (Official No. 552100);
8. ALASKA OCEAN (Official No. 637856);
9. ENDURANCE (Official No. 592206);
10. AMERICAN ENTERPRISE (Official No. 594803);
11. ISLAND ENTERPRISE (Official No. 610290);
12. KODIAK ENTERPRISE (Official No. 579450);
13. SEATTLE ENTERPRISE (Official No. 904767);
14. US ENTERPRISE (Official No. 921112);
15. ARCTIC STORM (Official No. 903511);
16. ARCTIC FJORD (Official No. 940866);
17. NORTHERN GLACIER (Official No. 663457);
18. PACIFIC GLACIER (Official No. 933627);
19. HIGHLAND LIGHT (Official No. 577044); and
20. STARBOUND (Official No. 944658)

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## APPENDIX B

### MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT is entered into as of December \_\_, 1998, by and among FORUM STAR, INC., AMERICAN SEAFOODS COMPANY, HARVESTER ENTERPRISES, INC., MUIR MILACH, INC., TRACY ANNE, INC., NEAHKAHNE FISHERIES, INC., AND SEA STORM, INC., and any other Member admitted pursuant to this agreement (together, the "Members") and Offshore Pollock Catchers Cooperative, a Washington nonprofit corporation.

#### RECITALS

A. The 1998 American Fisheries Act, ("the Act"), provides that, after an allocation of ten percent (10%) of the total allowable catch of Pollock in the Bering Sea and Aleutian Islands Management Area to the Western Alaska community development quota program and certain bycatch reserves, forty percent (40%) of the remaining quota is allocated to catcher/processors and catcher vessels harvesting Pollock for processing by catcher/processors. Of this 40%, at least eight and one half percent (8.5%) shall be available to the catcher vessels listed in section 208(b) of the Act (the "Catcher Vessel Share").

B. The Members of the Cooperative own or charter all of the vessels that qualify under section 208(b) of the Act.

C. The BS/AI Pollock Fishery has been traditionally managed on an "open access" or "Olympic Competition" basis. Under this management regime, each fishery participant has an incentive to harvest as much resource as possible as quickly as possible, because when the common pool of the relevant sector's Pollock Fishery quota is consumed, that sector is closed to all participants.

D. Because it promotes a "race for the fish," open access management encourages wasteful fishing and processing practices (as participants have an incentive to maximize harvest rather than optimize utilization of their catch), and creates a strong disincentive to employ careful fishing practices that have been demonstrated to reduce incidental catch of non-target species.

E. The Members believe that by reaching agreement regarding the amount of the allocation to which each of them will be entitled, it will be possible to maximize the value obtained from the fish and to reduce the incidental catch of non-targeted species.

F. The Act requires that in the event that a catcher vessel cooperative is formed by the Members of this Agreement, the Agreement must provide penalties to prevent the Members from exceeding in 1999, the traditional levels harvested by such vessels in all other fisheries in the exclusive economic zone of the United States.

Now, therefore, the parties agree as follows:

1. Entitlement to Harvest.



- a. Allocations: To enable each of them to extract the maximum amount of value from the fish that is available for harvest, and to provide each of them with the opportunity to take bycatch avoidance measures without adversely affecting their ability to remain competitive, each Member hereby agrees, subject to the terms and conditions of this Membership Agreement, the Articles of Incorporation and the Bylaws of the Cooperative, to harvest or arrange for the harvest of not more than the percentage of BERING SEA and ALEUTIAN ISLANDS Directed Pollock fishery as defined in Section 205(4) of the Act, listed on the schedule attached hereto as Exhibit A and incorporated herein by reference (the "Harvest Schedule").
- b. Management Measures. Each Member's allocation of Pollock and other groundfish species shall be subject to all management measures generally applicable to the catcher/processor and catcher vessel Section 206(b)(2) allocation allocated under Section 1.a., above (including but not limited to seasonal apportionments and area harvest restrictions) on a discreet, individual basis; i.e., each Member shall be restricted to harvesting no greater percentage of such Member's allocation in any season or area than the aggregate percentage of the catcher/processor and catcher vessel Section 206(b)(2) allocation permitted to be harvested in such season or area. Each Member shall have the individual authority to carry over from season to season a percentage of that Member's seasonal apportionment for each species no greater than the carry-over percentage generally applicable to the catcher/processor and catcher vessel Section 206(b)(2) allocation.
- c. Acquisition or Transfer of Harvesting Allocation. Notwithstanding the provisions of Section 1.a and 1.b. above, and subject to limits imposed by law, each Member shall have the right to transfer some or all of such Member's Pollock and other groundfish allocation(s) to one or more other Members or members of any catcher-processor Pollock cooperative, and shall have the right to acquire Pollock and other groundfish and/or the rights to harvest Pollock and groundfish from the catcher vessels, or catcher-processors or any of them, or an association they may form , on any terms each Member may agree upon. Member doing so shall notify the Cooperative and Sea State, Inc. or such other independent quota monitoring service as the Cooperative may retain from time to time (the "Monitoring Service") within seven (7) days, and in any case, prior to the harvest of any portion of a transferred allocation. Upon providing such notice, the relevant Members' Harvest Schedules and/or non-Pollock allocation percentages shall be considered to be amended accordingly for the term of the transfer agreement.
- d. Limitation on Participation in Fisheries Other Than Pollock: Each Member agrees to identify its traditional fisheries and its historical level of participation in those fisheries The board shall then determine which vessels and to what extent each Member may participate in each fishery so that the traditional

levels of harvest, as defined in Section 205(5) of the Act, by the Members in 1999 does not exceed the traditional levels harvested by section 208(b) vessels in other fisheries in the exclusive economic zone of the United States. The board shall then assign entitlement to participate in a fishery based upon prior participation. Priority shall be based on the extent of prior participation.

Upon the Board of Directors or two or more Members in good standing concluding that a Member may have participated in a fishery in which he was not entitled, Section 4.4 of the Bylaws shall be implemented for a determination of whether there has been an unauthorized participation, and if so, the penalty to be assessed. To determine the proper penalty, the forum shall be guided by the penalties assessed by judicial forums for illegal participation in similar fisheries. All revenue resulting from the assessment of penalties shall be used as determined by the Board of Directors.

2. Harvest Entitlement Monitoring. To enable each Member and the Cooperative to monitor other Members' compliance with Paragraph 1 above, each Member hereby agrees that it shall require in each contract for sale of its share of the harvest as provided for in paragraph 1 above, that the purchaser shall provide to Sea State, Inc. or such other independent monitoring service as the Cooperative may retain from time to time, (the "Monitoring Service"), all data and forms, including private and governmental forms that reflect the quantities of harvest entitlement purchased. Additionally, each Member shall waive any confidentiality entitlement that it may have regarding data that any U.S. or state governmental agency may have regarding its Pollock catch and by-catch records and information regarding participation in other fisheries, after the date of this agreement, and shall direct the U.S. and/or state agencies to provide such information to the Monitoring Service. Each Member agrees that absent manifest error, the data produced for the Cooperative by the Monitoring Service shall be presumed accurate, and that, absent manifest error, each Member's obligations under this agreement and all related documents may be enforced to their fullest extent on the basis of such data.

3. Harvest Schedule Enforcement. Each Member acknowledges and agrees that the benefits associated with the Member's mutual harvest agreement will only accrue to the Members if each of them strictly complies with the Harvest Schedule. Each Member acknowledges that all other Members will be taking certain significant operational and financial actions based on this Agreement, and that a breach of this Agreement by any Member would have significant adverse consequences. Therefore, to facilitate enforcement of this Agreement, each Member agrees to the procedures set forth in this Section 3.

a. Forfeiture Amount Calculation. Not less than twenty (20) days before each Pollock Fishery opening, the Cooperative Board of Directors shall establish a penalty amount per ton of Pollock (the "Value").

b. Bonding or Alternative Security. Not more than ten (10) days following announcement of the Value by the Board of Directors, each Member shall post with the Cooperative either:

(i) a bond (the "Harvest Bond") securing that Member's performance under this Agreement, in an amount equal to (i) the Value multiplied by (ii) fifty percent (50%) of the tons of Pollock available to such Member in the following calendar year based on such Member's Harvest Schedule percentage,

or

(ii) an alternative security acceptable to the Board of Directors (the "Alternative Security").

c. Over-harvest Forfeiture. Following the close of each Pollock Fishery season, the Board of Directors shall review the seasonal harvest data from the Monitoring Service and NMFS, and report to the Members concerning the Members' compliance with the Harvest Schedule. Upon the Members determining in accordance with the organization's Bylaws that a Member has provided for the harvest of an amount of Pollock from the Pollock Fishery in excess of that Member's percentage of the quota, as determined with reference to NMFS seasonal allocation (as the same may have been modified during the respective season) and the Harvest Schedule, the Cooperative shall have the right to collect from such Member an amount equal to the Value multiplied by the number of metric tons by which such Member's harvest exceeded that Member's allocation. This amount may be collected through any reasonable process, including but not limited to forfeiture of the Member's Harvest Bond or Alternative Security

d. Voluntary Compliance. The Members and the Cooperative agree that upon the Cooperative's Members determining that a Member has over-harvested its Harvest Schedule percentage, the Cooperative shall provide the over-harvesting Member with fifteen (15) days advance notice of its intent to exercise its rights of collection against an over-harvesting Member's Harvest Bond, during which period the Member may request reconsideration of the enforcement action or may propose an alternative method of compensating the remaining Members and the Cooperative for the damages suffered as the result of such Member's over-harvest. The remaining Members may grant or deny any request for reconsideration and may approve or disapprove any alternative form of compensation in their sole discretion.

e. Actual Damages and Enforcement Expenses. Each Member agrees that in the case of an over-harvest that results in a forfeiture amount in excess of the value of the Member's bond, the Cooperative shall be entitled to actual damages in addition to the forfeited amount, which shall be distributed in accordance with Section 3.g., below upon the collection of the arbitrators' award. The prevailing party in an enforcement action shall be entitled to an award of its reasonable costs, fees and expenses, including attorneys and arbitrator fees, incurred in the action by said party.

f. Bond Enforcement. Each Member agrees to take all actions and execute all documents necessary or convenient to give effect to the Harvest Bond enforcement procedure contemplated under this Section 3.

g. Distribution of Bond Proceeds and Damages. All funds forfeited or awarded to Members and or the Cooperative under this provision shall be distributed pro rata among the Members whose harvest share was less than their Harvest Schedule allocation, with each Member receiving a fraction of such funds the numerator of which is the amount by which such Member's Pollock Fishery catch was less than such Member's Harvest Schedule allocation, and the denominator of which is the sum of all Members' catch shortfalls.

