


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver 
Executive Director

DATE: May 23, 2006

SUBJECT: IR/IU

ESTIMATED TIME 12 HOURS (all C-1 items)

ACTION REQUIRED

- a) Final action on Amendment 80 EA/RIR/IRFA
- b) Review proposed data collection program, and take action as necessary

Amendment 80

Amendment 80 proposes to allocate rock sole, flathead sole, yellowfin sole, AI Pacific ocean perch, and Atka mackerel to the Non-AFA Trawl catcher processor sector. In addition, the proposed action would allocate PSC limits to the sector for use in their BSAI directed fisheries. The proposed action would establish a cooperative program for qualified Non-AFA Trawl catcher processor participants. To maintain existing fishing activity among non-allocated species in the BSAI and the GOA, sideboards are included in the proposed action. Finally, Amendment 80 includes options for increasing the CDQ program allocation of the five species noted above, secondary species taken incidental in these fisheries, and PSC limits.

In April 2006, the Council reviewed the Amendment 80 EA/RIR/IRFA Public Review draft, but did not take final action. The Council modified some of the components and options of the proposed action and narrowed the focus of the preliminary preferred alternative. Staff has updated the EA/RIR/IRFA to reflect the changes to the components and options and the preliminary preferred alternative. The revised EA/RIR/IRFA for Amendment 80 was released for public review on May 9. The executive summary of this analysis is attached as **Item C-1(a)**. A copy of the current alternatives, components, and options for Amendment 80 is attached as **Item C-1(a)(1)**. An additional table for the analysis is attached as **Item C-1(a)(2)** and modified tables (Table ES-2 on page viii, Table ES-7 on page xii, Table ES-13 on page xvii, and Table 3-97 on page 242) are attached as **Item C-1(a)(3)**. The table modifications are limited to the threshold allocation and the total allocation amounts when ITAC exceeds the threshold. The Council is scheduled to take final action at this meeting.

Data Collection Program

A data collection program is included in this action, and a summary of the program will be presented to the industry on Monday, June 5 from 6 to 8 pm in Fisherman's Hall. The proposed data collection program will also be presented to the SSC. The purpose of these presentations is to receive input from the industry and SSC on the data collection program for Council consideration (Section 3.2.12.15 and Appendix 3 in the document).

AGENDA C-1(a)
JUNE 2006

EXECUTIVE SUMMARY FOR AMENDMENT 80

The North Pacific Fishery Management Council (Council) has long recognized the need to reduce bycatch, minimize waste, and improve utilization of fish resources to the extent practicable in order to provide the maximum benefit to present generations of fishermen, associated fishing industry sectors, communities, and the nation as a whole. Since at least 1995, the Non-AFA Trawl CP sector has had the highest discard rate in the Bering Sea and Aleutian Islands (BSAI) groundfish fisheries. Although the overall retention level in that sector has increased in the last decade, it is still well below other BSAI sectors. The Non-AFA Trawl CP sector primarily participates in multi-species fisheries that operates under a "race for fish", where vessels attempt to maximize their harvest in as little time as possible, in order to claim a larger share of the available quota. Because vessels are competing with each other for shares of the total quota, an individual vessel may be penalized for undertaking actions to reduce incidental catch, such as searching for cleaner fishing grounds. To provide the sector with a tool to increase economic efficiency when reducing incidental catch and minimizing waste, the Council in October 2002, initiated Amendment 80, an action that would eliminate the race for fish among members of the sector that wanted to join a cooperative.

Amendment 80 would provide specific groundfish allocations to Non-AFA Trawl CP sector and allow the formation of cooperatives. Sector allocations and associated cooperatives would allow participants to focus less on harvest maximization and more on optimizing their harvest. This in turn could allow reduction of incidental catch, improve retention, and improve utilization, while still improving the economic health of the harvesting and processing, all of which address the problem statement for Amendment 80.

Four strawman alternatives are considered to compare the impacts of the proposed program components, a status quo alternative (Alternative 1) and three alternatives that would allow the formation of multiple (Alternatives 2 and 4) or single (Alternative 3) cooperatives. The alternatives evaluated in this analysis are summarized in the table below.

	Alternative 1 (Status Quo)	Alternative 2	Alternative 3	Alternative 4
Primary Target Species to be Allocated	None	yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch	yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch	yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch
Allocation to Sector	None	<p><u>Allocation:</u> Sector's retained catch over all retained catch, 1998-2002</p> <p><u>Management:</u> Hard cap</p> <p><u>Yellowfin sole:</u> all yellowfin sole in excess of 125,000 mt threshold to be divided 30% to sector and 70% to other trawl; rollover to the Non-AFA Trawl CP sector; no AFA yellowfin sole sideboards for yellowfin sole threshold fishery</p>	<p><u>Allocation:</u> Sector's retained catch over all total catch, 1995-2003</p> <p><u>Management:</u> Soft cap; rollover to sector</p> <p><u>Yellowfin sole:</u> all yellowfin sole in excess of 100,000 mt threshold to be divided 70% to sector and 30% to other trawl; rollover to the Non-AFA Trawl CP sector; no AFA yellowfin sideboards for yellowfin sole threshold fishery</p>	<p><u>Allocation:</u> Yellowfin sole 82.5%, rock sole 97%, flathead sole 98%, EAI/BS and CAI Atka mackerel 98% reduced to 90% over a 4-year period at 5% per year starting in second year. WAI Atka mackerel 100%. EAI and CAI AI POP 95% reduced to 90% the second year. WAI POP 98%.</p> <p><u>Management:</u> Hard cap for sector and an ICA for fixed gear sectors and trawl limited access fishery; rollover of allocated species and PSC to H&G sector, halibut PSC rollover discounted 5%</p> <p><u>Yellowfin sole:</u> all yellowfin sole in excess of 125,000 mt threshold to be divided 60% to H&G sector and 40% to the general limited access fishery; allow rollovers to the Non-AFA Trawl CP sector; no AFA yellowfin sole sideboards in the threshold fishery</p>

	Alternative 1 (Status Quo)	Alternative 2	Alternative 3	Alternative 4
Allocation of Prohibited Species	PSC allocated by target fishery and shared among all trawl vessels	Sector allowance based on average historic PSC usage in directed fishery for allocated primary species plus Pacific cod, 1998-2002	Sector allowance based on: a) average PSC usage, by fishery, of all trawl in each PSC fishery group for allocated primary species plus Pacific cod, 1995-2003 b) apply sector proportion as determined above c) reduce by 5%	Two <u>halibut</u> PSC options 1) H&G sector allowance based on average historic usage of PSC from 2000-2004. Reduce calculated halibut PSC allowance to 80% of apportionment amount phased in at 5% per year starting in the second year. 2) Allocate PSC based on sector's percentage allocations of Amendment 80 species multiplied by trawl PSC amounts apportioned to target species staying within 2,200 mt minimum and 2,450 mt maximum. <u>Crab</u> PSC apportionment amounts are 37.52% red king crab, 61.44% <i>C. opilio</i> , 52.64% for Zone 1 <i>C. bairdi</i> , and 29.59% for Zone 2 <i>C. bairdi</i> . Reduce crab PSC allocations to 80% of apportionment amount phased in at 5% per year starting in second year.
Sector Eligibility	determined by Congress	Determined by Congress	determined by Congress	determined by Congress
Cooperative formation	None	<u>Threshold:</u> 15% minimum of eligible participants and must be comprised of at least two separate entities	<u>Threshold:</u> 67% minimum of eligible vessels and must be comprised of at least three separate entities	<u>Threshold:</u> 30% minimum of eligible vessels and must be comprised of at least three separate entities

	Alternative 1 (Status Quo)	Alternative 2	Alternative 3	Alternative 4
Cooperative allocation	None	<p>Allocation: based on retain catch history, 1998-2002</p> <p>For Atka mackerel each vessel would receive its historic catch for all area combined. Vessels less than 200' in length and less than 2% of the sector's Atka mackerel history will receive their allocation by area according to catch distribution in those areas. The remainder of the Atka mackerel allocation in each of the subareas will be allocated equally in each area to vessels that are greater than 200' length or have more than 2% of the sector's Atka mackerel allocation.</p> <p>A qualified vessel that has not fished after 1997 will receive an allocation no less than 0.5% for yellowfin sole, 0.5% for rock sole, and 0.1 percent for flathead sole.</p>	<p>Allocation: based on total catch history, 1995-2003 drop 3</p> <p>For Atka mackerel each vessel would receive its historic catch for all area combined. Vessels less than 200' in length and less than 2% of the sector's Atka mackerel history will receive their allocation by area according to catch distribution in those areas. The remainder of the Atka mackerel allocation in each of the subareas will be allocated equally in each area to vessels that are greater than 200' length or have more than 2% of the sector's Atka mackerel allocation.</p> <p>A qualified vessel that has not fished after 1997 will receive an allocation no less than 0.5% for yellowfin sole, 0.5% for rock sole, and 0.1 percent for flathead sole.</p>	<p>Allocation: based on total catch history, 1998-2004 drop 2</p> <p>For Atka mackerel each vessel would receive its historic catch for all areas combined. Vessels less than 200' in length and less than 2% of the sector's Atka mackerel history will receive their allocation by area according to catch distribution in those areas. The remainder of the Atka mackerel allocation in each of the subareas will be allocated equally in each area to vessels that are greater than 200' length or have more than 2% of the sector's Atka mackerel allocation.</p> <p>A qualified vessel that has not fished after 1997 will receive an allocation no less than 0.5% for yellowfin sole, 0.5% for rock sole, and 0.1 percent for flathead sole.</p>
Excessive share limits	None	No limit on consolidation	No single person can hold no more than 50% of the catch history of an allocated species	<p>No single person can hold more than 30% of the catch history of an allocated either on an aggregate basis Initial allocation grandfathered</p> <p>No vessel may harvest more than 10% of the entire sector allocation. Initial allocation grandfathered</p>

	Alternative 1 (Status Quo)	Alternative 2	Alternative 3	Alternative 4
Sideboards	None	<p><u>For sector:</u> established based on participation in other fisheries, 1998-2002; for GOA halibut PSC based on usage by area, 1998-2002; only vessels that have GOA wide weekly participation in the flatfish fisheries over the threshold during the qualifying period would be eligible to participate in the GOA flatfish fisheries</p> <p><u>Within sector:</u> established between cooperative and non-cooperative participants for unallocated species</p>	<p><u>For sector:</u> established based on participation in other fisheries, 1995-2003; for GOA halibut PSC based usage by area, 1995-2003</p> <p><u>Within sector:</u> established between cooperative and non-cooperative participants for unallocated species</p>	<p>BSAI None</p> <p>GOA</p> <ol style="list-style-type: none"> 1) Eligible to participate in the GOA flatfish fisheries based on 10 weeks of participation in flatfish fishery using 1998-2004. 2) Sector vessels that have fished 80% of their weeks in the GOA from 2000 to 2003 will be exempt from GOA halibut sideboards 3) Gulf-wide halibut sideboards calculated based on actual usage for each target fishery within each area for the Non-AFA Trawl CP sector using 1998-2004 4) GOA pollock, Pacific cod, and directed rockfish sideboards for the Non-AFA Trawl CP sector based on retained catch of the sector as a percent of retain catch of all sectors from 1998-2004 5) CGOA rockfish demonstration program takes precedence. 6) Sideboards apply to vessels and LLPs used to generate harvest shares 7) GOA rationalization program when complete will supersede Amendment 80 sideboards 8) Sideboards for PSC and GOA would be allocated between cooperative and non-cooperative vessel/licenses based on same formula as Component 10 9) Each cooperative will receive its GOA sideboards

	Alternative 1 (Status Quo)	Alternative 2	Alternative 3	Alternative 4
CDQ	7.5% of groundfish and prohibited species (except herring) allocated to CDQ multispecies fishery	10% of allocated species, plus secondary species caught incidentally in directed fisheries, to CDQ multispecies fishery; PSQ proportional to the CDQ allocation	15% of allocated species, plus secondary species caught incidentally in directed fisheries, to CDQ multispecies fishery; PSQ proportional to the CDQ allocation	10% of allocated species and secondary species caught (except Pcod) taken incidentally in directed fisheries, to CDQ multispecies fishery; PSQ proportional to the CDQ allocation

Regulatory Impact Review

Effects on Harvest Participant and Fishing Practices

Alternative 1: Status Quo/No Action

Maintaining the status quo is expected to result in the continuation of existing fishing practices and patterns. Participants in the Non-AFA Trawl CP sector will likely continue to focus the majority of their fishing effort on several flatfish species, Atka mackerel, AI Pacific Ocean perch and Pacific cod in the BSAI. Some vessels in the sector will also participate in GOA fisheries. Under this alternative, trawl participants will continue to race for fish. Trawl fisheries will continue to be prematurely closed due to constraining halibut PSC allowances. Sector discard rates will likely improve, but overall the retention rates will continue to lag behind the rest of the BSAI sectors. Contributing to the improved retention rates is the impending groundfish retention standard (GRS) action. Amendment 79, if approved by the Secretary of Commerce, would phase in the GRS over a four-year period. Originally approved by the Council in June 2003, the GRS was to begin in 2005 with a starting GRS rate of 65 percent. Over the subsequent four-year period, the GRS would gradually increase, culminating at 85 percent in the fourth year. The action would only require Non-AFA Trawl CP vessels greater than or equal to 125 ft. LOA to comply with the GRS. Non-AFA Trawl CP vessels less than or equal 125 ft. LOA would be exempt from the GRS. To monitor and enforce the GRS, sector vessels greater than or equal to 125' LOA would be required to measure all catch on flow scales and all hauls must be observed. Many of the vessels already have flow scales onboard, but seven vessels need to install the scales. All sixteen vessels greater than 125 ft. LOA would also be required to carry an extra observer. Where feasible, GRS could reduce economic returns from fisheries to members of the sector.

Alternative 2

Under Alternative 2, the allocation percentages to the Non-AFA Trawl CP sector are expected to be sufficient to keep the sector's groundfish catch levels about the same as their historic catch (see Table ES-1). However, the remaining portion of groundfish reserved for the general limited access fishery would be substantially less than historic harvests and may disadvantage members of other sectors, particularly non-AFA catcher vessels. The remaining amount of groundfish reserved for the trawl limited access fishery is less than the combined AFA Trawl CP and CV sideboards for each of the species. Between 1995 and 1997, vessels whose catch history was assigned to the AFA Trawl CP and CV sectors participated in the fisheries allocated to the Non-AFA Trawl CP sector in larger numbers.

Table ES - 1 Allocations of Amendment 80 species under Alternative 2

Allocated Species	Alternative 2	
	Non-AFA Trawl CP sector Allocation percent	Trawl limited access fishery Allocation percent
Atka mackerel	99.7%	0.3%
Flathead sole	96.8%	3.2%
AI POP	100%	0.0%
Rock sole	95.4%	4.6%
Yellowfin sole	88.5%	11.5%

Source: Data summarized from 1995-2004 NOAA Fisheries Weekly Production Reports.

Under this alternative, the yellowfin sole threshold program could provide the opportunity for the AFA Trawl CP and CV sectors and the Non-AFA Trawl CV sector to expand their harvest of yellowfin sole in periods when BSAI pollock TAC declines relative to yellowfin sole. In that circumstance, 30 percent of the TAC over 125,000 mt would be assigned to the Non-AFA Trawl CP sector. The remaining 70 percent of the TAC would be apportioned to the trawl vessels that are not a part of the Non-AFA Trawl CP sector. Allocating 70 percent of the TAC, above the 125,000 mt level, would provide expanded harvesting opportunities for these sectors. Table ES-2 provides the yellowfin sole allocation to the Non-AFA Trawl CP sector and the trawl limited access fishery given different TAC levels.

Table ES - 2 Yellowfin sole allocation to the Non-AFA Trawl CP sector and the trawl limited access fishery to include threshold allocations under different TAC levels for Alternative 2.

TAC	125,000	140,000	150,000	160,000	170,000
CDQ allocation (10%)	12,500	14,000	15,000	16,000	17,000
ICA (Assumed 5%)	5,625	6,300	6,750	7,200	7,650
ITAC	106,875	119,700	128,250	136,800	145,350
Non-threshold Trawl limited access allocation	12,291	13,766	14,749	15,732	16,715
Non-threshold Non-AFA Trawl CP Sector allocation	94,584	105,935	113,501	121,068	128,635
Threshold allocation to trawl limited access			2,275	8,260	14,245
Threshold allocation to Non-AFA Trawl CP sector			975	3,540	6,105
Total allocation for trawl limited access	12,291	13,766	17,024	23,992	30,960
Total allocation for Non-AFA Trawl CP sector	94,584	105,935	115,776	124,608	134,470

The PSC allocation to the Non-AFA Trawl CP sector under Alternative 2 would likely be sufficient to harvest their entire allocation of groundfish. However, the remaining halibut PSC for all other trawlers could be insufficient to harvest the allocation of groundfish to the general limited access fishery. Given the historically usage of halibut PSC from 1995 to 1998, there is the potential for the remaining trawl sectors to fall short of the necessary halibut PSC needed to harvest the remaining groundfish, if, for example, the Pacific cod TAC were to increase relative to pollock TAC. Table ES-3 provides the PSC allocation under Alternative.

Table ES - 3 PSC allocations for Alternative 2 based on PSC usage by the Non-AFA Trawl CP sector from 1998 to 2002

PSC Species	Percent of PSC usage using average of annual percents
Halibut	77.43%
Red king crab	90.37%
<i>C. opilio</i>	94.37%
Zone 1 <i>C. bairdi</i>	90.41%
Zone 2 <i>C. bairdi</i>	94.56%

Source: Amendment 80 database. At this time, only data for 2003 was available for halibut.

Under Alternative 2, PSC allowance would be allocated to the Non-AFA Trawl CP sector for use while targeting their allocation of groundfish and any other non-allocated BSAI groundfish. PSC allowance allocated to the sector will be further divided between the cooperatives and the non-cooperative pool.

Based on the eligibility requirements under this alternative, there appear to be 26 vessels that qualify for the Non-AFA Trawl CP sector. Four vessels with trawl CP licenses failed to harvest the required 150 mt of BSAI groundfish with trawl gear and process that catch between 1997 and 2002.

Under Alternative 2, 15 percent of the qualified vessels would be needed to form a cooperative. In addition, at least three unique entities (using the 10 percent AFA rule) are required for cooperative formation. Since under Alternative 2 there are likely to be 26 qualified vessels, at least four of these vessels would be needed to form a cooperative. If each of the cooperatives had the minimum required four qualified vessels, six cooperatives would be formed in the Non-AFA Trawl CP sector. This provision should help to ensure that each vessel is given the opportunity to join a cooperative. Alternatively, the "odd-person-out" may have less of a voice in deciding the terms of the cooperative agreement. It seems less likely that the "odd-person-out" would be worse off under this alternative than Alternative 3 cooperative structure, which allows only a single cooperative to form. Under this action, each participant would have the option to join any of six potential cooperatives, so it is more likely to find a cooperative that would help them meet their objectives. Participants who elect not to join a cooperative would participate outside a cooperative but within the sector's limited access fishery.

Under Alternative 2, allocation of the primary species and PSC allowances between cooperatives and the sector's limited access fishery is based on the retained catch of the allocated species of the eligible license holders included in each cooperative and in the non-cooperative pool for the years 1998-2002, with no years of catch history excluded. Since it is not possible to determine which vessels will join a cooperative(s) very little can be said about the distribution of the sector's TAC between cooperatives and the sector's limited access fishery.

Using retained catch during the years 1998-2002 with no drop years, the number of vessels that would be below with minimum allocation for flathead sole (0.1 percent), rock sole (0.5 percent) and yellowfin sole (0.5 percent) would be less than 3. Due to confidentiality requirements, a more detailed description of the minimum allocation is not possible.

Unlike the other four allocated species, the allocation of Atka mackerel under Alternative 2 would be based on total catch for the years 1998-2002. Under this alternative, vessels less than 200' in length having less than 2 percent of the sector's Atka mackerel history will receive 1.937 percent of the BSAI Atka mackerel of which 1.505 percent would come from EAI/BS and .432 percent would come from the CAI. Applying these allocations to the 2005 TAC, the non-mackerel vessels would receive 12.6 percent of the EAI/BS TAC and 0.8 percent of the CAI. After deducting the allocation to the non-mackerel vessels, the remaining 98 percent of the BSAI Atka mackerel would be reserved for vessels greater than 200' in length or have more than 2 percent of the sector's Atka mackerel allocation.

Consolidation in the Non-AFA Trawl CP sector under Alternative 2 would not be constrained. There would be no limit on the percentage of the Non-AFA Trawl CP sector allocation that an eligible participant can own or use. In general, number of vessels in the fishery could be reduced to the minimum number need to harvest the entire allocation. Cost savings associated with a more optimal fleet size is expected to increase the producer surplus generated by the fleet.

Alternative 2 would implement specific GOA harvest caps on the Non-AFA Trawl CP sector for the species that are not allocated. Sideboard caps would be set using the sector's retained catch of BSAI groundfish species from 1998-2002 in all fisheries relative to the retained catch of all vessels. Those percentages are reported in Table ES-4. Sideboard caps would not be established for BSAI species. GOA groundfish harvests by the Non-AFA Trawl CP sector would be limited by requiring vessels to have fished 10 weeks during the 1998-2002 period. The 13 vessels that fished more than 10 weeks in the GOA flatfish fisheries during the qualifying period would be allowed to fish GOA flatfish without additional restrictions beyond the current management measures. The other eight vessels that have historically fished flatfish in the GOA, but had limited participation, would be prohibited from directed fishing for GOA flatfish in the future.

Table ES - 4 GOA sideboard estimates and average historic catch

Species	Alternative 2		
	Sideboard %	2005 ITAC (mt)	Estimated Sideboard (mt)
Pollock			
Pollock 610	0.3%	30,380	91
Pollock 620	0.1%	34,404	34
Pollock 630	0.1%	18,718	19
Pollock 640	0.1%	1,688	2

Species	Alternative 2		
	Sideboard %	2005 ITAC (mt)	Estimated Sideboard (mt)
Central Gulf			
Pacific Ocean Perch	RDP	8,535	RDP
Pelagic Shelf Rockfish	RDP	3,067	RDP
Northern Rockfish	RDP	4,283	RDP
Pacific Cod	5.4%	25,086	1,355
Western Gulf			
Pacific Ocean Perch	99.3%	2,567	2,549
Pelagic Shelf Rockfish	64.8%	377	244
Northern Rockfish	100.0%	808	808
Pacific Cod	2.0%	15,687	314
West Yakutat			
Pacific Ocean Perch	94.5%	841	795
Pacific Cod	3.6%	0	0
Pelagic Shelf Rockfish	86.4%	211	182

Source: Sideboard percent was estimated using the retained catch of the 26 Non-AFA Trawl CP vessels (as estimated in the Council IR/IU and GOA Rationalization data base) divided by the catch of all vessels in the GOA

Note: Only vessels with a sufficient number of weeks fished in GOA flatfish fisheries may participate in a directed flatfish fishery.

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

Sideboards would also be set for GOA halibut PSC based on actual usage relative to the other sectors from 1998-2002. The tons and percentage of the GOA halibut PSC allotment to Deep and Shallow water species groups are reported in Table ES-5. The amounts of halibut estimated for Alternative 2 are less than the fleet has traditional taken in the GOA.

Table ES - 5 GOA Trawl Halibut PSC Sideboard estimates (mt)

Alternative	Quarter				Total
	1	2	3	4	
	Trawl Halibut PSC Allotment to Deep Water, by Quarter (mt)				
Alt 2	50.94 (2.55%)	228.05 (11.40%)	243.29 (12.16%)	60.84 (4.09%)	583.12 (29.16%)
	Percent of Trawl Halibut Allotment to Shallow Water by Quarter				
Alt 2	18.75 (0.94%)	43.68 (2.18%)	43.59 (2.18%)	58.03 (2.90%)	164.05 (8.20%)

Source: NPFMC summary of NMFS weekly PSC reports.

Note: Data for 2004 was not included in this report. A trawl PSC allotment of 2,000 mt was assumed.

The Non-AFA Trawl CP sector should have the opportunity to harvest their historic percentages of BSAI groundfish species, given the sideboard options selected. These caps do not give the sector the rights to those fish, but instead are limits on their catch. Other sectors could legally harvest portions of the sideboard limits before the Non-AFA Trawl CP sector catches them. Basing the caps on retained catch, results in larger caps, in most cases, relative to using total catch.

Future GOA groundfish harvests cannot be predicted, without additional information on the number of participants that will be allowed to fish in the future. The GOA PSC caps, however, should enable the sector to harvest historic levels of groundfish. GOA halibut PSC catches were not assigned to a specific area, since NMFS does not manage PSC by area in the GOA. Finally, the analysts assumed that any catches by the sector under the Rockfish Pilot program would be deducted from the sideboard cap amounts.

Given the Alternative 2 methods of calculating the BSAI sideboard caps, it is expected that the Non-AFA Trawl CP sector could harvest their historic percentages of various fisheries and still provide sufficient protection for other sectors. Insufficient information is available to make that determination for the GOA. However, given that most fisheries in the GOA are closed due to halibut bycatch and not TAC, the halibut PSC caps should provide adequate protection for most species.

With regards to the meeting the GRS, Non-AFA Trawl CP sector participants would likely be better off under Alternatives 2 than under Alternative 1. Under Alternative 2 sector participants that join a cooperative can pool their individual annual GRS rates across the cooperative. Under Alternative 1, the GRS would be enforced on a vessel by vessel basis. Under Alternative 2, vessels in a cooperative would average their individual annual retention rates, which could help to reduce increased operation costs for those vessels limited by the GRS. Overall, given the flexibility of this alternative, each cooperative will minimize the cost of meeting the GRS to the extent possible.

Alternative 3

Under Alternative 3, the allocation of groundfish species and PSC species would be insufficient to maintain the Non-AFA Trawl CP sector's historic harvest levels (except maybe yellowfin sole). In addition, large portions of the remaining Amendment 80 species would be directed to the general limited access fishery where it would likely remain unharvested without substantial increases in harvest by participants in the fishery. The Non-AFA Trawl CV sector has traditionally not harvested rock sole to level allocated under this alternative. The alternative does include a provision to rollover any portion of the general limited access fishery allocation that is projected to go unused by a given date. However, the timing of some of the fisheries and lack of PSC that would be necessary to harvest the rollover decrease the benefits relative to a direct allocation as in Alternative 2. Table ES-6 shows groundfish allocation percentages for Alternative 3.

Table ES - 6 Allocations of Amendment 80 species under Alternative 3

Alternative 3		
Allocated Species	Non-AFA Trawl CP sector	General limited access fishery
	Allocation percent	Allocation percent
Atka mackerel	84.3%	14.6%
Flathead sole	63.1%	37.4%
AI POP	85.4%	13.8%
Rock sole	37.0%	63.9%
Yellowfin sole	59.8%	42.1%

Source: Data summarized from 1995-2004 NOAA Fisheries Weekly Production Reports.

Under this alternative, relative to Alternative 2, the yellowfin sole threshold program would be less likely to provide an opportunity for the AFA Trawl CP and CV sectors and the Non-AFA Trawl CV sector to expand their harvest of yellowfin sole in periods when pollock TAC declines relative to yellowfin sole. The primary reason is the allocation of the ITAC above the threshold would favor the Non-AFA Trawl CP sector and would diminish the yellowfin sole allocation to the general limited access fishery when ITAC exceeded the 100,000 mt threshold from 48 percent to 30 percent. Yellowfin sole ITAC above the threshold would be distributed 70 percent to the Non-AFA Trawl CP sector and 30 percent to all other trawlers. Constraining the success of the threshold program, under this alternative, is the lack of halibut PSC. Like Alternative 2, this alternative does not include reallocation of halibut PSC as part of the rollover provisions, so sectors will have to rely on their initial halibut allowance to harvest any groundfish that is rolled over to them. Table ES-7 provides the yellowfin sole allocation to the Non-AFA Trawl CP sector and the trawl limited access fishery given different TAC levels under Alternative 3.

Although it cannot be determined with any certainty, the PSC allocation percentages under this alternative could result in an allocation to the Non-AFA Trawl CP sector that may be insufficient for harvesting their entire allocation of the target species, if the sector cannot reduce its PSC catch rates substantially from current levels. In contrast, the remaining portion of halibut PSC reserved for all other trawlers should be sufficient to harvest the remaining portion of unallocated groundfish. Alternative 3 also includes a reduction in the calculated PSC apportionments to the Non-AFA Trawl CP sector by an additional 5 percent. Table ES-8 provides the PSC allocation under Alternative 3.

Like Alternative 2, 26 vessels appear to qualify for the Non-AFA Trawl CP sector. Four vessels with trawl CP licenses failed to harvest the required 150 mt of BSAI groundfish with trawl gear and process that catch between 1997 and 2002.

Table ES - 7 Yellowfin sole allocation to the Non-AFA Trawl CP sector and the trawl limited access fishery to include threshold allocations under different TAC levels for Alternative 3.

TAC	100,000	110,000	120,000	130,000	140,000
CDQ allocation (10%)	10,000	11,000	12,000	13,000	14,000
ICA (Assumed 5%)	4,500	4,950	5,400	5,850	6,300
ITAC	85,500	94,050	102,600	111,150	119,700
Non-threshold Trawl limited access allocation	34,371	37,808	63,645	44,682	48,119
Non-threshold Non-AFA Trawl CP Sector allocation	51,129	56,242	61,355	66,468	71,581
Threshold allocation to trawl limited access			780	3,345	5,910
Threshold allocation to Non-AFA Trawl CP sector			1,820	7,805	13,790
Total allocation for trawl limited access	34,371	37,808	64,425	48,027	54,029
Total allocation for Non-AFA Trawl CP sector	51,129	56,242	63,175	74,273	85,371

Table ES - 8 PSC allocations for Alternative 3 based on percentages from allocated Amendment 80 species multiplied by the total trawl PSC usage from 1995 to 2002

PSC Species	Percent of PSC usage using average of annual percents
Halibut	35.59%
Red king crab	34.98%
<i>C. opilio</i>	44.51%
Zone 1 <i>C. bairdi</i>	31.94%
Zone 2 <i>C. bairdi</i>	47.22%

Source: Amendment 80 database. At this time, only data for 2003 was available for halibut.

Under Alternative 3, PSC allowance would be allocated to the Non-AFA Trawl CP sector for use while targeting their allocation of groundfish and any other non-allocated BSAI groundfish. PSC allowance allocated to the sector will be further divided between the cooperatives and the non-cooperative pool.

To form a cooperative under this alternative, 67 percent of the eligible vessels would be required. If the calculation is based on vessels, and 26 vessels are in the sector, then 17 vessels would be required to meet the 67 percent threshold. Those qualified participants who elect not to join a cooperative would participate outside the cooperative but within the sector (sector limited access fishery).

Under Alternative 3, the allocation of the primary target species and PSC allowance between the cooperative and the sector limited access fishery would be based on the total catch of the allocated species to the eligible license holders include in each pool for the years 1995 to 2003. Each license holder must drop its three lowest years of total catch for each of the allocated species. Given that is not possible to determine with certainty which vessels will join the cooperative very little can be said about the impacts of this alternative will have on the distribution of catch, other than it will vary somewhat compared to Alternative 2.

Using total catch during the years 1995-2003 drop 3 years, the number of vessels that would be below the minimum allocation for flathead sole (0.1 percent), rock sole (0.5 percent) and yellowfin sole (0.5 percent) would be zero.

The allocation of Atka mackerel under Alternative 3 would be based on total catch for the years 1995-2003, drop 3 years. Under this alternative, vessels less than 200' in length having less than 2 percent of the sector's Atka mackerel history (non-mackerel vessels) will receive 3.48 percent of the BSAI Atka mackerel of which 1.87 percent would be from the EAI/BS, 1.38 percent would be from the CAI, and .23 percent from the WAI. Applying to the 2005 TAC, the non-mackerel vessels would receive 15.7 percent of the EAI/BS TAC and 2.5 percent of the CAI TAC. After deducting the allocations to the non-mackerel

vessels, the remaining 97 percent of the BSAI Atka mackerel would be reserved for vessels greater than 200' in length or have more than 2 percent of the sector's Atka mackerel allocation.

Consolidation would be limited under Alternative 3. Although numbers of persons over the cap cannot be reported for the Atka mackerel and AI POP fisheries to protect confidential data, no companies are over the cap for yellowfin sole, rock sole, and flathead sole. In general, the changes in the economic impacts of a 50 percent cap versus no cap are small. In either case, the number of vessels in the fishery could be reduced to the minimum number need to harvest the entire allocation.

The sideboard caps under Alternative 3 would be based on the total catch of the Non-AFA Trawl CP sector relative to the total catch of all sectors. Using total catch, as compared to retained catch, tends to reduce the size of the sideboard caps for the Non-AFA Trawl CP sector. Smaller caps will reduce the amount of revenue that the Non-AFA Trawl CP sector can generate. However, they will provide more fish for other sectors to harvest. Whether the other sectors will increase their participation and retention in fisheries other than Pacific cod and select other fisheries is unknown.

Sideboard caps will be set for both GOA groundfish and halibut fisheries under this alternative. Groundfish sideboard caps will have the greatest impact on species that close due to the TAC being harvested (see Tables ES-9, ES-10, and ES-11). These species are typically Pacific Ocean Perch, Pelagic shelf rockfish, northern rockfish, and Pacific cod. Other species are typically closed as a result of halibut PSC constraints.