4. Term and Termination. This Agreement shall take effect as of its execution by all Members and may be terminated by any Member upon the occurrence of one or more of the following:
- a. on or after September 1, 2000, NMFS implements or enforces a regulation that excludes a Member from participating in one of the below listed fishery in which he has traditionally participated as a result of that Member's participation in this Cooperative, and as a result thereof, at least fifty percent of the Membership, in writing, request the termination of this Agreement. The request must be filed before September 15 of the year in which it is filed and the termination shall be effective on December 31 of the year in which the notice is filed.
    - 1. Bering Sea Cod;
    - 2. Alaska Scallops
    - 3. Bristol Bay King Crab ; or
  - b. there is a determination by any government agency of competent jurisdiction or the Cooperative that this Agreement violates either State or Federal antitrust or unfair competition law, or unreasonably exposes any Member or the Cooperative to civil antitrust or unfair competition; or
  - c. a vessel other than those listed on Exhibit A is legally authorized to harvest Pollock from the allocation to vessels under Section 208(b) of the Act unless the operator of such vessel has agreed to be bound by the terms of this Agreement; or,
  - d. ownership or control of a vessel listed in Exhibit A is transferred to a party that is not a Member and that party has not agreed to be bound by the terms of this Agreement; or
  - e. termination or modification of the inshore/offshore allocation specified in Section 206(b) of the Act; or

- f as of December 31st of any of the calendar years 2000 and thereafter, at least 50% or more of Members delivering a notice of termination to all other Members on or before September 1st of such year, if such notice of termination is not rescinded by any of the terminating Member(s) on or before September 15th of such year; or

Termination of this Agreement shall not relieve any Member of its obligations to pay the damages set forth in Section 3 in connection with the determination of over-harvest.

5. Public Interest Research and Publication. The Members acknowledge that the primary purposes of the harvesting arrangement contemplated hereunder are improving their utilization of resources harvested in the Pollock Fishery, reducing the incidental catch of non-target species, promoting local employment in the Pollock Fishery, and promoting the adoption and continued support of resource utilization and conservation arrangements such as those contemplated under this Agreement. The Members therefore agree to contribute to research and publication concerning these issues. The amount shall be determined by the board at the beginning of each year. All such research and publication is to be conducted in the public's interest, and the results of all such research shall be made available to the general public at no charge.

6. Bycatch. Each Member acknowledges and agrees that reducing incidental catch of non-target species to the maximum reasonable extent is a primary objective of the Members and the Cooperative. Each Member therefore agrees to employ such reasonable bycatch avoidance techniques as the Board of Directors and/the Monitoring Service and/or other Cooperative agents may recommend from time to time.

7. Membership Agreement Enforcement. Each Member agrees that the Board of Directors of the Cooperative may enforce this Membership Agreement on behalf of the Cooperative and/or any of its Members. The procedure for doing so shall be as provided in the Cooperative's Bylaws.

8. Vessel Transfer Restrictions. Each Member acknowledges that the other Members will make investments in equipment and vessel modifications designed to improve their utilization of the Bering Sea resources in reliance on this Agreement, and that a breach of this Agreement during its term by any of them may cause the remaining Members to suffer substantial adverse economic consequences. In addition, each Member acknowledges that one of the primary purposes of this Agreement is to improve all Member's abilities to avoid certain non-target species, and that failure to constrain such incidental catch could result in premature closure of certain Bering Sea or Aleutian Islands fisheries, at substantial cost to all Members.

- a. Each Member agrees that so long as this Agreement remains in effect, no Member shall have the authority to sell, charter or transfer operating authority over a Vessel to a party not bound by this Agreement, regardless of whether such transfer is temporary or permanent, and regardless of whether such transfer is effected as part of a vessel sale or otherwise, unless the proposed

transferee first assumes all of the transferring Member's obligations under this Agreement. Each Member further agrees that should a Vessel that it owns, charters or manages be transferred to a party not bound by this Agreement, all BSAI groundfish harvested outside of this Agreement by such Vessel shall be deducted from such Member's allocation(s) under this Agreement. Any attempted or purported transfer of a Vessel other than in compliance with this Section shall be void.

- b. Each Member warrants that each Vessel under that Member's ownership, control or management shall be operated in accordance with this Agreement, regardless of whether such Vessel(s) remain under such Member's ownership, control or management.

9. Remedies and Attorneys' Fees. In addition to any of the remedies provided in this Agreement, each Member and the Cooperative shall have the right to have any provision of this Agreement specifically enforced through injunction, restraining order or any other form of equitable relief. In connection with any legal proceeding related to this Agreement, the non-prevailing party shall pay the prevailing party's reasonable costs and fees associated with the proceeding. For purposes of this Agreement, "legal proceedings" shall include arbitration, administrative, bankruptcy and judicial proceedings, including appeals therefrom.

#### 10. Miscellaneous.

- a. This Agreement contains the entire understanding of the parties as to the matters addressed herein, and supersedes all prior agreements related to the same. No amendment to this Agreement shall be effective against a party hereto unless in writing and duly executed by such party.
- b. This Agreement shall be governed by and construed in accordance applicable federal law and the laws of the State of Washington. Venue for any action related to this Agreement shall be in King County, Washington.
- c. This Agreement may be executed in counterparts which, when taken together, shall have the same effect as a fully executed original. Delivery of a signed copy of this Agreement by telefacsimile shall have the same effect as delivering a signed original.
- d. The parties agree to execute any documents necessary or convenient to give effect to intents and purposes of this Agreement.
- e. All notices to be given hereunder shall be in writing and shall be deemed given upon the earlier of when received or three days after mailing addressed as follows:

**MUIR MILACH, INC.  
F/V MUIR MILACH  
David Fraser  
120 Lakeside, Suite 230  
Seattle, WA 98122**

**TRACY ANNE, INC  
F/V TRACY ANNE.  
Charles Yates  
120 Lakeside, Suite 230  
Seattle, WA 98122**

**SEA STORM, INC.  
F/V SEA STORM  
Doug Christensen  
400 North 34th, Suite 306  
Seattle, WA 98103**

**FORUM STAR, INC.  
F/V FORUM STAR  
Jim Chase  
PO Box 4280  
Portsmouth N.H. 03802**

**NEAHKAHNIE FISHERIES, INC.  
F/V NEAHKAHNIE  
Frank Bohannon  
56648 Lunar DR.  
PO Box 3529  
Sunriver, OR 97707**

**AMERICAN SEAFOODS, INC.  
F/V AMERICAN CHALLENGER  
Mike Hyde  
American Seafoods, Inc.  
2025 First Ave.  
Seattle, WA 98121**

**HARVESTER ENTERPRISES  
F/V OCEAN HARVESTER  
Kaare Ness  
20117 15th Ave.NW  
Shoreline, WA 98177**

**The Members may from time to time change their address for notice purposes by written notice to the other Member.**

f. This Agreement shall be binding on the successors and assigns of all parties hereto.

g. This Agreement shall be construed as a whole according to its fair meaning, without a presumption that it shall be more strictly construed against the person who drafted it, as each party has participated in its preparation with the assistance of counsel.

h. In the event that any provision of this Agreement is held to be invalid or unenforceable, such provision shall be deemed to be severed from this Agreement, and such holding shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

Dated as of the date first set forth above.

\_\_\_\_\_  
FORUM STAR, INC

\_\_\_\_\_  
HARVESTER ENTERPRISES, INC.

\_\_\_\_\_  
AMERICAN SEAFOODS COMPANY

\_\_\_\_\_  
MUIR MILACH, INC.

\_\_\_\_\_  
SEA STORM, INC.

\_\_\_\_\_  
TRACY ANNE, INC.

\_\_\_\_\_  
EAHKAHNE FISHERIES, INC.

\_\_\_\_\_  
OFFSHORE POLLOCK CATCHER  
COOPERATIVE

**EXHIBIT A  
HARVEST SCHEDULE**



**BERING SEA / ALEUTIAN ISLANDS POLLOCK FISHERY HARVEST SCHEDULE**

<b>Members</b>	<b>Percentage of Annual Bering Sea / Aleutian Islands Directed Pollock Fishery as Defined in Section 205(4) of the Act</b>
<b>Forum Star, Inc.</b> <b>F/V FORUM STAR, ON 925863</b>	<p align="right">.2441%</p>
<b>American Seafoods Company</b> <b>F/V AMERICAN CHALLENGER, ON615085</b>	<p align="right">.3149%</p>
<b>Harvester Enterprises</b> <b>F/V OCEAN HARVESTER, ON 549892</b>	<p align="right">.4325%</p>
<b>Muir Milach, Inc.</b> <b>F/V MUIR MILACH, ON 611524</b>	<p align="right">.4538%</p>
<b>Tracy Anne, Inc.</b> <b>F/V TRACY ANNE, ON 904859</b>	<p align="right">.4642%</p>
<b>Neahkahnie Fisheries, Inc.</b> <b>F/V NEAHKAHNIE, 599534</b>	<p align="right">.6679%</p>
<b>Sea Storm, Inc.</b> <b>F/V SEA STORM, ON 628959</b>	<p align="right">.8226%</p>
<b>TOTAL:</b>	<p align="right"><b>3.4%</b></p>

## APPENDIX C

### COOPERATIVE AGREEMENT BETWEEN OFFSHORE POLLOCK CATCHERS COOPERATIVE AND POLLOCK CONSERVATION COOPERATIVE

This Cooperative Agreement is entered into between OFFSHORE POLLOCK CATCHERS COOPERATIVE, a Washington nonprofit corporation, (hereinafter "OPCC") and POLLOCK CONSERVATION COOPERATIVE, a Washington nonprofit corporation, (hereinafter "PCC") as of January 21, 1999.

#### RECITALS

- A. The American Fisheries Act (Div. C, Title II of Public Law 105-277) (the "Act") allocates the annual quota for the Bering Sea pollock fishery among three harvesting sectors for the years 1999 through 2004 and defines the classes of vessels eligible to harvest within each sector. Under Sections 206(b)(2), 208(b) and 208(e) of the Act, 40% of the Bering Sea pollock resource (net of a 10% allocation to the Community Development Quota program, and net of certain amounts reserved for incidental catch in non-pollock fisheries) is allocated to the catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore sector (the "206(b)(2) Allocation").
- B. The class of catcher/processor vessels eligible to harvest the 206(b)(2) Allocation is limited to certain named vessels and such replacement vessels as may be permitted by the Act (the "C/P Vessels") and any catcher/processor qualifying under Section 208(e)(21) of the Act. Pursuant to Section 210(c) of the Act, not less than 8.5% of the 206(b)(2) Allocation is to be made available to be harvested by certain catcher vessels identified in Section 208(b) of the Act (the "Catcher Vessels").
- C. The Act provides that not more than one half (.5) of one percent of the 206(b)(2) Allocation shall be made available for harvesting by the catcher/processor vessel(s) that meet the landing requirements of Section 208(e)(21). OPCC and PCC acknowledge that one or more vessels may qualify to harvest pollock from the 206(b)(2) Allocation under Section 208(e)(21).
- D. OPCC is an organization consisting of the owners of all the Catcher Vessels. Under the terms of the membership agreement of OPCC, the 8.5% of the 206(b)(2) Allocation to which the vessels of the members of OPCC are entitled pursuant to the Act has been allocated among its

members. A list of the Catcher Vessels represented by OPCC and a schedule of the catch allocation among its members are attached as Exhibit A.

- E. PCC is an organization consisting of the owners of all the C/P Vessels. Under the terms of the membership agreement of PCC, the 91.5% of the 206(b)(2) Allocation to which the vessels of the members of PCC are entitled pursuant to the Act has been allocated between its members. A schedule of the catch allocation among its members and a list of the C/P Vessels represented by PCC are attached as Exhibits B-1 and B-2.
- F. The vessels represented by PCC and OPCC have worked together in joint operations to harvest the offshore pollock allocation during the period preceding the enactment of the Act in ways that include direct catching of pollock, scouting for pollock, providing other support services to maximize the efficiency of their joint operations. The members represented by PCC and OPCC desire to enhance and continue the maximization of the efficiency of their joint harvesting operations.
- G. As a result of the two agreements identified in paragraphs B and C above, the total amount of pollock available in the 206(b)(2) Allocation is fully allocated. This Cooperative Agreement is being entered into to form an association between OPCC and PCC, for the purpose of facilitating efficient management and accurate accounting of the pollock resource to be harvested under the 206(b)(2) Allocation set forth in the Act, and to achieve the optimum yield available from the 206(b)(2) Allocation.

Now, therefore, the parties agree as follows:

1. PCC, OPCC and their members acknowledge that under Section 208(e)(21) of the Act, one or more vessels may qualify to harvest (in the aggregate) up to one-half (.5) of one percent of the 206(b)(2) Allocation. Therefore, PCC and OPCC agree that if one or more vessels qualify under Section 208(e)(21), (i) the percentages assigned to PCC members on the attached Exhibit B-1 shall be deemed to be adjusted downward on a proportionate basis prior to the opening of pollock fishing each year, by the amount necessary to create a reserve amount of the directed pollock fishing allowance equal to one-half (.5) of one percent of the 206(b)(2) Allocation (the "208(e)(21) Reserve"); and (ii) if any portion of the 208(e)(21) Reserve is released for harvest by the C/P Vessels during such fishing year, each PCC member's percentage shall be adjusted upward by the proportionate amount necessary to reallocate the remaining amount of the 208(e)(21) Reserve to the PCC members.

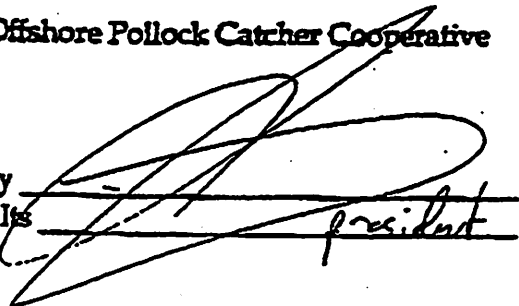
2. The catch allocations on OPCC Exhibit A and PCC Exhibit B-1 are hereby combined as Exhibit C to this Cooperative Agreement, which shall be the "Joint Harvest Schedule."
3. OPCC and PCC agree to jointly retain Sea State, Inc. or such other independent quota monitoring service as the OPCC and PCC may jointly select from time to time (the "Monitoring Service") and to share information among OPCC, PCC and the Monitoring Service as necessary to monitor compliance with the Joint Harvest Schedule.
4. Members of OPCC and Members of PCC may transfer any portion of their pollock allocation pursuant to paragraphs 1(c) of the OPCC Membership Agreement and paragraph 1(h) of the PCC Membership Agreement. Members doing so shall notify OPCC, PCC and the Monitoring Service within seven (7) days, and in any case, prior to the harvest of any portion of a transferred allocation. Upon providing such notice, the relevant members' allocation percentages shall be considered to be amended accordingly for the term of the transfer agreement.
5. OPCC and PCC hereby agree that this Agreement satisfies all obligation either organization or its respective members may have to the other organization or its respective members under Section 210(c) of the Act.
6. OPCC and PCC acknowledge that under certain circumstances, an overharvest of quota by one or more members of one organization could impair the ability of one or more members of the other organization to harvest their individual quota allocation. OPCC and PCC further acknowledge that because each organization's allocation enforcement provisions are internal to each organization, and do not run directly between the members of the two organizations, it would be difficult for a member of one organization who suffered damages as a result of overharvest by a member of the other organization to obtain relief. Therefore, to facilitate recourse by each organization's members in connection with such circumstances, PCC and OPCC agree as follows:
  - (i) upon either organization receiving notice that one or more of its members may have overharvested their allocation(s), and that such overharvest may have impaired the right of one or more members of the other organization to harvest their allocation(s), the notified organization shall promptly investigate whether any of its members have done so, and if so, the notified organization shall promptly undertake an enforcement action against such members; and

(ii) Any recovery that the notified organization obtains in connection with such activity, less any costs and fees incurred in obtaining it that are not reimbursed, shall be promptly delivered to the member or members of either or both organizations whose harvest allocation has been impaired.

This Cooperative Agreement is entered into on the 15<sup>th</sup> day of January, 1999.

Offshore Pollock Catcher Cooperative

By  
Its

  
\_\_\_\_\_  
president

Pollock Conservation Cooperative

By  
Its

\_\_\_\_\_  
\_\_\_\_\_

(ii) Any recovery that the notified organization obtains in connection with such activity, less any costs and fees incurred in obtaining it that are not reimbursed, shall be promptly delivered to the member or members of either or both organizations whose harvest allocation has been impaired.

This Cooperative Agreement is entered into on the 21<sup>st</sup> day of January, 1999.

Offshore Pollock Catcher Cooperative

Pollock Conservation Cooperative

By \_\_\_\_\_  
Its \_\_\_\_\_

By J. P. Brady  
Its President

EXHIBIT A

OFFSHORE POLLOCK CATCHERS COOPERATIVE  
BERING SEA/ALEUTIAN ISLANDS POLLOCK FISHERY  
HARVEST SCHEDULE

<u>Members</u>	<u>Percentage of Annual Bering Sea/ Aleutian Islands Directed Pollock Fishery Allowance</u>
Forum Star, Inc. F/V FORUM STAR, ON 925863	.2441%
American Seafoods Company F/V AMERICAN CHALLENGER, ON615085	.3149%
Harvester Enterprises F/V OCEAN HARVESTER, ON 549892	.4325%
Muir Milach, Inc. F/V MUIR MILACH, ON 611524	.4538%
Tracy Anne, Inc. F/V TRACY ANNE, ON 904859	.4642%
Neahkahnne Fisheries, Inc. F/V NEAHKAHNIE, 599534	.6679%
Sea Storm, Inc. F/V SEA STORM, ON 628959	.8226%
<b>TOTAL</b>	<b>3.4000%</b>