Table ES - 9 GOA sideboard estimates and average historic catch

Species	Alternative 3		Average Catch of Non-AFA Trawl CPs (95-03)
	Sideboard %	Estimated Sideboard (mt)	
Pollock			
Pollock 610	0.2%	61	120
Pollock 620	0.1%	34	100
Pollock 630	0.1%	19	
Pollock 640	0.1%	2	
Central Gulf			
Arrowtooth Flounder	15.2%	3,795	7,750
Deep Water Flatfish	10.0%	335	252
Shallow Water Flatfish	2.9%	377	173
Flathead Sole	24.4%	1,222	369
Rex Sole	78.7%	5,777	2,317
Pacific Ocean Perch	RDP	RDP	4,179
Rougheye Rockfish	50.1%	279	495
Shortracker Rockfish	50.1%	162	
Thornyhead Rockfish	39.1%	395	210
Pelagic Shelf Rockfish	RDP	RDP	1,620
Northern Rockfish	RDP	RDP	1,156
Other Rockfish	0.8%	2	233
Pacific Cod	4.0%	1,003	2,024
Sablefish	23.1%	335	524

Species	Alternative 3		Average Catch of Non-AFA Trawl CPs (95-03)
	Sideboard %	Estimated Sideboard (mt)	
Western Gulf			
Arrowtooth Flounder	40.3%	3,224	4,218
Deep Water Flatfish	4.3%	14	9
Shallow Water Flatfish	39.7%	1,787	143
Flathead Sole	57.6%	1,152	314
Rex Sole	88.1%	1,480	572
Pacific Ocean Perch	85.0%	2,182	1,456
Rougheye Rockfish	63.5%	119	161
Shortracker Rockfish	63.5%	98	
Thornyhead Rockfish	39.7%	163	116
Pelagic Shelf Rockfish	55.5%	209	135
Northern Rockfish	72.3%	584	443
Other Rockfish	4.8%	2	23
Pacific Cod	1.9%	298	553
Sablefish	41.1%	209	116
West Yakutat			
Deep Water Flatfish	29.9%	634	34
Rex Sole	64.8%	868	35
Flathead Sole	46.6%	1,398	8
Shallow Water Flatfish	0.1%	2	0
Arrowtooth Flounder	73.0%	1,825	18
Sablefish	49.2%	151	80
Pacific Ocean Perch	93.5%	786	784
Other Rockfish	50.0%	65	20
Pelagic Shelf Rockfish	90.3%	191	116
Entire Gulf			
Atka Mackerel	71.7%	430	178
Other Species	2.1%	291	853

Source: Sideboard percent was estimated using the retained catch of the 26 Non-AFA Trawl CP vessels (as estimated in the Council IR/IU and GOA Rationalization data base) divided by the retained (Alt 2) or total (Alt 3) catch of all vessels in the GOA, as reported in the NOAA Fisheries catch and bycatch reports (1995-2003).

Given that this alternative would decrease the Non-AFA Trawl CP sector's halibut PSC cap by about 36 mt compared to Alternative 2 and 50 mt under Alternative 4, they are expected to be worse off under this alternative compared to the other two alternatives being considered. Other participants in the GOA fisheries would fair better under this alternative.

Table ES - 10 GOA Trawl Halibut PSC Sideboard estimates (mt)

Alternative	Quarter				Total
	1	2	3	4	
Trawl Halibut PSC Allotment to Deep Water, by Quarter (mt)					
Alt 3	57.47 (2.87%)	189.28 (9.46%)	218.64 (10.93%)	98.17 (4.91%)	563.56 (28.18%)
Percent of Trawl Halibut Allotment to Shallow Water by Quarter					
Alt 3	20.59 (1.03%)	41.87 (2.09%)	36.77 (1.84%)	48.13 (2.41%)	147.35 (7.37%)

Source: NPFMC summary of NMFS weekly PSC reports.

Note: Data for 2004 was not included in this report. A trawl PSC allotment of 2,000 mt was assumed.

BSAI sideboard caps are set only for Alternative 3. The sideboard amounts are shown in the table below. Members of industry in and the Council have indicated that the primary BSAI directed fisheries are already or are in the process of being rationalized. Therefore, the impact of excluding BSAI sideboard caps is expected to be relatively small. Implementing the caps shown in the following table is expected to provide minimal amounts of protection for vessels outside the Non-AFA Trawl CP sector.

Table ES - 11 BSAI Sideboard estimates and average historic catch

Species	2005 ITAC (mt)	Alt. 3		Average Catch of Non-AFA Trawl CPs (95-03)
		Sideboard %	Estimated Sideboard (mt)	
Bering Sea				
Other Rockfish	391	51.37%	201	138
Pacific Ocean Perch	1,190	11.46%	136	231
Sablefish (Trawl)	1,037	73.83%	766	221
Greenland Turbot	2,295	16.99%	390	1,077
Aleutian Islands				
Other Rockfish	502	35.73%	179	315
Sablefish (Trawl)	557	62.61%	349	22
Greenland Turbot	680	19.38%	132	165
Bering Sea & Aleutians				
Arrowtooth Flounder	10,200	20.13%	2,053	9,351
Northern Rockfish	4,625	4.25%	197	4,026
Other Flatfish	2,975	11.90%	354	2,138
Alaska Plaice	6,800	11.90%	809	
Other Species	24,650	2.25%	554	8,892
Pacific Cod - Trawl CP	44,779	*	*	25,257
Shortraker Rockfish	552	38.13%	210	368
Rougheye Rockfish	207	38.13%	79	

Source: Sideboard percent was estimated using the retained catch of the 26 Non-AFA Trawl CP vessels (as estimated in the Council IR/IU and GOA Rationalization data base) divided by the retained (Alt 2) or total (Alt 3) catch of all vessels in the BSAI, as reported in the NOAA Fisheries catch and bycatch reports (1995-2003).

In meeting the GRS, Non-AFA Trawl CP sector participants would likely be better off under Alternatives 3 than under Alternative 1, but less so than under Alternatives 2 and 4. Under Alternative 3, sector participants that join the cooperative can pool their annual vessel GRS rates across the cooperative. By averaging individual vessel retention rates across the cooperative, this could help to reduce operation costs for those vessels limited by the GRS. However, unlike Alternatives 2 and 4, which allow multiple cooperatives to form, Alternative 3 would allow only one cooperative. As a result, there is a chance that some members of the sector will not join the cooperative thus reducing the benefits of GRS pooling. Overall, participants in the cooperative will seek to minimize their cost of meeting the GRS to the extent possible.

Alternative 4

In April 2006, the Council selected preliminary preferred allocation percentages for the Non-AFA Trawl CP sector. Allocation percentages selected were 82.5 percent for yellowfin sole, 97 percent for rock sole, and 98 percent flathead sole. For Atka mackerel and AI POP, the Council selected an approach that would phase in the final allocation percentages over a period of years. For the Atka mackerel that period would be four years and for AI POP it would be two years. The allocation percentages for Atka mackerel would start at 98 percent for EAI/BS and CAI and then be reduced 2 percent every year for four years culminating at a 90 percent allocation. For WAI, the Non-AFA Trawl CP sector would be allocated 100 percent of the Atka mackerel. For EAI and CAI AI POP, the allocation would start at 95 percent the first and decrease to 90 percent the second year. For WAI POP, the allocation to the sector would be 98 percent.

Table ES-12 shows the 2005 allocations to the Non-AFA Trawl CP sector and the trawl limited access fishery for each of the allocated species under Alternative 4. Under this alternative, the allocations of yellowfin sole, rock sole, and flathead sole are similar to the allocations under Alternative 2 in that the allocations are expected to be sufficient to keep the Non-AFA Trawl CP sector's groundfish catch levels about the same as their historic catch. Atka mackerel and AI POP would be slightly less than Alternative 2 at the end of the phase in reduction. The percentages used for the Atka mackerel and AI POP allocations in the table are the final allocation percents. In reviewing the allocation amounts to the trawl limited

access fishery in this alternative, it is likely there would be insufficient amounts of Amendment 80 species for a directed fishery with the exception of yellowfin sole. In general, this is indicative of the historical catch history of the trawl limited access participants since before the implementation of the AFA in 2000.

Table ES - 12 Allocations of Amendment 80 species under Alternative 4

	Yellowfin sole	Rock sole	Flathead sole	POP*			Atka Mackerel*		
				EAI	CAI	WAI	EAI/BS	CAI	WAI
2005 TAC	90,686	41,500	19,500	3,080	3,035	5,085	7,500	35,500	20,000
CDQ allocation (10%)	9,069	4,150	1,950	308	304	509	750	3,550	2,000
AFA CV Sideboard limit	5,281	1,274	886	21	7	0	22	3	0
AFA CP Sideboard limit	18,772	1,382	632	55	3	18	0	3,674	3,600
Jig allocation (1% of Atka mackerel for EAI/BS)	-	-	-	-	-	-	68	-	-
ICA (Assumed 5%)	4,081	1,868	878	139	137	229	334	1,598	900
2005 ITAC	77,537	35,483	16,673	2,633	2,595	4,348	6,348	30,353	17,100
Trawl limited access allocation	13,569	1,064	333	263	259	0	635	3,035	342
Non-AFA Trawl CP Sector allocation	63,968	34,418	16,339	2,370	2,335	4,348	5,714	27,317	16,758

Source: Data summarized from 1995-2004 NOAA Fisheries Weekly Production Reports.

* The percentages used for the Atka mackerel and AI POP allocations are the final allocation percents

Table ES-12 also provides CDQ allocation amounts under the preliminary preferred alternative, AFA sideboard limits for the allocated species, and the ICA. The Council in April 2006, clarified that the ICA is intended for the both the fixed gear sectors and the trawl limited access fishery to account for incidental catch. The Council also clarified that the ICA will be determined prior to allocations to the Non-AFA Trawl CP sector and the trawl limited access fishery. The Council also clarified in April 2006 that the sideboard limits for the AFA sectors would be determined after the CDQ allocations. Based on clarification, it would appear that the sideboards have no effect because the sideboard is greater than the allocation to the trawl limited access fisheries for most of the species. The only exception would be the AI POP and EAI/BS Atka mackerel. In these cases, the sideboard is less than allocation to the trawl limited access fishery. The primary reason for the ineffectiveness of the sideboard limit under this action is due to the Non-AFA Trawl CP sector receiving allocations of these species. One of the primary purposes of the AFA sideboards was to prevent the AFA sectors from expanding beyond their historic catch history in these fisheries and potentially harming the Non-AFA Trawl CP sector.

Alternative 4 includes a rollover provision like Alternative 3, but the alternative also includes PSC rollovers. Under this provision, NOAA Fisheries would review the fisheries for the purpose of rollovers of both Amendment 80 species and PSC on May 1 and August 1.

Under this alternative, the yellowfin sole threshold program could provide some increased opportunity for the AFA Trawl CP and CV sectors and the Non-AFA Trawl CV sector to expand their harvest of yellowfin sole in periods when BSAI pollock TAC declines relative to yellowfin sole depending on the allocation percentage below the threshold. In this alternative, 60 percent of the TAC over 125,000 mt would be assigned to the Non-AFA Trawl CP sector. The remaining 40 percent of the TAC would be apportioned to the trawl vessels that are not a part of the Non-AFA Trawl CP sector. Table ES-13 provides the yellowfin sole allocation to the Non-AFA Trawl CP sector and the trawl limited access fishery given different TAC levels under Alternative 4.

Table ES - 13 Yellowfin sole allocation to the Non-AFA Trawl CP sector and the trawl limited access fishery to include threshold allocations at different TAC levels for Alternative 4.

TAC	125,000	140,000	150,000	160,000	170,000
CDQ allocation (10%)	12,500	14,000	15,000	16,000	17,000
ICA (Assumed 5%)	5,625	6,300	6,750	7,200	7,650
ITAC	106,875	119,700	128,250	136,800	145,350
Non-threshold Trawl limited access allocation	18,703	20,948	21,876	23,940	25,436
Non-threshold Non-AFA Trawl CP Sector allocation	88,172	98,753	103,124	112,860	119,914
Threshold allocation to trawl limited access			1,300	4,720	8,140
Threshold allocation to Non-AFA Trawl CP sector			1,950	7,080	12,210
Total allocation for trawl limited access	18,703	20,948	23,176	28,660	33,576
Total allocation for Non-AFA Trawl CP sector	88,172	98,753	105,074	119,940	132,124

The effects of halibut PSC allowance under Alternative 4 are a little more difficult to determine given the Council has two options under consideration: 1) allocate halibut PSC based on historical usage of PSC in all fisheries by the Non-AFA Trawl CP sector for year combinations 2002-2004 (Suboption 6.1.1) with a reduction of the initial limit to 80 percent, which would be phased at 5 percent per year for four years starting in the second year of the program; 2) allocate halibut PSC based on the sector's percentage allocations of the Amendment 80 species multiplied by the trawl PSC amounts apportioned to the Amendment 80 species annually (Suboption 6.1.4) with minimum and maximum amounts for the Non-AFA Trawl CP sector and the trawl limited access fishery. For the Non-AFA Trawl CP sector, the minimum halibut PSC limit would be 2,153.5 mt and the maximum limit would be 2,403.5 mt. For the trawl general limited access fishery, the minimum halibut PSC limit would be 903.5 mt and the maximum limit would be 1,153.5 mt.¹

Under Suboption 6.1.1 the halibut PSC apportioned to the Non-AFA Trawl CP sector would be 80 percent with the remaining 20 percent apportioned to the trawl limited access fishery. Applying these percentages to the 3,307 mt trawl halibut apportionment would result in 2,646 mt for the Non-AFA Trawl CP sector and 661 mt of halibut to the trawl limited access fishery. Reducing the 2,646 mt by 20 percent would result in the Non-AFA Trawl CP sector having 2,117 mt for use in directed fishing, while the remaining 529 mt of halibut would stay in the water.

Under Suboption 6.1.4 using Council selected percentages, the April 2006 Pacific cod allocation to the Non-AFA Trawl CP sector, and 2005 TAC, the allocation to the Non-AFA Trawl CP sector would be 2,158 mt since the calculated PSC apportionment is slightly above the 2,153.5 mt minimum allocation. This assumes a 90 percent allocation for both AI POP and Atka mackerel across all subareas combined to the Non-AFA Trawl CP sector². The remaining 1,149 mt would be apportioned to the trawl limited access fishery. One of the potential advantages of Suboption 6.1.4 compared to Suboption 6.1.1 is that PSC apportionment will be adjust annually as the TAC of the Amendment 80 species changes relative to one another. To some degree this approach better reflects the dynamic nature of the North Pacific fishery. However, one of the disadvantages

¹ Under the preliminary preferred alternative, the portion of PSC reserved for the CDQ program will increase from 7.5 percent to 10 percent resulting in a reduction in the trawl halibut PSC from 3,400 mt to 3,307 mt. The minimum and maximum allocation amounts were adjusted evenly to account for the reduction in trawl halibut PSC.

² Both AI POP and Atka mackerel allocations between sectors will be phased in over time. For EAI and CAI POP, the allocation would be 95 percent the first year and 90 percent the second year. For WAI, the allocation would be 98 percent. For EAI/BS and CAI Atka mackerel, the allocation would be 98 percent the first year, decreasing in 2 percent increments over a four year period to 90 percent. For WAI, 100 percent of the Atka mackerel would be allocated to the Non-AFA Trawl CP sector.

of Suboption 6.1.4 compared to Suboption 6.1.1 is there is little room for the Council to take advantage of any potential PSC savings resulting from cooperatives while at the same time staying above the minimum apportionment for the Non-AFA Trawl CP sector (2,153.5 mt). Since the maximum allocation to the Non-AFA Trawl CP sector under this option is 2,403.5 mt, most of the potential PSC saving is shifted to the trawl limited access fishery.

For crab PSC under Alternative 4, the Council selected percentages based on results from the analysis (see far right column in **Error! Reference source not found.**). The following are the crab PSC limits selected by the Council under this alternative for the Non-AFA Trawl CP sector:

Red king crab	37.52%
<i>C. opilio</i>	61.44%
Zone 1 <i>C. bairdi</i>	52.64%
Zone 2 <i>C. bairdi</i>	29.59%

In addition, the crab PSC limit to the Non-AFA Trawl CP sector would be reduced to 80 percent of the initial allocation. This reduction would be phased in gradually at 5 percent per year starting in the second year of the program for a total of four years to phase in the PSC limit reduction.

Under Alternative 4, PSC allowance would be allocated to the Non-AFA Trawl CP sector for use while targeting their allocation of groundfish and any other non-allocated BSAI groundfish. PSC allowance allocated to the sector will be further divided between the cooperatives and the non-cooperative pool.

Based on the eligibility requirements under this alternative, 26 vessels appear to qualify for the Non-AFA Trawl CP sector. Four vessels with trawl CP licenses failed to harvest the required 150 mt of BSAI groundfish with trawl gear and process that catch between 1997 and 2002.

Under Alternative 4, 30 percent of the eligible vessels would be needed to form a cooperative. In addition, at least three unique entities are required for cooperative formation (using the 10 percent AFA rule). Since under Alternative 4 there are likely to be 26 qualified vessels, at least seven vessels would be needed to form a cooperative. If each of the cooperatives had the minimum required (seven vessels), three cooperatives would be formed in the Non-AFA Trawl CP sector.

For Alternative 4, the allocation of the Amendment 80 species and PSC allowance between the cooperatives and the sector limited access fishery would be based on total catch of the allocated species of cooperative participants and the pool of sector limit access fishery participants using years 1998-2004 dropping the two lowest annual catches. This alternative also includes the minimum allocation provision for vessels with no harvests after 1997.

Using total catch during the years 1998-2004 drop 2 years, the number of vessels that would be below the minimum allocation for flathead sole (0.1 percent), rock sole (0.5 percent) and yellowfin sole (0.5 percent) would be less than 3. Similar to Alternative 2, confidentiality requirements limit the amount information that can be released.

The Atka mackerel allocation under Alternative 4 would be based on total catch for the years 1998-2004 drop 2 years. Under this alternative, vessels less than 200' in length having less than 2 percent of the sector's Atka mackerel history will receive 6 percent of the BSAI Atka mackerel of which 4.6 percent would come from EAI/BS; 1.2 percent would come from the CAI; and the remaining .2 percent would come from the WAI. Applying these allocations to the 2005 TAC, the non-mackerel vessels would receive 38.6 percent of the EAI/BS TAC, 2.1 percent of the CAI TAC, and 0.6 percent of the WAI. After deducting the allocation to the non-mackerel vessels, the remaining 94 percent of the BSAI Atka mackerel would be reserved for vessels greater than 200' in length or have more than 2 percent of the sector's BSAI Atka mackerel allocation.

Consolidation would be limited under Alternative 4. At least one company was over the 30 percent cap under this alternative. The exact number cannot be reported to protect confidential data. This information in general indicates that the sector can undergo some consolidation under this alternative. Allowing the fleet to consolidate should enable the remaining companies to operate more efficiently. Improvements will be due to the cost savings that result from retiring vessels that are the least efficient.

In addition to the ownership caps, the Council also included a 10 percent vessel use cap in Alternative 4. A vessel use cap would limit the percentage of the Non-AFA Trawl CP sectors allocation of the five species that a vessel could harvest ensuring that a minimum number of vessels remain in the fishery. At the 10 percent level 1 to 4 vessels would be affected. While this does not indicate the number of vessels that would be affected by vessel use caps in the future, it does show that selecting a 10 percent use cap could prohibit vessels from harvesting their historic percentage of the sector's catch. The alternative includes a grandfather provision for those vessels that have harvested over the 10 percent cap. If a vessel is assigned an amount of the sector's allocation above the use cap, the vessel would be grandfathered allowing it to harvest the percentage of the sector's allocation equal to their initial allocation. However, these vessels would be unable to harvest any portion of another vessel's allocation, in addition to their own.

Limiting the harvest of vessels over the cap may prohibit some of the most economically efficient harvesters from catching as much of the sector allocation as they would without use caps. Limiting their harvest could restrict efficiency improvements. If less efficient vessels are required to harvest more of the sector's allocation, net benefits to the Nation could be lower and the compensation to vessels wishing to exit the fishery will be lower.

Sideboard limits within Alternative 4 would implement the program outlined in Table ES-14 below. No sideboard limits would be established for the BSAI. Any sideboard limits imposed in the GOA would apply to the vessels in the Non-AFA Trawl CP sector, as well as the LLPs associated with those vessels.

Table ES - 14 Summary of GOA sideboards for Alternative 4

Annual Sideboard Limit	All C/P Cooperatives	All C/P Limited Access
<p>Catch limits ... See 12.4.4 Western GOA Pollock, Pacific cod, POP, Pelagic Shelf, and Northern Rockfish</p>	<p>All C/P Co-op vessels and LLP associated with that vessel See 12.4.6 would be subject to a sideboard limit in that area and season</p>	<p>All C/P Non Co-op vessels and LLP associated with that vessel See 12.4.6 would be subject to a Sideboard limit in that area and season</p>
<p>Central GOA Pollock, Pacific cod</p>	<p>Sideboard limit cap (% set by Council</p>	<p>Sideboard limit cap (% set by Council at time of motion) = % of TAC.</p>

<p>West Yakutat Pollock, Pacific cod, POP, and Pelagic Shelf Rockfish.</p>		
<p>See 12.4.5 Central GOA POP, Pelagic Shelf, and Northern Rockfish</p>	<p>Does not apply as long as Rockfish Pilot Program is in place, otherwise, compute the CGOA rockfish sideboard limit using the same method as described above.</p>	<p>Does not apply as long as Rockfish Pilot Program is in place, otherwise, compute the CGOA rockfish sideboard limit using the same method as described above.</p>
<p>See 12.4.3 Halibut mortality limits ... GOA-wide (1) Shallow-water limit, & (2) Deep-water limit See Table ES-15 below:</p>	<p>All C/P Co-op vessels and LLP associated with that vessel See 12.4.6 would be subject to a halibut PSC limit for each seasonal trawl apportionment for the two complexes. Seasonal apportionment already set by Council in Table ES-15 below. (1) Once the shallow-water cap is met, all directed fishing for all species in the shallow-water complex is closed in the GOA; (2) Once the deep-water cap is met, all directed fishing for all species in the deep-water complex is closed in the GOA</p>	<p>All C/P Non Co-op vessels and LLP associated with that vessel See 12.4.6 would be subject to a halibut PSC limit for each seasonal trawl apportionment for the two complexes. Seasonal apportionment already set by Council in Table ES-15 below. (1) Once the shallow-water cap is met, all directed fishing for all species in the shallow-water complex is closed in the GOA; (2) Once the deep-water cap is met, all directed fishing for all species in the deep-water complex is closed in the GOA.</p>
<p>Inferred from See 12.4.1 Prohibited Directed Flatfish Fishing ... All directed GOA flatfish fisheries</p>	<p>If a vessel gave rise to an LLP with catch history less than or equal to 10 weeks in directed flatfish fishing in any GOA flatfish fishery (not 10 weeks/area) during the years selected under component 10 then that vessel and any LLP licenses used on the vessel that generated history for that vessel (See 12.4.6) will be prohibited from directed fishing in all GOA flatfish fisheries.</p>	

<p>Inferred from 12.4.1 Flatfish Sideboard Limit ...</p> <p>All directed GOA flatfish fisheries.</p>	<p>If a vessel gave rise to an LLP with catch history more than 10 weeks in directed flatfish fishing in any GOA flatfish fishery (not 10 weeks/area) during 1998-2004 then that vessel and LLP associated with that vessel (See 12.4.6) will <u>not</u> be subject to a directed fishing sideboard limit for that flatfish fishery in that area and that season. A total of 13 Non-AFA Trawl CP vessels would be allowed to continue fishing in the GOA flatfish fisheries.</p>
<p>See 12.4.2 Exemption from GOA halibut and flatfish sideboard limits in West Yakutat, Central GOA, and Western GOA</p>	<p>If a vessel has fished 80% of their weeks fished in the GOA from 2000-2003 in GOA flatfish fisheries, that vessel will be exempt from Amendment 80 halibut sideboards in the GOA and may participate fully in the GOA open-access flatfish fisheries. The history of this vessel will not contribute to the non-AFA Trawl CP sideboards and its catch will not be subtracted from these sideboards. One vessel met this exemption's requirements.</p>

GOA sideboard percentages for the following species and areas are included under Alternative 4 (see Table ES-15). The sideboards are designed to limit participation in the pollock, Pacific cod, and directed rockfish species not allocated under the Rockfish Pilot Program. The pollock and Pacific cod sideboards will constrain the harvest of these species by limiting vessel's incentives to join the inshore component of the GOA fleet. Rockfish sideboard limits are less restrictive, but could provide some protections to the other GOA vessels operating in pelagic shelf rockfish fisheries.

Table ES - 15 GOA sideboard estimates and average historic catch

Species	Alternative 4		Average Catch of Non-AFA Trawl CPs (95-03)
	Sideboard %	Estimated Sideboard (mt)	
Pollock			
Pollock 610	0.3%	91	120
Pollock 620	0.2%	34	100
Pollock 630	0.2%	19	
Pollock 640	0.2%	4	
Central Gulf			
Pacific Ocean Perch	RDP	RDP	4,179
Pelagic Shelf Rockfish	RDP	RDP	1,620
Northern Rockfish	RDP	RDP	1,156
Pacific Cod	4.4%	1,355	2,024
Western Gulf			
Pacific Ocean Perch	99.4%	2,549	1,456
Pelagic Shelf Rockfish	76.4%	288	135
Northern Rockfish	100.0%	808	443
Pacific Cod	2.0%	314	553
West Yakutat			
Pacific Cod	3.4%	*	*
Pacific Ocean Perch	96.1%	808	784
Pelagic Shelf Rockfish	89.6%	182	116

Source: Sideboard percent was estimated using the retained catch of the 26 Non-AFA Trawl CP vessels (as estimated in the Council IR/TU and GOA Rationalization data base) divided by the retained (Alt 2) or total (Alt 3) catch of all vessels in the GOA, as reported in the NOAA Fisheries catch and bycatch reports (1995-2003).

Note: n/a - Indicates that no sideboard is implemented. Only vessels with a sufficient number of weeks fished in GOA flatfish fisheries may participate in a directed flatfish fishery.

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

Finally, GOA halibut PSC caps would be set based on historic usage of halibut PSC. Table ES-16 shows the percentages of the Deep and Shallow water halibut allotments by quarter that would be issued under this alternative. A total of 760.5 mt of halibut would be assigned to the Non-AFA Trawl CP sector. This is a larger sideboard limit than proposed under Alternatives 2 (747 mt) or Alternative 3 (711 mt). Therefore, Alternative 4 would provide the Non-AFA Trawl CP sector the greatest opportunity to participate in the GOA flatfish fisheries. These fisheries typically close due to halibut mortality caps being reached. The difference in catch and revenue that will result from the various caps cannot be estimated with certainty. The magnitude of the difference will depend on halibut bycatch rates which may change.

Table ES - 16 GOA Trawl Halibut PSC Sideboard estimates (mt)

Alternative	Quarter				Total
	1	2	3	4	
	Trawl Halibut PSC Allotment to Deep Water, by Quarter (mt)				
Alt 4	56.82 (2.84%)	238.49 (11.92%)	231.91 (11.60%)	81.87 (4.09%)	609.09 (30.45%)
	Percent of Trawl Halibut Allotment to Shallow Water by Quarter				
Alt 4	16.93 (0.85%)	38.47 (1.92%)	41.19 (2.06%)	54.79 (2.74%)	151.38 (7.57%)

With regards to meeting the GRS, Non-AFA Trawl CP sector participants would likely be better off under Alternative 4 than under Alternative 1. Like the previous two alternatives, sector participants that join a cooperative can pool their individual annual GRS rates across the cooperative thereby helping to reduce operation costs for those vessels limited by the GRS. Overall, given the flexibility of this alternative, each cooperative will minimize the cost of meeting the GRS to the extent possible.

Effects on Catcher Processor Efficiency

Production efficiency of the Non-AFA Trawl CP sector under the status quo is limited to some degree by the race for fish under the current LLP fishery and GRS. Sector participants are compelled to race for groundfish with other sector participants, as well as other participants in other sectors throughout the period the fisheries are open. Generally, participants in the Non-AFA Trawl CP sector are equipped to produce whole and head and gut frozen products. Production of these products is likely to continue, if the status quo is maintained. Participants in the Non-AFA Trawl CP must comply with GRS, which could limit production efficiency. With higher retention rates required for vessels greater than 125 ft, sector participants are constrained in production efficiency.

Under Alternatives 2 and 4 more than Alternative 3, the Non-AFA Trawl CP sector is likely to realize some gains in production efficiency capturing greater rents from the allocated fisheries despite having to comply with GRS. Under Alternatives 2 and 4, most eligible participants in the Non-AFA Trawl CP sector are likely to join a cooperative, since operations in the limited access fishery are likely to be less efficient (and less profitable) and it will be easier to meet the cooperative formation requirements. However, there is some potential under Alternative 3 that some eligible participants may elect not to join a cooperative.

Effects on the CDQ Program

Alternatives 2, 3, and 4 would increase CDQ percentage allocations for both primary target and incidental catch species. Under Alternatives 2 and 4, CDQ percentage allocations for each of the primary target species identified in Component 1 and associated secondary species taken

incidental in the primary trawl target fisheries would increase to 10 percent. Under Alternative 3, the percentage allocations for both target and incidental catch species would increase to 15 percent. The PSQ percentage allocations would increase proportionately under each alternative, as well. Under Alternatives 2 and 4, the PSQ percentage allocation would increase to 10 percent, and under Alternative 3 would increase to 15 percent. Currently, the CDQ Program receives 7.5 percent of each groundfish TAC and PSC limit as CDQ and PSQ reserves. These reserves are further allocated among six CDQ managing organizations (CDQ groups). CDQ groups plan and conduct fishing operations for their CDQ allocations, and then receive royalties from the harvest of their CDQ. This revenue is used to provide a means for starting and supporting commercial fisheries business activities in CDQ communities in western Alaska.

CDQ groups have had varied, but increasing, success in harvesting their existing CDQ allocations for primary target species. In the last several years, CDQ groups have harvested the majority of their yellowfin sole, Atka mackerel, and Pacific Ocean perch allocations. They have not been very successful at harvesting their rock sole and flathead sole CDQ allocations. The increased CDQ percentage allocations for primary target species considered under Alternative 2, Alternative 3, and Alternative 4 could allow CDQ groups to receive larger CDQ allocations, if the TACs for these species remained constant or increased. If fully harvested, this could provide additional CDQ royalties to CDQ groups. Harvesting any increased allocations of target species probably would result in increased catch of incidental catch species and prohibited species in the CDQ fisheries. The increases to CDQ and PSQ percentage allocations for incidental catch species proposed under Alternatives 2, 3, and 4 are meant to allow the CDQ Program to have adequate CDQ reserves to account for the additional catch of incidental and prohibited species that could occur along with the catch of increased allocations of primary target species. The actual benefits that each CDQ group would receive from increased primary species allocations cannot be estimated given currently available information. The relatively small size of these quotas, variability in the amount of each primary species harvested in past years, and lack of specific information about CDQ royalty rates makes it difficult to estimate the future CDQ Program benefits associated with increasing CDQ percentage allocations for primary target species.

Effects on Consumers

Although production of the sector is typically high quality, some quality improvements could be achieved as cooperative allocations will remove pressure to rapidly catch and process fish to maximize catch from the fisheries. Improvements will be limited to those in a cooperative, but since most (if not all members of the sector are likely to join cooperatives) these improvements should be realized throughout the fleet. Any improvements in consumer benefits arising from improved quality are likely to be realized by Asian, U.S., and European consumers, as most of the production from this sector is sold into these markets.

Production of the Non-AFA Trawl CP sector participants is likely to be similar to current production under Alternatives 2 and 4. The allocations under Alternative 3 could reduce the amount of the flatfish species allocated to the Non-AFA Trawl CP sector. If the portion of the TACs assigned to sectors, other than the Non-AFA trawl CP sector, is not harvested, and the amounts of those fish rolled-over to the Non-AFA Trawl CP sector cannot be harvested due to halibut constraints, the reduced supply could negatively impact consumers through higher prices. Market prices for these species will depend on other world flatfish markets. If substitute products are available at similar prices, consumer impacts would be small. The lack of information on these markets precludes quantitative estimates of the impacts on U.S. consumers.

Effects on Environmental/Non-use Benefits

Public non-use benefits derived from the management of healthy stocks of these species are likely to be maintained, if the current management is perpetuated.

Under Alternatives 2, 3 and 4, NOAA Fisheries will make annual, exclusive cooperative allocations for the five allocated species. The proposed action will require eligible Non-AFA Trawl CP vessels under 125 ft length overall to meet the GRS. These measures should have the effect of reducing bycatch and discards, contributing additional non-use benefits that might arise from productive use of the resource. In addition, if Alternative 3 reduces the harvest of the allocated species below the allowed catch, the unharvested fish will remain in the BSAI ecosystem, which is considered a benefit to the environment.

Effects on Management, Monitoring, and Enforcement Costs

In addition to the monitoring challenges documented under other quota programs, Amendment 80 includes additional catch accounting and compliance challenges specific to this type of dedicated access program. To address these challenges, additional requirements will be needed to manage these sector allocations and allow single or multiple cooperatives to function. Proposed monitoring components for all non-AFA trawl CPs while fishing in the BSAI are described below.

1. All vessels would be required to weigh all catch on NMFS-approved scales and provide an observer work station.
2. All hauls would be available to be observed by NMFS-certified observers.
3. Vessels would be prohibited from having more than one operational line or other conveyance device for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples.
4. The observer must be able to view all the activities of crew inside the bin locate prior to where the observer collects unsorted catch. The vessel would be required to choose, and have approved at the time of the observer sampling station inspection, one of three options to meet this requirement. These options are:

Limit Tank Option. Crew would be prohibited from entering any tank located prior to where the observer collects unsorted catch, unless:

- The flow of fish has been stopped between the tank and the location where the observer collects unsorted catch, and;
- All catch has been cleared from all locations between the tank and the location where the observer collects unsorted catch, and;
- The observer has been given notice that vessel crew must enter the tank, and;
- The observer is given the opportunity to observe activities of the person(s) in the tank.
- The observer has informed vessel personal that he or she has completed all sampling activities.

Line of sight option. From the observer sampling station and the location from which the observer collects unsorted catch, an observer must be able to see all areas of the bin where crew could be located. This requirement may be accomplished by creating a viewing port inside the bin, and would be approved by NMFS during the observer sample station inspection.

Video option. A vessel may provide and maintain cameras, a monitor, and a digital video recording system for all areas of the bin where crew could be located. The video data must be maintained and made available to NMFS upon request for no less than a 120 day period. This option would also be subject to approval by NMFS at the time of the observer sample station inspection.

5. Unsorted catch would be prohibited from remaining on deck outside of the codend without an observer present, except for fish accidentally spilled from the codend during hauling or dumping.
6. A vessel operator would be required to document the flow of fish within the vessel's factory.
7. Each vessel would be required to provide the opportunity for a pre-cruise meeting.

The costs for the monitoring program include both accounting costs (that are itemized to the extent feasible) and other opportunity costs (that are difficult to quantify). Total costs for scale, sample station, observer requirements, and factory modifications necessary to comply with other proposed requirements for each vessel greater than or equal to 125 ft. range between approximately \$64,045 and \$365,545. Total costs for these categories for each vessel less than 125 ft. range between \$182,225 and \$406,725. Other costs associated with these proposed monitoring requirements could include decreased operating efficiencies or additional crew.

In addition to costs borne by the vessels, increases in the number of observer days and their associated increase in the amount of data collected is expected to raise overall annual costs of the Observer Program. This budgetary increase can be attributed to additional staffing, augmented spending for observer sampling equipment, data entry contracts, and travel associated with inspecting sample stations, and conducting pre-cruise meetings. The Observer Program estimates increased staffing and costs associated with this action to include 3.5 full time equivalent staff positions and approximately \$450,000 annually.

NMFS believes that anticipated benefits of a Non-AFA Trawl CP cooperative as currently outlined, including the expectation of reduced effort and capital inputs through a slower paced fishery substantially depend on these proposed monitoring improvements. A multi-species cooperative, with internal transactions and contracts requires reliable catch accounting to create secure agreements. Because Amendment 80 monitoring requirements would include flow scales, observer stations, observation of every haul, and additional requirements described above; some improvements to management catch accounting may also occur. For example, direct measurement of weight on a flow scale is likely to be more reliable than alternative observer measurements based on volumetrics and density.

Effects on Communities

The fishing communities that are expected to benefit from this proposed action are the locations the vessels offload, take on supplies, and the owners and crew live. Twenty-seven catcher processors appear to be eligible for the Non-AFA Trawl CP sector. Of these vessels, nearly all are based in Seattle. Due to the large size and diversity of Seattle's economy, community-level impacts are not expected to differ between Alternatives 2, 3 and 4. Significant benefits to other communities that are home to some of the other Non-AFA Trawl CP fleet are not expected. Vessels located in those communities will continue to generate revenue from these fisheries. Changes in benefits to the community could occur, but the magnitude of the change is expected to be relatively small. Impacts on other communities with ties to catcher vessels cannot be quantitatively, but they are expected to be relatively small based on historic participation in the five primary BSAI fisheries and the sideboard caps proposed for other fisheries.

Effects on Net Benefits to the Nation

Under status quo, producer surplus is expected to remain at current levels until Amendment 79 is implemented. After Amendment 79 is implemented, producer surplus will decline. The amount of the decline is equal to the increased processing and monitoring costs of the vessel. Revenues are assumed to remain constant. However, the potential exists that more inferior products could be produced because of retaining fish that are of a size that are in less demand or of the wrong sex

(e.g., rock sole during the roe season). Prices paid by consumers are not expected to increase or decrease because of this action.

Alternative 2

Net benefits to the Nation would likely increase under Alternative 2 relative to Alternative 1. Contributing to the increase in net benefits to the Nation is the increase in producer surplus from Non-AFA Trawl CP sector participants fishing in cooperatives. Participants would be able to slow the pace of fishing and processing, thus potentially reducing expenditures on inputs and increasing output slightly. These participants would also be free to consolidate fishing up to the user cap. With fewer vessels, the harvesting costs should also decline. Some additional benefits would also likely accrue from the additional 2.5 allocation for the Amendment 80 species to the CDQ program, which would also benefit from a slower paced fishery.

The alternative would require increased monitoring and enforcement costs necessary for meeting the GRS for Non-AFA Trawl CP vessels under 125 ft. LOA. These costs are associated with additional observer coverage, costs associated with vessel modification to better allow the catch to be observed, and slowing processing and harvesting below optimal levels to enable more accurate counts of total groundfish and PSC catches. Some additional benefits to the Nation could arise through reduction in discards, since sector vessels under 125 ft. LOA will have to meet the GRS.

A producer surplus would likely be generated some net benefits for the Nation under Alternative 2 as a result of pooling individual annual vessel GRS rates. Vessels that join a cooperative would average their individual annual retention rates across all cooperative participants, which would help to reduce operation costs for those vessels limited by the GRS. Overall, each cooperative will seek to minimize the cost of meeting the GRS to the extent possible.

Consumer surplus is expected to increase. The Non-AFA Trawl CP sector will continue to produce mostly frozen round and headed and gutted products primarily. Any improvements in consumer benefits arising from improved quality are likely to be realized by Asian, U.S. and European consumers, as most of the production from this sector is sold into that market.

Alternative 3

Net benefits to the Nation would likely be smaller under Alternative 3 relative to Alternative 2. It is difficult to compare the changes in Net benefits between Alternatives 1 and 3. The amount of fish the Non-AFA Trawl CP sector can legally harvest under Alternative 3 relative to the status quo, is reduced. However, the benefits of cooperatives are expected to increase the overall efficiency of the fleet. The benefit of a cooperative under this alternative will depend on whether a sufficient number of members of the sector are able to reach agreement and whether persons not in the initial cooperative are able to come to terms with the cooperative. If no cooperative forms, sector efficiency would be similar to that of status quo.

An additional unknown under this alternative is how much of the allocation to the general limited access fishery will be harvested by other sectors, and how efficient will they be when harvesting and processing that catch. The allocation to the general limited access fishery under this alternative exceeds the combined AFA Trawl CP and CV sideboards. Without substantial increases in effort by the Non-AFA Trawl Catcher Vessels, large portions of the allocation to the general limited access fishery would go unharvested. If the other sectors do not harvest their portion of the TAC and large amount of quota are rolled over late in the year, it may be of less value to the Non-AFA Trawl CP fleet than if it was available earlier.

Similar to Alternatives 2 and 4, the Nation would likely see an increase in net benefits from the pooling of individual vessel annual GRS rates while in a cooperative. However, unlike

Alternatives 2 and 4, which has the potential for multiple cooperatives, Alternative 3 allows only one cooperative. As a result, there is a chance that some members of the sector will not join the cooperative thus reducing the benefits of pooling annual vessel GRS across the cooperative. In general, members of the cooperative will seek to minimize the cost of meeting the GRS to the extent possible, thereby creating a producer surplus under this alternative.

Under this alternative, the CDQ Program would be allocated 15 percent of the annual TAC for each of the allocated species. The CDQ program would also receive 15 percent of the TAC for the incidental catch species (with the exception of Pacific cod) taken in the Amendment 80 allocated species. The additional 7.5 percent increase in non-pollock groundfish (except Pacific cod) would likely slow the pace of fishing and processing for participants in the CDQ program, thus potentially reducing expenditures on inputs and increase output slightly. However, the benefits will be reduced if the CDQ program fails to harvest their entire allocation.

Like Alternative 2, this alternative could increase the net benefits to the Nation from the reduction in discards. However, producer surplus will be reduced, from what it could have been due to an increase in vessel monitoring costs.

This alternative is expected to increase consumer surplus. The Non-AFA Trawl CP sector will continue to produce frozen round and headed and gutted products primarily. Any improvements in consumer benefits arising from improved quality are likely to be realized by Asian, U.S. and European consumers, as most of the production from this sector is sold into that market.

Alternative 4

Net benefits to the Nation would likely increase under Alternative 4 relative to Alternatives 1, 2, and 3. Contributing to the increase in net benefits to the Nation is the increase in producer surplus from Non-AFA Trawl CP sector participants fishing in cooperatives. The favorable groundfish allocation for the Amendment 80 species, the allocation of the necessary PSC to harvest the allocation, and the ability to form cooperatives contributes the increase in net benefits to the Nation. These participants would be able to slow the pace of fishing and processing, thus potentially reducing expenditures on inputs and increasing output slightly. These participants would also be free to consolidate fishing up to the use cap to the extent permitted by the Council. With fewer vessels, the harvesting costs should also decline.

Some additional benefits would also likely accrue from the additional 2.5 percent allocation increase for the Amendment 80 species to the CDQ program. The increased CDQ allocation will slow the pace of fishing and processing, thus potentially reducing expenditures on inputs and increase output slightly. If the CDQ program fails to harvest their entire allocation, any amount of allocation left unharvested would tend to reduce the net benefits.

The alternative would also require increased monitoring costs necessary for meeting the GRS for Non-AFA Trawl CP vessels under 125 ft. LOA. These costs are associated with additional observer coverage, costs associated with vessel modification to better allow the catch to be observed, and slowing processing and harvesting below optimal levels to enable more accurate counts of total groundfish and PSC catches. Some additional benefits to the Nation could arise through reduction in discards, since sector vessels under 125 ft. LOA will have to meet the GRS.

Like in Alternative 2 and 3, produce surplus is likely to decline given that individual vessel retention rates would be averaged across all cooperative participants, helping those vessels with historically low retention rates to lower their operating costs. Collectively, members of each cooperative would seek to minimize their costs of meeting the GRS to the extent possible thereby generating a producer surplus.

Like Alternative 2 and 3, this alternative would likely yield some increase in consumer surplus. Improvements will be limited to those in cooperatives, but since most (if not all members of the sector are likely to join cooperatives) these improvements should be realized throughout the fleet. Since most participants in the sector are limited in their ability to produce higher processed products, production choice changes are likely to be limited. Any improvements in consumer benefits arising from improved quality are likely to be realized by Asian, U.S., and European consumers, as most of the production from this sector is sold into these markets.

Environmental Assessment

The Environmental Assessment discusses the environment that would be affected by the alternatives, and then describes the impacts of the alternatives. The following components of the environment are discussed: the primary target species to be allocated under the alternatives, prohibited species, other fish species, benthic habitat and essential fish habitat, marine mammals and seabirds, economic and socioeconomic components, and the ecosystem as a whole.

The current fishery management program, represented by Alternative 1, was analyzed in detail in the *Alaska Groundfish Fisheries Programmatic Supplemental Environmental Impact Statement* (NMFS 2004b), the *Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska* (NMFS 2005), and updated in the annual Environmental Assessment of Harvest Specifications for the Years 2005-2006 (NMFS 2004a). These analyses concluded that the groundfish fisheries, in the status quo, are not affecting a significantly adverse impact on the environment.

In most instances, the effects of Alternatives 2, 3 and 4 have been considered together, as there is little difference between these alternatives in terms of their impact on the physical and biological environment. Under these alternatives, a sector allocation is made that will allow the formation of cooperatives. This will likely change fishing patterns, and may distribute fishing for the primary target species over a longer season or more diverse area. Harvest levels for the primary target species will remain unaffected, as well the existing management measures that distribute the harvest in space and time. As a result, the impact of the alternatives on these species is not assessed to be significant.

Incidental catch patterns may change as a result of Alternatives 2, 3 and 4, as the fisheries endeavor to meet the groundfish retention standard and reduce discards. In addition, an option under the alternatives would require the fisheries to reduce their historic proportion of prohibited species catch. The increased flexibility afforded to the Non-AFA Trawl CP sector under these alternatives should allow the sector to reduce discards. However, prohibited species catch limits and harvest quotas for other incidental catch species will continue to be set at biologically sustainable levels under these alternatives, and regardless of the ability of the sector to reduce its incidental catch, the impact to the sustainability of these incidental species is not assessed to be significant.

As the amount of overall fishing effort under the alternatives is likely to remain the same or decrease, the alternatives are unlikely to result in a change that would significantly impact seabirds or marine mammals that interact with the groundfish fisheries. Similarly, minimal and temporary impacts to benthic habitat and essential fish habitat are unlikely to be aggravated by these alternatives.

The economic and socioeconomic impacts of the alternatives are summarized in the RIR above.

An evaluation of the effects of the groundfish fisheries on the ecosystem is undertaken annually in the *Stock Assessment and Fishery Evaluation* report. Based on the discussions above regarding population-level impacts of Alternatives 2, 3 and 4, and the lack of other impacts to ecosystem attributes, the alternatives are not assessed to have a significant impact on the ecosystem.

The cumulative effects of the proposed alternatives are also evaluated in the Environmental Assessment. The analysis of past actions affecting the Non-AFA Trawl CP sector showed that, since the mid-1980s, adjustments in the regulatory regime have changed the economic conditions of the groundfish fisheries in which these vessels participate. An increasingly restrictive regulatory environment and escalating compliance costs resulted in economical stress for some Non-AFA Trawl CP owners. The increased restrictions were also a primary reason that flatfish became the primary target species for the Non-AFA Trawl CP sector. Because these species are bottom-dwellers, flatfish fisheries are prone to high incidental catches of prohibited species such as halibut and crab. In addition, flatfish fisheries have limited markets—particularly with regard to size and product quality. These characteristics of the flatfish fisheries, in combination with a “race for fish” regime and other factors, led to a relatively high level of economic and regulatory discards in the Non-AFA Trawl CP sector.

In recent years, the Non-AFA Trawl CP fleet has faced increasing pressure to reduce its discard rate. In 2003, the Council established a minimum groundfish retention standard for Non-AFA Trawl CPs greater than 125 ft length overall. The GRS will result in a substantial reduction in the bycatch of the affected vessels. However, a GRS may also result in substantial costs and lost revenues for these vessels because of holding/processing, transporting and transferring fish that are of relatively low value or “unmarketable.” In addition, the GRS measure imposes significant costs on the vessels with increased observer and scale costs.

With the possible exception of the BSAI Pacific cod allocation and rationalization programs, the reasonably foreseeable future actions cited above may have negative effects (to some degree) on the economic performance of Non-AFA Trawl CP sector. The cumulative effects of all actions—past, present, and future—are toward an increasingly restrictive regulatory environment resulting in lower harvests and gross revenues and/or higher operating costs. While some foreseeable future actions may offset these negative effects to some extent, the overall trend points to increasing economic stress for the Non-AFA Trawl CP sector.

The conclusions reached in the direct and indirect effects analysis of the cooperative alternatives indicate that the compliance costs incurred under a GRS may be mitigated by the benefits of participating in a cooperative. The costs of the GRS associated with retaining unwanted fish may be reduced or avoided altogether under a cooperative structure, as vessels can be more selective in what they catch without losing any competitive advantage. In addition, a cooperative structure may allow the sector to manage its PSC allocation in a manner that prevents PSC limits from being exceeded and thereby avoids the lower harvests and revenues associated with fishery closures when PSC limits are reached.

Initial Regulatory Flexibility Analysis

The directly regulated entities in this action include all of the groundfish harvesters in the BSAI and GOA and the processors that take delivery of their catch, plus the CDQ groups and communities. A total of 996 vessels were classified as small entities in 2003 based on the \$3.5 million revenue threshold. Seventy-one vessels were classified as large entities that year. All but one of the 27 vessels in the Non-AFA Trawl CP sector are considered large entities based on the \$4 million threshold applied to all vessels owned by an entity. The owners of some catcher processors have requested that the small entity definition be updated to use the processor definition. Changing the criteria would reclassify most of the sector as small entities. NMFS is currently reviewing that definition, but until the review is complete, the current definition will continue to be used.

A total of 36 processors in the BSAI and GOA have less than 500 employees. These processors, on average, generated about \$0.9 million in revenue from groundfish and had total revenues from all seafood processing of about \$5.2 million. The processors with over 500 employees averaged

\$43.5 million in groundfish revenues and \$79.1 from all fish products (NMFS, 2002). The small processors will be protected by imposing sideboard limits. The protections should have a limited impact though, because many of the species are primarily processed at-sea.

All six CDQ groups and the 65 communities associate with those groups are considered small entities. The alternatives considered in this amendment would either maintain their current allocation or increase the amount of specific species they are allocated. The royalty increases are expected to be small relative to total annual revenues by these groups. These groups are dominated by pollock, crab, halibut, and Pacific cod, but the royalty increases would likely help further the mission of improving the lives of residents of rural Western Alaska.

Alternatives, Components, and Options for Amendment 80

Alternative 1: No Action

With the exception of Amendment 79, which is yet to be approved by the Secretary of Commerce (SOC), the current management of groundfish and prohibited species catch in the BSAI would remain in effect for this alternative. In general, after deducting 7.5 percent for reserves and 7.5 percent for the CDQ program, the remaining portion of TAC is available to any vessel with a federal license. For Eastern Aleutian District and the Bering Sea subarea Atka mackerel, up to 2 percent of the ITAC may be allocated to jig gear. Currently, only one percent is allocated to the jig gear. For further details on the current management of the species to be allocated under this proposed action, please refer to Section 3.1.1.

Although Amendment 79 to the BSAI Groundfish FMP, the groundfish retention standard (GRS), has not yet been implemented, a final rule should be published before final action on Amendment 80, which is scheduled for December 2005. Currently, there are three potential outcomes. One is the SOC could implement GRS in 2006 at 75 percent. Another is that the SOC approves Amendment 79 at 65 percent starting in 2007. Finally, the SOC could disapprove Amendment 79. Due to the timing of Amendment 80 and Amendment 79, the no action alternative could change after initial review of Amendment 80 in October 2005 but before final review in December 2005. For purposes of the initial review of Amendment 80, the no action alternative will include a GRS phased in over a four year period for Non-AFA Trawl CP vessels greater than 125 ft length overall starting in 2007 at 65 percent and culminating in 2010 at 85 percent. The decision to use this scenario is based on the Council's recommendation to the SOC at the June 2005 meeting to implement Amendment 79 in 2007 at 65 percent to allow ample time for Non-AFA Trawl CP sector to complete any retrofits necessary to meet the enforcement and monitoring requirements included in Amendment 79. In addition, the Council felt it was important to allow the sector time to develop a vessel buyback program authorized under the Consolidated Appropriations Act of 2005. Finally, the Council also clarified at the June 2005 meeting that the specific years tied to GRS in the original action are of less importance than starting at the intended 65 percent.

Alternative 2: Multiple Cooperatives

This alternative would allocate the following species to the Non-AFA Trawl CP sector: yellowfin sole, rock sole, flathead sole, Atka mackerel by subarea, and Aleutian Islands subarea Pacific Ocean perch—referred to as primary target species. Allocation of these species to the sector would be in proportion to the retained catch of the Non-AFA Trawl CP sector relative to the retained catch of all vessels, for the years 1998 to 2002.¹ Non-AFA Trawl CP sector allocations of the primary target species would be managed as a hard cap: when the sector harvests all of its allocation of a primary target species, all directed fisheries for that species, as well as those fisheries that catch species incidentally, would close for the sector.

The unallocated portion of the primary target species quota would be reserved for the Non-H&G trawl fishery, which is composed of AFA Trawl CP sector, AFA Trawl CV sector and Non-AFA Trawl CV sector. Primary species quota cannot be rolled over between trawl sectors under this alternative.

This alternative includes a quota threshold of 125,000 mt for the yellowfin sole quota. If, in a given year, the quota exceeds this threshold, the excess would be allocated in the following manner: 30 percent to the Non-AFA Trawl CP sector and 70 percent to the limited access trawl fishery. Specifically for this excess allocation, a two-way rollover option is allowed. A portion of the yellowfin sole reserve allocated to

¹ All allocations are after allocations to the CDQ program and, in the case of Atka mackerel, after any allocation to the jig sector.

either the Non-AFA Trawl CP sector or the limited access trawl fishery would be rolled over to the other sector. A portion of the yellowfin sole reserve allocated to either the Non-AFA Trawl CP sector or the limited access trawl fishery would be rolled over to the other sector, if, after a specified date (August 1 or September 1), there is any quota that is projected to remain unused. AFA sideboards do not apply to the yellowfin sole threshold fishery.

The Non-AFA Trawl CP sector would receive a PSC allowance under this alternative, which would be based on the sector's historical usage of PSC in the directed fisheries for the allocated primary species plus Pacific cod during the years from 1998 to 2002, inclusive.

The eligibility criteria for the Non-AFA Trawl CP sector have been determined by Congress in the provisions of the BSAI CP Capacity Reduction Program, which was passed in November 2004. In order to qualify for the sector, a license holder must have trawl and catcher processor endorsements on its License Limitation Program permit (LLP), and must own a Non-AFA vessel that caught and processed 150 mt of groundfish with trawl gear between 1997 and 2002.

Only catch history from eligible vessels will be credited in the cooperative program. The catch history assigned to the first license of the eligible vessel will be the catch history of the eligible vessel. Any eligible vessel that has sunk, is lost, or becomes inoperable or ineligible during or after the qualifying period will be credited to the license that arose on the vessel. Any such license assigned to an eligible vessel will be credited with the catch history of that vessel during cooperative apportionment.

Licenses and vessels used to qualify for Amendment 80 (either to be included in the Non-AFA Trawl CP sector or to be used in Amendment 80 cooperative formation) are restricted from being used outside of the Amendment 80 sector, except that any eligible vessel authorized to fish pollock under the AFA would still be authorized to fish under this statute.

To operate as a cooperative, membership must include at least three separate entities and must be composed of at least 15 percent of the qualified vessels. Those participants who do not elect to join a cooperative may either form their own cooperative (with at least 15 percent of qualified licenses with cooperative endorsements) or participate outside the cooperative in the sector's limited access fishery.

Allocation of the primary target species and PSC allowance to the cooperative and sector's limited access fishery would be in proportion to the total catch of the primary target species of the eligible license holders included in each pool, for the years 1998-2002 by species, during this period. PSC would be apportioned to target species and Pacific cod based on average use of PSC in each target species during years 1998-2004.

Atka mackerel will be allocated using two different apportionment methods to two different vessel types. Each vessel will receive credit for its historic share of the sector's Atka mackerel allocation using total catch from 1998-2002 for all subareas combined. Allocations to non-mackerel vessels (less than 200' in length having less than 2 percent of the sector's Atka mackerel history) would receive their allocation by area according to each non-mackerel vessel's catch in each subarea during this same year period. After removing the non-mackerel portion, the remaining amount is then allocated to the mackerel vessels (vessels that are greater than 200' in length or less than 2 percent of the sector's mackerel allocation) based on their respective percentages equally in each area.

Notwithstanding the qualifying history of the vessel, a qualified vessel that has not fished after 1997 will receive an allocation under the cooperative program less than 0.5 of the yellowfin sole catch history, 0.5 percent of the rock sole catch history, and 0.1 percent of the flathead sole catch history.

Within the Non-AFA Trawl CP sector, consolidation would not be constrained. An eligible participant (either individual or entity) would not be limited as to the percentage of the Non-AFA Trawl CP sector allocation it can use or the amount of licenses and qualified catch that it may hold.

Sideboards for the Non-AFA Trawl CP sector would be established in regulation based on the sector's participation in other fisheries during the same years used to calculate the sector's allocation, (1998 to 2002). Sideboards for those species that close on TAC in the GOA and the BSAI would be established based on retained catch of the Non-AFA Trawl CP sector divided by the retained catch of all sectors from 1998 to 2002. Sideboards would also be established for halibut PSC in the GOA based on actual halibut PSC usage by the Non-AFA Trawl CP sector in each target fishery in the deep and shallow water complexes by area between 1998 and 2002. Only vessels with LLPs that have Gulf wide weekly participation in the flatfish fisheries over a threshold number of weeks during a qualifying period would be eligible to participate in those fisheries. The sideboards would remain in place until such time as other fisheries are rationalized (including sector allocations for the Pacific cod fishery). Within the Non-AFA Trawl CP sector, sideboards would be established between cooperative and non-cooperative participants for unallocated species, based on the same years. Sideboards would apply to eligible licenses and associated vessels from which the catch history arose.

The CDQ program would be allocated 10 percent of each primary target species, and the associated species taken incidentally, except Pacific cod, in the prosecution of these directed fisheries. The prohibited species allowance allocated to the CDQ program as prohibited species quota reserves would also continue to be issued at the same percentage as the CDQ groundfish allocation.

Alternative 3: Single Cooperative

This alternative would allocate the following species to the Non-AFA Trawl CP sector: yellowfin sole, rock sole, flathead sole, Atka mackerel by subarea, and Aleutian Island Pacific Ocean perch--referred to as the primary target species. Allocation of these species to the sector would be in proportion to the retained catch of the Non-AFA Trawl CP sector relative to the total catch by all vessels, for the years 1995 to 2003. The unallocated portion of the primary target species quota would be reserved for the Non-H&G trawl fishery, which is made up of the AFA Trawl CP sector, AFA Trawl CV sector, and the Non-AFA Trawl CV sector. Non-AFA Trawl CP sector allocations of the primary target species would be managed as a soft cap: when the sector harvests all of its allocation of a primary target species, the species would be placed on prohibited species status, and would need to be discarded.

Alternative 3 also includes a rollover provision: any portion of the primary target species in the general limited access fishery projected to remain unharvested would be rolled over to the Non-AFA Trawl CP sector.

This alternative also includes a quota threshold of 100,000 mt for the yellowfin sole quota. If, in a given year, the quota exceeds this threshold, the excess would be allocated in the following manner: 70 percent to the Non-AFA Trawl CP sector and 30 percent to the limited access trawl fishery. Any yellowfin sole above the threshold that is projected by the NOAA Regional Administrator to go unharvested would be rolled over to the other threshold recipients (Non-AFA Trawl CP sector or the general limited access fishery).

The Non-AFA Trawl CP sector would receive a PSC allowance under this alternative. PSC usage of all trawl vessels in each PSC fishery group for allocated primary species plus Pacific cod, from 1995 to 2002, would be calculated, to which the proportion of the Non-AFA Trawl CP sector's share of the target species quota (as determined in Component 3) would be applied. The sector's PSC allowance for each prohibited species would be 95 percent of the total amount calculated using this formula.

The eligibility criteria for the Non-AFA Trawl CP sector have been determined by Congress in the provisions of the BSAI CP Capacity Reduction Program. In order to qualify for the sector, a license holder must have trawl and catcher processor endorsements on their LLP and must own a vessel that caught and processed 150 mt of groundfish with trawl gear between 1997 and 2002.

Only catch history from eligible vessels will be credited in the cooperative program. The catch history assigned to the first license of the eligible vessel will be the catch history of the eligible vessel. Any eligible vessel that has sunk, is lost, or becomes inoperable or ineligible during or after the qualifying period will be credited to the license that arose on the vessel. Any such license assigned to an eligible vessel will be credited with the catch history of that vessel during cooperative apportionment.

Licenses and vessels used to qualify for Amendment 80 (either to included in the Non-AFA Trawl CP sector or to be used in Amendment 80 cooperative formation) are restricted from being used outside of the Amendment 80 sector, except that any eligible vessel authorized to fish pollock under the AFA would still be authorized to fish under this statute.

To operate as a cooperative, membership must include as least three separate entities and would need to be composed of at least 67 percent of the qualified vessels. Those participants who do not elect to join a cooperative could participate outside the cooperative in the sector's limited access fishery.

Allocation of the primary target species and PSC allowance to the cooperative and sector's limited access fishery would be in proportion to the total catch of the primary target species of the eligible license holders included in each pool, for the years 1995-2003, dropping the three lowest annual catches for the license, by species, during this period. PSC would be apportioned to target species and Pacific cod based on average use of PSC in each target species during years 1998-2004.

Atka mackerel will be allocated using two different apportionment methods to two different vessel types. Each vessel will receive credit for its historic share of the sector's Atka mackerel allocation using total catch from 1995-2003 drop three years for all subareas combined. Allocations to non-mackerel vessels (less than 200' in length having less than 2 percent of the sector's Atka mackerel history) would receive their allocation by area according to each non-mackerel vessel's catch in each subarea during this same year period. After removing the non-mackerel portion, the remaining amount is than allocated to the mackerel vessels (vessels that are greater than 200' in length or less than 2 percent of the sectors mackerel allocation) based on their respective percentages equally in each area.

Notwithstanding the qualifying history of the vessel, a qualified vessel that has not fished after 1997 will receive an allocation under the cooperative program less than 0.5 of the yellowfin sole catch history, 0.5 percent of the rock sole catch history, and 0.1 percent of the flathead sole catch history.

Consolidation in the Non-AFA Trawl CP sector would be limited by a use cap that applies to each person (using individual and collective rule). No single person may use or hold more than 50 percent of the sector's combined allocation for each allocated species. However, if a person's attributed history at initial allocation is greater than the use cap threshold, the person's ability to exceed the cap would be grandfathered.

Sideboards for the Non-AFA Trawl CP sector would be established in regulation based on the sector's participation in other fisheries during the same years used to calculate the sector's allocation, (1995 to 2003). Sideboards for those species that close on TAC in the GOA and the BSAI would be established based on total catch of the Non-AFA Trawl CP sector divided by the total catch of all sectors from 1995 to 2003. Sideboards would also be established for halibut PSC in the GOA based on the usage by the Non-AFA Trawl CP sector in each target species in the deep and shallow water complexes by area between 1995 and 2003. The sideboards would remain in place until such time as other fisheries are rationalized (including sector allocations for the Pacific cod fishery). Within the Non-AFA Trawl CP sector, sideboards would be established between cooperative and non-cooperative participants for unallocated species, based on the same years. Sideboards would apply to eligible licenses and associated vessels from which the catch history arose.

The CDQ program would receive an allocation of 15 percent of each primary target species, and the associated species taken incidentally in the prosecution of these directed fisheries. The prohibited species

allowance allocated to the CDQ program as prohibited species quota reserves would be issued at the same percentage as the CDQ groundfish allocation.

Alternative 4: Preliminary Preferred Alternative

This alternative would allocate the following species portions to the Non-AFA Trawl CP sector: yellowfin sole 82.5 percent, rock sole 97 percent, and flathead sole 98 percent. For EAI/BS and CAI Atka mackerel the allocation would be 98 percent the first year but then decrease 2 percent each year over a 4-year period to 90 percent. 100 of the WAI Atka mackerel would be allocated to the Non-AFA Trawl CP sector. For EAI and CAI POP the allocation would be 95 percent the first year decreasing to 90 percent the second year of the program. For WAI POP, 98 percent would be allocated to the Non-AFA Trawl CP sector. The unallocated portion of the primary target species quota would be reserved for the trawl limited access fishery, which is made up of the AFA Trawl CP sector, AFA Trawl CV sector, and the Non-AFA Trawl CV sector. An ICA for the fixed gear sectors and trawl limited access fishery would be removed before sector allocations. AFA sideboards would be determined after CDQ reserve amounts are deducted from TAC. Non-AFA Trawl CP sector allocations of the primary target species would be managed as a hard cap; when the sector harvests all of its allocation of a primary target species, the cooperative would be restricted from directed fishing for that species. Allocations to the general limited access fishery would be managed using an incidental catch allowance ICA.

Alternative 4 also includes a rollover provision; any portion of the primary target species and PSC in the general limited access fishery projected to remain unharvested by NOAA Fisheries would be rolled over to the Non-AFA Trawl CP sector. Any rollover of halibut PSC to the Non-AFA Trawl CP sector will be discounted 5 percent. NOAA Fisheries will perform a review on May 1, August 1, and any time after August 1 as appropriate to determine rollover amounts by considering current catch and PSC usage, historic catch and PSC usage, harvest capacity and stated harvest intent.

This alternative would adjust the allocation of yellowfin sole between the Non-AFA Trawl CP sector and the trawl limited access fishery when the ITAC exceeds 125,000 mt. If, in a given year, the ITAC exceeds this threshold, the portion that is in excess of the 125,000 mt threshold would be allocated in the following manner: 60 percent to the Non-AFA Trawl CP sector and 40 percent to the limited access trawl fishery. Any yellowfin sole above the threshold that is projected by the NOAA Regional Administrator to go unharvested would be rolled over from the trawl limited access fishery to the Non-AFA Trawl CP sector. AFA yellowfin sole sideboards do not apply to the threshold fishery.

In April 2006, the Council narrowed the halibut PSC apportionment options to two. The first option would base halibut PSC apportionment to the Non-AFA Trawl CP sector on historical usage of PSC from 2002 to 2004. The sector's PSC allowance for each prohibited species would be reduced to 80 percent of the total calculated amount phased in over a four year at 5 percent per year starting in the second year of the program. The second option would apportion halibut PSC based on the sector's percentage allocations of target species (see above for percentages) multiplied by the trawl PSC amounts for these species. Trawl PSC apportionment amounts would be based on 2002 to 2004 average consumption rate for all trawlers for each of the Amendment 80 species plus Pacific cod multiplied by the TAC for the upcoming year or the previous year's catch whichever is less. The following maximum and minimum will apply to this PSC option: 2,200 mt to 2,400 mt for the Non-AFA Trawl CP sector and 950 mt to 1,200 mt for trawl limited access fishery. For crab PSC, the following percentages will be applied annual total trawl crab PSC apportionment amounts published during final specifications: 37.52 percent for red king crab, 61.44 percent for *C. opilio*, 52.64 percent for Zone 1 *C. bairdi*, and 29.59 percent for Zone 2 *C. bairdi*. These allocations would then be reduced 5 percent per year starting in the second year of the program until the reduced allocation is 80 percent of the initial allocation.

The eligibility criteria for the Non-AFA Trawl CP sector was been determined by Congress in the provisions of the BSAI CP Capacity Reduction Program. In order to qualify for the sector, a license

holder must have trawl and catcher processor endorsements on their LLP and must own a vessel that caught and processed 150 mt of groundfish with trawl gear between 1997 and 2002.

Only catch history from eligible vessels will be credited in the cooperative program. The catch history assigned to the first license of the eligible vessel will be the catch history of the eligible vessel. Any eligible vessel that has sunk, is lost, or becomes inoperable (total constructive loss) or ineligible during or after the qualifying period will be credited to the license that arose on the vessel. Any such license assigned to an eligible vessel will be credited with the catch history of that vessel during cooperative apportionment.

Licenses and vessels used to qualify for Amendment 80 (either to included in the Non-AFA Trawl CP sector or to be used in Amendment 80 cooperative formation) are restricted from being used outside of the Amendment 80 sector, except that any eligible vessel authorized to fish pollock under the AFA would still be authorized to fish under this statute.

To operate as a cooperative, membership must include as least three separate entities and would need to be composed of at least 30 percent of the qualified vessels. Those participants who do not elect to join a cooperative could participate outside the cooperative in the sector's limited access fishery.