EXHIBIT B-1

POLLOCK CONSERVATION COOPERATIVE

BERING SEA/ALEUTIAN ISLANDS POLLOCK FISHERY  
HARVEST SCHEDULE

<u>Members</u>	<u>Percentage of Annual Bering Sea/Aleutian Islands Directed Pollock Fishery Allowance</u>
Alaska Ocean Seafood, L.P.	2.891%
Alaska Trawl Fisheries, Inc.	1.375%
American Seafoods Company	15.949%
Arctic Fjord, Inc.	1.725%
Arctic Storm, Inc.	1.772%
Glacier Fish Company, LLC	3.097%
Highland Light Seafoods, L.L.C.	1.698%
Starbound Ltd. Partnership	1.525%
Tyson Foods, Inc.	6.568%
<b>TOTAL</b>	<b>36.600%</b>



EXHIBIT B-2

LIST OF VESSELS

1. AMERICAN DYNASTY (Official No. 951307);
2. KATIE ANN (Official No. 518441);
3. AMERICAN TRIUMPH (Official No. 646737);
4. NORTHERN EAGLE (Official No. 506694);
5. NORTHERN HAWK (Official No. 643771);
6. NORTHERN JAEGER (Official No. 521069);
7. OCEAN ROVER (Official No. 552100);
8. ALASKA OCEAN (Official No. 637856);
9. ENDURANCE (Official No. 592206);
10. AMERICAN ENTERPRISE (Official No. 594803);
11. ISLAND ENTERPRISE (Official No. 610290);
12. KODIAK ENTERPRISE (Official No. 579450);
13. SEATTLE ENTERPRISE (Official No. 904767);
14. US ENTERPRISE (Official No. 921112);
15. ARCTIC STORM (Official No. 903511);
16. ARCTIC FJORD (Official No. 940866);
17. NORTHERN GLACIER (Official No. 663457);
18. PACIFIC GLACIER (Official No. 933627);
19. HIGHLAND LIGHT (Official No. 577044); and
20. STARBOUND (Official No. 944658)

EXHIBIT C

PCC and OPCC Joint Harvest Schedule

BERING SEA/ALEUTIAN ISLANDS POLLOCK FISHERY  
HARVEST SCHEDULE

<u>Members</u>	<u>Percentage of Annual Bering Sea/ Aleutian Islands Directed Pollock Fishery Allowance</u>
Alaska Ocean Seafood, L.P.	2.891%
Alaska Trawl Fisheries, Inc.	1.375%
American Seafoods Company	16.2639%
Arctic Fjord, Inc.	1.725%
Arctic Storm, Inc.	1.772%
Glacier Fish Company, LLC	3.097%
Highland Light Seafoods, L.L.C.	1.698%
Starbound Ltd. Partnership	1.525%
Tyson Foods, Inc.	6.568%
Forum Star, Inc.	0.2441%
Harvester Enterprises, Inc.	0.4325%
Tracy Anne, Inc.	0.4642%
Neahkahnne Fisheries, Inc.	0.6679%
Sea Storm, Inc.	0.8226%
Muir Milach Inc.	0.4538%
<b>TOTAL</b>	<b>40.0%</b>

## APPENDIX D

# North Pacific Fishery Management Council

Richard B. Lauber, Chairman  
Clarence G. Pautzke, Executive Director

Telephone: (907) 271-2809



605 West 4th Avenue, Suite 306  
Anchorage, AK 99501-2252

Fax (907) 271-2817

Visit our website: <http://www.fakr.noaa.gov/npfmc>

October 21, 1999

Trevor McCabe  
At-Sea Processors Assn.  
4039 21<sup>st</sup> Avenue West, Suite 400  
Seattle, WA 98199

Dear Trevor:

At our recent meeting in Seattle the Council approved a motion regarding information to be submitted annually by co-ops, in addition to existing reporting requirements specified in Section 210(a) of the American Fisheries Act. Specifically, the motion was that cooperatives must annually prepare a report for the Council containing the information listed below. A preliminary report covering activities through November 1, should be submitted by December 1, with a final report by January 31, containing the following:

1. Allowed catch and bycatch in pollock and all sideboards by whatever method is used to determine those allocations.
2. Actual catch and bycatch in pollock by vessel, and in sideboard fisheries by whatever method is used to determine those sideboards.
3. Method(s) used to monitor fisheries in which cooperative vessels participated.
4. Actions taken by cooperatives to enforce vessel or aggregate catches that exceed allowed catch and bycatch in pollock and all sideboard fisheries.

I believe NMFS will be including these requirements in regulation, though they would not be in effect until early 2000. Notwithstanding the formal regulations, I believe the Council would like to see such information for the 1999 fisheries. We would appreciate your efforts to provide this information for the catcher processor cooperative, to the extent possible, for the December Council meeting.

Sincerely,



Chris Oliver  
Deputy Director

cc: Kent Lind, NMFS  
Joe Sullivan, Mundt MacGregor

## APPENDIX E

# North Pacific Fishery Management Council

Richard B. Lauber, Chairman  
Clarence G. Pautzke, Executive Director



605 West 4th Avenue, Suite 306  
Anchorage, AK 99501-2252

Telephone: (907) 271-2809

Fax (907) 271-2817

Visit our website: <http://www.fakr.noaa.gov/npfmc>

November 1, 1999

Trevor McCabe  
At-Sea Processors Assn.  
4039 21<sup>st</sup> Avenue West, Suite 400  
Seattle, WA 98199

FAX CONFIRMATION  
Sent 11/2 Rec'd \_\_\_\_\_

Dear Trevor:

This is to follow up on and clarify my letter of October 21 regarding Council expectations for reports from the co-ops. The four specific elements passed by the Council in October overlap considerably with the existing provisions of the AFA, and we noted that the Council motion was in addition to any existing requirements of the AFA. There is also overlap with the Council's specific request to NMFS (from the February 1999 meeting) regarding an agency performance report each year. I have summarized these various motions and AFA provisions in the attachment to this letter, including some of the primary comments we made to the Secretary of Commerce regarding the Council's review of the original co-op agreements.

Based on these provisions, and taking into account the discussions by the AP and Council at the October meeting, I believe the list below (in no particular order) summarizes the Council's expectations regarding the reports from the co-ops. This list includes some of the things identified for the NMFS report on co-ops. I believe the Council can review the preliminary co-op reports this December, and at that time provide direction with regard to further expectations from the agency, or from the co-ops.

1. As presented in the original co-op agreements, the report should contain the parties to the contract, the vessels involved and the specific percentages of pollock and other species, including PSC, to be harvested by each party. In the case of bycatch in pollock, and directed fishing for sideboard species, I realize this may not be specifically allocated by vessel but managed as a pool. The report should specify how the co-op approached the season with regard to these species, and how it was allocated among parties, if at all.
2. The Council would expect to see the actual catch and bycatch in the directed pollock fisheries on a vessel-by-vessel basis, and in total, at year's end to see how that compares to the original co-op plan. For sideboard species, a vessel-by-vessel accounting is also expected, as well as the total. While sideboards may have been managed in aggregate by the co-op going into the fishing year, we assume you have to have vessel-by-vessel information in order to maintain the overall catch within the sideboard limit.
3. A descriptive discussion of the internal workings of the co-ops in terms of how catch of all species is allocated, how it is managed by the co-ops to stay within limits, and how transfers within the co-ops occur in-season. This would include methods to monitor catch and actions taken by co-ops to enforce vessel or aggregate limits.
4. At least a qualitative description (quantitative to the extent possible) of the co-ops' effectiveness at reducing bycatch of non-target species, including PSC. This should include a discussion of how transferability within the co-ops affects these bycatch issues, and how transferability in general affects the co-ops' ability to stay within individual and overall catch limits.

5. A description of utilization and recovery rates, by species and product categories, relative to those experienced prior to co-ops.

I realize that some of this information is only officially verifiable through State of Alaska fish tickets, or through NMFS data sets. However, I assume that the individual vessels, and the co-op as a whole, must have this type of information for all co-op members in order to stay within the pollock allocations and the aggregate sideboard limits. Having this information will allow the Council to more fully understand the workings of the co-ops, including the effects of transfers of catch among co-op participants. As I noted in my previous letter, a final report is not due until February, but any information you can provide in the preliminary report in December will be much appreciated by the Council. This will also enable the Council to determine what additional information should appropriately be provided by NMFS. Please contact me if you have any questions.

Sincerely,



Chris Oliver  
Deputy Director

cc: Sue Salveson, NMFS  
Joe Sullivan

## COOP DATA REQUIREMENTS

### AFA Section 210(a)(1):

(A) make available to the public such information about the contract, contract modifications, or fishery cooperative the Council and Secretary deem appropriate, which at a minimum shall include a list of parties to the contract, a list of the vessels involved, and the amount of pollock and other fish to be harvested by each party to the contract; and,

(B) make available to the public in such manner as the Council and Secretary deem appropriate information about the harvest by vessels under a fishery cooperative of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis.

### December 29, 1998 letter from Council to Secretary Daley:

1. Vessel by vessel data are missing from contract
2. Contract language is vague regarding sideboard species and PSC, and would not allow the Council to publish harvest levels of non-pollock groundfish or PSC on a member by member or vessel by vessel basis.
3. Does not specify how transfers within co-ops may affect harvest on vessel-by-vessel basis.

### February 1999

#### Request NMFS prepare COOP performance report:

1. Effectiveness of pollock coops in reducing bycatch (all species).
2. Effectiveness of management measures to protect other fisheries from adverse impacts caused by the AFA or pollock coops.
3. Discussion of how transfers within co-ops may affect issues 1 and 2 above.
4. Utilization and recovery rates by species and product categories.
5. Method of monitoring and enforcement.
6. Report should include the most specific catch and bycatch information available on an individual vessel level to help the coop and the Council realize the public disclosure requirements for such information envisioned in section 210(a)(1)(A).