Allocation of the primary target species and PSC allowances to a cooperative (and sector's limited access fishery) would be in proportion to its member's total catch of the primary target species by the eligible vessel during the years 1998-2004 dropping the two lowest catch years by species. PSC would be apportioned to target species and Pacific cod based on average use of PSC in each target species during years 1998-2004.

Atka mackerel will be allocated using two different apportionment methods to two different vessel types. Each vessel will receive credit for its historic share of the sector's Atka mackerel allocation using total catch from 1998-2004 drop two years for all subareas combined. Allocations to non-mackerel vessels (less than 200' in length having less than 2 percent of the sector's Atka mackerel history) would receive their allocation by area according to each non-mackerel vessel's catch in each subarea during this same year period. After removing the non-mackerel portion, the remaining amount is then allocated to the mackerel vessels (vessels that are greater than 200' in length or less than 2 percent of the sectors mackerel allocation) based on their respective percentages equally in each area.

Notwithstanding the qualifying history of the vessel, a qualified vessel that has not fished after 1997 will receive an allocation under the cooperative program less than 0.5 of the yellowfin sole catch history, 0.5 percent of the rock sole catch history, and 0.1 percent of the flathead sole catch history.

The alternative would restrict consolidation in the Non-AFA Trawl CP sector on two levels. First, no single person (using individual and collective rule) can hold catch history in excess of 30 percent of total sector apportionment of all allocated species combined. In addition, no vessel can harvest more than 10 percent of the entire sector's allocation. Persons (individuals or entities) that exceed the caps in the initial allocation will be grandfathered.

Sideboards for the Non-AFA Trawl CP sector would be established in regulation based on the sector's participation in other fisheries during the same years used to calculate the sector's allocation. Sideboards for those species that close on TAC in the GOA would be established based on total of the Non-AFA Trawl CP sector from 1998-2004. There would be no BSAI groundfish sideboards.

The alternative includes several GOA sideboards provisions: 1) eligibility to participate in the GOA flatfish fisheries based on participation in that fishery for greater than 10 weeks, 2) exemption for Non-AFA Trawl CP vessels that have fished more than 80 percent of their weeks in the GOA flatfish fisheries during the 2000 and 2003 period will be exempt from GOA halibut sideboards, 3) Gulf-wide halibut sideboards for deep and shallow water complex fisheries based on the actual rate for each target fisheries, 4) GOA pollock, Pacific cod, and directed rockfish species (Pacific Ocean perch, Northern rockfish, and

Pelagic shelf rockfish) based on retained catch for the years 1998 to 2004. The sideboards would remain in place until such time as other fisheries are rationalized (including sector allocations for the Pacific cod fishery). Within the Non-AFA Trawl CP sector, each cooperative will receive its GOA sideboards. Cooperatives that sign an inter-cooperative agreement that would allow aggregation of sideboards will be managed as aggregate sideboard. Sideboards limits will be managed as a hard cap.

The CDQ program would receive an allocation of 10 percent of each primary target species, and the associated species taken incidentally in the prosecution of these directed fisheries. The prohibited species allowance allocated to the CDQ program as prohibited species quota reserves would be issued at the same percentage as the CDQ groundfish allocation.

Components and Options for Amendment 80

Provided below are the components and options that define the sector allocations in Amendment 80. These components and their respective options and suboptions are divided into four issues comprising 13 components in total. The four issues are allocations of BSAI non-pollock groundfish between the Non-AFA Trawl CP sector and the trawl limited access fishery, PSC allowance for the Non-AFA Trawl CP sector and the trawl limited access fishery, cooperative formation requirements for the Non-AFA Trawl CP sector, and the option for implementing a yellowfin sole threshold fishery. Note that Alternatives 2, 3, and 4 represent specific combinations of components and options for analysis. The Council's current suite of preferred alternatives has been identified in this document by an asterisk. For some components, multiple options have been selected as the Council's preferred alternative. In those cases, single alternative will be selected at the time of final action. It is important to note that the Council may select any alternative considered in this document at the time of final action and is not limited to the preferred alternatives identified in this draft. The Council's preferred alternative will be analyzed in the final document.

Issue 1: Sector Allocation of BSAI Non-Pollock Groundfish to the Non-AFA Trawl Catcher Processor Sector and CDQ Program

Note that the bolded components and options with the * denote Council selected preliminary preferred alternative.

***Component 1** Allocate only the following primary target species to the Non-AFA Trawl CP sector: yellowfin sole, rock sole, flathead sole, Atka mackerel, and Aleutian Islands Pacific Ocean perch. Species could be added or deleted through an amendment process.

Component 2 CDQ allocations for each primary target (Component 1) species in the program shall be removed from the TACs prior to allocation to sectors at percentage amounts equal to one of the following.

- Option 2.1 7.5%
- *Option-2.2 10%**
- Option 2.3 15%

***For Amendment 80 species, the reserves would be set at 10% of the TAC and all would be allocated to the CDQ reserves**

CDQ allocations for secondary groundfish species (except Pacific cod) taken incidental in the primary trawl target fisheries shall be removed from the TACs prior to allocation to sectors at percentage amounts equal to one of the following:

- Suboption 2.1 7.5%
- *Suboption 2.2 10%**

Suboption 2.3 15%

Suboption 2.4 At species specific percentages that reflect historical incidental catch rates in the directed fisheries for the primary species by the Non-AFA Trawl Catcher Processor sector during 1998-2003.

Suboption 2.5 The Council can select percentages for each of the secondary species allocated to the CDQ Program

Component 3 Identifies the sector allocation calculation (after deductions for CDQs, ICAs, and other existing fishery allocations, i.e., Atka mackerel jig) for the Non-AFA Trawl CP sector. Atka mackerel and Aleutian Islands Pacific Ocean perch allocations will be calculated for individual subareas and all subareas combined (541/EBS, 542, and 543). The remaining portion of the primary species TAC included in this program would be allocated to the BSAI trawl limited access fishery.

For purpose of allocation to the Non-AFA Trawl CP sector, each primary species allocation is based upon the years and percentage of catch history selected in Component 4 using one of the following:

Option 3.1 Total legal catch of the sector over total legal catch by all sectors

Suboption 3.1.1 An ICA would be taken off the top to accommodate incidental bycatch that applies only to fixed gears.

Option 3.2 Retained legal catch of the sector over retained legal catch by all sectors

***Suboption 3.2.2 Allocations would be managed as a hard cap for the H&G sector, and for the Non H&G sector, an ICA would be taken off the top to accommodate incidental bycatch by the non-H&G sector. AFA vessel sideboard amounts will be determined after CDQ reserve amounts are deducted from TAC.**

Option 3.3 Retained legal catch of the sector over total catch by all sectors

***For purpose of allocation to the Non-AFA Trawl CP sector, each primary species allocation is:**

Yellowfin Sole	82.5%
Rock Sole	97%
Flathead Sole	98%
Atka Mackerel	98% in 541/EBS and 542, in the first year of the program, decreasing by 2% increments over 4-yr period to 90%. 100% in 543.
AI POP	95% in 541 and 542 in the first year of the program, decreasing to 90% in the second year of the program. 98% in 543.

Legal landing means, for the purpose of initial allocation of QS, fish harvested during the qualifying years specified and landed in compliance with state and federal permitting, landing, and reporting regulations in effect at the time of the landing. Legal landings exclude any test fishing, fishing conducted under an experimental, exploratory, or scientific activity permit or the fishery conducted under the Western Alaska CDQ program.

Option 3.4 Management of groundfish allocations

Suboption 3.4.1 Allocations would be managed as a hard cap. When the allocation is reached, further fishing would be prohibited.

Suboption 3.4.2 Allocations would be managed as a soft cap. When the allocation is reached, species would be prohibited status.

***Option 3.5 This option may be selected in conjunction with Options 3.1 through 3.4. Target species and PSC rollover: any unharvested portion of the Amendment 80 target**

species or unharvested portion of PSC in the limited access fishery that is projected to remain unused shall be rolled over to vessels that are members of Amendment 80 cooperatives.

Any roll over of halibut PSC to the Non-AFA Trawl CP sector shall be discounted by 5%. That is, if 100 mt of halibut is available for roll over, then 95 mt of halibut would be re-allocated to the Non-AFA Trawl CP sector. Once the initial allocation has been determined, the Non-AFA Trawl CP sector may re-allocate the PSC among the target species.

NMFS shall perform a review on or before May 1 and August 1 each year, and at such other times after August 1 as it deems appropriate. In making its determination, NMFS shall consider current catch and PSC usage, historic catch and PSC usage, harvest capacity and stated harvest intent, as well as other relevant information.

Component 4 Catch history years used to determine the allocation to the Non-AFA Trawl CP sector in Component 3.

Option 4.1 1995-2003

Option 4.2 1997-2002

Option 4.3 1998-2002

Option 4.4 1998-2004

Option 4.5 1999-2003

Option 4.6 2000-2004

Option 4.7 The Council can select percentages for each of the species allocated to the Non-AFA Trawl CP sector.

Issue 2: PSC Allowance for the Non-AFA Trawl Catcher Processor Sector and the CDQ Program

***Component 5** Increase PSQ reserves allocated to the CDQ program (except herring and Chinook salmon) to levels proportional to the CDQ allocation of primary species under Component 2.

Component 6 PSC allowances of halibut and crab to the Non-AFA Trawl CP Sector.

Option 6.1 Apportion PSC to Non-AFA Trawl CP sector:

***Suboption 6.1.1** Allocation halibut PSC based on historical usage of PSC by the Non-AFA Trawl Catcher Processor sector from January 1, 2002 thru December 31, 2004 rather than the sector's allocation, with the remainder available to the other sectors.

***Suboption 6.1.1.1** Reduce apportionments to 80% of calculated level

***Suboption 6.1.1.1.1** Phase in PSC reductions 5% per year starting in second year of program.

Suboption 6.1.2 Allocation based on the PSC taken in the Non-AFA Trawl Catcher Processor sector directed fishery for allocated primary species plus Pacific cod.

Suboption 6.1.3 Percentage allocations (estimates for PSC associated with Pacific cod catch would be based on the process laid out in Component 3) selected in Component 3 multiplied by the relevant total PSC catch by all trawl vessels in each PSC fishery group for allocated primary species plus Pacific cod.

***Suboption 6.1.4 Allocation of halibut PSC to the non-AFA Trawl CP sector shall be determined by that sector's percentage allocations of target species groups (contained in Component 3) multiplied by the trawl PSC amounts for those target species groups as set forth in the annual specifications.**

Sectoral PSC allocations will be calculated using a predetermined fixed target fishery bycatch rate, based on the 2002-2004 average consumption rate across the trawl sectors based on the lesser of the TAC or the previous year's catch, with initial allocations of the PSC to all trawl target fisheries adjusted pro rata such that their sum equals the overall trawl PSC allocation.

The following maximum and minimum allowances shall apply to the initial PSC allocations: Non-AFA Trawl CP sector shall receive an allowance of not less than 2,200 mt of halibut and not more than 2,450 mt of halibut. Trawl limited access sectors shall receive an allowance of not less than 950mt of halibut and not more than 1,200 mt of halibut. Minimum and maximum allowances of crab PSC for each sector may be selected within the range of alternatives identified in the January 2006 Amendment 80 analysis.

Option 6.2 Select a Non-AFA Trawl CP sector PSC reduction option from the following that would apply to any PSC apportionment suboption selected in 6.1. PSC reduction options can vary species by species. Any reduction in the Non-AFA Trawl CP sector should not result in an increase in PSC allocation to any other sector.

Suboption 6.2.1 Reduce apportionments to 60% of calculated level.

Suboption 6.2.2 Reduce apportionments to 75% of calculated level.

Suboption 6.2.3 Reduce apportionments to 90% of calculated level.

Suboption 6.2.4 Reduce apportionments to 95% of calculated level.

Suboption 6.2.4.1 Start the reduction in the third year of the program.

Suboption 6.2.5 Do not reduce apportionments from calculated level.

Suboption 6.2.6 Phase in PSC reductions 5% per year for Suboptions 6.2.1–6.2.4.

Suboption 6.2.7 Reductions under Suboptions 6.2.1–6.2.4 apply only to vessels that participate in the Non-AFA Trawl CP sector's limited access fishery.

***Option 6.3 The Council can select percentages and/or amounts for PSC allocated to the Non-AFA Trawl CP sector.**

Crab PSC allocations to the Non-AFA Trawl Catcher Processor sector shall be based on the percent of historic usage of crab PSC in all groundfish fisheries from 1995 to 2002 (resulting percentages are reported in the far right column in Table 3-43 in the March 16, 2006 EA/RIR/IRFA):

Red king crab.....37.52%
C. opilio.....61.44%
Zone 1 C. bairdi...52.64%
Zone 2 C. bairdi...29.59%

The initial allocation will be reduced by 5% per year starting in the second year until the Non-AFA Trawl CP sector is at 80% of the initial allocation. Trawl limited access sectors shall receive an allowance of the sum of the combined AFA CV/CP sideboards. These levels shall be reviewed, and further reduced as necessary, by the Council during the fifth year of the program. (Note – basing usage on a % of annual PSC limits, results in a calculation that is crab abundance based.)

If Amendment 85 is implemented prior to Amendment 80, the Non-AFA Trawl CP sector would receive an allocation of PSC in accordance with Amendment 85. Upon implementation of Amendment 80, no allocation of PSC will be made to the Non-AFA Trawl CP sector under Amendment 85.

Issue 3: Cooperative Development for the Non-AFA Trawl Catcher Processor Sector

***Component 7** The BSAI non-pollock groundfish CP buyback legislation establishes the vessels eligible to participate as a catcher processor in the BSAI non-pollock groundfish fisheries. The members of the Non-AFA Trawl Catcher Processor subsector are defined as the owner of each trawl CP:

- a.) that is not an AFA Trawl CP
- b.) to whom a valid LLP license that is endorsed for BSAI Trawl CP fishing activity has been issued; and
- c.) that the Secretary determines who has harvested with trawl gear and processed not less than a total of 150 mt of non-pollock groundfish during the period January 1, 1997 – through December 31, 2002.

This definition establishes the vessels that can participate in the Amendment 80 program.

Restrict LLPs that are used for eligibility in Amendment 80 (either to be included in the Non-AFA CP sector or to be used in Amendment 80 cooperative formation) from being used outside of the Amendment 80 sector, except that any eligible vessel which is authorized to fish Pollock under the AFA would still be authorized to fish under the statute.

Only history from eligible vessels will be credited in the program. The catch history credited to an eligible vessel will be catch history of that vessel. The catch history credited to an eligible vessel for the first license assigned to that vessel will only be the catch history of the eligible vessel. The catch history of any vessel that meets the non-AFA and catch criteria of Component 7 which has sunk, is lost or becomes inoperable, or becomes otherwise ineligible during or after the qualifying period will be credited to the license that arose from that vessel. Any such license assigned to an eligible vessel will be credited with the catch history during the Component 10 period of the eligible non-AFA trawl CP from which the license arose, except that no history can be assigned to more than one vessel at a given time. Once the catch history has been assigned to the license, that license must be eligible Non-AFA Trawl CP vessel.

Component 8 Establishes the number of vessels required before the cooperative is allowed to operate. No later than November 1 of each year, an application must be filed with NOAA fisheries by the cooperative with a membership list for the year.

In order to operate as a cooperative, membership must be comprised of at least three separate entities (using the 10% AFA rule) and must be:

- Option 8.1 At least 15 % of the eligible vessels
- *Option 8.2 At least 30% of the eligible vessels**
- Option 8.3 At least 67% of the eligible vessels
- Option 8.4 At least 100% of the eligible vessels
- Option 8.5 All less one distinct and separate vessel using the 10% threshold rule
- Option 8.6 All less one vessel

Component 9 Determines the method of allocation of PSC limits and groundfish between the cooperative and eligible Non-AFA Trawl CP participants who elect not to be in a cooperative.

***Option 9.1 Catch history is based on total catch**

Option 9.2 Catch history is based on total retained catch

Assign PSC within the sector to allocated target species and Pacific cod based on the average use of PSC in each target species from the years 1998-2004, expressed as a percent of the total PSC allocation to the sector.

Each eligible vessel will then receive an allocation percent of PSC for catch of allocated target species and Pacific cod equal to its proportion of the catch history of the allocated fishery.

This PSC allocation will not change from year to year (i.e., will not fluctuate annually with the TAC).

Component 10 Determines which years of catch history are used for establishing cooperative allocations. The allocation of groundfish between the cooperative and those eligible participants who elect not to join a cooperative is proportional to the catch history of groundfish of the eligible license holders included in each pool. Applicable PSC limits are allocated between the cooperative and non-cooperative pool in same proportions as those species that have associated PSC limits. The catch history as determined by the option selected under this component would be indicated on the Sector Eligibility Endorsement, which indicates the license holder's membership in the Non-AFA Trawl CP sector. The aggregate histories would then be applied to the cooperative and the non-cooperative pool.

Notwithstanding the qualifying history of the vessel, a qualified vessel that has not fished after 1997 will receive an allocation under the program of no less than:

0.5 percent of the yellowfin sole catch history

0.5 percent of the rock sole catch history

0.1 percent of the flathead sole catch history

- Option 10.1 1995-2003, but each vessel drops its 3 lowest annual catches by species during this period
- Option 10.2 1997-2003, but vessel holder drops its two lowest annual catches by species during this period
- Option 10.3 1998-2002, but vessel holder drops its lowest annual catch by species during this period

- Suboption 10.3.1 Each vessel does not drop its lowest annual catch by species during this period
- Option 10.4 1998-2003, but each vessel drops its lowest annual catch by species during this period
- Suboption 10.4.1 Each vessel drops two years during this period
- Option 10.5 1999-2003, but each vessel drops its lowest annual catch by species during this period
- Option 10.6 1997-2004, but each vessel drops its two lowest annual catch by species during this period
- Option 10.7 1997 – 2004, but each vessel drops its three lowest annual catch by species during this period
- *Option 10.8 1998 – 2004, but each vessel drops its two lowest annual catch by species during this period**
- Option 10.9 Select the highest percentage allocation by species, for each vessel using total catch of the vessel over the total catch of the sector for the following four suites of years: 1997-2003, drop 2; 1997-2004, drop 2; 1997-2004, drop 3; 1998-2004, drop 2. Different year scenarios may be chosen for different species.
- Add all of the percentages together and then adjust proportionally to 100%.

For AI POP, all vessels will receive their allocation equally in 541, 542 and 543.

Each vessel will receive its historic share of the sector's Atka mackerel allocation based on component 10 (all areas combined). Vessels less than 200' in length having less than 2% of the sector's Atka mackerel history ("Non-mackerel vessels") will receive their allocation distributed by area according to each individual vessel's catch distribution during the component 10 years. The remainder of EBS/541, 542 and 543 sector allocation after "Non-mackerel vessels" have been removed will be allocated to vessels that are greater than 200' in length or have more than 2% of the sector's Atka mackerel allocation ("mackerel vessels"). Mackerel vessels will receive their respective percentages (adjusted to 100%) equally in each area.

In the event that the Non-AFA Trawl CP sector receives an exclusive allocation of Pacific cod, that allocation will be divided between cooperatives and the sector's limited access fishery in the same manner (and based on the same history) as the division of the other allocated species within the sector.

Component 11 Determines if excessive share limits are established in the Non-AFA Trawl CP sector.

Option 11.1 There is no limit on the consolidation in the Non-AFA Trawl CP sector.

***Option-11.2 Consolidation in the Non-AFA Trawl Catcher Processor sector is limited such that no single person (using the individual and collective rule) can hold catch history more than a fixed percentage of the overall sector apportionment history. The cap would be applied on an aggregate basis (options: 20%, *30%, 40%, or 50% of the sector's allocation).**

Suboption 11.2.1 Cap would be applied on an aggregated basis.

***Suboption 11.2.2 Persons (individuals or entities) that exceed the cap in the initial allocation would be grandfathered.**

***Option 11.3 No vessel shall harvest more than 5%, *10%, 15% or 20% of the entire Non-AFA Trawl CP sector allocation.**

***Suboption 11.3.1 Vessels that are initially allocated a percentage of the sector allocation that is greater than the vessel use cap shall be grandfather at their initial allocation.**

Component 12 Establishes measures to maintain relative amounts of non-allocated species until such time that fisheries for these species are further rationalized in a manner that would supersede a need for these sideboard provisions. Sideboards shall apply to eligible licenses and associated vessels from which the catch history arose.

Option 12.1 BSAI and/or GOA sideboards for the Non-AFA Trawl CP sector would be established by regulation using the same years used to calculate the apportionment of PSC and groundfish between the Non-AFA Trawl CP and limited access pool until such time as these other fisheries are rationalized, when the allocations are determined in these newly rationalized fisheries.

Suboption 12.1.1 Sideboards would be allocated between cooperative and non-cooperative LLP holders, based on the same formula as Component 10.

Option 12.2 BSAI and/or GOA sideboards for the Non-AFA Trawl CP sector would be established by regulation by establishing percentages and/or amounts for the species/fisheries not included in this program. These measures maintain relative amounts of non-allocated species until such time that fisheries for these species are further rationalized in a manner that would supersede a need for these sideboard provisions.

Suboption 12.2.1 Sideboards would be allocated between cooperative and non-cooperative LLP holders, based on the same formula as Component 10.

***Option 12.3 In the BSAI, Pacific cod will be managed under existing sector apportionments, with rollovers, until new Pacific cod sector allocations are implemented. Pacific cod will be allocated between the cooperative and non-cooperative sub-sectors based on the same formula as Component 10.**

In the BSAI, management of unallocated species should remain status quo.

Option 12.4 GOA sideboard provisions

Sideboard provisions for Amendment 80 qualified non-AFA trawl CP sector with valid GOA LLP with appropriate area endorsements are as follows:

***Suboption 12.4.1 Vessels associated with LLPs that have Gulf weekly participation of greater than 10 weeks in the flatfish fishery during the years defined in Component 10 will be eligible to participate in the GOA flatfish fisheries.**

***Suboption 12.4.2 Non-AFA Trawl CP vessel(s) that fished 80% of their weeks in the GOA flatfish fisheries from January 1, 2000 through December 31, 2003 will be exempt from GOA halibut sideboards in the GOA. Vessel(s) exempt from Amendment 80 halibut sideboards in the GOA may participate fully in the GOA open-access flatfish fisheries. The history of this vessel will not contribute to the Non-AFA CP sideboards and its catch will not be subtracted from these sideboards.**

***Suboption 12.4.2.1 Vessel(s) exempted from Amendment 80 GOA sideboards may not lease their Bering Sea Amendment 80 history.**

***Suboption 12.4.3 Gulf-wide halibut sideboards for the deep and shallow complex fisheries would be established by season calculated based on:**

- Option A: Bycatch rate approach for each of the target fisheries within each of the regulatory areas (610, 620, 630, and 640) for the Amendment 80 qualified non-AFA trawl sector for the years defined in Component 10
- *Option B: Actual usage for the Amendment 80 qualified non-AFA trawl sector for the years defined in Component 10**
- Option C: The Council may select a percentage for halibut sideboards which is between options A and B.

***Suboption 12.4.4 GOA Pollock, Pacific cod, and directed rockfish species (POP, NR and PSR) sideboards for the Amendment 80 qualified non-AFA trawl CP sector would be established using the years defined in Component 10, where catch is defined as retained catch by Gulf area as a percentage of total retained catch of all sectors in that area.**

***Suboption 12.4.5 While the CGOA rockfish demonstration program is in place, the CGOA rockfish demonstration program takes precedence. The demonstration program would remove the need for catch sideboards for the CGOA directed rockfish species. The Amendment 80 CPs deep halibut mortality sideboard cap for the 3rd seasonal allowance (in July) will be revised by the amount of the deep complex halibut mortality allocated to the rockfish demonstration program for the Amendment 80 qualified non-AFA trawl CP sector while the demonstration program is in effect.**

***Suboption 12.4.6 Sideboards apply to vessels (actual boats) and LLPs used to generate harvest shares that resulted in allocating a percentage of the Amendment 80 species TACs to the non-AFA trawl CP sector. The intent is to prevent double-dipping with respect to GOA history related to sideboards.**

***Suboption 12.4.7 On completion of a comprehensive rationalization program in the GOA, any sideboards from the BSAI Amendment 80 plan amendment will be superseded by the allocations in the GOA rationalization program.**

***Suboption 12.4.8 Sideboards for PSC and GOA groundfish would be allocated between cooperative and non-cooperative vessel/licenses that are initially assigned harvest privileges for the five BSAI species allocated, based on the same formula as Component 10.**

***Suboption 12.4.9 Each cooperative will receive its GOA sideboards; cooperatives that sign an inter-cooperative agreement that allow aggregation of sideboards will be included within the aggregated sideboards. GOA sideboards may not be transferred between cooperatives. Sideboards limits assigned to cooperative will be managed as hardcaps.**

Issue 4: Development of a Yellowfin Sole Threshold Fishery

Component 13 The Council will allocate yellowfin sole above the threshold to participating sectors when the ITAC is anticipated to reach the threshold level. ITAC below the threshold level would be allocated to the Non-AFA Trawl Catch Processor sector based on the formula determined in Components 3 and 4. Threshold levels for other species may be developed at a later date. AFA sideboards do not apply to the YFS threshold fishery. The Council will allocate yellowfin sole above the threshold to participating sectors when the ITAC is anticipated to reach the threshold level.

Option 13.1 Threshold Rollover options:

Suboption 13.1.1 No rollover provision

Suboption 13.1.2 Any unharvested portion of the threshold reserve allocated to the limited access fishery that is projected to remain unused by a specific date (August 1 or Sept 1) shall be reallocated to the Non-AFA Trawl CP sector. Any unharvested portion of the threshold reserve allocated to the Non-AFA Trawl CP sector that is projected to remain unused by a specific date (August 1 or September 1) shall be reallocated to the limited access fishery.

***Suboption 13.1.3 Allow rollovers of any portion of the yellowfin sole TAC that is projected by the NOAA Regional Administrator to go unused. The NOAA Regional Administrator would be responsible for determining both the amount and the timing of the rollover.**

Option 13.2 Yellowfin sole threshold options:

Suboption 13.2.1 80,000 mt

Suboption 13.2.2 100,000 mt

***Suboption 13.2.3 125,000 mt**

Suboption 60% Non-AFA Trawl CP sector and 40% limited access fishery

Suboption 13.2.4 150,000 mt

Suboption 13.2.5 175,000 mt

Option 13.3 Allocate the threshold reserve to the Non-AFA Trawl CP sector and the BSAI limited access fishery using one of following suboptions:

Suboption 13.3.1 30% Non-AFA Trawl CP sector and 70% limited access fishery

Suboption 13.3.2 50% Non-AFA Trawl CP sector and 50% limited access fishery

Suboption 13.3.3 70% Non-AFA Trawl CP sector and 30% limited access fishery

Other Elements of Amendment 80

This section provides additional specifics and elements for the Non-AFA Trawl CP cooperative program. These specifics and elements are common for any cooperative program that might be developed.

- ***The cooperative program developed in Amendment 80 would not supersede pollock and Pacific cod IR/IU programs.**

- ***The Groundfish Retention Standards (GRS) (Amendment 79) would be applied to the cooperative as an aggregate on an annual basis and on those vessels who did not join a cooperative as individuals.**
- ***Non-AFA Trawl CP sector participants that did not elect to join a cooperative would be subject to all current regulations including all restrictions of the LLP and the GRS if approved.**
- ***All qualified license holders participating in the fisheries of the Non-AFA Trawl CP sector for Amendment 80 species would need to have trawl and catcher processor endorsements with general licenses for BSAI and the additional sector eligibility endorsement. Length limits within the license would also be enforced such that any replacement vessel entering the fishery would not exceed the Maximum Length Overall (MLOA) specified on the license.**
- ***Permanent transfers of an eligible vessel, its associated catch history, and its permit would be allowed. Eligible vessels, their associated catch history, and sector eligibility endorsement would not be separable or divisible. In the case of a sunk, lost, inoperable or otherwise ineligible vessel, catch history would be attached to the license that arose from the vessel and could not be separable or divisible. All transfers must be reported to NOAA Fisheries in order to track who owns the sector eligibility permit and harvest privileges of a vessel. The purchaser must be eligible to own a fishing vessel under MarAd regulations or any person who is currently eligible to own a vessel.**
- ***Annual allocations to the cooperative will be transferable among Non-AFA Trawl CP cooperative members. Such transfers will not need NOAA Fisheries approval.**
- ***Annual allocations to the cooperative will be transferable among Non-AFA Trawl CP cooperatives. Inter-cooperative transfers must be approved by NOAA Fisheries.**
- ***Any non-trawl or non-BSAI catches by qualified license holders that are considered part of the Non-AFA Trawl CP sector will not be included in the defined cooperative program. In addition, these non-trawl or non-BSAI catches allocated to the Non-AFA Trawl CP sector would not necessarily be excluded from other rationalization programs.**
- ***Catch history used for allocation and eligibility purposes will be legal and documented catch.**
- ***Disposition of groundfish species not allocated to the Non-AFA Trawl CP sector will not change as a result of the cooperative program developed in Amendment 80.**
- ***Bycatch limits for non-specified species or marine resources would not be established. However, if the Council deems that bycatch is unreasonable, specific regulations to minimize impacts would be considered.**
- ***The cooperative(s) would need to show evidence of binding private contracts and remedies for violations of contractual agreements would need to be provided to NOAA Fisheries. The cooperative would need to demonstrate adequate mechanism for monitoring and reporting prohibited species and groundfish catch. Participants in the cooperative would need to agree to abide by all cooperative rules and requirements.**
- ***Specific requirements for reporting, monitoring and enforcement, and observer protocols will be developed in regulations for participants in the Non-AFA Trawl CP sector. These monitoring and enforcement provisions are described in Section 3.3.7 of the April 2006**

EA/RIR/IRFA. Revisions to 3.3.7 have been described in a March 27, 2006 letter from NMFS to the Council.

- ***A detailed annual report will be required from each cooperative(s). Fishery managers will review the annual report and determine if the program is functioning as desired. An in-depth assessment of the program will be undertaken under the auspices of the Council/NOAA Fisheries every five years). The in-depth studies will report the accomplishments of the program and indicate whether any changes are necessary. This assessment shall determine whether the program is successful in reducing bycatch, minimizing waste, and improving utilization to the extent practicable to provide the maximum benefit to present generations of fishermen, associated fishing industry sectors, including the CDQ sector, communities and the nation as a whole. The Council shall consider significant changes or events (regulatory, economic, or biological) which negatively impact the Amendment 80 participants.**
- ***A socioeconomic data collection program will be implemented under the Non-AFA Trawl CP Cooperative Program. The program will collect cost, revenue, ownership, and employment data on a periodic basis. The purpose of the data collection is to fully understand the socio-economic impacts of the action, to inform future management actions, and to assure that this action serves its intended purpose and meets the goals set forth in the problem statement. Data will be used by Council and agency staff, recognizing that confidentiality is of extreme importance.**

The ownership data will be collected by vessel for enforcement of the ownership cap regulations; ownership data collection is essential to ensure that ownership caps are not exceeded. Employment data will be collected for monitoring of the community impacts of this program. Revenue and cost data by vessel and sector are essential to identify/estimate the costs associated with bycatch reduction and estimate the revenues generated to the sector, as an objective of this program is to offer sector participants the opportunity to mitigate, to some degree, the costs associated with bycatch reduction. Revenue, cost and employment data will be used to monitor the program benefits to present generations of fishermen, associated fishing sectors, including the CDQ sector, communities, and the nation as a whole.

The Council will implement the following process for developing appropriate elements of the data collection program.

1. **Convene a staff workgroup to develop information necessary to answer questions posed by NOAA Fisheries by letter of March 28, 2006 to ensure an adequate basis for the data collection program.**
2. **Host an industry workshop during the June 2006 Council meeting week to review and solicit comments in the socio economic data collection program.**
3. **Council review and approval of the socio-economic data collection program and considerations of SSC comments.**

Table 1. Annual first wholesale revenue and percent of total for AFA Trawl CP and Non-AFA Trawl CP sectors by BSAI groundfish species from 1999 to 2004

Year	Species	AFA Trawl CP		Non-AFA Trawl CP	
		First Wholesale Revenue	Percent of Total	First Wholesale Revenue	Percent of Total
1999	ALL OTHER SPECIES	\$86,810	0.04%	\$8,613,136	7.91%
	ATKA MACKEREL	*	*	\$20,802,760	19.10%
	FLATHEAD	\$50,801	0.02%	\$10,697,907	9.82%
	PACIFIC COD	\$4,383,776	2.15%	\$28,859,460	26.49%
	POLLOCK	\$197,201,236	96.60%	\$4,244,706	3.90%
	POP COMPLEX	\$161,977**	0.00%	\$5,060,577	4.65%
	ROCK SOLE	\$47,656	0.02%	\$14,431,319	13.25%
	YELLOWFIN	\$2,207,705	1.08%	\$16,218,976	14.89%
Total		\$204,139,961	100.00%	\$108,928,841	100.00%
2000	ALL OTHER SPECIES	\$35,235	0.02%	\$11,893,058	9.44%
	ATKA MACKEREL	*	*	\$19,395,535	15.40%
	FLATHEAD	\$13,352	0.01%	\$11,685,826	9.28%
	PACIFIC COD	\$2,229,183	1.55%	\$33,247,344	26.40%
	POLLOCK	\$139,882,845	97.48%	\$6,075,852	4.82%
	POP COMPLEX	\$55**	0.00%	\$4,160,965	3.30%
	ROCK SOLE	\$179,323	0.12%	\$15,694,280	12.46%
	YELLOWFIN	\$1,165,703	0.81%	\$23,782,512	18.88%
Total		\$143,505,696	100.00%	\$125,935,372	100.00%
2001	ALL OTHER SPECIES	\$72,087	0.03%	\$6,846,840	5.07%
	ATKA MACKEREL	*	*	\$42,085,135	31.14%
	FLATHEAD	\$52,811	0.02%	\$10,560,395	7.81%
	PACIFIC COD	\$1,156,575	0.52%	\$28,241,879	20.89%
	POLLOCK	\$220,000,852	98.99%	\$6,813,561	5.04%
	POP COMPLEX	\$11,078**	0.00%	\$3,784,531	2.80%
	ROCK SOLE	\$151,354	0.07%	\$15,340,655	11.35%
	YELLOWFIN	\$802,249	0.36%	\$21,492,637	15.90%
Total		\$222,247,006	100.00%	\$135,165,633	100.00%
2002	ALL OTHER SPECIES	\$60,114	0.03%	\$6,467,386	4.81%
	ATKA MACKEREL	*	0.00%	\$22,984,391	17.08%
	FLATHEAD	\$44,759	0.02%	\$10,310,343	7.66%
	PACIFIC COD	\$1,158,316	0.51%	\$31,040,358	23.07%
	POLLOCK	\$222,774,313	99.02%	\$7,492,314	5.57%
	POP COMPLEX	\$1,237**	0.00%	\$5,006,346	3.72%
	ROCK SOLE	\$67,485	0.03%	\$21,346,232	15.86%
	YELLOWFIN	\$883,537	0.39%	\$29,918,769	22.23%
Total		\$224,989,761	100.00%	\$134,566,139	100.00%

Year	Species	AFA Trawl CP		Non-AFA Trawl CP	
		First Wholesale Revenue	Percent of Total	First Wholesale Revenue	Percent of Total
2003	ALL OTHER SPECIES	\$67,681	0.03%	\$7,146,167	5.37%
	ATKA MACKEREL	*	0.00%	\$20,665,535	15.52%
	FLATHEAD	\$30,214	0.01%	\$8,381,538	6.29%
	PACIFIC COD	\$1,711,909	0.74%	\$35,037,670	26.31%
	POLLOCK	\$228,737,463	98.27%	\$7,375,134	5.54%
	POP COMPLEX	\$284,956**	0.12%	\$6,399,652	4.81%
	ROCK SOLE	\$31,912	0.01%	\$16,593,244	12.46%
	YELLOWFIN	\$1,889,335	0.81%	\$31,570,371	23.71%
Total		\$232,753,470	100.00%	\$133,169,311	100.00%
2004	ALL OTHER SPECIES	\$60,567	0.01%	\$8,334,963	4.84%
	ATKA MACKEREL	*	0.00%	\$26,609,022	15.45%
	FLATHEAD	\$45,290	0.01%	\$11,779,952	6.84%
	PACIFIC COD	\$1,314,797	0.30%	\$44,341,576	25.74%
	POLLOCK	\$429,114,523	99.09%	\$11,032,519	6.40%
	POP COMPLEX	\$9,392**	*	\$6,532,661	3.79%
	ROCK SOLE	\$442,190	0.10%	\$28,644,074	16.63%
	YELLOWFIN	\$2,062,828	0.48%	\$35,004,538	20.32%
Total		\$433,049,587	100.00%	\$172,279,305	100.00%

*Data was withheld to protect confidentiality

**Includes both Atka mackerel and POP complex first wholesale value

Source: Amendment 80 database

Table ES-2 Yellowfin sole allocation to the Non-AFA Trawl CP sector and the trawl limited access fishery to include threshold allocations under different TAC levels for Alternative 2

TAC	125,000	140,000	150,000	160,000	170,000
CDQ allocation (10%)	12,500	14,000	15,000	16,000	17,000
ICA (Assumed 5%)	5,625	6,300	6,750	7,200	7,650
2005 ITAC	106,875	119,700	128,250	136,800	145,350
Non-threshold Trawl limited access allocation	12,291	13,766	14,375	14,375	14,375
Non-threshold Non-AFA Trawl CP Sector allocation	94,584	105,935	110,624	110,624	110,624
Threshold allocation to trawl limited access	0	0	2,275	8,260	14,245
Threshold allocation to Non-AFA Trawl CP sector	0	0	975	3,540	6,105
Total allocation for trawl limited access	12,291	13,766	16,650	22,635	28,620
Total allocation for Non-AFA Trawl CP sector	94,584	105,935	111,599	114,164	116,729

Table ES-7 Yellowfin sole allocation to the Non-AFA Trawl CP sector and the trawl limited access fishery to include threshold allocations under different TAC levels for Alternative 3

TAC	100,000	110,000	120,000	130,000	140,000
CDQ allocation (10%)	10,000	11,000	12,000	13,000	14,000
ICA (Assumed 5%)	4,500	4,950	5,400	5,850	6,300
2005 ITAC	85,500	94,050	102,600	111,150	119,700
Non-threshold Trawl limited access allocation	34,371	37,808	50,250	50,250	50,250
Non-threshold Non-AFA Trawl CP Sector allocation	51,129	56,242	74,749	74,749	74,749
Threshold allocation to trawl limited access	0	0	780	3,345	5,910
Threshold allocation to Non-AFA Trawl CP sector	0	0	1,820	7,805	13,790
Total allocation for trawl limited access	34,371	37,808	51,030	53,595	56,160
Total allocation for Non-AFA Trawl CP sector	51,129	56,242	76,569	82,554	88,539

Table ES-13 & Table 3-97 Yellowfin sole allocation to the Non-AFA Trawl CP sector and the trawl limited access fishery to include threshold allocations under different TAC levels for Alternative 4

TAC	125,000	140,000	150,000	160,000	170,000
CDQ allocation (10%)	12,500	14,000	15,000	16,000	17,000
ICA (Assumed 5%)	5,625	6,300	6,750	7,200	7,650
2005 ITAC	106,875	119,700	128,250	136,800	145,350
Non-threshold Trawl limited access allocation	18,703	20,948	21,875	21,875	21,875
Non-threshold Non-AFA Trawl CP Sector allocation	88,172	98,753	103,124	103,124	103,124
Threshold allocation to trawl limited access	0	0	1,300	4,720	8,140
Threshold allocation to Non-AFA Trawl CP sector	0	0	1,950	7,080	12,210
Total allocation for trawl limited access	18,703	20,948	23,175	26,595	30,015
Total allocation for Non-AFA Trawl CP sector	88,172	98,753	105,074	110,204	115,334

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INTERNATIONAL PACIFIC HALIBUT COMMISSION

ESTABLISHED BY A CONVENTION BETWEEN CANADA
AND THE UNITED STATES OF AMERICA

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May 30, 2006

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West 4th avenue, Suite 306
Anchorage, AK 99501-2252

re: June 2006, Agenda Item C-1 (a) Final Action on Amendment 80

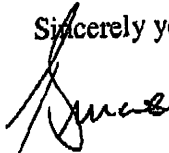
Dear Stephanie,

The staff of the International Pacific Halibut Commission (IPHC) has reviewed the April 2006 Council motion for Amendment 80. We would like to offer the following comments.

1. The IPHC staff supports the Council's development of a cooperative program for the non-AFA trawl catcher processor sector. The open-ended, race for fish in this sector has created an environment which prohibits vessels from fishing more cleanly and efficiently. Among other issues, halibut bycatch is very likely greater than it needs to be for the amount of groundfish being harvested. Allowing for the creation of co-ops should bring a slower pace to the fishery, thereby permitting vessels to fish more efficiently.
2. Regarding PSC Allocation (Issue 2, Component 6), the IPHC staff supports Option 6.2, which would accomplish several objectives. First, it would require a reduction in the halibut PSC by this sector. We believe that the formation of co-ops will allow this reduction to occur without undo hardship to the sector. Importantly, the PSC reduction would not result in a concurrent increase in the PSC in another sector. The option contains suboptions on the timing of the PSC reduction, and the IPHC staff supports Suboption 6.2.8, which calls for reducing the PSC to 80% of the current level. The industry has been in favor of co-ops for quite some time, and we believe the creation of co-ops will be fairly rapid and will accomplish this reduction.

IPHC staff will be in attendance at the meeting and can answer any questions the Council or SSC may have on this issue.

Sincerely yours,



Bruce M. Leaman
Executive Director

cc: Commissioners

AMENDMENT 80, COMPONENT 6 –CRAB PSC
Submitted by the Best Use Coalition

RECEIVED
MAY 8 2006
W.P.F.M.C.

Initial crab cap deliberations and subsequent discussions on crab PSC levels indicate that such caps are not conservation driven and do not effect the stocks of the crab species (See attached Tagart letter). Therefore both the allocations, which are lower than the crab caps, and the subsequent bycatch reductions that the Council seeks are not issues of conservation.

Under the preliminary preferred alternative, the Council has identified percentages of the cap that would become the H&G sector's allocation. These percentages most closely resemble the 95-02 sector average crab usage. Twenty percent reductions are imposed on top of that.

The red king crab allocation in the preliminary preferred alternative represents 43% reduction from the H&G sector's 2005 usage. Red king crab is critical to both the prosecution of the rock sole with roe and the yellowfin sole fisheries. The rock sole with roe fishery has seen very minimal to no participation from other sectors for the past decade, however those sectors are given more red king crab than the H&G sector. Red king crab usage from the other trawl sectors was 2757 crab in 2005.

Bairdi and opilio usage to the H&G sector would be cut significantly from the cap, while the other sectors are funded with the full AFA sideboard amounts. There is no conservation purpose in these reductions to the H&G fleet, nor is there an overall reduction to crab bycatch in the BSAI as much of the balance is still available for harvest by the other trawl sectors.

Requiring the level of reductions in PSC allocations contained in the Council's PPA will further jeopardize the ability of the H&G fleet to take advantage of the gains afforded by coops, with no conservation benefit. Under-funding of the critical limiting bycatch species that drive the multi-species fisheries set the fleet up for failure from the outset because of the competing nature of halibut and crab bycatch avoidance.

HALIBUT vs CRAB

In the rock sole with roe fishery, avoiding areas of red king crab bycatch drives vessels into areas with halibut bycatch. Alternatively, avoiding halibut will put the fleet into areas of high red king crab bycatch. It is a balancing act that the fleet has managed well through gear modifications, area avoidance, communication and working with Seastate monitoring programs. This same halibut/bairdi and opilio dilemma occurs in the other flatfish and cod fisheries. Similar efforts are made by the fleet to manage crab and halibut bycatch through gear modifications, moving grounds, and communication facilitated by Seastate and bycatch teleconferences.

It is difficult to quantify the red king crab loss as it is coupled with a fleet wide reduction of halibut. Suffice to say that the fleet now gets a "double-whammy" effect from such excessive PSC reductions. As stated on page 136 of the analysis, "Significant reductions from the sector's historical PSC usage could strand a portion of the sector's allocation, if PSC catch rates cannot be reduced substantially from current levels under cooperative fishing." The fleet has already taken a substantial reduction, prior to the ability to work in coops.

When crab bycatch avoidance strategies shift vessels into areas of similarly under-funded halibut, there is nowhere for the fleet to go. Gear modifications and moving away from crab are proven strategies for bycatch avoidance. When gear modifications are not adequate to avoid crab, then

vessels must move out of areas of such high incidence. When moving puts vessels into areas of higher halibut, which the Council PPA has also cut by at least 20%, vessels are squeezed from both ends and there is nowhere to go except to exit the fishery. The only effect of such simultaneous reductions in PSC will be stranded target fish.

The net result, ultimately, will be that the fleet which has been 100% dependent on the Amendment 80 fisheries will be forced out of the fisheries due to inadequate funding of critical limiting species. The fleets that have no real economic dependence¹ on the Amendment 80 species will have an excessive amount of crab and halibut with which to pursue these fisheries. Ultimately, due to stranded fish, the Council will be forced to make reallocations to the limited access trawl fishery. Such effects are surely contrary to the intent of Section 211 protections for non-AFA fishermen or any National Standard of the MSA.

H&G SECTOR PSC ALLOCATIONS

PSC Species	red king crab	bairdi zone 1	bairdi zone 2	opilio
2005 cap	182,225	906,500	2,747,250	4,494,569
H&G - actual 2005 total catch	96,723	200,922	424,382	3,175,780
H&G catch under 6.3, w/ 20% reduction	54,668	420,180	715,806	2,206,833
difference (animals)	(42,055)	219,258	291,424	(968,947)
% change	-43%	109%	69%	-31%

LIMITED ACCESS TRAWL PSC ALLOWANCE

PSC Species	red king crab	bairdi zone 1	bairdi zone 2	opilio
Non-H&G trawl actual 2005 total catch	2,757	33,908	24,257	61,616
Non-H&G catch under 6.3, PPA	56,074	382,299	712,661	1,647,511
difference (animals)	53,317	348,391	688,404	1,585,895
% change	1934%	1,027%	2,837%	2,573%

¹ (Table 1, C-1 Supplemental June 2006, shows under that Amendment 80 species account for less than 1% of first wholesale value to AFA CPs in 2002-2002 and 2004; and less than 2% in value for 1999 and 2003 .)

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VESSEL USE CAPS UNDER AMENDMENT 80
Submitted by the Best Use Coalition

Executive Summary

As part of its deliberation at the April 2006 meeting, the North Pacific Fishery Management Council adopted for consideration as part of Amendment 80 to the BSAI Fishery Management Plan a component that would limit the amount of fish taken by any vessel in the Non-AFA Trawl CP sector allocation. Option 11.3, selected as the preferred alternative for the so-called "vessel use cap," states as follows:

"No vessel shall harvest more than 10% of the entire Non-AFA Trawl CP sector allocation."

Unfortunately, while the idea of vessel use caps as a management tool for avoiding undue social dislocation is laudable, it does not appear that a ten percent cap will provide the sector the requisite flexibility to take advantage of the economic efficiencies that cooperatives should provide. **Therefore, for the reasons stated in more detail below, the sector would recommend an initial vessel harvest limit of no less than 20 percent.**

It should be noted at the outset, that the analysis in the EA/RIR/IRFA for Allocation of Non-Pollock Groundfish and Development of a Cooperative Program for the Non-AFA Trawl Catcher Processor Sector, NPFMC Staff, March 16, 2006, Section 3.2.10, at pp. 160-61 (hereinafter referred to as "EA/RIR"), is largely qualitative and speculative. It lacks sufficient detail to support a finding that a 10 percent or any other specific harvest limitation will meet the primary goals the Council announced in its "Problem Statement" (i.e., insuring practicable attainment of improved retention/improved utilization and realizing the economic benefits of the ability to form cooperatives and rationalize the fishery).

Rather, it appears that preferred vessel use cap of 10 percent – offered as a means to minimize job losses from the rationalization process – will, in fact hinder attainment of the primary objectives of Amendment 80. As explained below, with such a low cap, vessels that will be unable to economically adjust to the groundfish retention standards and Amendment 80 monitoring and enforcement requirements will likely not be able to find partners with whom to lease history. The resulting lack of options for vessels in this sector stifles its ability to find creative solutions to the economic and conservation issues Amendment 80 is designed to address.

Unfortunately, the EA/RIR does not address these issues in much detail. As such, the information provided below fills in an important data gap and brings forth new information for the Council to consider as it makes its final decision on this alternative.

Background

For the past several years, 23 vessels have participated in the Non-AFA Trawl CP sector. Of these vessels, 8 can be categorized as large vessels (over 200 feet), 7 as medium sized (over 135 feet but less than 200 feet) and 8 as small vessels (less than 135 feet). The

larger vessels have tended to focus primarily on Atka mackerel and yellowfin sole fisheries, while the medium and small vessels have focused on the multi-species flatfish and cod fisheries. Retention rates in the mackerel fishery are traditionally higher than in the flatfish fisheries, and the larger vessels have significantly larger hold capacity than the smaller vessels; therefore, the larger vessels have both more catch history and higher retention rates than the smaller vessels.

Council documents show, on average, three vessels have harvested in excess of 10% of the sector's allocation annually (EA/RIR/IRFA, Table 3-67, at p. 262). It is likely that the other large vessels also harvest close to 10% of the sector's allocation annually, making it difficult for them to fish the allocation of another vessel without exceeding the proposed 10% vessel use cap.

Concerns Associated with Proposed 10% Vessel Use Cap

The use cap as proposed will strip the cooperative system of many of the attributes needed to enable the Non-AFA Trawl CP fleet to meet the burden imposed by Amendment 79. The following problems are created by implementation of this proposed cap:

1. Small vessels that are unable to economically meet the monitoring and catch retention requirements of Amendment 79 will be unable to lease their catch history to the larger vessels, which are most capable of economically meeting those standards. This will force smaller vessels to cease fishing with little chance of compensation.
2. The fleet will be unable to access the tools contained in the Buy Back Legislation that were intended to enable the fleet to consolidate and become more efficient.
3. The fleet will be unable to attain the efficiencies otherwise available through cooperatives, due to the limitations on assigning harvesting duties to the most efficient platforms.

A more in depth discussion on these three problems follows:

1. Restricting lease or sale of catch history to large vessels. The difficulties confronting small vessels in meeting the retention and monitoring requirements of IRIU have been the topic of Amendment 79 analysis and testimony of vessel owners. The owners of some of these small vessels have looked to leasing catch history to large vessels as a way to continue participation in the fishery. The large vessels should not have difficulty meeting the increased retention standards, and are likely to have excess harvesting and processing capacity.

However, the 10% use cap will make it difficult or impossible for the large vessels to lease additional fish. They are currently at or near the 10% cap. The small vessels will not be able to lease to each other, since they all have similar economic situations. The mid-sized vessels may be able to lease some of the

quota from small vessels, but will likely be challenged in attempting to meet the retention standards themselves. Leasing more fish from fisheries with lower retention rates may not prove economically viable for the mid-sized vessels. Further, since a vessel and its catch history must be sold as a whole package, vessel owners unable to lease their history out will be even more restricted in terms of who they would be able to sell to in order to exit the fishery with some compensation. Therefore, much of the anticipated relief for the small vessels is eradicated by the 10% use cap.

2. Frustrating Vessel Buy-Back Plans. The BSAI Catcher Processor Capacity Reduction Program, which is part of Public Law 108-447, provides a mechanism for the Non-AFA Trawl CP fleet to form plans to buy back excess capacity in the fleet. This would be done through a plan agreed to by at least two-thirds of the fleet. Federal funds would be available to execute the purchase of the excess vessels, and the remaining fleet would be required to pay back the borrowed funds to the federal government. Congress thought this plan was needed to ensure the viability of the Non-AFA Trawl CP fleet.

The proposed use caps will frustrate any attempt to utilize the buy back program. Owners of vessels capped in the amount of fish they harvest will not be interested in participating in a buy back if they receive no benefits. Without the participation of the vessels that harvest the most fish, it is unlikely that the remaining fleet will be able to get the required votes for any plan, and the pay back may be too onerous for these vessels.

3. Restricting Efficiencies Generally Available through Cooperation. The vessel use cap will likely frustrate the achievement of many efficiencies otherwise inherent in a cooperative program. Owners of multiple mid-sized and large vessels will have difficulty "stacking" catch history on their most efficient vessels. Cooperatives will have difficulty employing harvest strategies that capitalize on the efficiencies of having vessels specialize in particular fisheries. Many vessels currently participate in the multi-species fisheries because it is too difficult for them to economically focus on the high volume low value fisheries.

Conclusion

While it is clear that the vessel use cap will hinder the Non-AFA Trawl CP fleet's attempts to deal with the burdens of Amendment 79, there is no record basis for concluding that it will meet the goals and objectives of Amendment 80. While in some sense, a vessel use cap of 20 percent is equally arbitrary, current participants strongly believe that this represents a compromise that will provide needed flexibility while also providing concrete information for the Council to assess the effectiveness of the vessel cap and inform future program reviews and possible modification.

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TARGET ALLOCATION FORMULAS IN AMENDMENT 80 Submitted by the Best Use Coalition

Introduction

In April 2006 the North Pacific Fishery Management Council approved a “preliminary preferred alternative” (PPA) for Amendment 80 to the Bering Sea/Aleutian Island Groundfish Fishery Management Plan. The purpose of Amendment 80 is to rationalize the non-AFA trawl catcher-processor (head & gut or H&G) sector, ending the current race for the fish. The other major purpose is to practicably implement the Council’s improved retention/improved utilization standard by helping the fleet meet the groundfish retention standards by authorizing the formation of cooperatives. In order to achieve these objectives, Amendment 80 creates a sector allocation for the five primary target species, as well as prohibited species. This paper focuses on the formulas used to allocate the species on which the H&G fleet depends.

Problem with the PPA’s Allocation Scheme

The allocations to the H&G fleet called for in the Amendment 80 PPA are dramatically reduced from the sector’s recent (post-AFA) participation level and could cause disabling overall H&G fishery closures. The benefits from rationalization will not come close to accounting for these (perhaps unforeseen) adverse economic impacts. A more appropriate, legal, and equitable allocation should not have any adverse economic impacts, as other fleets are not harvesting the fish that Amendment 80 would allocate to them.

The primary inequity is that the allocation percentages in the preferred alternative result in serious shortfalls to the H&G sector. This is in large part because the needs of other sectors that do not rely significantly on Amendment 80 species are all provided for first. For example:

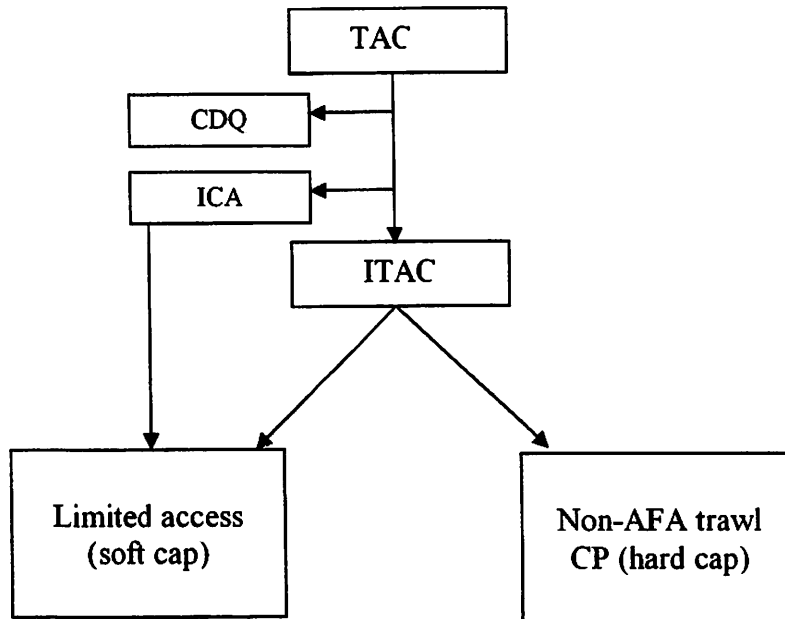
- The Non-AFA Trawl CP sector is managed under a hard cap, while all other sectors are under soft caps.
- The Non-AFA Trawl CP allocations are calculated after deducting both CDQ and bycatch needs for all other fishermen.
- The suggested allocation for yellowfin sole to the Non-AFA Trawl CP fleet is 82.5 percent. After deducting CDQ and ICAs, however, this results in only 70 percent of the yellowfin TAC for our sector. The H&G fleet’s historic catch since 2002 has averaged 81 percent of the TAC.¹

A more equitable and legally appropriate allocation to the H&G sector—one that reflects its true historic share—would be 95 percent of the yellowfin sole ITAC, as this would result in traditional 81 percent share of the yellowfin sole TAC going to the Non-AFA trawl CPs under the PPA’s allocation formula.

¹ From H&G catch data 1995 to 2005, Mary Furuness, NMFS.

How the PPA's Allocation Works to the Disadvantage of the H&G Sector

The following diagram shows the Council's recommended allocation formula



The Council chose the following nominal allocation percentages as part of the PPA:

Species	Non-AFA trawl CP	Limited Access Fishery
Yellowfin sole	82.5%	17.5%
Rock sole	97%	3.0%
Flathead sole	98%	2.0%
Atka mackerel	90% in 541/EBS and 542 ² 100% in 543	10% in 541/EBS and 542 0% in 543
Pacific Ocean Perch	90% in 541 and 542 ³ 98% in 543	10% in 541 and 542 2% in 543

Source: Amendment 80 motion, Component 3, Council Preferred Preliminary Alternative

In reality, the Council's preferred alternative would shift over 15,000 tons of yellowfin (20 percent of the H&G catch) away from this sector. More specifically, the actual amount of fish available to the limited access fishery is the allocated amount, shown above, plus the incidental catch allowance (ICA). For yellowfin sole (assuming a 5 percent ICA, as in the EA/RIR/IRFA of May 5, 2006), the overall formula under the PPA is: TAC (100%) – CDQ (10%) – ICA (5%)

² 98% in first year of program in 541/EBS and 542, decreasing by 2% intervals to 90% in year 5 and beyond

³ 95% in 541 and 542 in first year of program, decreasing to 90% in year 2 and beyond

= ITAC (85.5%). The ITAC is divided according to the table above, so the final percentages of the TAC are:

H&G fleet: 82.5% (allocation) of 85% (ITAC) = **70% of TAC**
Limited access: 17.5% (allocation) of 85% (ITAC) plus ICA = **20% of TAC**.

The remaining 10% of the TAC is for the CDQ reserve.

The following table shows how this allocation scheme would have changed the 2005 yellowfin sole fishery:

2005 TAC (mt)	2005 ITAC* (mt)	Actual 2005 catch		Council's PPA		Loss to H&G sector	
		H&G catch (mt)	H&G % of TAC	H&G catch (mt)	H&G % of TAC	Catch (mt)	% of 2005 catch
90,686	77,537	78,890	87%	63,968	70%	14,922	19%

*Assuming 10% CDQ and a 5% ICA for the fixed gear and trawl limited access fisheries.

Source: H&G catch statistics 1995 to 2005, Mary Furuness, NMFS, with total catch from NMFS Alaska Region website; Table ES-12, pg xvi Amendment 80 EIS (May 5, 2006).

Further, the allocation to the H&G fleet is the maximum amount that sector can harvest, whether directed or incidental. As a practical matter, once the sector's allocation for a given species is taken, all fisheries which take that species must close. On the other hand, the allocation for the limited access fishery is a soft cap. Under the PPA, NMFS determines how much incidental catch is necessary and takes that off the top, as shown above. If the allocation/ICA is reached, the species will go on PSC status for the limited access fleet, and fishing will continue.

In other words, the non-AFA trawl CP fleet gets shut down when its reduced allocation is taken, while the limited access fisheries stay open even if their allocation is met. Even more incongruously, these species are turned into regulatory discards for the limited access fishery once the ICA is reached.

Conclusion

The yellowfin sole fishery was only recently (as of 2002) fully utilized. Since then, the H&G fleet has caught an average of 81 percent of the TAC, while the directed limited access fishery has accounted for only 5.3 percent of the catch.⁴

A better reflection of historic use and dependence, therefore, would be a formula that allocates 81 percent of the TAC to the H&G sector. To achieve this fair and equitable allocation under the formula proposed in the PPA, the Council should grant the H&G sector 95 percent of the ITAC. This would provide the limited access fishery with its recent share of 5 percent of the ITAC for a directed fishery, plus a full ICA for all their incidental needs. This level is consistent with the limited access sector's recent participation and, hence, continuing dependence.

⁴ From AFA yellowfin sole target catch data 2002 to 2005, Mary Furuness, NMFS

Even if the 5 percent ITAC allocated to limited access is not deemed to be enough to fund a directed fishery at the level desired by the Council, the PPA still provides a means for increasing this group's share without unduly harming the H&G sector economically. Component 13 allocates more fish to the limited access fishery when the TAC reaches the threshold level. Under the PPA, with a 125,000 ton threshold, decreasing the 2006 pollock TAC by less than 3 percent (40,000 mt) would allow the yellowfin sole TAC to reach the threshold and result in a higher relative allocation to the limited access fishery. This represents a more equitable means of allocating fishing opportunities.

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May 28, 2006

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NPFMC

Re: Comments on conservation value of proposed PSC reductions under NPFMC draft Amendment 80 - Crab

Under Alternative 4 of the May 7, 2006 Public Review Draft of the NPFMC proposed Amendment 80 to the Groundfish FMP for the Bering Sea and Aleutian Islands, the Council proposes modifying existing PSC caps for halibut and crab. The proposed PSC reductions apply to the non-AFA trawl catcher processor sector. The Council is proposing a phased reduction of the PSC limits with halibut and crab allotments reduced to 80% of the current apportionment amounts. At issue is an estimate of the increased catch that may accrue as a consequence of lowering the bycatch ceilings.

By design the cap on allowable crab bycatch is indexed to the crab population abundance (CFR 679.21 (e) (ii-iv), Table 1). The bycatch allowances are quite small relative to the population size. There is no indication at present that crab bycatch in the trawl fishery represents a conservation concern. For example, in the *C. opilio* fishery the trawl bycatch barely registers in the overall catch (see Figure 1 from Turnock and Rugolo, 2005) reprinted below.

Table 3-43 (p 123) of the draft Amendment 80 provides the percent of the PSC allowance that would be apportioned to the Non-AFA Trawl CP sector by year combinations for the individual PSC species. Crab apportionments for the qualifying years 1995-2002 range from 37.5% to 88.3 % for red king crab, 60.5% to 88.5% for *C. opilio*, 52.6% to 81.4% for Zone 1 *C. bairdi*, and 29.6% to 88.2% for Zone 2 for *C. bairdi*. Depending on the metric, the Non-AFA Trawl CP sector has historically consumed little to a large portion of the crab bycatch.

The groundfish trawl sector's crab bycatch follows the limitations built into the existing caps (Tables 2 and Table 3). The trawl fishery crab bycatch caps are such a small fraction of the total population abundance that they are completely overwhelmed by the imprecision in the survey estimated abundance. Note that the survey abundance is seldom estimated with less than $\pm 30\%$ confidence intervals (Table 3), yet bycatch allowances are indexed at tenths of a percent of the estimated abundance and realized at tenths to hundredths of a percent of population abundance. These caps provide an allocation function. They place a high penalty on trawl fisheries which can be closed when caps are reached. While forgone crab bycatch from the trawl fishery may have the opportunity to accrue to the mature population and directed pot fishery, the impact of such catch would in my view be undetectable.

Sincerely,

Jack V. Tagart, Ph.D.

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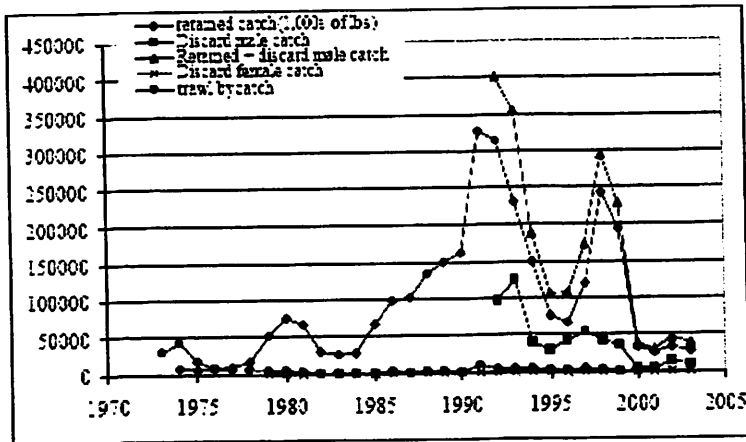


Figure 1. Catch (1,000s lbs) from the directed snow crab pot fishery and groundfish trawl bycatch. Retained and total catch are males only, female catch is the discard mortality from the directed pot fishery and trawl is male and female bycatch from groundfish trawl fisheries.

Reprinted From Turnock and Rugolo, 2005.

Table 1. Prescribed groundfish trawl fishery crab bycatch rates (50CFR 679.21(e)(ii-iv).)

Red King Crab Total Abundance (N)	Effective Spawning Biomass (ESB)	Zone 1	Zone 2
N = 8.4 million mature crab	OR ESB = 14.5 million pounds		32,000
N > 8.4 million mature crab	AND 14.5 < ESB = 55 million pounds		97,000
N > 8.4 million mature crab	AND ESB > 55 million pounds		197,000
C. bairdi		Zone 1	Zone 2
N = 150 million crab		0.5% of N - 20,000 crab	
150 < N = 270 million crab		730,000	
270 < N = 400 million crab		830,000	
N > 400 million crab		980,000	
N = 175 million crab			1.2% of N - 30,000 crab
175 < N = 290 million crab			2,070,000
290 < N = 400 million crab			2,520,000
N > 400 million crab			2,970,000
C. opilio		Anywhere in the BSAI	
0.1133% * N < 4.5 million crab		4.35 million crab	
4.5 million < 0.1133% * N = 13 million crab		0.1133% of N	
0.1133% * N > 13 million crab		12.850 million crab	

Table 2. Estimated total crab bycatch, and discard mortality rates by fishery and year, 1995-2004.

Fishery/Gear	Discard Mortality Rate
Groundfish Trawl	0.80
Groundfish Fixed Gear	0.20
Scallop Dredge	0.40
RKC Pot	0.08
C. bairdi Pot	0.20
C. opilio Pot	0.24

Bycatch of *C. opilio* crabs (numbers of crab) in Bering Sea fisheries, 1995-2004. ^{1/}

Year	Directed crab pot	Groundfish		Scallop dredge	Total	% Groundfish Trawl
		trawl	fixed gear			
1995	48,734,000	5,165,555	230,233	0	54,129,788	10%
1996	56,570,785	3,643,612	267,395	104,836	60,586,628	6%
1997	75,005,446	5,276,208	554,103	195,345	81,031,102	7%
1998	51,591,453	4,122,648	549,139	232,911	56,496,151	7%
1999	47,093,200	1,544,747	269,778	150,421	49,058,146	3%
2000	5,020,800	2,207,279	270,000	105,602	7,603,681	29%
2001	6,123,100	1,293,143	215,000	68,458	7,699,701	17%
2002	15,823,300	882,967	n/a	70,795	16,777,062	5%
2003	22,140,336	615,012	86,313	16,206	22,857,867	3%
2004	4,800,043	1,693,101	140,428	3,843	6,637,415	26%
Mean 2000-2004						16%

Bycatch of Bristol Bay red king crabs (numbers of crab) in Bering Sea fisheries, 1995-2004.

Year	Directed crab pot	Groundfish		Scallop dredge	Total	% Groundfish Trawl
		trawl	fixed gear			
1995	0	44,934	3,257	0	48,191	93%
1996	605,000	30,967	75,675	0	711,642	4%
1997	985,000	50,711	25,579	0	1,061,290	5%
1998	4,593,800	42,003	7,017	146	4,642,966	1%
1999	957,800	84,709	8,968	1	1,026,178	8%
2000	1,701,000	70,787	39,754	2	1,653,542	4%
2001	2,419,100	58,552	19,000	0	2,496,652	2%
2002	1,677,800	89,955	27,477	2	1,795,234	5%
2003	5,808,200	91,937	13,531	0	5,913,668	2%
2004	2,470,868	78,742	15,014	0	5,035,492	2%
Mean 2000-2004						3%

Bycatch of *C. bairdi* crabs (numbers of crab) in Bering Sea fisheries, 1995-2004.