### October 1999 Summary in Newsletter

1. Allowed catch and bycatch in pollock and all sideboards by whatever method is used to determine those allocations.
2. Actual catch and bycatch in pollock by vessel and sideboarded fisheries by whatever method is used to determine those sideboards.
3. Method used to monitor fisheries in which cooperative vessels participated.
4. Actions taken by cooperatives to enforce vessel or aggregate catches that exceed allowed catch and bycatch in pollock and all sideboarded fisheries.

**BERING SEA/ALEUTIAN ISLANDS CRAB CO-OP MEETING  
NOVEMBER 22, 1999 - SEATTLE, WASHINGTON**

**MEETING MINUTES**

The crab co-op meeting was called as a result of crab fishermen petitioning the Council to begin the process of reviewing further options to rationalize the crab fisheries of the Bering Sea/Aleutian Islands. The Council requested that Dave Fluharty and Kevin O'Leary assist in developing proposals for consideration. Approximately 140 people attended the meeting, of which about 90 were crab vessel owners or managers of vessels. Kodiak, Alaska was linked via telephone, and Jeff Stephan provided a meeting location for crab fishermen in Kodiak to listen and comment.

Chris Oliver from the NPFMC staff and Doug Mecum from ADF&G were unable to attend, but ADF&G had a representative monitoring the meeting.

**NPFMC Meeting facilitators:** Dave Fluharty  
Kevin O'Leary

Minutes were taken by Linda Kozak. For a full meeting summary (21 pages), contact Linda Kozak at 907-486-8824.

**MORNING SESSION**

<b>Presenters:</b>			
Joe Sullivan	John Bundy	Trevor McCabe	Dave Fraser
Brent Paine	John Iani	John Young	

**Presentation Highlights**

**Joe Sullivan:** Addressed anti-trust issues in forming co-ops. Referenced the Sherman Anti-trust Act, the Fishermen's Collective Marketing Act, and the Rule of Reason. Discussed examples of how anti-trust issues apply and how other co-ops were exempt. Discussed the problems with a GHL for crab, rather than a TAC and how this could impact anti-trust issues. Informed group of legal questions to NOAA GC regarding forming sub-group co-ops and how this is prohibited, because the IFQ moratorium language is so broad. Addressed questions regarding the IFQ moratorium in the reauthorization process of the Magnuson-Stevens Act. Suggested that the Council may wish to begin working on an IFQ program for crab and use this as a mechanism to inform Congress of a desire for the moratorium to expire.

**John Bundy:** Indicated a strong level of experience with whiting and pollock co-ops. Reiterated that crab co-ops have nothing to do with the co-ops formed under AFA. Stressed that co-ops work because fishermen who are flexible can work together to solve their own problems. It takes creative planning and organization to work. Stated that the

IFQ moratorium needs to be gone. NMFS will not manage 100 five-boat co-ops. The crabbers need to work with NMFS in order to work cooperatively in trying to design the co-op structure. Addressed four problems in forming co-ops:

1. Deficient Information: Everyone needs to have sufficient information about their catch and everyone else's catch is, so it can be fair and everyone feels it's fair.
2. Excessive numbers: Whiting co-op were four companies and so it was easy. There is a number where the numbers are too great and it will fail.
3. Community of Interest: Look for opportunities where members of the co-op can all win.
4. Distribution of the quota: That depends on community of interest and excessive numbers. This is important when starting to concentrate on the organizing principles of forming a co-op.

**Trevor McCabe:** Provided hand-outs with legislative language for IFQs, AFA, and buyback funds available for the crab fleet. Stated that the AFA legislation was very unique and it is unrealistic to expect this will happen again for a number of reasons. The capacity reduction component of the Act allowed for partial Congressional and partial industry financing. Congress put in \$1 million for crab, which can be a guarantee for \$100 million for a buyback. A referendum of 2/3 of the fleet needs to agree in order to do a buyback program.

**Dave Fraser:** Presented perspective from a member of a co-op for the at-sea fleet. Addressed the fact that the boat that has the most to gain will be most interested in negotiating. The vessel which has the least to gain has the best bargaining position. In order to form a co-op you need:

1. fixed allocation
2. Defined universe
3. Common data set that everyone agrees is accurate.
4. Way of monitoring to ensure compliance

Discussed the benefits of the pollock co-op which include ending the race for fish, slowing the fishery down and increasing product recovery rates, as well as achieving better leverage in price negotiations.

**Brent Paine:** Spoke as a representative of the United Catcher Boats, which has 65 trawlers as members. Recommended that any problem statement and potential solutions that would apply to crab needs to keep three things in mind; minimizing fixed and operating costs, increasing efficiency, and increasing market price. Stated that it is important to consider how the processor and harvester share in any cooperative structure and stressed that there needs to be cooperation.

**John Iani:** As a representative of Unisea, this is a shorebased processor perspective. Stated that the first thing is to reduce the number of players. Recommended that the crab industry ask Congress to help with the solutions that the crab industry needs to buy out those who leave the fishery and that those who remain will only have a partial loan to assist in buying them out. Indicated that a problem with letting the strong survive and having the low producing vessels go away, is that they won't go away. They will just get



sold for ten cents on the dollar. Stated that there is a fundamental policy to think about for IFQs vs. co-ops. IFQs in future programs have a trail of people who want a piece of the pie - environmentalists, crew members, and communities. Co-ops don't have these restrictions in place for the needed give-aways that would occur. Another issue to consider is how do you mesh the harvester with the processor? The kind of thinking of running as much product through the plant as possible will change. This is something processors and harvesters need to change the way they do business. Recommended that the crab fleet ask two questions First, do we want to change the system? Secondly, does the cooperative system make the most sense? If so, then everyone needs to put their hats on and begin working together. It will take a lot of thought and dedication in order to put it together. One thought is that most crabbers have been working with the same processor for years with the same members of the fleet, in the range of 25-30 vessels. This would be one way to bring it down to an easier level for the fleet.

**John Young:** This perspective is from someone who represents independent catcher vessels and negotiates prices. Concerned about the need to keep the competing interests of processors and harvesters in mind. Addressed his concerns with the pollock co-ops and general concerns with cooperatives in general, such as:

1. Pollock cooperative gives a tremendous disincentive to never leave your processor.
2. Cooperatives take a relevant prior number of years and you're locked in unless you buy or lease quota.
3. Prices can be a problem with many small groups negotiating, rather than one large harvester group. Communication becomes an issue.
4. Processor issues such as the two-pie proposals need to be addressed.
5. Flexibility to leave one co-op and join another needs to be included in any program.

### AFTERNOON SESSION

Three draft problem statements were presented by Brent Paine, Linda Kozak, and Steve Toomey with Gary Stewart. The Council's inshore pollock cooperative structure problem statement was presented by Arni Thomson as an informational item. There was some discussion about issues that should be included in a problem statement such as, resource concerns, need to achieve balance, and the fact that the North Pacific Council has not resolved the problem of excess capacity in the crab fisheries. Dave Fluharty stated that a problem statement would be created from the drafts presented and public comments.

Short presentations were made by Steve Miner, representative of the City of St. Paul, and Glenn Merrill, representing the Aleutians East Borough. They provided general comments regarding community dependence on the crab resource (85% for St. Paul and 35% for Aleutians East), as well as a willingness to work with the fleet to find solutions.

There was then a comment period where questions were raised and potential solutions were discussed.

Dave Fluharty then introduced the subject of draft discussion papers for crab co-ops. Discussion papers handed out included those prepared by: Ed Poulsen, Skipper's for Equitable Access, and four processing companies - Snopac, Royal Aleutian, NorQuest, and Icicle. No one was available to present the SEA paper, but Ed Poulsen and John Garner presented the other two.

The discussion that followed expressed varying degrees of support and concern. Shown below are some of the specific issues addressed:

**Cut-off date and years to consider:** Some concerns were expressed about the December 31, 1998 cut-off date. Some wanted to include 1999 and possibly 2000 for qualifying years. There were concerns from others about letting recent participants get too much credit and that long-term history needs to be rewarded. The need to compromise was emphasized. It was also expressed that if everyone stays involved in the process, the chances of a certain viewpoint being considered are very good. Regarding the years to consider for analysis, there were several options included in the discussion papers, and one verbal suggestion was to look at 1992 - 1998. Another suggestion was to take the best two out of three years or the best one out of five years. One recommendation was that recent participation could receive a different weighted value than past history.

**Restrictions on brokering crab and processor caps:** The need for fleet flexibility was discussed, with an emphasis on working with the processors. A comment was made by Tom Casey that members of the Alaska and Washington delegations have stated that there would be no co-op legislation unless processors were part of the equation. Concerns were addressed with regard to needing the flexibility to leave one co-op and join another.

**Resource and conservation concerns:**

A discussion ensued regarding conservation issues. Gordon Blue mentioned the concerns about churning through an area. The need to stop catching little crab a bunch of times. The need to conserve the resource. Ed Poulsen believes an emphasis needs to be put on conservation of the resource. David Lethin commented that small crab don't have time to escape when a pot is pulled so frequently.

**Co-ops vs. IFQs:** Some questions were raised with regard to the best type of system - why is the focus on co-ops and not on IFQs? Dave Fluharty responded that it seems to be more acceptable politically. Wally Pereyra commented that he supported IFQs, but didn't like the way the sablefish and halibut program turned out with all the bells and whistles. He stated that he was more in favor of co-ops, because it takes the government out of the equation of managing the fishermen.

**Formation of a committee:** Tom Casey suggested that it would be good to form a steering committee. One idea was to ask the Council in December to set up a committee, which would represent the interests of harvesters and processors, as well as different classes of vessels. After a lengthy discussion, the consensus was to keep the current

structure for now. Comments were made with regard to having an inclusive process and a committee might make people feel they were not part of the process. Dave Fluharty noted that as we move forward, it will be very useful to have Council and ADF&G participation and to ask for their assistance with the analysis of some of the options.