Year	Directed crab pot	Groundfish		Scallop dredge	Total	% Groundfish Trawl
		trawl	fixed gear			
1995	15,897,300	2,212,181	87,674	0	18,197,155	12%
1996	4,588,000	1,836,031	279,560	17,000	6,930,591	26%
1997	4,865,900	1,917,736	50,218	28,000	6,861,854	28%
1998	4,293,800	1,477,816	46,552	36,000	5,854,168	25%
1999	1,995,100	901,619	43,220	n/a	2,939,939	31%
2000	491,000	1,002,074	140,453	53,614	1,539,141	65%
2001	626,400	950,331	80,000	48,718	1,705,449	56%
2002	1,282,600	1,086,286	98,848	48,053	2,515,787	43%
2003	626,000	897,340	105,094	31,316	1,659,750	54%
2004	334,593	800,794	38,592	15,303	2,849,032	28%
Mean 2000-2004						49%

1/ Source: 2005 BSAI Crab SAFE p 33-34

Table 3. Estimates of survey abundance and the proportionate contribution of the groundfish trawl fishery to total crab bycatch and total crab bycatch mortality.

Survey Abundance ^{2/}				Total Estimated Mortality			
C. opilio				C. opilio			
Year	Abundance (millions of crab)		% Groundfish Trawl	Total Mortality	Groundfish Trawl mortality	% Groundfish Trawl	% GF Trawl Mort. of Total Abundance
	Total	±% ^{3/}					
1995	8,655			15,874,651	4,132,444	26%	0.048%
1996	5,425			16,587,291	2,914,890	18%	0.054%
1997	4,108			22,411,232	4,220,966	19%	0.103%
1998	3,233			15,883,059	3,298,118	21%	0.102%
1999	1,401			12,652,290	1,235,798	10%	0.088%
2000	3,241	87%	0.068%	3,067,056	1,765,823	58%	0.054%
2001	3,861	47%	0.033%	2,574,442	1,034,514	40%	0.027%
2002	1,489	48%	0.059%	4,532,284	706,374	16%	0.047%
2003	2,631	48%	0.023%	5,829,435	492,010	8%	0.019%
2004	4,421	n/a	0.038%	2,536,114	1,354,481	53%	0.031%
Mean 2000-2004			0.045%			35.038%	0.036%

Red king crab				Red king crab			
Year	Abundance (millions of crab)		% Groundfish Trawl	Total Mortality	Groundfish Trawl mortality	% Groundfish Trawl	% GF Trawl Mort. of Total Abundance
	Total	±%					
1995	33.9			36,599	35,947	98%	0.106%
1996	53.3			88,309	24,774	28%	0.046%
1997	75.1			124,485	40,569	33%	0.054%
1998	75.6			402,568	33,602	8%	0.044%
1999	46.7			146,185	67,767	46%	0.145%
2000	50.0	33%	0.142%	200,661	56,630	28%	0.113%
2001	44.2	48%	0.132%	244,170	46,842	19%	0.106%
2002	77.3	62%	0.116%	211,684	71,964	34%	0.093%
2003	84.1	39%	0.109%	540,912	73,550	14%	0.087%
2004	104.8	n/a	0.075%	263,666	62,994	24%	0.060%
Mean 2000-2004			0.115%			23.778%	0.092%

C. bairdi				C. bairdi			
Year	Abundance (millions of crab)		% Groundfish Trawl	Total Mortality	Groundfish Trawl mortality	% Groundfish Trawl	% GF Trawl Mort. of Total Abundance
	Total	±%					
1995	189.9			4,966,740	1,769,745	36%	0.932%
1996	175.6			2,449,137	1,468,825	60%	0.836%
1997	159			2,528,612	1,534,189	61%	0.965%
1998	156.5			2,064,723	1,182,253	57%	0.755%
1999	349.5			1,128,959	721,295	64%	0.206%
2000	219.2	52%	0.457%	949,395	801,659	84%	0.366%
2001	600.1	52%	0.158%	921,032	760,265	83%	0.127%
2002	433.0	34%	0.251%	1,164,540	869,029	75%	0.201%
2003	449.0	52%	0.200%	876,617	717,872	82%	0.160%
2004	571.7	n/a	0.140%	721,393	640,635	89%	0.112%
Mean 2000-2004			0.241%			82.461%	0.193%

1/ Source: 2005 BSAI Crab SAFE p 33-34
 2/ Source: 2000-2003 Annual Report to Industry
 3/ Based on 2 SDs from the mean

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Legal Comments on Amendment 80
Submitted on Behalf of the
Best Use Coalition

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INTRODUCTION

The North Pacific Fishery Management Council's regulatory program designed to rationalize the North Pacific non-American Fisheries Act trawl catcher-processor sector and improve its retention and utilization of groundfish is threatening to go seriously awry. Supported in concept by every company in this sector, a series of damaging decisions have gravely eroded the utility of this program to the industry it ostensibly benefits, while increasing the difficulty the sector will face in practicably achieving the bycatch reduction standards.

Underlying the compound difficulties in assessing the cumulative economic and practical impacts of the program was the splitting of the regulatory program into three interdependent, but separate actions. This has led, for example, to a situation in which vessels subject to the groundfish retention standards and monitoring and enforcement measures under Amendment 79 face the serious likelihood of having to undergo serial and very costly vessel retrofits due to non-uniform requirements. More harmful to the entire sector was the leapfrogging of Amendment 80 by Amendment 85, because its reallocation of the sector's Pacific cod catch to other fisheries has made both the primary objectives of Amendment 80, *i.e.*, bycatch reduction and rationalization, almost impossible to achieve. By itself, moreover, the preliminary preferred alternative for Amendment 80 now would only exacerbate the adverse impacts on this sector.

In fact, the actions by the Council at its April 2006 meeting, with respect to both final action on Amendment 85 and its preliminary preferred alternative for Amendment 80, have brought the head-and-gut sector together in an historic alliance to attempt to bring this rulemaking back to the purposes for which it was originally intended. Working together as the Best Use Coalition, companies in the non-AFA trawl catcher-processor sector have endeavored, through a series of white papers, studies, and economic analyses, to demonstrate the profoundly negative consequences and cumulative effects of the preliminary preferred alternative and the two prior, yet integral, actions.

In sum and substance, these documents conclusively demonstrate that, as currently envisioned, Amendment 80 will have severe negative economic consequences for the businesses in the sector and the Alaskan fishing communities which rely upon it. These negative impacts stem in large measure from constraints in the preliminary preferred alternative on the ability of vessels to form beneficial cooperative arrangements that make achieving the important yet relatively modest benefits from rationalization virtually impossible to realize. The allocative decisions embodied in Amendments 80 and 85 also deny this sector its earned historical share of the resources on which it depends and hinder its ability to continue to build on its proven record of reducing discards and improving utilization rates.

This paper both draws upon the prior submissions and addresses the legal authorities governing decision-making by the Council and the National Marine Fisheries Service generally. Altogether, these materials supplement the record and help form a basis upon which reasoned, balanced, and rational decisions can be made at the June meeting in Kodiak. It is the Best Use Coalition's strong conviction, as articulated herein and in its other submissions, that in order to arrive at a legally compliant conclusion to the Amendment 80 development process, the Council must reconsider and revise the course charted in the preliminary preferred alternative along the

lines suggested by the Coalition. Fortunately, the relatively modest changes sought are all within the range of alternatives currently within the analyses supporting Amendment 80.

These issues are described in much greater detail below. For its part, the members of the Best Use Coalition would like to thank the Council for its years of work on this important matter, and appreciate and understand that this has been a complex undertaking. Given the many interrelated components, it is not surprising that the impact of a series of individual decisions made in relation to three different amendments over the course of years was not immediately apparent at the time they were made, but have only become clear now that all the pieces are (nearly) in place. The Coalition trusts that once the Council members have had a chance to fully comprehend the totality of these impacts, it will agree that the relatively minor adjustments sought will lead to the type of fair and equitable allocation decision required by law and sound public policy.

EXECUTIVE SUMMARY

This document discusses legal issues raised by the North Pacific Fishery Management Council's ("Council") preliminary preferred alternative ("PPA") for Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea/Aleutian Islands ("BSAI") Management Area ("Amendment 80"), established at its April 2006 meeting. Also discussed are general legal principles required by the Magnuson-Stevens Fishery Conservation and Management Act ("Magnuson-Stevens Act" or "MSA"), 16 U.S.C. § 1801 *et seq.*, and other laws such as the American Fisheries Act ("AFA")¹ governing regulatory actions that assign fishing privileges and seek to reduce economic and regulatory bycatch. The document concludes that relatively modest changes to Amendment 80 are required to bring the regulatory program in compliance with applicable law, and that the changes sought by the members of the Best Use Coalition ("BUC") can be implemented without additional analysis as they are all within the range of considered alternatives.

In sum, the Coalition urges the following changes to the PPA:

- To meet prevailing legal standards, changes are necessary to the alternatives currently preferred for Components 3, 4, 6, 9, and 13. Generally, these changes must include:
 - Allocation of directed fishing privileges and prohibited species catch ("PSC") that place appropriate emphasis on recent use patterns, economic dependence, and the other factors mandated by MSA Section 1853(b)(6). As the PPA currently stands, the head-and-gut ("H&G") catcher-processor sector stands to lose significant opportunities to harvest their target stocks at the

¹ P.L. 105-277, Division C, Title II, Subtitle I, 112 Stat. 2681, 2681-616 (October 21, 1998).

expense of vessels whose recent and historical use and dependence do not come close to matching those of the sector.

- An increase to the target species allocation which includes the sector's directed fishing allowance and its incidental catch, and increase of PSC to levels necessary to enable the sector to prosecute its directed fisheries. The PPA reallocates the H&G sector's allocation of such species as crab and halibut, just as Amendment 85 did for Pacific cod, to fund other fisheries and as a bycatch reduction measure. The reallocation of PSC is governed by the same standards as allocations of rights to the directed fisheries, while measures established to reduce bycatch are constrained by the MSA's practicability standards.
- Subsequent reductions in PSC allocations made purely for bycatch reduction purposes, *i.e.*, Suboption 6.1.1.1 and option 6.3, should be deferred to a future rulemaking based on actual use and need of the sector once it has been rationalized.
- The choices in the PPA for Component 3, particularly with respect to the allocation of primary species to the H&G sector, need to be modified to reflect a distribution closer to that would result from adoption of Option 4.6 of Component 4.
- Modification of the rules governing the formation of cooperatives (Components 7-11) to eliminate practical barriers to meeting the goals and objectives of Amendment 80's rationalization program. In particular, the Coalition urges adoption of a vessel use cap under Option 11.3 that is not less than 20 percent.
- For Component 13, a threshold of 175,000 metric tons ("mt"), Option 13.2.5, is most consistent with prevailing legal standards and exceeds accommodations made under other rationalization programs for new entrants. Assuming, however, that the AFA sector is limited to its recent history (*i.e.*, the purported and extra-legal waiver of the AFA fleet's statutorily mandated sideboard for yellowfin sole is eliminated and other protections are built in to insure that other AFA sideboards are not exceeded), a threshold of 125,000 mt could be supported, along with Suboption 13.3.3, if the sector receives net allocations of the Amendment 80 stocks which approximate recent history. Either approach will provide ample opportunities for the development of fisheries for potential new entrants.

This paper also discusses the following legal issues:

- The standards of reasoned decisionmaking require (1) that the record reflect a clear understanding of the impacts of proposed regulations and (2) that the means chosen to implement the Council's stated goal bear a rational relationship to the ends sought. Current analysis of the effects of the PPA do not fully or accurately account for either the adverse impacts on the H&G sector or of the cumulative

impacts of decisions already made. Moreover, the purpose of Amendment 80 is to rationalize the H&G sector in order to achieve the economic benefits the ability to form cooperatives provides and to implement the Council's improved retention/improved utilization policy. As such, allocations of directed fishing opportunities, prohibited species catch, and sideboard species in this action must be geared toward achieving these goals. The PPA, however, limits the ability of the sector to meet the goal of effective rationalization and, particularly in conjunction with decision made on Pacific cod allocations through Amendment 85, make the stated goal of improving retention rates extremely difficult to achieve.

- The primary legal factors guiding allocations of fishing privileges, found at 16 U.S.C. § 1853(b)(6), strongly favor an allocation scheme that reflects, as closely as possible, the current distribution of fishing effort for the non-pollock Bering Sea/Aleutian Islands groundfish fishery. These factors, including present participation, historic practices and economic dependence, alternative fishing opportunities, the social framework (including the dependence of fishing communities in Washington and Alaska on the H&G fleet), and other factors such as equity, use of the fish for food purposes, and others, strongly favor an allocation based on recent history. The pre-AFA period cannot be justified as a baseline period. [These issues are also described in greater detail in the Coalition's letter to Council Chair Madsen, dated April 5, 2006.]
- National Standard 4, 16 U.S.C. § 1851(a)(4), and its implementing guidelines, *see* 50 C.F.R. § 600.325, tracks and supports the above analysis. It states: "If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges." In large measure, fairness and equity in allocating fishing rights is a function of an evaluation of the Section 1853(b)(6) factors listed above.
- The corollary point is that no compelling legal justification supports a reallocation to either present participants outside the sector, such as the AFA fleets or new entrants, at the expense of the H&G fleet. No significant barriers to utilization of these stocks have existed in the post-AFA period, other than overall caps (or "sideboards") on the total amounts of non-pollock groundfish AFA vessels can harvest. *See* American Fisheries Act § 211(b)-(c). The AFA fleet, however, has not come close to harvesting its sideboards, nor have other limited access vessels participated in these fisheries in any significant way. These operators have consciously arranged their business operations to take advantage of different opportunities. Further, all these groundfish stocks are fished well-below allowable biological catch limits ("ABCs"), leaving room for creating new opportunities should demonstrated interest emerge in the future.

- Section 211 of the AFA is designed to protect non-AFA fishing businesses. Specifically, it requires the North Pacific Council “to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or by fishery cooperatives in the directed pollock fishery.” AFA § 211(a). One means by which the Act provides such protection is through an AFA-required hard limit on the amount of non-pollock groundfish and prohibited species AFA catcher/processors and catcher vessels may harvest in any year. AFA § 211(b)-(c). These sideboards, mandated by law and enacted by regulation, *see* 50 C.F.R. § 679.64, are based on historical use of these other stocks by AFA vessels and cannot be exceeded. It is therefore imperative that Amendment 80 contain enforceable provisions to insure that neither the AFA catcher/processors nor catcher vessels exceed their sideboards of the stocks allocated by the amendment.
- The Council must insure that there are practicable alternatives for meeting the groundfish retention standards (“GRS”), as mandated by National Standard 9. 16 U.S.C. § 1851(a)(9). Analyses supporting Amendment 80 show that the smallest vessels cannot profitably meet the GRS and would be forced to exit fishery. The Council must insure that Amendment 80 provides realistic opportunities for these vessels to form cooperative partnerships in order to comply economically. The preliminary preferred alternative does not appear to meet this standard.
- Amendment 80’s monitoring and enforcement (“M&E”) requirements may suffer from the same practicability issue. Small vessels cannot meet the standards, while those subject to Amendment 79 may be forced to go through serial retrofits due to different standards in Amendment 80. The enormous costs of the M&E requirements must be justified and minimized to meet the National Standard 9 practicability requirement, as well as the Council’s obligations under National Standard 8. 16 U.S.C. § 1851(a)(8) (“Conservation and management measures shall . . . to the extent practicable, minimize adverse economic impacts on [fishing] communities”).
- Analyses supporting Amendment 80 must account for the cumulative impacts of Amendments 79 and 85, if the Council is to make rational and legally-supportable decisions regarding the costs and benefits of Amendment 80, as well as assess the alternatives that Amendment 80 contains. The Magnuson-Stevens Act and other applicable law, such as the Administrative Procedure Act, 5 U.S.C. Chapt. 5 & 7, require a complete and reasonable assessment of these impacts. *See, e.g.*, 16 U.S.C. § 1853(a)(9); *see also id.* § 1851(a)(7) (minimizing regulatory duplication and costs); *id.* § (8) (minimizing adverse economic impacts on fishing communities).
- National Standard 5 states: “Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.” 16 U.S.C. § 1851(a)(5). Amendment 80’s purpose should not be converted from H&G sector rationalization to a vehicle for achieving other, allocative goals.

- Courts have interpreted the Council's duties under National Standard 8, alone and in conjunction with the requirements of the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612, as requiring an assessment of adverse economic impacts of regulations on participants in commercial fisheries, and minimization of such impacts to the extent consistent with conservation and management goals. The PPA and associated M&E requirements do not meet this standard. Further, the current analysis fails to account for adverse economic impacts of the PPA on the Alaskan fishing communities which rely on the H&G sector.
- National Standard 7 states: "Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." 16 U.S.C. § 1851(a)(7). Courts have treated this standard as requiring NMFS to attempt to calibrate the benefits with the burdens of fishery management measures, albeit not necessarily to conduct a formal cost-benefit analysis. Certain of the M&E requirements, particularly those relating to the potential ban on mixing of hauls and the limitation to one flow scale and production line, are extremely onerous and costly. At a minimum, effective alternatives that minimize such costs must be considered and analyzed, and the least cost alternatives recommended for adoption.

Finally, all the elements of an effective and beneficial Amendment 80 are included within the options and alternatives currently before the Council. The important information provided by the Coalition supplements the record and helps provide a basis for minor adjustments that can be made by the Council at its June meeting. These adjustments will help insure that the final action meets all legal standards and provides the greatest benefits to the fishing industry and the Nation.

I. Basic Principles of Rulemaking Under the Magnuson-Stevens Act and Other Federal Laws Require a Solid and Complete Set of Analyses

This section discusses the relevant legal standards under the Magnuson-Stevens Act and the Administrative Procedure Act ("APA") guiding the development and approval process for amendments to fishery management plans.

In general, legally supportable decisions must rest on an adequate understanding of the impacts particular decisions will have on the regulated community, and the substantive decisions made must bear a rational relationship to the objectives the rule seeks to achieve. The public review draft for Amendment 80 may fail to meet these standards in that it does not adequately account for the cumulative impacts, particularly of the decisions made on Amendment 85, and does not relate the impacts of the preferred alternative to the objectives Amendment 80 is intended to achieve.

The APA holds unlawful any agency action which is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). As interpreted by the courts, this standard requires that a rule-making agency "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the

facts found and the choice made.” *Blue Water Fishermen's Ass'n v. Daley*, 122 F. Supp. 2d 150, 158 (D.D.C. 2000) (citing cases) (internal quotations omitted). The court explained:

Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Id. at 159 (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). “For an agency’s decisionmaking to be rational under *Motor Vehicle Mfrs. Ass'n*, the agency ‘must respond to significant points raised during the public comment period’ and ‘consider significant alternatives to the course it ultimately chooses.’” *Id.* (quoting *Allied Local & Regional Mfrs. Caucus v. U.S. EPA*, 215 F.3d 61, 80 (D.C.Cir.2000)).

The MSA also requires a full and well-reasoned analysis of the economic impacts of decisions made by a regional fishery management council. Section 1853(a)(9) states:

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall . . . include a fishery impact statement for the plan or amendment . . . which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on — participants in the fisheries and fishing communities affected by the plan or amendment

16 U.S.C. § 1853(a)(9)(a). Elements of National Standard 4, dealing with allocations of fishing privileges; National Standard 7, requiring the minimization of regulatory duplication and costs; and National Standard 8, mandating the minimization of adverse economic impacts on fishing communities, also require an understanding of the regulatory and economic impacts of decisions by the Council. These are discussed individually below.

These standards are particularly relevant in at least three distinct ways to the Amendment 80 development process. The first is that the information provided the Council by the Best Use Coalition raises “important aspect[s] of the problem” currently before it, which must be considered in any final decision. Second, the substance of these aggregated papers and reports highlight a significant disconnect between the objectives of the rulemaking and its practical effects. Finally, as highlighted herein, the rationale supporting many of the allocative decisions are weakly aligned, if at all, with the applicable legal standards.

The first issue is one which is not yet ripe in the sense that the Council still has time to consider the important information provided and adjust course during its final deliberations on Amendment 80 in June. So, too, with the other two concerns, although it is worth underscoring the deficiencies with the current analysis and the preferred alternative which underlie these contentions. Some specific examples are discussed in turn.

A. Failure to adequately account for the cumulative impacts of prior actions

One of the major problems with the Public Review Draft of May 5, 2006, is that it fails to consider the impacts of the decisions made in April with respect to Amendment 85.² The only place the actual allocations appear to be discussed is in the portion of the Environmental Assessment entitled "Reasonably Foreseeable Future Actions." BSAI Groundfish Amendment 80 Public Review Draft ("Public Review Draft") at 339-40 (May 5, 2006). This section, however, only superficially discusses the impacts of the Pacific cod allocations. More importantly, the analysis does not integrate Amendment 85's impacts with respect to the groundfish retention standards and economic effects.³ To understand the sweep of the analytical problem this omission causes, it is necessary to review the substantive problems caused by the sharp reduction from recent use levels in allocation of Pacific cod for the H&G sector.

The major problem is that this reallocation transforms the H&G sector's Pacific cod fishery from a fishing-year long fishery with one hundred percent retention to, at best, a two-week directed fishery. The rest of the sector's allocation necessarily will be allocated as incidental catch in order to prosecute other groundfish fisheries. In practical effect, this means that Pacific cod will go from a one hundred percent retained species to a regulatory discard counted against the sector's groundfish retention standards.

This is no small matter, as Pacific cod is a major target for the H&G sector. It is one of the mandatory retention species, and so currently, the sector's ability to harvest and utilize Pacific cod helps maintain current retention rates. The fact that it will be subject to a maximum retainable amount for the majority of the year means that vessels will be unable to retain more than 20 percent of total landings, with the rest discarded. This is at cross-purposes with a major objective of Amendments 80 and 79.

Amendment 85's re-allocation of the Pacific cod fishery also has serious, yet unacknowledged, economic impacts not only in lost revenue from discarded fish, but also due to the very real threat that the sideboard could be met, shutting down the entire fishery. In other

² The process by which Amendment 85 was adopted likely falls far short of these standards for reasoned decisionmaking. The record on which the allocations of Pacific cod were made evinces no confidence that the full impacts of the alternative selected were understood by the Council. Objectively speaking, the fact that the Council found it necessary to reconsider its decision upon subsequent discovery of one unintended consequence, coupled with the lack of any record basis to conclude that the Council fully, if at all, understood the Amendment's impact on the head-and-gut sector (as explained below), suggests that that decision falls short of what it is required. Given that the final measure deviated significantly from the direction anticipated by and commented upon by the public and combined elements in a manner that had not been fully analyzed, the prudent course would have been to defer final action and direct staff to analyze the new alternative for subsequent action.

³ For example, in the Regulatory Impact Review, the analysis continues to assume that Amendment 85 is still under development and even that it is (as was intended to be) "on a slower time line." *Id.* at 68.

words, the cod allocation to the H&G sector is a hard cap, while for all other sectors it remains a soft cap, first by going on an incidental catch allowance, then as a prohibited species catch. See Public Review Draft at 339-40. While this raises equity concerns, especially given the recognized importance of Pacific cod to this sector,⁴ the Coalition is not asking to remove hard cap management. Rather, this point is raised because it is an "important aspect of the problem" that must be considered.

Also, as explained herein, Amendment 80 replaces the M&E requirements for the GRS contained in Amendment 79, without attempting to harmonize the two regimes. The analysis fails to recognize or fully account for the serial, and in many cases, unnecessary and bankrupting costs that this failure to harmonize the different requirements will engender. Nor, moreover, does the analysis fully or realistically take into consideration the inefficiencies and actual costs associated with the M&E requirements it seeks to impose.

B. The analysis does not recognize the realistic barriers to effective rationalization

The Coalition has noted several instances where the Council's competing objectives have led to development of measures that are inconsistent with the problem statement. However, the analysis tends to obscure or ignore these inconsistencies, and falls back on simple assertions of the existence or non-existence of benefits and costs. Such bald assertions, unsupported by the record, do not meet the standards required by law.

As mentioned above, the objective of Amendment 80 is to rationalize the sector and reduce discards. These are complementary measures, with the ability to form cooperatives creating efficiencies and means by which vessels unable to comply with the GRS can pool their allocations with vessels that have sufficient capacity to meet the standards. Rationalization also allows the sector to fish more carefully (although not nearly to same extent as, for example, rationalization of the pollock fishery), and, thus, better avoid unmarketable fish. Finally, the economic gains resulting from the ability to reduce excess capacity should go at least part of the way towards offsetting the extremely high costs of complying with the monitoring and enforcement measures. (Discussed in greater detail below.)

As shown in the next subsection, these gains are uniformly overstated. What is of concern here is an almost complete lack of recognition of the barriers to effective rationalization inherent in the preferred alternative. As stated in BUC's white paper on vessel use caps, the Public Review Draft "lacks sufficient detail to support a finding that a 10 percent or any other specific harvest limitation will meet the primary goals the Council announced in its 'Problem Statement' of insuring practicable attainment of improved retention/improved utilization and

⁴ The importance of Pacific cod to the H&G sector is demonstrated in the supplemental to the May version of the Public Review Draft. This analysis shows that for the past six years, Pacific cod has accounted for a quarter of the sector's total revenues in nearly every year. See McCracken, Amendment 80 Supplemental/Errata, C-1 Supplemental, Table 1 (May 25, 2006), available at http://www.fakr.noaa.gov/npfmc/current_issues/bycatch/ERRATA.pdf.

realizing the economic benefits of the ability to form cooperatives and rationalize the fishery.” BUC, Vessel Use Caps Under Amendment 80 at 1. In short, the problem is that the lowest capacity vessels will be unable to find partners with whom to form cooperatives with such a low allowance, while the largest vessels will be precluded from fishing additional allocations under a cooperative due to the fact that they are near or above the 10 percent threshold.

As the analysis prepared for Amendment 79 demonstratively shows, the GRS has bankrupting impacts on the smallest vessels because they lack space to accommodate flow scales and observer stations, and the hold space to economically retain valueless fish.⁵ Eight of the 23 vessels in the H&G fleet likely to qualify fall into this category, while another eight are large vessels that are likely near or above the cap. That leaves seven medium-sized vessels, each of which will have to work hard to meet the GRS, available to fish the small vessels’ allocations. Moreover, the type of fisheries for which these vessels have allocations are those flatfish fisheries with the lowest retention rates. In short, the proposed 10 percent cap frustrates the essential purpose of the Amendment.⁶

The failure to recognize this problem is a major failing of the Environmental Assessment in its own right. The issue of the vessel use cap raises other APA issues as well. The purpose of the cap appears to be to prevent excessive consolidation in the fishery and concentration of excessive shares on too few boats. These are reasonable objectives under the MSA, but not to the extent that this subsidiary goal renders the essential purpose of the rulemaking impossible to achieve. In particular, where the analysis assumes benefits of consolidation, in large measure to insure that the GRS measures meet the practicability standard imposed by National Standard 9, 16 U.S.C. § 1851(a)(9) (discussed below), but the measures selected frustrate the industry’s ability to effectively consolidate in fact, the ensuing rule would rise to the level that could be found to be arbitrary and capricious.

C. Qualitative analysis of the benefits leads to overstatement of the gains and a failure to realistically analyze net gains

Finally, Amendment 80’s the overall analysis suffers from a lack of context and clarity. As will be discussed in the Coalition’s forthcoming white paper on expected gains from rationalization, the analysis assumes that every burden – in terms of lost fishing opportunities, the GRS, barriers to effective rationalization (such as the vessel use caps), and cost imposed in the form of monitoring and enforcement (“M&E”) requirements – is justified in terms of

⁵ See, e.g., Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Amendment 79 to the BS/AI Groundfish FMP § 4.5.2.1, at 69 (May 2005) (“It is possible, that the highest levels of GRS, and without relief from a specific HT-CP sector allocation and cooperatives, that some of these vessels could be compelled to exit the BSAI groundfish fisheries.”). See also Northern Economics, Inc., Assessment of Changes in IR/IU Flatfish Requirements, Public Review Draft, at 120-121 (Sept. 2002) (stating that the impacts of retaining valueless fish fall most heavily on the smallest vessels).

⁶ This cap would also make it difficult, if not impossible for the sector to participate in the BSAI Catcher Processor Capacity Reduction Program, which is part of Public Law 108-447.

expected benefits of rationalization. While the H&G sector readily acknowledges that there will be some gains from the ability to form co-ops, these tend to be greatly overstated and speculative.

As only one example, the purpose and need section, Public Review Draft Section 1.2 at 2, states:

This particular action stems from the realization that bycatch reductions and utilization increases may require changes in fishing practices and patterns that require added expenditures and may be inconsistent with the incentives created by the current limited access management. As such, under the current limited access management the retention requirements may present a challenge for certain participants. This action would fundamentally change the management of the fishery resolving these inconsistent incentives, while also providing participants with a management system that allows for improved efficiency by providing an environment in which revenues can be increased and operating costs can be reduced. **Depending on the magnitude of these potential efficiency gains and the costs of bycatch reduction, increases in efficiency could be used to cover the costs of bycatch reduction measures** or provide additional benefits to participants.

Id. (emphasis added). Among the anticipated gains cited in this section, and elsewhere, are the end of the "race to the fish" and the fact that "[c]ooperatives . . . facilitate the exchange of fishing information, which can further aid in achieving bycatch reduction goals." *Id.*

The problem with this qualitative analysis, as shown in the white paper on rationalization, is that unlike other fisheries, such as pollock and crab, the gains from the ability to co-op this multispecies fishery are not nearly of the same magnitude. This fishery is prosecuted much more slowly, to meet the demands for high-quality product. Moreover, the industry already shares bycatch information through Sea State, which has accounted for significant reductions in discards by helping vessels avoid bycatch hotspots. These factors simply are not discussed, and there is no serious attempt to reconcile the very real and quantifiable costs with the speculative and over-stated benefits. The requirement of rational decisionmaking demands more than this.

D. Summation

This section outlines several illustrative deficiencies in the Amendment 80 analysis, particularly as they relate to the impacts of the preliminary preferred alternative. None of these deficiencies, however, are beyond correction in a final Environmental Analysis/Regulatory Impact Review. More importantly, they do not present barriers to adoption of a legally-compliant and beneficial Amendment 80 at the June meeting, along the lines recommended by the Coalition. All the recommendations are within the range of existing alternatives, and therefore could be adopted without further analysis. This document, and other information

provided by BUC, supply the type of gap-filling analysis and information needed by the Council to make reasoned decisions.

II. Protections for the Non-American Fisheries Act Fisheries Must be Established in Amendment 80

This section shows that the PPA fails to establish the basic safeguards the Council is legally obligated to provide for participants in non-AFA fisheries vis-à-vis vessels which are provided for by the American Fisheries Act and cooperatives form under its auspices. Such protections are not optional or subject to waiver. Rather, Amendment 80 must establish measures that prevent the AFA fleets from exceeding their sideboards of non-pollock species.

A. The AFA Establishes Affirmative Protections for the H&G Sector

Section 211 of the American Fisheries Act requires the Council and NMFS to protect other fisheries from the adverse effects of its allocative scheme. AFA § 211(a) Specifically, Section 211(a) states: "The North Pacific Council shall recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery." *Id.*

Section 211 provides initial statutory recommendations for such protections, including, among others, caps on the amount of BSAI non-pollock groundfish and prohibited species catch AFA catcher-processor vessels could harvest, based on those vessels' three-year qualifying period of 1995-97.⁷ *Id.* § 211(b)(2)(A), (B). Subsection (c) likewise directs the Council to establish sideboards for the AFA catcher fleet, motherships, and shoreside processors based on historic use of non-pollock species and PSC. *Id.* § 211(c). These caps, or sideboards, are codified at 50 C.F.R. § 679.64. Congress provided the Council the authority to "supercede[]" these specific measures with otherwise AFA- and MSA-compliant regulations, *id.* § 211(b)(1), but not to ignore the mandate "to protect other fisheries under its jurisdiction and the participants in those fisheries."⁸

⁷ Specifically, Section 211(b) states that AFA catcher-processors "are hereby *prohibited* from, in the aggregate – exceeding the percentage of the harvest available in the offshore component of *any* Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors" as a percentage of the total harvest during the years 199-97. AFA § 211(b)(2)(A) (emphasis added). The subsection dealing with the catcher vessels contains a similar provision limiting such vessels to their "traditional levels" of non-pollock species. *Id.* § 211(c)(1)(A).

⁸ *Id.* § 211(a). Congress' use of the term "shall" to prescribed the Council's and Secretary's duty to protect the non-AFA sector is important and telling. As a general matter, "shall" has the same meaning as "must," rather than indicating the future tense. *See, e.g.,* 50 C.F.R. § 600.305(c).

As such, Section 211(a) requires the Council to justify any allocation decision it makes regarding the harvest of non-pollock groundfish in terms of how that allocation protects the non-AFA fleet. By contrast, allocations which have the effect of reducing the amount of actual, or even potential, harvest of species other than pollock by the non-AFA fleet, and making such harvests available to vessels already given a dedicated pollock allocation under the AFA is consistent with neither the plain language nor the intent of Section 211. This position is supported by a recent opinion by the National Oceanic and Atmospheric Administration (“NOAA”) Office of General Counsel in response to an inquiry on this matter by the Council itself.⁹

In that opinion, NOAA General Counsel, Alaska Region, examined not only the words of the statute, but the legislative history as well. The latter states that the purpose of AFA Section 211(b)(2)(A) and (B) was to “prohibit the catcher/processors eligible to participate in the BSAI directed pollock fishery from exceeding the aggregate amounts of targeted species and bycatch in other fisheries” beyond the sideboards that the law provided. *Id.* at 3 (quoting 144 Cong. Rec. S12781). Senator Stevens’ report concluded more plainly that Section 211(a) of the AFA “requires the Council to recommend conservation and management measures to protect the participants in non-pollock fisheries.” *Id.* at 5 (emphasis added).

B. The Amendment 80 Preliminary Preferred Alternative Does Not Provide the Level of Protection to the H&G Sector the AFA Requires

Amendment 80’s preliminary preferred alternative fails to meet the legal requirements of AFA, Section 211. It does not build-in protective measures to insure that the AFA fleet does not exceed their sideboards. In fact, and by contrast, the purported waiver of the statutorily-mandated sideboards with respect to the threshold fishery (Component 13) for yellowfin sole clearly exceeds the letter of the law. Allocations of other Amendment 80 species to the “trawl limited access fleet,” moreover, derogate the recent history of the H&G sector by reducing its harvest below current levels, largely to the benefit of the AFA fleet, because there is simply not enough capacity in the non-AFA portion of this sector to reasonably harvest this fish. Such actions constitute “adverse impacts” as that phrase is used in Section 211, and therefore are unlawful.

Specifically, and as noted in the Coalition’s white paper on allocation issues, the nominal 82.5 percent allocation of the yellowfin sole – one of the H&G sector’s most economically important fisheries – translates into an actual allocation of only 70 percent because it is calculated after taking the increased community development quota shares and all other sectors’ incidental catch allowances off the top. This allocation will almost exclusively benefit the AFA sector in derogation of the law, because not only does the non-AFA, non-H&G sector currently lack the capacity to harvest these stocks, the Council has a pending action to further reduce latent capacity in the non-AFA catcher vessel sector.

⁹ Memo from R. Babson to C. Oliver (June 4, 2004) (quoting 144 Cong. Rec. S12781 (daily ed. Oct. 21, 1998)).

A similar issue is raised with respect to the sideboard amounts for Eastern Aleutian Island/Bering Sea Atka mackerel and Eastern and Central Aleutian Island Pacific Ocean perch ("POP"), both of which exceed statutory limitations.¹⁰ There also are questions as to whether the dedicated trawl limited access, PSC allocations, and excessive Atka mackerel and POP sideboard allocations – which are largely available only to the AFA fleet – meets legal requirements. The Coalition strongly believes that these allocations are not consistent with the spirit or intent of Section 211 because the H&G sector is palpably harmed by the loss of access to the stocks on which it solely relies, and the clear beneficiary of the reallocation – absent any protective measures – will be the AFA fleet.

Moreover, under Amendment 80 as currently configured, the H&G sector's allocation is treated as a hard cap. While this is a necessary feature of the rationalization scheme, the amounts and percentages of the allocations do not appear to conform with the letter and spirit of Section 211 because the H&G sector's access to its primary stocks and PSC allocations has been reduced in order to provide increased access primarily to the AFA sector. The result is that the non-AFA trawl catcher-processor fleet can face a shut-down in its primary fisheries simply to provide increased, guaranteed access for the AFA fleet should it chose to develop such a fishery at some point in the future.

The plain language of Section 211(a) alone suggests that providing the AFA fleet – which already has access to the lion's share of the total available BSAI resource – should not be granted any guaranteed allocation of the non-AFA fisheries. The Coalition would therefore urge the Council to revise this allocation to meet the needs only of the non-AFA catcher vessel fleet, and continue to manage the AFA's sideboards as currently done. This approach is consistent with the Council's duties under the law.

Finally, it is important to note the since the inception of the AFA, the H&G sector has not been protected adequately from harm at the expense of AFA fleet, which makes the adjustments recommended by the Coalition all the more important. The AFA's principal adverse effect is that it disqualified the H&G fleet, as well as other vessels, from any significant pollock catches. As such, these vessels were forced to develop markets for other species, and to develop an exclusive economic dependence on these other species.

Further, despite the ostensible protections afforded by Section 211, the H&G sector's allocations of their species have been decreased over the past few years as pollock has taken an increasing share of the overall optimum yield total allowable catch ("TAC"). Now that the AFA has created a regime where the H&G sector cannot switch between fisheries, the Council should not allocate away the H&G sector's safety net fishery, so that the AFA sector might enjoy the

¹⁰ The Coalition is aware that sideboards for these stocks have been increased to help communities such as Adak develop these fisheries. The H&G sector does not oppose this concept. In order to comply with AFA Section 211, however, regulatory protections must be built into Amendment 80 to insure that AFA-qualified vessels do not exceed their sideboards on Atka mackerel and POP.

ability not only to prosecute the pollock fishery nearly exclusively, but also to enter the non-pollock groundfish fisheries in the future.

Section 211 is a remedial provision, *i.e.*, a law which extends protection to an identified class – here non-AFA vessels and other stakeholders in the various BSAI fisheries. Rules of statutory construction require that a remedial statute be liberally construed so as to give full effect to its purpose.¹¹ As noted in the *Ocean Spray* decision:

Remedial statutes are liberally construed to suppress the evil and advance the remedy. The policy that a remedial statute should be liberally construed in order to effectuate the remedial purpose for which it was enacted is firmly established. Expressions of that rule appear over and over in judicial opinions.

Id. at 11 (quoting 3 SUTHERLAND ON STATUTORY CONSTRUCTION § 60.01 at 147 (Norman Singer, ed., 5th ed. 1992 rev.) (footnotes omitted)). This rule of statutory construction prevents rule-making bodies from looking for ambiguities or “loopholes” in the wording of a remedial law if the effect of those would be to harm the protected class. In the context of the PPA, the reallocation of the H&G sector’s primary fish stocks to the “trawl limited access fleet” is as legally infirm as directly allocating these fish to the AFA fleets, because the effect is substantially the same.

Simply put, there is nothing at all protective or ameliorative about the proposed Amendment 80 action, particularly when combined with the effects of the decisions made on Amendment 85, because the practical effect of the PPA is to reallocate the H&G sector’s fishery to the AFA fleets.

III. Magnuson-Stevens Act Standards Governing Allocations of Fishing Privileges Support the Best Use Coalition’s Request for a “Fair and Equitable” Allocation

The primary legal factors guiding allocations of fishing privileges strongly favor an allocation scheme that reflects, as closely as possible, the current distribution of fishing effort for the non-pollock BSAI groundfish fishery. This section discusses the relevant standards and how they apply to the decisions the Council faces in June.

A. The Magnuson-Stevens Act requires the Council to allocate fishing privileges primarily on the basis of dependence and recent participation

Section 1853(b)(6) articulates the relevant criteria which must be considered and analyzed when a council makes decisions to allocate rights to fishery resources. Specifically, the MSA states:

¹¹ For a discussion of the statutory construction principles described here, see *In re Application of Ocean Spray Partnership*, NMFS Alaska Region, Office of Administrative Appeals No. 01-0002 at 5-6 (June 15, 2001).

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may . . . establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

- (A) present participation in the fishery,
- (B) historical fishing practices in, and dependence on, the fishery,
- (C) the economics of the fishery,
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries,
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities, and
- (F) any other relevant considerations;

16 U.S.C. § 1853(b)(6). As explained below, application of these principles to the allocation of the H&G fleet's primary fisheries, particularly yellowfin sole, which faces dramatic reductions under the preferred alternative, favors allocations which mirror as closely as possible the sector's recent use history. This conclusion applies equally to decisions involving future allocations if and when BSAI groundfish TACs increase above threshold levels, as well as decisions as to just where those thresholds should be set.

The essential point is that no compelling legal justification supports a reallocation of fish from the H&G fleet to either present participants outside the sector, such as the AFA fleet or new entrants, at the expense of the H&G fleet. No significant barriers to utilization of these stocks have existed in the post-AFA period, other than overall caps on the total amounts of non-pollock groundfish AFA vessels can harvest. The AFA fleet, however, has not come close to harvesting its sideboards; nor have other limited access vessels participated in these fisheries in any significant way. Rather, these other operators consciously have arranged their business operations to take advantage of different opportunities. Further, all these groundfish stocks are fished well below ABCs, leaving room for creating new opportunities should demonstrated interest emerge in the future.

Turning to the specific MSA factors, the first – present participation – clearly supports the Coalition's position. Congress has mandated that Councils give strong weight to settled expectations and current business practices. This is sensible as a matter of public policy, because people have ordered their operations – and made investments – in response to current conditions. Businesses also require stable regulatory environments. Absent extraordinary factors or equitable considerations not present in this instance, therefore, this first consideration suggests that the status quo be maintained to the extent consistent with wise conservation and management.

The second factor, which ties historical participation to dependence on the resource being allocated, also strongly favors supporting the H&G sector's current share of Amendment 80 species from erosion. Generally speaking, patterns of historical participation may, in certain instances, be more reflective of dependence than current participation. For instance, overfishing

may deprive certain sectors or communities of access to traditional resources, so it would be inequitable to deny such past participants future access for a problem for which they may be, at most, only partially responsible.

On the other hand, however, this element cannot be read as a command to reach into the past and restore some balance that existed at some earlier point, in a never-to-be-repeated pre-AFA paradigm. There are no equitable factors like the one described above at play here. Moreover, the linking of historical patterns with dependence still leads to the conclusion that the H&G sector's current share of non-pollock groundfish should be protected because of the AFA's sector's economic dependence on these fisheries was relatively marginal even in the mid-1990s. Since then, the AFA, itself, has intervened to make that historical period a particularly inapt analogue for today.

The third factor, which deals with pure economic realities, also militates in favor of the Coalition's position. In the BSAI groundfish fisheries, the present situation is one in which the AFA vessels have a protected share in a large and lucrative fishery, and all other major fisheries are subject to limited or controlled access, and most have also been rationalized. Although AFA vessels have had opportunities to fish Amendment 80 species, they have chosen not to do so in any material way. Meanwhile, the H&G sector developed a fishery that captures over 90 percent of the species being allocated by Amendment 80.¹²

In short, the present situation is one where the non-AFA trawl sector is solely dependent upon its ability to harvest the maximum share of Amendment 80 species, whereas today the AFA sector has created an incredibly successful business model that takes only very small non-pollock groundfish catches. The AFA sector also has taken an increasingly large share of the overall optimum yield cap, at the expense of non-AFA fleets including the H&G sector.

The fourth statutory factor governing a limited access regime – ability of vessels to engage in other fisheries – likewise favors the non-AFA sector. Limited access schemes are the norm in North Pacific, as elsewhere across the country, and the vessels in the H&G CP fleet simply have no alternative fisheries should their allocation be short-changed in this Amendment. Courts have taken note of this fact when judging the economic impacts of conservation restrictions. *See Southern Offshore Fishing Ass'n v. Daley*, 995 F. Supp 1411, 1435 (M.D. Fla 1998).

Finally, the last two factors relate to the cultural, social, and "other factors" relevant to the decision to limit entry and how best to accomplish that objective. As to the "other factors," the guidelines state:

In designing an allocation scheme, a Council should consider other factors relevant to the FMP's objectives. Examples are economic and social consequences of the scheme, food production, consumer interest, dependence on the fishery by present participants and coastal communities,

¹² See Amendment 80 Public Review Draft, Tables 3-32-33, at 90-92.

efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

50 C.F.R. § 600.325(c)(3)(iv). In other words, these factors include the vast array of integrated impacts and effects, including those that extend beyond the directly affected participants and go to the large local, regional, and national interests. In the balance, it is likely that each group with an interest in these issues can argue that the factors favor their position. However, and as explained below in the discussion of National Standard 8, the Amendment 80 analysis gives short-shrift to the needs of fishing dependent communities in Alaska, such as Unalaska/Dutch Harbor and Adak, which depend on the H&G fleet throughout much of the year.¹³

Moreover, the H&G fleet produces high quality food products from these stocks, whereas AFA vessels do not currently, and may not be able to, produce the same quality product from these stocks. In order to do so, however, the AFA fleet and any other new entrants directing on these fish stocks will have to use the same gear and methods pioneered by the H&G fleet, and face the same issues that Amendment 80 is designed to address. On this record, disenfranchising current participants at the expense of providing speculative benefits to fishermen with alternative, statutorily-protected, near-monopolistic (in the case of the AFA fleet) fishing options does not meet MSA standards.

It should also be noted that, with the H&G sector's support, Amendment 80 provides opportunities for new entrants without curtailing current levels of participation by the H&G fleet. Amendment 80 contains what is referred to as a "threshold" provision that increases out-of-sector allocations when the TACs rise above certain level, assuming appropriate safeguards against excessive harvest by the AFA fleet are developed. Given that these species have been under-allocated relative to allowable biological catch limits, the threshold provision comfortably meets the requirements of National Standard 4.

Taking all the factors as a whole, the equities favor an allocation scheme which protects the non-AFA sector by establishing a cooperative program largely mirroring the current configuration. The preliminary preferred alternative falls short of this standard.

¹³ This point is illustrated by NMFS Inseason Management Report, which shows the continued and near-exclusive presence of the H&G fleet in the BSAI groundfish fishery from the end of March to the beginning of June each year. See NMFS, Inseason Management Report, December 2005, at 15, available at <http://www.fakr.noaa.gov/sustainablefisheries/inseason/npfmcreport1205.pdf>. During this period of time, Alaskan fishing communities receive a substantial amount of economic benefit from the H&G fleet, which benefit is potentially jeopardized by the Council's action.

B. National Standard 4 and its Implementing Guidelines Do Not Support the Reallocation contained in the PPA

National Standard 4,¹⁴ which requires fairness and equity in allocation decisions, and its implementing guidelines also bear on the issues in Amendment 80. For example, the guidelines state:

An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as "fair and equitable," if a restructuring of fishing privileges would maximize overall benefits. **The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo.**

50 C.F.R. § 600.325(c)(3)(i)(B) (emphasis added).

The lengthy discussion above relating to the protections afforded the H&G sector by AFA Section 211 has application to the relative hardship analysis under National Standard 4. Without reiterating the arguments, it is important to note that Congress has weighed-in specifically on the matter of imposing hardships on non-AFA sectors if the purpose is to convey allocations of non-pollock fisheries to AFA vessels. In short, even such transfers that increase total benefits are prohibited by law.

In considering the relative hardships, the Council also should recognize that no barriers have existed for AFA vessels or the non-AFA trawl catcher fleet to fish for the Amendment 80 species, at least to the extent of the AFA fleet's sideboards. These sectors have demonstrated, however, no significant interest in fishing for these resources. In practical terms, this means that the reallocation from the H&G sector to others takes fish from a group that is fully utilizing the resource and redistributing them to others whose present participation has been consciously and purposefully limited in order to confer a prescriptive, speculative benefit on the latter group. This cannot be justified as either being "fair and equitable" or as maximizing overall benefits, especially when the future and speculative nature of the benefits of the reallocation are weighed against the tangible and immediate adverse effects on the H&G sector.

¹⁴ "Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges." 16 U.S.C. § 1851(a)(4).

The “unfairness” of the proposed allocation is compounded when, as here, the class benefiting from any such reallocation has statutorily-guaranteed access to what amounts to about 75 percent of the total optimum yield cap. Without a solid, record-based justification for favoring this sector, such a redistribution of fishing rights could be characterized as favoring more (purportedly) local-based interests, as opposed to legally required consideration of the relevant factors. Such a reallocation may thus be seen as a violation of principles of reasoned decisionmaking.

For example, a recent decision invalidating a limited access scheme for the Atlantic tilefish fishery reaffirmed a long-standing principle that decisions on whom to include and exclude from a fishery cannot be made on the basis of “political compromise.” *Hadaja, Inc. v. Evans*, 263 F. Supp.2d 346 (D.R.I. 2003) (holding that the tilefish limited access scheme violated the “best science” standard). This decision follows a long line of such rulings.¹⁵ These cases highlight the importance of basing allocation decisions on appropriate, statute-based considerations.

Another factor to consider for purposes of the National Standard 4 analysis – how the Council has handled similar decisions in other rationalization plans – is part of the “fairness and equity” calculus. Generally speaking, in other fisheries, such as halibut and sablefish and crab, the Council has granted the bulk of the fishing rights and all the future upside to potential TAC increases, to the current, active fleet. Congress also reserved any potential future upside of pollock TAC increases solely for AFA-eligible vessels. The same should hold true with Amendment 80, even though the Coalition has gone on record supporting an increase in community development quota allocation and a reasonable threshold allocation to support the development of new fisheries when the ABCs for these stock rise above certain levels.

In conclusion, looking at the relevant statutory elements of the MSA, applicable law convincingly favors the status quo in terms of allocation of the Amendment 80, particularly vis-à-vis options that redirect harvest rights based on a combination of never-to-be-repeated pre-AFA fishery and speculative, undemonstrated post-AFA fishery aspirations.

C. National Standard 5 Prohibits Allocations Made on a Purely Economic Basis

National Standard 5 requires that in adopting conservation and management measures, the Council “consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.” 16 U.S.C. § 1851(a)(5). The guidelines implementing National Standard 5 state:

Economic allocation. This standard prohibits only those measures that distribute fishery resources among fishermen on the basis of economic

¹⁵ See *Hall v. Evans*, 165 F. Supp. 2d 114, 133 (D.R.I. 2001); *The Fishing Company of Alaska v. United States*, 195 F. Supp. 2d 1239, 1248 (W.D. Wash. 2002); *Parravano v. Babbitt*, 837 F. Supp. 1034, 1047 (N.D. Cal. 1993); *Midwater Trawlers Co-Operative v. Dept. of Commerce*, 282 F.3d 710, 720-21 (9th Cir. 2002).

factors alone, and that have economic allocation as their only purpose. **Where conservation and management measures are recommended that would change the economic structure of the industry or the economic conditions under which the industry operates, the need for such measures must be justified in light of the biological, ecological, and social objectives of the FMP, as well as the economic objectives.**

50 C.F.R. § 600.330(e). (emphasis added). Moreover,

[i]n an unutilized or underutilized fishery, it may be used to reduce the chance that these conditions will adversely affect the fishery in the future, or to provide adequate economic return to pioneers in a new fishery.

Id. § (c) (emphasis added).

Amendment 80, in conjunction with Amendment 79, is designed to rationalize the H&G sector and to practicably minimize bycatch through the imposition of groundfish retention standards. These goals support the overall goals of Amendment 80 to ensure better utilization by the H&G sector. In contrast, the ancillary reallocations of fishing privileges included in the Amendment 80 PPA (and enacted by final action on Amendment 85) are nothing more than unvarnished economic allocations. There are no conservation objectives obtained through these allocations.

The H&G sector, moreover, was the pioneer of this fishery and the markets it serves. These stocks are “underutilized” in the sense that allowable biological catch limits have never been close to being achieved. Rather than eliminating opportunities for the H&G sector, Amendment 80 should, as was originally intended, allocate the resource based on recent catch history, so that its participants can earn the “adequate economic return” for their years of investment and development of these fisheries.

IV. Other Applicable Magnuson-Stevens Act Standards that Apply to Amendment 80

This Section reviews other legal obligations imposed on the Council by the MSA that have relevance to the issues the Coalition is addressing. These include National Standards 9, 8 and 7.

A. As Amendment 80 is Currently Structured, the Groundfish Retention Standards and Accompanying Monitoring and Enforcement Measures May Not be Practical Within the Meaning of the Law

National Standard 9 requires that “conservation and management measures . . . , to the extent practicable, minimize bycatch and to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.” 16 U.S.C. § 1851(a)(9); *see also id.* § 1853(a)(11) (same). As the culmination of years of effort to design a practicable improved retention/improved utilization program for the non-AFA trawl catcher-processor sector, Amendment 80 is designed to help

achieve this legitimate Magnuson-Stevens Act objective. Indeed, the Coalition supports the groundfish retention standards, and has successfully worked hard over the years, even prior to, and in anticipation of this Amendment, to voluntarily reduce discards in the mixed species fishery.

The only caveat the H&G sector has with respect to bycatch reduction relates to the practicability of the measures Amendment 80 imposes. As noted above, the preliminary preferred alternative for Amendment 80 would erect crippling roadblocks to the sector's ability to form cooperatives. However, the ability to form co-ops in order to meet the GRS on an aggregated basis and to allow owners of small vessels to have their allocations fished on larger vessels that allows them to practicably conform to the retention standards. If barriers persist which make the formation of such relationships impossible, these vessels will be forced to exit the industry. Fixing the problems associated with the vessel use caps is an absolute necessity, as courts have invalidated bycatch reduction provisions with significantly less economic impact than the GRS would have if this does not occur in June.

1. Recent cases involving National Standard 9

In recent years, there have been a series of important court decisions that have helped to define and clarify the MSA "practicability" standard. These cases have discussed practicability with respect to the bycatch and habitat requirements. The leading case, *Conservation Law Foundation v. Evans*, 360 F.3d 21 (1st Cir. 2004), decided a challenge to a rulemaking under the MSA claiming that the regulations adopted to manage the Atlantic scallop fishery were not consonant with the Council's and NMFS's MSA-based bycatch and habitat duties.

These claims were premised on the theory that the New England Council failed to enact certain area closures that the plaintiff environmental groups (Oceana and Conservation Law Foundation) claimed were "practicable" measures to minimize bycatch and adverse impacts of scallop fishing on essential fish habitat ("EFH"). *Id.* at 27-28. Plaintiffs argued that NMFS had a legal duty to impose any and all "practicable" alternatives. *Id.* at 28. In rejecting these claims, the court stated:

[T]he plaintiffs essentially call for an interpretation of the statute that equates "practicability" with "possibility," requiring NMFS to implement virtually any measure that addresses EFH and bycatch concerns so long as it is feasible. Although the distinction between the two may sometimes be fine, there is indeed a distinction. The closer one gets to the plaintiffs' interpretation, the less weighing and balancing is permitted.

*Id.*¹⁶ Importantly, the First Circuit went on to note that not closing these areas would yield greater economic benefits in the short run, and any long-term economic benefits "were

¹⁶ This line of reasoning was adopted and extended by the U.S. District Court for the District of Columbia last year in *Oceana, Inc. v. Evans*, 2005 WL 555416 *35 (D.D.C. 2005).

uncertain.” *Id.* Also, in *Blue Water Fisherman's Ass'n v. Daley*, 122 F. Supp. 2d 150 (D.D.C. 2000), the court invalidated a blanket requirement that vessels obtain and use electronic vessel monitoring systems (“VMS”) that was imposed, in part, to enforce bycatch reduction mandates. *Id.* at 170-71. The basis for this holding was a failure by NMFS to provide sufficient justification that the measure’s benefits outweighed the costs imposed on the industry. *Id.* at 171.

These cases demonstrate that, in terms of bycatch reduction, economic impact is a major component in determining the practicability of a proposed bycatch minimization measure. Moreover, these holdings are consistent with the National Standards Guidelines. For example, the guidelines for National Standard 9 state that bycatch reduction measures should be at least qualitatively determined to have net positive benefits. *See* 50 C.F.R. § 600.354(d). Moreover, such regulations must be “consistent with other national standards and maximization of net benefits to the Nation,” and the agency is required to consider a variety of factors, including “[c]hanges in fishing, processing, disposal, and marketing costs.” *Id.* § (3)(i).

Where a court presented with the question of whether a bycatch reduction measure that had the effect of bankrupting industry members met the practicability standard, there is a high probability a court would find it was not. However, the analysis supporting Amendment 80 show that without the ability to effectively form cooperative relationships with other vessels, the smallest vessels with the least capacity will not be able to survive economically. It is therefore vital that the barriers to effective rationalization be addressed and corrected.

2. A note on the duty to minimize bycatch mortality

Finally, all the analysis of this fishery contained in the Public Review Draft recognizes that the H&G sector’s bycatch of prohibited species and non-marketable fish is “unavoidable” as that term is used in the Act. *See, e.g.*, Public Review Draft at 52-53. Given that fact, it is troubling that no attention has been paid at all to the second and equally important requirement of the law, that is to “minimize the mortality of such bycatch.” This is particularly troubling with respect to, for instance, the bycatch of halibut which is a hardy species that can survive if returned to the water in a timely manner. However, the current policy, reinforced through the M&E requirements, is to insure 100 percent mortality of such species merely for accounting purposes. The Coalition believes this policy is, at best, misguided.

B. The Amendment 80 preferred alternative does not comport with National Standard 8

As explained below, the Coalition finds the analysis of the Council’s compliance with National Standard 8, which protects fishing dependent communities from unnecessary adverse impacts, to be facile and thoroughly inadequate. To explain why, the prevailing legal standard is discussed at length, followed by a critical consideration of the analysis contained in the public hearing draft.

1. Case law regarding National Standard 8

National Standard Eight requires NMFS to “consider the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities,

and to the extent practicable, minimize adverse economic impacts on such communities.”¹⁷ 16 U.S.C. § 1851(a)(8). It is important to note that in interpreting this requirement, as discussed below, courts have considered the impacts of measures at issue on vessels, using this impact almost as a proxy for impacts on the communities in which these vessels reside. The only constraint on this requirement is that measures be “consistent with the conservation requirements of” the MSA. *Id.* When this latter constraint is met, there is an affirmative duty to seek to minimize adverse economic impacts of conservation measures. 50 C.F.R. § 600.345(b)(1).

Courts have, further, referred to the “balancing” the Council and NMFS must undertake between MSA conservation requirements and those of National Standard Eight.¹⁸ In many cases, such as in *NRDC* and *RFA*, courts have found that the balance must, by the terms of the MSA, favor conservation when the issue is simply one of failing to consider certain economic impacts found by the Secretary to be unavoidable to meet overfishing and rebuilding objectives under National Standard One.¹⁹ *NRDC*, 209 F.3d at 753-54 (finding a measure with “only an 18% likelihood of achieving the target F is so inherently unreasonable that it defies the plain meaning of the statute”); *RFA*, 172 F. Supp. 2d at 46 (holding that recreational fishing limits were necessary and that economic impacts were considered). However, in a series of cases involving the interaction of National Standard Eight and the Regulatory Flexibility Act, courts have found inadequate analysis of economic impacts of the regulations on fishing communities to be a violation of National Standard Eight. See *N.C. Fisheries Ass’n*, 27 F. Supp. 2d at 664-66; *Southern Offshore Fishing Ass’n v. Daley*, 995 F. Supp. 1411, 1437 n.35 (M.D. Fla. 1998).

Moreover, courts have not similarly conditioned their National Standard Eight analysis when the issue has involved mitigation of economic impacts with respect to MSA requirements tempered by the practicability standard. In *Blue Water*, for example, the court held that a requirement that fishermen purchase and use expensive VMS transponders in part to enforce bycatch reduction regulations violated National Standards 8 and 7²⁰ because the record indicated that NMFS failed to explore less costly alternatives and the record did not support the need for the measure. 122 F. Supp. 2d at 169.

¹⁷ A fishing community is defined in the National Standard Guidelines as a “community that is . . . substantially engaged in the harvest or processing of fishery resources.” 50 C.F.R. § 600.345(b)(3).

¹⁸ See *Rec. Fishing Alliance (“RFA”) v. Evans*, 172 F. Supp. 2d 35, 51-52 (D.D.C. 2001); *Nat’l Resources Defense Council (“NRDC”) v. Daley*, 209 F.3d 747, 753 (D.C. Cir. 2000); *N.C. Fisheries Ass’n v. Daley*, 27 F. Supp. 2d 650, 652 (E.D. Va. 1997).

¹⁹ It should be noted that that unlike National Standards 8 and 9, National Standard 1 is not constrained by a practicability standard. That is to say, the command that NMFS “shall prevent overfishing while achieving, on a continuing basis, optimum yield” is phrased without any qualifiers and in absolute terms.

²⁰ “Management measures shall, where practicable, minimize costs and avoid unnecessary duplication.” 16 U.S.C. 1851(a)(7).

In both the *Blue Water* and *Southern Offshore* cases, the courts discussed this adverse impact minimization requirement solely in terms of the financial impacts of the measures on fishing vessels themselves. In other words, the holding in *Blue Water*, for example, did not rely on a finding that the VMS requirement imperiled the sustained participation of fishing communities separate from the vessels that supported their communities, but rather that NMFS failed to investigate mitigating alternatives. See 122 F. Supp. 2d at 169. The same holding was made in the second *Southern Offshore* case in discussing and reaffirming its initial National Standard Eight holding. See *Southern Offshore*, 55 F. Supp. 2d 1336, 1339-40 (M.D. Fla. 1999), *vacated on settlement* ("NMFS inadequately considered, and perhaps overlooked altogether, feasible alternatives or adjustments to the 1997 quotas that may mitigate the quotas' pecuniary injury to the directed shark fishermen.").

Indeed, courts have found fisheries regulations, even those designed to meet the strict requirement to prevent overfishing, to be invalid under National Standard Eight where the agency failed to adequately account for the economic impacts on the full range of affected vessels. In *North Carolina Fisheries*, for example, the court found the failure to rationally consider economic impacts of quota reductions on the potential for bankruptcy of fishing operations in specific to constitute a substantive violation of the MSA. 27 F. Supp. 2d at 665-66. In short, National Standard Eight acts as a mandate on NMFS and the Councils to fully and rationally explore the economic impacts of regulations on fishing vessels and to minimize such impacts to the greatest extent possible.

2. Inadequacies of the Public Review Draft

In Section 6.1.1, Consistency with the Magnuson-Stevens Act, National Standards, the Public Review draft's discussion of Amendment 80's compliance with National Standard 8 is limited to listing the ports of the H&G sector and other elements of the BSAI fishery, and noting the self-evident proposition that the increase in the community development quota percentage to ten percent represents a potential boon to those communities. Public Review Draft at 356. Scattered in various sections, such as the selection below from the Regulatory Impact Review, are only slightly more fulsome discussions of anticipated community impacts:

The fishing communities that are expected to benefit from this proposed action are the locations the vessels offload, take on supplies, and the owners and crew live. Twenty-seven catcher Processors appear to be eligible for the Non-AFA Trawl CP sector. Of these vessels, nearly all are based out of Seattle or other Washington communities. A few catcher processors are based in Rockland, Maine. Although the BSAI non-pollock groundfish fisheries may be important to the Seattle-based participants in these fisheries, the effects of these fisheries are largely overshadowed by both the large fishing and processing industry in Seattle and the general Seattle economy as a whole.

Id. at 61. What should be apparent in light of the forgoing discussion, the various testimony and reports submitted by the Coalition, and the many letters from businesses and communities that rely on the H&G sector, is that this “analysis” of the preferred alternative is wholly inadequate.

This sort of cursory dismissal of the economic importance of the H&G sector mirrors the analysis in the environmental assessment for Amendment 79. The only difference was that Amendment 79’s rules were expected to have negative consequences, though not of a magnitude to be felt by “the general Seattle economy as a whole.”

As the cases discussed above demonstrate, this cursory level of analysis does not meet the legal requirements, particularly where, as here, a measure has such high compliance costs and imposes some severe penalties in terms of lost PSC and directed fisheries allocations. At the very least, it should be an open question as to whether the trade-offs present a net benefit or loss to the sector, and the communities which rely on it. This discussion is never engaged because of the analytic failures of the document discussed above.

Equally unsatisfactory is the definition of community implicit in the document. It does not follow that the proper unit of analysis is an entire city where vessels are homeported. At some level of aggregation, the most egregious losses to a fishing fleet would not be noticed at all. The Council knows and can identify each and every H&G vessel affected by this Amendment. A stylized, Seattle-wide analysis frustrates reasoned decision-making and can be seen to deliberately obscure targeted economic impacts. *Cf. SOFA I*, 995 F. Supp. at 1434-35 (excoriating NMFS’s use of an overly-broad “universe” of fishery participants in economic analysis).

The focus in National Standard 8, moreover, is on *fishing dependent* communities. In a place like Seattle, that community is comprised of the fleet, docks, shipyards, buyers, suppliers, etc., and not also Microsoft and Boeing. Further, there are many such communities that would be hurt by economic reductions to the H&G, including smaller Washington communities like Bellingham, and the ports in Alaska which supply, repair, and generate fees from landings by this sector. On an annual basis, communities such as Adak and Unalaska/Dutch Harbor rely on the fishing year-long presence of this fleet. A discussion of the impacts on the H&G sector is not legally sufficient if it does not mention impacts on these communities.

C. Some of the monitoring and enforcement requirements run afoul of National Standard 7’s command to avoid unnecessary costs and inefficiencies

National Standard Seven prescribes that, “Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.” 16 U.S.C. § 1851(a)(7). Courts have treated this standard as requiring NMFS to attempt to calibrate the benefits with the burdens of fishery management measures, albeit not necessarily to conduct a formal cost-benefit analysis. *See, e.g., Blue Water*, 122 F. Supp. 2d at 171. It has also been held to require that the agency “give consideration to significant practicable alternatives” which minimize any attendant costs. *Id.* at 169.

NMFS regulations confirm that this national standard requires an affirmative consideration of whether management goals can be accomplished in more efficient ways. Indeed, NMFS guidelines implementing National Standard Seven state that “[m]anagement measures should be designed to give fishermen the greatest possible freedom of action in conducting business The type and level of burden placed on user groups by the regulation need to be identified.” 50 C.F.R. § 600.340(d)(1).

NMFS guidelines also impose affirmative analytical requirements: to ensure that “[m]anagement measures not impose unnecessary burdens on the economy, [or] on individuals,” *id.* § 600.345(c), and to “demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to industry of compliance.” *Id.* § (d). When such a review is conducted, the regulations explain that “[f]actors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative.” *Id.* (c). In practical application, courts will examine a measure that imposes costs on the industry with respect to the benefits purported to ensue from its promulgation. Where the link between these costs and benefits are weak, that measure may be invalidated.

In *Blue Water*, for example, the court invalidated a bycatch reduction measure because NMFS had not adequately or rationally justified its costs. 122 F. Supp. 2d at 170-71. The court explained:

NMFS has provided neither a reasoned nor a conservation-based justification for implementing the VMS regulations and associated costs upon *all* fishers carrying Atlantic HMS permits, and, unable to discern NMFS’s reasoning from the record, I cannot supply one. . . . While NMFS must minimize costs only “where practicable [and] not absolutely,” . . . NMFS failed to implement practicable cost-minimization alternatives. Rather, NMFS imposed blanket VMS costs without showing how, by imposing these costs on fishers who do not operate near established time/area closures, the VMS regulations would provide conservation benefits.

Id. at 171. In sum, courts will closely scrutinize costs imposed on the industry when presented with compelling reasons, such as the benefits of the costly requirement are relatively minor.