**Process for development:** Gordon Blue provided a recommendation for ways to establish the minimum elements needed to move forward in developing a cooperative program. These are shown below:

1. Management rebuilding provisions:
  - a) Deal with the problems of a GHL vs. TAC driven management system.
  - b) Establish a very conservative management regime.
  - c) Address and understand the costs for management, monitoring, enforcement?  
Industry may be assuming costs they have not in the past.  
Assure fishery managers that fishery is being managed.
2. End the Race for Fish:
  - a) Establish a catch history basis for allocation - period of years  
No new catch history to be considered - no new licenses
  - b) Reduce the number of licenses  
Buybacks - If a co-op is formed, you have to reduce the number of initial licenses
  - c) Allow co-ops to be formed with a limited number of vessels.  
Example options include - 15 vessels or 20 vessels
  - d) Voluntary participation on Co-ops  
If you can't agree to a co-op structure, you can fish under open access. Some open access quota is allowed.
3. Processor concerns - protections and/or caps
4. Community concerns
5. Sideboard issues

It was agreed to incorporate the structure provided by Gordon Blue and add the options presented in the discussion papers, along with comments during the meeting. This will be available for industry to review.

Dave Fluharty requested a show of hands of those in favor and those opposed to moving forward with the development of a cooperative program. A few were opposed and a few others expressed uncertainty, but the vast majority were willing to continue to explore and develop a co-op option with the understanding that there would be an opportunity to review the full package later on.

It was decided to hold the next meeting in conjunction with the North Pacific Council meeting in December in Anchorage. Efforts will be made to notify the entire LLP database for crab license holders, as well as processors and all those who attended the Seattle meeting.

Dave Fluharty and Kevin O'Leary will provide a meeting report for the Council at the December meeting.

The meeting adjourned at 5:00 PM

### **KEY POINTS FROM THE MEETING**

1. Anti-trust issues need to be addressed. Guideline harvest level vs. total allowable catch needs to be resolved.
2. The IFQ moratorium is an impediment to forming the types of co-ops that will work for the crab fleet.
3. A co-op must be accompanied by a reduction program. A buyback is possible with \$100 million available, with the possible combination of federal and industry financing. The buyback legislation provides for a referendum with 2/3 of the fleet approving. However there may be other ways to finance a buyback program, without going through the buyback legislation requiring a 2/3 fleet-wide referendum.
4. While the buyback legislation provides for a 2/3 approval referendum, this is not the case for the development of a co-op program.
5. Issues in forming a co-op include; (1) a good data/information set, (2) defined universe of players, (3) ways to monitor for compliance, (4) distribution of quota, (5) desire to change the system, (6) and industry support for a cooperative program.
6. Benefits to co-ops include, slowing the race for fish, ability to target highest value product, resource benefits, and flexibility based on contractual arrangements, not government oversight.
7. Concerns include the need for harvester/processor communication and willingness to work together, price negotiation issues, access to good information, and the need for flexibility.
8. Crab co-ops are not the same as the cooperatives adopted under AFA.
9. Excess capacity is a problem that impacts harvesters and processors.
10. Handling mortality and conservation concerns are a major issue.
11. Industry consensus is a key to success. If industry is not supportive, the process will not move forward. All interested parties should stay involved in the process.

# BERING SEA CRAB INDUSTRY WORKSHOP ON COOPERATIVES

NOVEMBER 22, 1999 MEETING

Welcome! Your participation at this meeting of the North Pacific crab industry is extremely important. As each of you knows, crabbing is difficult at best and now it is potentially in serious trouble. In such times in the past, the industry has been known to pull together and to focus its knowledge toward crafting solutions. Today we are exploring the use of a new tool, crab co-ops, to help deal with the current crisis and to set a solid basis for the long-term. Thanks for coming.

## MORNING SESSION -- WHAT ARE CO-OPS?

*The purpose of the morning session is to inform crab industry participants about how other co-ops have come into effect, how they are set up, and what they are expected to do. It is also a time to ask questions to obtain information.*

Tips from the Experts/Participants [a tentative list]\*

Joe Sullivan	The Legal Bases for Co-ops
John Bundy	The Pacific Hake Co-op Experience
Trevor McCabe	The American Fisheries Act and the Catcher/Processor Co-op
Dave Fraser	Catcher Vessel Co-op and the Catcher/Processor Co-op
Brent Paine	Catcher Vessel / Processor Co-ops
John Iani/Joe Plesha	Catcher Vessel / Processor Co-ops
John Young	Unresolved Legal Concerns
Chris Oliver	NPFMC and Co-ops / Gulf of Alaska Co-op Discussions
Doug Mecum	ADF&G Perspectives

[Others who would like to offer perspectives, please contact Dave or Kevin or just ask for the mike].

\*[Questions from the audience after each short presentation].

Lunch -- Approximately 12:00 noon to 1:30 PM

## AFTERNOON SESSION

*The purpose of the afternoon session is to develop an industry-driven process that leads to design of a crab co-operative.*

**DISCUSS A PROBLEM STATEMENT** [Anyone who has a written proposal will get first crack at presenting it to the meeting. Please provide copies to all and especially to Dave and Kevin]. [1 hr.]

**DISCUSS POSSIBLE CO-OP FRAMEWORKS** [Anyone who has a written proposal will get first crack at presenting it to the meeting. Please provide copies to all and especially to Dave and Kevin]. [2 hrs.]

**NEXT STEPS FOR CONTINUING THE DEVELOPMENT OF CRAB INDUSTRY CO-OPS** [1 hr.]

What are the tasks that need to be done and who can do them? Crab Industry, NPFMC, ADF&G, NMFS.

What time line do we want to establish. [For starters. What do we want to have in place by 2001]?

Other?

**Revised Draft: 10/22/99**

## **DISCUSSION PAPER**

### **DRAFT LEGISLATIVE PROPOSAL FOR BSAI CRAB COOPERATIVES**

**Background:** Recognizing the resource and financial crisis facing the Bering Sea/Aleutian Islands crab industry, numerous industry representatives from the harvesting and processing sectors of the industry, and the NPFMC, have expressed their interest and support for the development of a consensus proposal for crab cooperatives to submit for consideration for federal legislation. The assumption is that the NPFMC lacks the authority under the MSFCMA to establish the harvester/processor coop system that is under consideration. The goal of establishing the cooperative structure is to ensure sustainability of the fragile crab fisheries in a manner that will equitably benefit both harvesters and processors.

#### **OPTIONS FOR CRAB FISHING VESSELS: (ADDITIONAL ALTERNATIVES ARE SOLICITED)**

1. Co-ops would be comprised of fishing vessels that fish BSAI FMP crab fisheries. Co-ops could be combined with an industry/government funded license buyback program.
2. Co-op fishing shares would be based on catch history from crab LLP qualified vessels, on a fishery-by-fishery basis. The catch history should include a minimum of three years. Note: At an industry meeting held on September 14, 1999, there was consensus on a qualification cutoff date of December 31, 1998. This accorded with the intent of the NPFMC/NMFS 1999 notices to industry that 1999 and 2000 catch history will not count toward future limited access programs.
3. Catch history options:
  - Opilio and Bristol Bay king crab, Pribilofs and St. Matthew Is. king crab—1996-1998; but 1994-1996 for bairdi, since the fishery was closed in 1997. The Aleutians brown crab fishery should also be included.
  - Based on American Fisheries Act (AFA) years, 1995, 1996, 1997.
  - Based on AFA king crab sideboard qualification years, 1991-1997.
  - Need to develop catch history solution(s) for converted and or newly constructed vessels that acquired moratorium and fishing history rights and met the recent participation crab LLP landing requirement of February 7, 1998 and for other LLP qualified recent entrant vessels.
  - Additional catch history options for consideration?

- Allowance for transfer and stacking of catch history, with limitations, to increase efficiency and to improve profitability in the depressed crab fisheries.
4. Excessive share caps for vessel owners:
- Cap on harvesting allocation by ownership entity: 1%, 2%, 3%, 4% or 5%.
  - Cap on number of vessels owned by an ownership entity: Crab LLP establishes an upper limit of 5 vessels. Other options?
  - Include a grandfather provision.
5. How to deal with small, developing or closed fisheries (Adak red king, deep water Tanneri, Bering Sea brown crab) ?
6. Harvester/processor coop ideas, options and issues: Vessels need bargaining power, as reflected in the need to reserve the right to change processors (markets). Processors also need bargaining power and a level of stability in product flow. A major issue that divides the parties is the minimum duration of market/coop contracts.
- Duration of coop contracts: one or two year coop contracts?
  - Need to determine the minimum percentage of vessels required to authorize the development of an umbrella inshore coop structure for the Bering Sea crab fleet. Same as the AFA inshore pollock coop, 80%, or some other level?
  - Will the catcher-processor fleet need a separate umbrella coop, similar to the offshore pollock coop?
  - Need to establish an upper limit on company owned vessels in coops through a voting cap or some other mechanism: 15%, 20%, 25%, or 30% voting cap. If and when a Justice Department opinion is issued concerning AFA pollock coops, that will be considered in light of the circumstances in the BSAI crab fisheries. In any event, legislation will be needed to resolve any uncertainty for crab coops.
7. Additional issues for resolution:
- Observer coverage policy.
  - Retention policy.

OPTIONS FOR CRAB PROCESSORS: (ADDITIONAL ALTERNATIVES ARE SOLICITED)

1. Individual market share caps:

1.a. Caps could be implemented on an entity-by-entity basis, and be based on historic processing average, with an allowance for growth to minimize impacts on fishermen and processors, while maintaining market competition.

1.b. No market share caps.

2. Aggregate excessive market share cap: An upper limit on market share to preserve or enhance competition. Cap options being analyzed by the NPFMC are at the 10%, 20% and 30% levels. Options include allowance for a grandfather provision.

3. Limited number of processors:

3.a. Each processing company could be given a license to process crab. If a crab processing company is sold to an existing crab processing company, the former company's license to process would be placed on the market. The intent is to accommodate resource cycles, the fluctuating economics of the industry and to preserve market competition.

3.b. No entry limit on processors.

4. Vessels owned by crab processing companies would be included in the co-ops as above.

The recent NPFMC adopted action at the October 12-18 meeting in Seattle, on AFA pollock cooperatives, provides an informative background paper on the issues confronting the fishing industry in regards to the development and implementation of coops in 2000. Attachment.



## Bering Sea Crab Cooperatives Discussion Paper

In response to the current and projected status of crab stocks, certain segments of the crab industry have called for crab harvesting cooperatives. The North Pacific Fishery Management Council has appointed Dr. Dave Fluharty and Kevin O'Leary as Council liaison to the Bering Sea Crab Industry on this cooperative initiative. In response to their request for input at a meeting called for November 22, 1999, the following is offered for consideration and discussion. These options were prepared by, though not necessarily endorsed by, Snopac Products, Inc., Royal Aleutian Seafoods, Inc., NorQuest Seafoods, Inc. and Icicle Seafoods, Inc.

1. Crab processors, like crab harvesters, have a substantial capital investment dedicated to that industry. Crab harvesting cooperatives must take into account these investments by processors, to ensure they are not negatively impacted. Non-AFA crab processors have no option to utilize their investment in the pollock processing business, and therefore, without a realistic option to diversity into that fishery, they will need a set aside (allocation) to ensure parity with the harvesters and with AFA eligible crab processors. The set aside is to be based on historical participation in the crab fishery. That set aside might be in the form of:
  - A. AFA style processor limited entry
  - B. Some form of allocation that allows growth of the share of crab processed by these processors
  - C. AFA style coop structure (with or without Dooley-Hall type measures)
2. Others may be impacted by the formation of crab cooperatives. They include communities, crewmen and operators of the vessels. Additionally, there is a concern that cooperatives will favor some types of processing operations over others. Therefore, there needs to be an analysis of the impacts on each of the groups currently participating in the crab industry. Options for set asides for both harvester and processor rights include:
  - A. Consideration only based on historical participation
  - B. Consideration by community (e.g., should St. Paul be assured that a share of the crab will be processed there – and harvesters that delivered there historically would be required to continue that in the future?) or by group (e.g., should floating processors be assured of a share of the crab – and therefore harvesters that delivered to floaters in the past would be required to continue to do that)
  - C. Would catcher processor shares be treated as a separate group, and capped according to their historical production?
3. Crab cooperative measures should not displace or supercede the harvesting or processing sideboard protections established in the AFA.

## Bering Sea Crab Cooperatives Discussion Paper

4. The base period to define "historical participation" will need to be the same for harvesters and processors. Options for a base period include at least:
  - A. 1995 - 1997
  - B. 1995 - 1998
  - C. 1998 - 1999
  - D. Special consideration should be given to cases where a license was not used during the base period due to loss or sale of vessel, or where a license has been acquired and substantial investment made in reliance on the regulations existing at the time the license was acquired.
  - E. Participation in 1999 would be required to secure harvester or processor shares, or the last year a fishery was conducted if it was closed in 1999.
5. There must be an excessive share cap established for both processor and harvesting entities at the time the crab cooperative authorization occurs. This issue cannot be left to later Council action. Caps should reflect the highest shares in effect at the time the crab coop authorization occurs.
6. Should company owned crab harvesting vessels be allowed to participate in a harvester cooperative? Should vessels owned by shareholders in a crab processing company be allowed to participate in a harvester cooperative? Resolution of these issues should be consistent with the treatment of such vessels under the AFA.
7. Leasing, sale and stacking of both harvesting and processing rights should be allowed, subject to rules about excessive shares, and within sector rules (e.g., if a certain amount must go to St. Paul, then stacking could not reduce the amount), consistent with the treatment of these issues in the AFA.
8. Government funding to buy out excessive capacity shall be for both harvesters and processors. Harvesters and processors each are overcapitalized and must be treated equally with respect to capacity reduction funding.
9. CDQ groups will likely ask for an increased allocation of crab, similar to the results during the AFA negotiations. Are crab industry participants willing to grant an increased crab CDQ in order to gain the benefits of crab cooperatives?
10. Enforcement measures will be needed to ensure compliance with harvesting shares, processing shares and excessive share caps.
11. Consideration should be given to deleting or raising pot limits.

**December Council Meeting  
Agenda Item C-1 American Fisheries Act**

We propose that the Council do the following:

- Revoke the Exemptions to the GOA Sideboards approved by Council in June. The language for the revocation should be included in the Emergency rule, and Council should direct NMFS to remove the exemption language in the Proposed Rule.
- Reaffirm the Council's intent that Co-ops shall afford Vessels with disproportionately smaller Pollock Quotas and substantial GOA landings shall be granted consideration by the Co-op when the GOA fishing management strategies are negotiated.
- Affirm Council's intent that Vessels that received minimal benefit from AFA (less than 1700 m.t.) shall have the ability to 'opt out' of AFA if that is their desire.

There are a number of points we would like you to consider:

1. The AFA provides that Council shall implement management measures that will ensure that the aggregate catch of ALL AFA vessels will not exceed the historical catch in other fisheries. Council made the determination that historical would be the average catch 1995-1997 of all AFA Vessels.
2. We have heard from NMFS that if the Council exempts, and removes the catch history of "exempt" vessels it may be that the aggregate will be exceeded.
3. We heard from the attorney taking the lead on drafting the Co-op Contracts, that the Co-ops have been sent a message from NMFS that the contracts must address sideboards vessel by vessel. In other words, no vessel will be limited to less than it's historical average.
4. We would like to remind you that the group testifying for an exemption is the same group that testified before you in June and indicated 'very few vessels' fell into this 0-1700 category.
5. This same group is now testifying to you that they don't have large histories in the BSAI because they were parked in the gulf. The reality is that, for the most part this group of 20 is a very diversified fleet – the most likely reason their catch histories in the BSAI are low is that they participate in the whiting fishery off the Pacific Coast, the Halibut and Sablefish IFQ fisheries and crab fisheries in the BSAI.
6. The group of 20 represented states that the non-AFA vessels wish to 'take history away. That simply is untrue. We are concerned that talk of rationalization will provide further incentive to lease BSAI quota and shift effort from the BSAI to the GOA.
7. There are 14 Vessels with greater than 500 average m.t. average BSAI Pollock landings. If these vessels choose to lease their quota, these vessels realize a minimum benefit of \$82,000 – 187,000 per year, without a requirement to do any

**December Council Meeting  
Agenda Item C-1 American Fisheries Act**

more than make a single landing in the directed Pollock fishery. Further, these vessels are assured through the Co-op Contract of being able to fish their historical average.

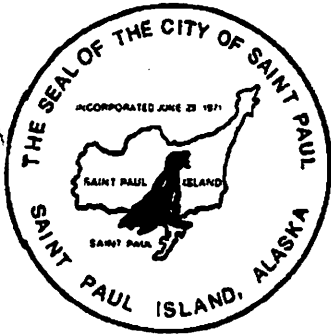
In summary, we would suggest that your decision today must give greater weight to the protection of non-AFA fisheries, than to increasing the advantage AFA Vessels received.

**Stoian Iankov  
F/V Michelle Renee**

**Kent Helligso  
F/V Pacific Star; F/V Laura**

**Joseph Han  
F/V Chellissa**

**F/V Mar Pacifico**



## CITY OF SAINT PAUL

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November 29, 1999

Mr. Richard B. Lauber, Chairman  
Mr. David Fluharty  
Mr. Kevin O'Leary  
North Pacific Fishery Management Council  
605 West 4th Avenue, Suite 306  
Anchorage, Alaska 99501-2252

Gentlemen,

First, let me take a moment to thank you for facilitating the November 22<sup>nd</sup> Crab Co-op meetings in Seattle, and allowing Steve Minor time to present some perspective from the community and the City of Saint Paul, Alaska.

On behalf of our community, I am submitting several comments and observations in the attached document "Bering Sea Crab Rationalization and the Community of St. Paul Island". This document echoes several points Mr. Minor made in last week's meetings.

The rationalization of this fishery will dramatically affect our local economy and diversification efforts. We are already scrambling to deal with the expected opilio crisis, and we want to work closely with the Council and the industry to ensure that rationalization does not precipitate a second economic disaster, nor undermine a sustainable fishery.

Again, thank you for taking the lead in last week's discussions. We look forward to continuing a close working relationship.

Sincerely,

Simeon Swetsof, Mayor  
City of Saint Paul

cc: Arni Thompson and Gordon Blue, Alaska Crab Coalition  
John Young and Gary Stewart, Independent Crab Vessel Owners  
Brent Paine and Steve Hughes, United Catcher Boats

## **Bering Sea Crab Rationalization and the Community of St. Paul Island**

The people of St. Paul Island have a unique partnership with, and a significant dependence on, the Bering Sea crab industry. It has been a good partnership for St. Paul Island and for the crab fleet. Our strategic location has allowed vessels to deliver close to the grounds, reduce dead-loss and return to the nearby grounds faster.

Our only significant economic partner continues to be the Bering Sea crab fleet, both catchers and processors, in both good times and bad.

Next spring, when the opilio crisis becomes a reality, it will almost certainly generate an economic crisis on St. Paul Island. Our local economy is about 85% dependent on the crab industry. As many of you know from our meetings, we have already started working on the opilio problem. We would like your continued support.

We want to work closely with industry, the NPFMC, and other interests throughout this process to ensure that the rationalization of the crab industry, including the potential creation of crab co-ops, does not precipitate a second economic crisis for the fishery, the industry and communities such as St. Paul Island.

Under the present circumstances, we agree that the industry needs to be rationalized. While co-ops and buy-backs are some of the alternatives being explored, there are a number of different interests that must be factored in, to find a solution acceptable to everyone. For nearly a decade, the fishing industry, the local community and the state and federal governments have invested tens of millions of dollars into harbor and utility infrastructure, processing plants and services on St. Paul Island, primarily to serve the Bering Sea crab fleet.

There are also several tens of millions of additional dollars of infrastructure investment already in the pipeline. Although much of this new investment is being made to improve operating conditions for the crab industry, it is also expected to stimulate economic diversification within the community - but those events are several years away. As a result, we need a plan that recognizes and protects these considerable investments and ensures continued and sustainable processing activity on St. Paul Island, in crab and other fisheries.

The City of Saint Paul, and the community as a whole, look forward to working with the industry, the NPFMC and other interests to muster the political and regulatory support necessary to get this done. We have already met with many of you to coordinate our

efforts to trigger a federal disaster declaration on the basis of a Commercial Fishery Failure as soon as we can document the impact of the coming opilio crisis.

In addition, we have already started meeting with Governor Knowles' staff in Alaska; however, this is also a regional problem, and must include the active support of Washington's and Oregon's political and industry leadership in order to arrive at a plan that everyone can support. We hope that the November 22nd meeting was the first step in a renewed process for developing such a plan.

Thank you.



**Tom Manos**  
201 Erie Avenue • Seattle, Washington 98122 • (206) 325-2524

NPFMC By Fax (907-271-2817)  
605 West 4th Ave. , Suite 306  
Anchorage, AK 99501

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DEC - 1 1999  
N.P.F.M.C

**RE: Agenda item C-1-b**  
**American Fisheries Act**  
Comment on proposed rule for 2000 , particularly with regard to vessel exemption

**Dear Councilmember**

I am writing as an owner of a limit seiner /trawler seeking to preserve the dynamic, competitive environment that has allowed smaller boats in Gulf of Alaska groundfishing to successfully participate.

I am concerned with the catcher vessel sideboard issue that is before the council at this meeting. If the current sideboard exemption is allowed to stand, vessels with up to 3.4 million pounds of Pollock, on hold in the Bering Sea, will be allowed to compete side by side with the small boat fleet in the gulf. To give you some idea of the difference between a small Gulf trawler and the Bering Sea big boat fleet and seventeen hundred tons or 3.4 million pounds. My boat has not caught 3.4 million pounds of fish in any of the twenty-four years I have fished in Alaska and I consider my fishing business successful. My vessel works ten months a year in Alaska and I have 15 well-paid crew positions throughout longlining, trawling and seining. The American Fisheries Act, by eliminating competition in the Bering Sea frees up a scale of vessel that can push the small trawlers out of the Gulf.

Under the options being presented by council staff please look favorably at the options for an average of 30 landings and 500mt or less for an exemption. This will allow those operators with a historic dependence in the Gulf to continue to compete in a viable way.

Sincerely,

*Tom Manos*

Tom Manos  
FV Solstice





**Southeast Alaska Seiners**

November 30, 1999

RECEIVED  
DEC - 1 1999  
N.P.F.M.C

**NPFMC By Fax (907-271-2817)  
605 West 4th Ave, Suite 306  
Anchorage, AK 99501**

**Re: Agenda item C-1-b, American Fisheries Act  
Comment on proposed rule for 2000, particularly with regard to vessel exemption**

**Dear Council member**

I am writing on behalf of Southeast Alaska Seiners (SEAS). SEAS is a broad based association of fishermen operating limit seiner size or smaller vessels, seeking to preserve the dynamic, competitive environment which has allowed the fisheries in Alaska to prosper.

SEAS is concerned with the catcher vessel sideboard issue before the council at this meeting. If the current side board exemption is allowed to stand, vessels with up to 3.4 million pounds of pollock on hold in the Bering Sea will be allowed to compete side by side with the small boat fleet in the G.O.A. We in no way think the large boat AFA fleet should lose their historic access to the Gulf, however we think that it is simply fair that they are capped at their historic catch levels.

Failure to alter this exemption will force the small boat fleet into a derby style competition with the AFA fleet. Without meaningful sideboards the small boat operators will lose any chance for legitimate participation in the Gulf while the harvest is transferred into the hands of fewer and larger catcher vessels. In order to preserve the small boat fleet that coastal Alaska depends upon, we believe it necessary to maintain opportunities for that fleet.

Under the options being presented by council staff, please look favorably at the options for an average of 30 landings and 500mt or less for an exemption. This will allow those operators with a historic dependence in the Gulf to continue to compete in a viable way in the ground fish fishery.

Sincerely,

**Mark Anderson  
NPFMC Representative**



333 First Avenue West / Seattle, WA 98119 USA / 206-286-8584 / FAX: 206-286-8810 / TELEX: 49612854 PRMPAC

December 1, 1999

Chairman Rick Lauber  
Dr. Clarence Pautzke  
North Pacific Fisheries Management Council  
605 W 4<sup>th</sup> Ave.  
Anchorage, Ak. 99501

**RECEIVED**  
DEC - 1 1999  
N.P.F.M.C

SENT VIA FACSIMILE

Dear Rick and Clarence,


It appears that NMFS has incorrectly interpreted the June, 1999 NPFMC action regarding Catcher Vessel Sideboards as it relates among other things to Mothership Catcher Vessel Pacific Cod sideboards.

Under BSAI Groundfish Sideboards, item 6a. states that groundfish sideboards shall apply throughout the year except: Mothership sector qualified AFA vessels CV trawl P. cod sideboards shall be lifted March 1.

In the draft regulatory process NMFS has indicated that they intend to write regulations that would apply the sideboard year round rather than lifting the sideboard on March 1 as the Council passed. It would be greatly appreciated if at some point during the upcoming meeting the Council could restate its intention from the June meeting regarding the lifting of this sideboard on March 1 of each year. The Council's statement in June was very clear and the language of 6a is unambiguous.

Thanks for your kind consideration of the unfortunately redundant bit of housekeeping.

Sincerely Yours,

  
Doug Forsyth  
President



## PURSE SEINE VESSEL OWNERS ASSOCIATION

1900 W. NICKERSON ST., #320  
SEATTLE, WA 98119-1650

TEL. (206) 283-7733  
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December 1, 1999

NPFMC By Fax (907) 271-2817  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252

Re: December 1999 Council meeting in Anchorage, Alaska under Agenda item C-1 (b)

**American Fisheries Act and proposed rules for 2000, particularly with regard to vessel exemptions in the GOA fisheries**

Chairman Lauber and Council Members:

My organization represents 500 small boat owners who operate in multiple fisheries throughout the West Coast and Alaska.

Small boat groundfish harvesters (vessels less than 59') account for 77% of the entire groundfish fleet in the Alaskan EEZ, and that fleet is 86% Alaskan owned. Under present LLP rules, 45% of the GOA trawl endorsements will go to these small boats.

The allocative needs of harvesters and processors in the Bering Sea, which were generously addressed in the American Fisheries Act, failed to consider or protect in any meaningful fashion the interests of small boat participants in the GOA. No one at this meeting can seriously argue that the implementation of AFA shoreside coops, without adequate sideboard protections, will allow a major influx of "previous" Bering Sea harvesters into the GOA. At your October meeting in Seattle you recognized and acted on a similar problem by adopting a fixed gear allocation for BSAI cod fearing the influx of crabbers.

We appreciate the Council's willingness to delay action on the GOA sideboard rule proposed at your June meeting in Kodiak. That proposal, which provided an exemption to AFA eligible vessels under 125' which annually landed less than 1700 metric ton GOA groundfish, would have devastated the small boat fleet.


We must now craft a set of GOA sideboards that provide interim protection for the 2000 fishing season. Staff was instructed at the October meeting in Seattle to prepare a discussion paper analyzing a range of alternatives, based on poundage and landing requirements, to determine what AFA eligible vessels, if any, should qualify to fish in the GOA.

We did not have an opportunity to review the Staff analysis prior to submittal of this testimony. However, we are confident that the range of alternatives to be analyzed will provide sufficient information to develop workable sideboards for 2000. That is, sideboards that allow participation by only those AFA vessels which have, and will continue, to substantively rely on GOA fisheries. [We will amend our oral testimony to comment on the staff discussion paper/analysis. Any less restrictive sideboards will only further complicate efforts to rationalize the GOA fisheries.

With a "fair" sideboard package in place, we urge its implementation by emergency rule as early in 2000 as possible.

With this hopefully accomplished, we look forward to contributing toward the development of a plan to rationalize GOA fisheries,

Thank you,



ROB ZUANICH  
Executive Director

AFA CV's (<125' LOA) who averaged less than 1,700 mt of annual BSAI pollock landings grouped by their number of BSAI landings, 1995-97

BSAI Pollock Avg. Catch	BSAI Groundfish Landings						BSAI Pacific Cod Landings					
	<15	15+	20+	30+	40+	Total	<15	15+	20+	30+	40+	Total
<500	6	3	2	0	0	9	7	2	1	0	0	9
<750	6	6	5	3	3	12	7	5	4	2	2	12
<1200	6	14	13	11	11	20	7	13	12	9	4	20
<1700	6	25	24	22	22	31	7	24	23	18	13	31