The tremendously costly and intrusive M&E requirements are defended as necessary to police the rationalization scheme, but the Amendment 80 Public Review Draft contains none of the required analysis. The Coalition recognizes that certain such costs, including flow scales and increased observer coverage, are necessary to enforce sector allocations and cooperative agreements. What is not apparent is whether the full sweep of measures recommended are all absolutely interdependent and essential to accomplish this task, or whether there might be less costly or more efficient means to achieve the same ends.

For example, under Amendment 79, a very similar set of M&E requirements was developed, not by the Council, but by NMFS, largely, it appears, at the behest of the NMFS’s

Office of Law Enforcement. In the final rule, such measures as the "line of sight" rule, were defended as necessary on the grounds that the agency had uncovered a recent presorting violation. 70 Fed. Reg. 17362, 17373 (Apr. 6, 2006). That violation was uncovered, however, as a result of a tip, which suggests that alternative means that are less costly than significant overhauls of ships might be available.

Another vexing and costly requirement is the ban on mixing of hauls – a routine fishing practice in the H&G fleet and a practical necessity when fishing for low-margin species. The ostensible reason this is required is the need to obtain "discrete samples." *Id.* It not at all clear, as either a statistical or practical matter, why other methods cannot developed to collect accurate samples, through a combination of random sampling techniques and monitoring the timing of the hauls to insure that samples are not all coming from one part of the net.

Finally, it is unclear as a matter of either monitoring or enforcement why the M&E requirements contain a strict limitation to one production line. For some of the largest vessels in the fleet that are designed to run two lines, this requirement is an astronomically expensive proposition. It is not explained why maintaining two lines should be prohibited if such an owner chose to install two flow scales and otherwise could arrange a legally sufficient observer station or stations that provides the reasonable level of monitoring the law requires.

In contravention of the requirements of National Standard 7, Amendment 80 contains no alternatives to these costly measures. Nor are there any detailed discussion in the Public Review Draft or elsewhere that explains why each and every one of the M&E measures are needed, in just the form suggested.²¹

In the case of the M&E requirements, specifically, any challenge to the necessity of these very expensive measures would be aided by the fact that the analysis supporting their necessity is, as suggested above, virtually non-existent. The necessity is simply asserted rather than shown. Also, there has been no discussion of the need, benefits, or existence or lack of adequate alternatives by the Council. On such a thin record, a court may well find these measures to be contrary to the letter and intent of National Standards 7 and 8, as the *Blue Water* court did with respect to the VTS.

V. Conclusion

The issues identified in this paper are not insurmountable. While as currently configured, the Amendment 80 preliminary preferred alternative does not appear to meet prevailing legal standards under the Magnuson-Stevens Act, Section 211 of the American Fisheries Act, or Administrative Procedure Act, the alternatives suggested by the Best Use Coalition are sufficient to bring Amendment 80 in line with these requirements. These

²¹ In point of fact, there are two alternatives: one with respect to the prohibitions on having crew in the fish tank, and the other on the line of sight rule, which allows for video monitoring under certain conditions. Public Review Draft at xxiv. This is a rather crabbed range of alternatives, and there are none for the measures cited above.

adjustments are, moreover, in line with current options in the document, and thus can be implemented in June without further delay.

It is very important that these adjustments be made. Amendment 80 was conceived to address issues specific to the H&G sector, both with respect to issues related to capacity and bycatch reduction. Unfortunately, the Amendment has been freighted with other objectives and impacted by prior Council actions such that the essential purpose of the rule has become threatened. In order to insure that the H&G sector receives the promised benefits from rationalization in order to both provide greater net benefits to the Nation and to enable it to practicably comply with the groundfish retention standards, it is imperative that the ancillary allocative decisions be deferred to a future rulemaking.

The Coalition appreciates the time the Council has put into this important measure, and look forward to help achieving a beneficial Amendment 80 that we all can wholeheartedly support.

Potential Impacts and Opportunities for Economic Benefits
from the
Non-AFA Multispecies Trawl Rationalization—Amendment 80

By
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UPPER

My name is James Wilen and I am a professor of Natural Resource Economics at the University of California, Davis. Most of my research during my 33 year career has focused on fisheries economics, particularly on the impacts of regulations and rationalization schemes on fishermen. I was asked by a group of H&G companies to examine pending rationalization options for the non-AFA CP sector and provide my judgment about their likely impacts.

I. Introduction

The pending rationalization of the non-AFA multispecies trawl fleet fishery is important not only for those in the fishery, but also for the larger global community of managers, fishermen, and fisheries scientists concerned about fisheries management options. Alaska has been at the forefront of fisheries management evolution in at least two ways. First, Alaska fisheries are the healthiest of all of the regional fisheries in the U.S., and they rank as among the most well managed in the world. This has been made possible because of high quality science, conservative harvest targets, and an ethic among fishermen that largely supports a precautionary system. Second, Alaska has been in the forefront in the development of new fisheries governance systems. Perhaps the most important institutional innovation in fisheries over the past decade has been Alaska's adoption of the harvester cooperative. While there are other examples of harvester cooperatives operating elsewhere in the world, it is in Alaska that observers of alternative management systems are turning to help understand whether these new institutions will achieve their promise and provide a satisfactory alternative to other less favored policies including ITQs.

My point in placing the pending cooperative plan for the non-AFA trawl fleet in the larger context of global fisheries governance, is to emphasize that the rationalization of this particular fishery is important as a case study that others will be looking at. In particular, this is the first mixed trawl multispecies fishery that will be attempting rationalization with a harvester cooperative. Most mixed species trawl fisheries are still managed by complex command and control time/area closures and trip limits. In the few examples where multispecies rationalization schemes have been implemented, the favored policies have been ITQ systems that manage with hard TACs and within-season trades between fishermen. This case is therefore an important experiment because it is the **only** attempt to manage a multispecies trawl fishery with a cooperative. It is thus important to give it an opportunity to succeed.

II. Fisheries Rationalization: An Overview

There has been a steady accumulation of experience with various kinds of fisheries rationalization schemes around the world since the jurisdiction extension in 1978. The earliest fisheries rationalization schemes of note were implemented in the 1950s and 1960s. These were vessel limited entry schemes (British Columbia salmon 1967, Alaska salmon 1976) and some gear limit schemes (Australian rock lobster pot limits, 1965). Most of these programs were initiated by managers with the objective to help slow the incessant capacity growth that plagued fisheries worldwide. While there was high hope in the 1960s and 1970s that these kinds of policies might mitigate overcapacity problems, most only had temporary effects (Fraser, 1979). In hindsight, it is clear that regulations aiming to reduce effort growth by restricting vessels, or tonnage, or other composite measures of fishing power, simply generate compensating behavior that adds capacity in unrestricted dimensions of effort (Townsend, 1990, Wilen, 1988).

A more fundamental conclusion from the evidence about command and control effort regulations is that they **all** are subject to "leakage" in the long run because they are aimed at **symptoms** rather than the deeper **cause** of fisheries problems (Wilen, 2006). Fisheries economists universally agree that the most important cause of fisheries problems is the insecurity of access that compels fishermen to engage in the race for fish. The race for fish is a universal outcome of management systems that focus solely on biological health and ignore the fundamental economic drivers of harvester behavior. Most of the world's fisheries are still bound up in adversarial systems in which fishermen are subjected to increasingly draconian and unpredictable restrictions on choice, by regulators faced with legal obligations to constrain the effects of effort growth on biological health (Homans and Wilen, 1993).

Of special relevance to the Being Sea multispecies trawl fishery is the role of insecure harvest privileges in inducing bycatch and discards. This is a less appreciated point, but excessive bycatch, discards, and other practices that may affect resource sustainability are also symptoms of the fundamental problem characterized as the race to fish. While the literature in fisheries science often ascribes bycatch and discards as technical problems to be solved by gear redesign, it is clear that part of the problem is also behavioral. In particular, the incessant competition induced in the race to fish often compels fishermen to fish in areas that generate high bycatch as they pursue high catch rates of target species. All fishermen agree that if they could slow the pace of fishing they could reduce bycatch and discards substantially. The lesson here is that bycatch problems, like overcapacity and the race to fish, are also a symptom of the deeper problem and not, as is commonly portrayed in the press, an indication that fishermen are purposefully and incautiously pillaging the ocean. In an important sense, harvest insecurity traps fishermen in a setting that generates perverse incentives. Experience shows that if the decision making setting changes, behavior can be changed to mitigate these important problems.

As observers of rationalization schemes have noted with increasing consistency, there is really only one way to tackle the race to fish, and that is to convert insecure access privileges into secure access privileges granted to either individuals or groups (Christy, 1996). There are basically three ways to allocate access privileges. The most common is the IFQ or ITQ that guarantees individual holders the right to harvest a certain fixed

fraction of the TAC. New Zealand and Iceland adopted these in the early 1980s, New Zealand over virtually all of its fisheries in the 1980s, and Iceland in its herring and its valuable offshore cod fisheries. These programs had demonstrable and dramatic effects almost immediately, removing the race to maximize catch, and promoting effort reduction, gear and vessel reconfiguration, and fishing practice changes. Since the early 1980s, there have been almost 100 additional adoptions of transferable quota-based programs around the world (Muse and Schele, 1989, OECD, 1997). Currently, there are over 170 fisheries managed by some form of IFQ or ITQ around the world.

In spite of their successes, ITQs have been contentious and are not the only way to allocate harvest privileges. Two other schemes are harvester cooperatives with species-specific rights granted to groups, and territorially-based harvester cooperatives with privileges granted to groups to manage resources within a specific area (eg. Japanese community cooperatives (Uchida and Wilen, 2004), Chilean nearshore harvester coops). The Alaskan model of coops formed under the AFA has contributed some unique features to the global experience with cooperatives. First, it has avoided contentious initial individual allocation decisions by shifting components of those decisions to cooperative members. In addition, Alaskan coops have allowed the internal pooling of incidental catch allowances and redistribution back to coop members through price contracts. Finally, Alaskan coops have demonstrated how a range of internal incentive and disincentive mechanisms and contractual arrangements can be used to manage bycatch, promote market development, and improve operational efficiency.

III. Major Impacts of Rationalization

The major impacts of rights-based experiments with ITQs, harvester coops, and area-based coops have repeated themselves in numerous applications. These are:

Elimination of the Race to Fish: with secure harvest privileges, the race to fish is replaced by a "race for value". When fishermen no longer have to race to capture fish, they turn attention toward generating value from their secure allocations.

Market Gains: generally, the first sources of new value emerge from the market side of the ledger (Homans and Wilen, 2005). Derby fisheries are spread out over longer seasons so that fresh product is available over more of the marketing year. This generates higher prices because wholesalers can rely on a longer period of secure supply. In addition, slower fishing may produce a higher quality raw product, whether by immediate gutting and icing, or careful handling and offloading. The slower pace of fishing also enhances the ability to target more accurately. This may mean larger sizes, or more uniform sizes, or sizes targeted to particular market niches, or targeting associated with market timing.

Effort Consolidation: the second source of new value arises from effort and input reduction. ITQs are stacked as quotas are bought and sold and combined, and less productive vessels in coops are retired. This generally reallocates harvest privileges from redundant and inefficient vessels to more efficient vessels. The economic gain emerges from reallocating harvests from many vessels fishing portions of the season, to a smaller

number of vessels that can make better use of vessel capital by spreading fixed costs over larger volumes of harvest.

Effort Reconfiguration: subsequent waves of changes occur as market/harvesting operations are coordinated and fine tuned. For example, decks and handling facilities may be reconfigured to optimize production of new mixes of products and to maintain flexibility to adapt to market conditions (Wilén, 2004).

Innovation: over the long run, the race to generate value maintains a constant incentive to innovate and save costs in harvesting operations and generate value in the market, through market deepening, new niche development, and spatial and temporal coordination of deliveries.

Stewardship: with a secure stake in the resource productivity, fishermen have new incentives to become stewards with long term interest in the resource health. This has meant in practice more involvement in enforcement, science, and program development.

The magnitude of the gains have been generated from rationalization are difficult to gauge, although there have been many studies of individual ITQ programs that have catalogued the kinds of impacts that have been generated. One good benchmark measure of economic impacts from rationalization is the lease price and/or the quota trading price. Most are familiar with Alaskan cases (halibut, sablefish, pollock, crab); additional examples of the impacts of other programs include:

Iceland: herring and groundfish, cod most important groundfish. Export oriented, little improvement in market quality; fishery still an industrial product. Gains mostly from consolidation of ITQs into larger factory trawler vessels and economies of scale/scope in vertically integrated companies. ITQ lease prices approximately 50% of ex-vessel prices. (Arnason 1993, Danielsson, 1997, Runnolfsson and Arnason, 2000).

New Zealand: complicated and diverse multispecies, multigear fisheries. Very flexible, market driven system with modest constraints on ownership, transfers, etc. Broad and diverse changes including consolidation into mid-sized vessels, changes in marketable products produced, and changes in vessel configuration and fishing practices (Clark et. al., 1988, Boyd and Dewees (1992),. Most recent study of all ITQ markets has lease price averaging 21% of exvessel price and sale prices 11 times lease prices. (Newell and Sanchirico, 2005)

British Columbia halibut: immediate gains from longer season, fresh product, new market development in Canada. Estimated ex-vessel price increase 25-40%. Quota sales prohibited in first two years so all early gains in market changes. Consolidation after sales allowed, current fleet size about half of initial size. ITQ lease prices 50-70% of exvessel values, sale values 8-12 times lease prices. (Casey et. al., 1995, Hermann. 1996, Grafton et. al., 2000).

BC Groundfish fishery: most similar to Alaska groundfish. Developed very flexible ITQ program in 1996 that achieves targeted and bycatch TACs via trades among licensed vessels. Bycatch dramatically reduced, excess capital retired, consolidation to mid-sized vessels. Fishing to market demand. Lease prices from \$0.10-0.20 per pound, sale prices about 10 times lease prices (Grafton et. al., 2005).

IV. Lessons: Opportunities for Economic Efficiency Improvements

A lesson from most of the existing cases is that the size of the economic gains generated from rationalization depends upon two factors. The first is the degree to which the system is bound up by race to fish, efficiency-reducing regulations before rationalization. The second is the degree to which the fishery is released from these after rationalization. The circumstances that generate the largest gains are those that are dramatically straightjacketed to begin with, and then, post rationalization, are just as dramatically freed up as the constraints are lifted. For example, the halibut and sablefish fisheries saw substantial market gains because both seasons had been artificially shortened to just a few days, necessitating an inferior frozen product form. Releasing the fishery from top down area/season controls allowed large revenue increases to be generated almost immediately. Similarly, in New Zealand, fisheries such as the red snapper were caught by trawls before rationalization, but after fishermen switched to long lines in order to harvest fish live that were then shipped to the Japanese sashimi market. This change was profitable because the access right was granted to shares of the TAC, without any gear endorsements or similar limitations that froze fishing technology. The Bering Sea pollock fishery experienced dramatic gains by reconfiguring vessels to respond to relative prices of surimi and fillet markets, and by reconfiguring fishing/processing operations to optimize recovery. On the other hand, Iceland's cod fishery faced only limited opportunities to alter their product quality and focus, because the primary market was a global whitefish market, with little absorption capacity for new products. The clam/quahog fishery served mainly a clam product market. Consolidation and fleet reduction allowed modest gains from reducing inputs and vertical integration, but little change in the output market.

V. Amendment 80: Opportunities for Efficiency Improvement

These observations are relevant for the pending rationalization of the non-AFA factory trawl fishery. The main issue here is: what avenues are there to generate economic gains from forming a cooperative? To answer this question, I spent several days interviewing a number of current participants, understanding how they conduct their operations now, and listening to them provide their best predictions about what might happen under a rationalized governance system. The perspectives of individuals I interviewed were varied, and reflect the considerable diversity of this fishery. Companies in this fishery range from small family single vessel operations to larger multiple vessel operations. The vessels themselves vary over a range from less than 124 feet to a vessel in the 300 foot range, with many in the 200 foot range. Most firms have developed their own market links, and non-AFA trawl products are shipped directly to European, domestic, Japanese and Korean markets as well as for reprocessing in China for

subsequent domestic and export sale. While each firm has a slightly different business model and perspective on the current status of the fishery, there was consensus on the likely impacts of pending rationalization schemes and current options. The following is a summary of what industry participants expect:

Opportunities for Market Gains: most (but not all) industry participants believe that there are modest opportunities for market gains. But no one believes that the market gains will be anything approaching those of halibut, sablefish, and pollock fisheries in Alaska. Because of the isolation and high transport costs, creating new fresh markets is highly unlikely as is the opportunity to "fish to the market" and fine tune landings on a daily basis, both developments that have generated new revenues in the British Columbia groundfish trawl fishery. In the end, current participants believe that the post-rationalization product mix will still rely on head and gut operations because that is the high value option for most species caught, particularly flatfish. The cooperative structure itself will generate new incentives to produce different primary products such as kairimi, and some additional emphasis on existing secondary products such as cod cheeks, fish tails, and milt. But the ability to do this is limited to the small number of vessels load lined and classed as processors. Current safety regulations thus box the fishery into a very inflexible situation in that while there is the physical possibility of extracting more moderate and low valued product, regulations constrain the ability of coop members to take advantage of the opportunities.

Fine-tuning harvesting/processing operations: A slower fishery would allow better coordination of the joint harvesting/processing operation. Without the incentives to race for fish, vessels could fish slower and more selectively over space and time, targeting larger sizes, and more uniform sizes, allowing fine tuning of the cutting operations and hence marginally higher recovery rates on primary head and gut products. But the fishery is not starting from a low recovery industrial/volume product basis and hence is unlikely to experience the large gains in either recovery rates or product mix changes the occurred in the pollock fishery. Recovery rates are already high and there is only a marginal amount of extra high-valued salable product to be created. In addition, there is a tension between the need to slow harvest and processing to generate a higher raw product quality, and the need to keep vessels and lines running to spread fixed costs. This is difficult to sort out at present. The best gauge of likely changes is this fishery's experience with the CDQ quotas. The experience there suggests that more products and grades can be squeezed out of an operation that is not engaged in the race to fish. But CDQ experience also emphasizes that there are limits to the gains because of the tradeoff between slower, higher valued operations and the need for throughput.

Opportunities for PSC and discard reduction: A popular expectation is that the bycatch and discard problems associated with this fishery will be dramatically changed by reducing the race to fish with a cooperative. This is what we might expect as open access fisheries under race to fish conditions are rationalized, and this is exactly what happened in the BC trawl fishery rationalization plan. In that case, the pre-rationalization fishery was bound up with quarterly TACs, trip limits, bycatch induced closures, and significant down time. Under rationalization, large gains were made by preventing

premature shutdowns and by stretching the season out. However, for the H&G fisheries of Alaska, these kinds of gains are not likely. The reason is that the Sea State program has already wrung most of the potential economic gains from bycatch coordination out of the system by voluntary cooperation. This program initially provided aggregated and real time information to fishermen in the form of maps indicating high bycatch rate areas. But the system has morphed and evolved in dramatic ways from the early operations that simply provided information. Currently, information is not only gathered, but it is analyzed and synthesized by the Sea State Director, who then also acts subtly and forcefully as a coordinator of fishing grounds activity. His bycatch avoidance suggestions are relayed to skippers, who then, through cajoling and peer pressure, reach agreements over bycatch reduction strategies for the fleet in a real time manner on the grounds. The system is thus quite close, at the moment, to one that might emerge under a formal cooperative in which the group managed the extent and placement of effort in order to manage group-wide bycatch. There would be some gains that would emerge from full participation by all members of the group, and hence marginally fewer unanticipated closures and expenses associated with those. But most of the benefits from cooperative bycatch avoidance have already been achieved by voluntary actions, and one would not expect large additional economic gains from formalization of the coop.

Discards may also be reduced so that more product is available from fish that was previously discarded. But discard rates in recent years have been substantially decreased and hence this is not a potentially significant source of new product. Another potential source of new revenues might be the prospect of accessing more of the large flatfish ABCs as the coop improves PSC bycatch management. But the prospects for this revenue source are limited under several options for initial allocations that appear to reserve most of the opportunities for the non-H&G sectors of the groundfish fishery, some of which would be harvesting under open access conditions. Unless these splits are resolved more favorably in initial allocation formulas, there are only limited opportunities for the H&G sector to convert savings by better managing PSC bycatch into upside gains in new flatfish fishery development.

Vessel consolidation and retirement: In most other race to fish fisheries, there is a substantial amount of overcapacity that is removed and that generates significant and sometimes most of the gains from rationalization. In British Columbia, there were 142 vessels originally, but only 115 or so active. That fleet consolidated down to 70 vessels, and this agglomeration of the 45 retired vessels' quota generated the lion's share of the profits embedded in current lease prices. Most of the H&G participants in the Alaskan fishery that I interviewed do not believe that there is significant overcapacity presently. The fishery fishes a number of different species at different times of the year and in different locations over a large area. There is very little enforced idleness of existing capital, and where it does happen it is induced by low TACs and pending PSC caps. Slower fishing, if it materializes, and coordinated bycatch management will press the need to retain catching power. Most see the need in a cooperative for vessels from all size classes for a successful cooperative. Smaller vessels are particularly effective at harvesting across the whole portfolio of existing and potentially underfished species in ways that would generate value with high quality retention. And larger vessels that are load lined and classed as processors will be needed for their grandfathered processing

services. The mid-sized vessels currently operate as the work horses in the industry, and if this cooperative is like others, they will continue to operate fully.

VI. Summary

The non-AFA multispecies fishery is a diverse and dynamic fishery. But it is also highly constrained by numerous regulations and sideboards. Many of these, such as PSC caps, time/area closures, and groundfish retention requirements, are conservation measures that ostensibly have been implemented to tackle the symptoms of insecure access and the race to fish. They mostly achieve conservation objectives, but they do so by imposing inefficiencies, raising costs, and wasting the economic potential from the resource base. These are all scheduled to be in force after rationalization has removed race to fish incentives. Other recent and pending regulatory decisions, like yellowfin sole and cod TAC reductions, may also be motivated by conservation concerns, or they may be direct reallocation decisions that transfer potential revenues to other user groups. The most unfavorable combinations of pending options would pinch the H&G sector on both sides of the income statement.

Many expect that rationalization will make up for new conservation motivated revenue reductions and cost increases by generating new profits that did not exist before. But a precondition for higher post-rationalization profits is that the industry has both inherent **opportunities** to generate new returns and the **flexibility** to do so. This fishery does not have all the inherent opportunities that have existed in other successful rationalization stories such as the Bering Sea pollock fishery under AFA. It has limited opportunities to create new products, to increase yield of salable products, to shed redundant capital, and to improve on the existing scheme that has been implemented to manage bycatch and avoid bycatch closures. In addition, the web of regulations put in place under open access race to fish conditions will still be in place after rationalization, limiting the flexibility to innovate and change operations.

All of the evidence shows that rationalization clearly changes perverse race to fish incentives and substitutes an environment that encourages the industry to internally solve problems by coordinating, consolidating and reconfiguring. But the industry needs both "wiggle room" and the promise of economic payoff to induce innovative operational changes that solve outstanding problems in ways that maintain economic viability. Tightening PSC constraints, reducing target fishery TACs, reducing the access of the H&G sector to the portion of the flatfish ABCs that have not been harvested historically, and imposing unnecessary constraints on coop designs all threaten the viability and promise of cooperatives to sustainably and profitably managing a mixed species trawl fishery. It would be a lost opportunity, from the standpoint of this fishery and from the standpoint of learning about the potential of multispecies cooperatives, to over-constrain the fishery from the outset to such a degree that we do not get to witness the full suite of innovations that might be developed to make a multispecies trawl fishery both sustainable and profitable.

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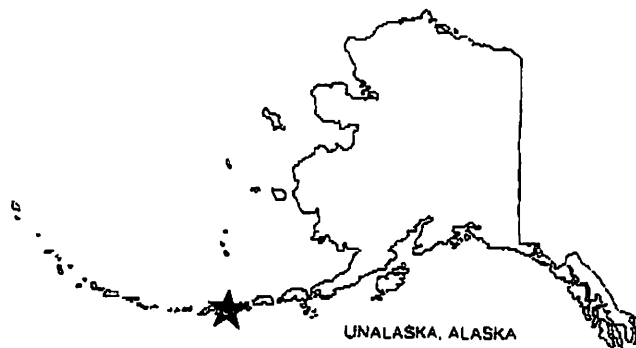
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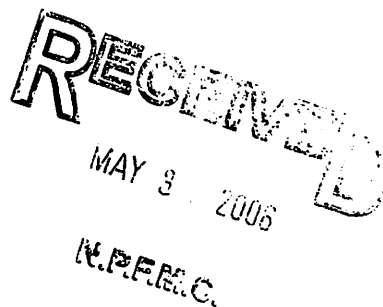
CITY OF UNALASKA

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May 30, 2006

Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W 4th Avenue Suite 306
Anchorage, Alaska 99501



Subject: C-1 IR/IU Amendment 80

Dear Chair Madsen:

On behalf of the City of Unalaska, I am writing to you today in support of the H/G Catcher Processors sector. This sector, of over 20 vessels, has been an important part of the community of Unalaska for many years. They support our local businesses with the purchasing of goods and services in the millions of dollars annually, generating employment and sales tax dollars. They pay the State of Alaska Resource Landing Tax that has a shared return rate of 50% with fishery-dependent communities such as Unalaska, and are an established and valued industry partner.

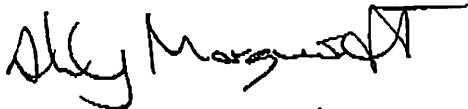
We support many of the measures included in Amendment 80. We believe it is critical to stop the race for fish in this sector. The formation of cooperatives will allow participants in this sector to focus more on retention than optimizing harvest amounts. This will have positive effects on the reduction of incidental catch and discards, and meet the goal of improved retention and improved utilization.

We would ask the North Pacific Council to take into consideration this sector's recent and past participation in their target fisheries, especially the Yellowfin Sole fishery. We recognize their historical dependence on this fishery, and because of the established business partnerships we have formed based on this level of effort, we strongly support this sector's request to receive their current historical catch of Yellowfin Sole under Amendment 80.

The Community of Unalaska/Dutch Harbor does business, and receives revenues from all sectors of the fishing industry, and we do not want to see any of our partners hurt or legislated out of business. We know that rationalization of this sector is important, and is intended to fix many of the problems that exist today. With a significant change in allocation to the H & G fleets historical catch, there is bound to be consolidation, and some vessels will leave the fishery. This will impact local businesses and possibly revenues to Unalaska. We want to go on record today, in support of this sector's request for their historical catch in the Yellowfin Sole fishery, and to affirm this sector's value to our local support sector businesses, and to the City of Unalaska.

Once again, Madam Chair and Council Members, thank you for taking the time to consider our comments on this issue.

Sincerely,



Mayor Shirley Marquardt

CC: Unalaska City Council Members
Chris Hladick, City Manager

May 26, 2006

Lori Swanson
Best Use Coalition
4241 21st Ave. W., Suite 200
Seattle, WA 98199

RECEIVED
MAY 30 2006
N.P.F.M.C.

Dear Lori:

This letter report summarizes our findings based on the information provided by members of the head & gut trawl catcher processor (HG-TCP) fleet in the Alaska-based expenditure survey conducted by the Best Use Coalition in May 2006.

Summary

Economic Contributions on a Statewide Level

The survey data provided by the HG-TCP fleet indicate that total Alaska-based expenditures in 2004:

- Totaled \$51.7 million;
- Resulted in an estimated 455 – 485¹ indirect and induced full or part-time jobs;² and
- Generated \$20.0 million – \$21.3 million in indirect and induced personal income to Alaska residents. This income is in addition to any income earned by Alaskans that were directly employed by the fleet.

Every million dollars in 2004 fleet expenditures is estimated to have resulted in additional personal income between \$0.39 and \$0.41 million, and supported nine full or part-time jobs within Alaska.

For 2005, the analysis estimates that the HG-TCP fleet's expenditures:

- Totaled \$56.5 million;
- Resulted in 480 – 520 indirect and induced full or part-time jobs; and
- Generated \$21.6 million – \$23.2 million in indirect and induced personal income to Alaska residents not directly employed by the fleet.

We estimate that every million dollars of fleet expenditures in Alaska in 2005 resulted in additional personal income of \$0.38 – \$0.41 million, and approximately nine additional full or part-time jobs.

Economic Contributions in Dutch Harbor

The analysis also estimated the portion of expenditure spent in Dutch Harbor in 2004 and 2005. Note that these expenditures were a subset of the expenditures made in the state as a whole. The

¹ The difference between the conservative estimate and the high estimate is driven by uncertainty in how much of the money is spent on freight forwarding and surface transportations activities. The conservative estimates assume that none of the money stays in Alaska, while the high estimate assumes that all of the money stays in Alaska.

² This estimate does not include any jobs that Alaskans may have had as members of the fishing or processing crews on-board the vessels.

analysis used local spending estimates to calculate indirect and induced full or part-time jobs and personal income in the local economy that were generated by HG-TCP activities. We estimate that the HG-TCP fleet spent \$39.7 million in the Dutch Harbor economy in 2004, which resulted in local Dutch Harbor effects ranging between:

- 200 and 210 in indirect and induced full or part-time jobs; and
- \$10.5 million and \$11.0 million in indirect and induced personal income to persons working in the Dutch Harbor area.

We estimate that every million dollars spent in Dutch Harbor in 2004 resulted in additional income from \$0.20 — \$0.21 million and supported four full or part-time jobs within the community.

For 2005, the analysis estimates that the HG-TCP fleet's \$44.1 million in Dutch Harbor expenditures generated between:

- 225 and 235 indirect and induced local jobs; and
- \$12.0 million and \$12.6 million in indirect and induced personal income in the community.

Every million dollars spent in Dutch Harbor in 2005 resulted in an estimated \$0.21 – \$0.22 million in personal income, and approximately four additional full or part-time jobs.

General Approach

This analysis is based on data provided by HG-TCP fleet through a May 2006 expenditure survey. The survey asked members to detail the expenditures on goods and services purchased in Alaska in 2004 and 2005. Overall, the survey contained nearly 30 expenditure categories ranging from food and fuel to cab services and cell phones. Respondents were also asked to provide information on state and local taxes. Expenditure and tax categories are outlined further in Table 1 through Table 4 in the *Expenditures and Taxes* section of this document.

Overall nine (9) companies representing 21 boats responded to the survey. At the direction and assistance of the Best Use Coalition, data for two boats of companies which did not respond to the survey were estimated using proxy boats based on other survey respondents. This set of assumptions allows the analysis to estimate the expenditures of the entire HG-TCP fleet. The analysis aggregates the data for all of the boats by expenditure category in order to maintain confidentiality between members. As an additional precaution, the analysis does not report any data on a category level for which less than three companies responded. The analysis combines these categories as uncategorized expenses or economic sectors.

This analysis provides a quantitative measure of the HG-TCP economic contribution to the local Dutch Harbor and to Alaska's economy as a whole, using an input-output analysis. The analysis uses the IMPLAN software and database to estimate provide estimates of:

- Indirect and induced jobs (total number of part-time and full-time jobs); and
- Indirect and induced personal income (wages, salaries, and proprietors' income).

These estimates focus only on jobs and income produced through boat expenditures and do not include employment or income effects associated with hiring Alaska-based crew members. Thus, if the HG-TCP fleet includes some Alaska-based crew members, then this analysis will underestimate the actual economic effect of the fleet on Alaska's economy.

How IMPLAN Analyses Work

The analysis uses IMPLAN software (and database) developed and distributed by the Minnesota Implan Group. IMPLAN estimates economic impacts using specific data on inputs needed to produce the products or services (so-called production functions) for over 500 industries, as well as borough or county-specific data on the industries available locally that supply those inputs. Essentially, IMPLAN tracks the flow of money through the economy. For example, when a fleet of boats spends money on fuel, the fuel company spends that money hiring someone to pump the fuel into the boat and spends money purchasing the fuel or shipping it from a wholesale supplier to Dutch Harbor. The fuel company employees and wholesale suppliers then spend that money on other goods and services which they need to live or to continue their business. Thus, the economic effect of spending one dollar on fuel is much higher than just one dollar. As each successive person or company spends and saves parts of that dollar, the overall effect of the initial expenditure is multiplied. The number of times a dollar travels through the economy is called its "multiplier." The multipliers for any given industry in any given location are unique, based on industry composition and geographic area.

As the IMPLAN model estimates how many times each dollar flows through the economy, it divides the effects into three categories: direct effects, indirect effects, and induced effects. Direct effects are the effect of the original economic expenditure while the indirect effects capture all the subsequent economic activity generated in the sectors supporting fleet members. The induced effects capture the additional economic activity brought about by local spending by households and governments. When economic activity creates jobs, labor income or personal income in the region increases and a portion of this income is re-spent in the local economy, creating induced effects. Most of these induced effects are generated in the retail, restaurants, amusement centers, and other personal services sectors.

Expenditures and Taxes

This section outlines the fleet's Alaskan expenditures and taxes paid in 2004 and 2005. Overall, the fleet paid \$1.49 million in landing taxes in 2004 (see Table 1). The fleet paid 82 percent of its 2004 landings taxes, or \$1.22 million, in Dutch Harbor in 2004 while landings in other locations (\$118,000), other Aleutian Island ports (\$102,000), and Kodiak (\$47,000) generated smaller tax payments. Total landings taxes slipped by nearly 20 percent between 2004 and 2005 to \$1.24 million, while the share of taxes paid in Dutch Harbor remained relatively constant at 80 percent of overall landings taxes paid. The other three locations identified by the survey remained in the order seen in 2004.

Table 1. Landing Taxes Paid by Location, 2004 and 2005³

Location	2004	2005
Dutch Harbor	\$1,224,000	\$989,000
Kodiak/Gulf of Alaska Communities	\$47,000	\$41,000
Other Aleutian Islands	\$102,000	\$93,000
Other Locations	\$118,000	\$118,000
State Landing Share	\$745,000	\$620,000
Local Landing Share	\$745,000	\$620,000
Total Landing Taxes	\$1,490,000	\$1,240,000

Source: NEI estimates based on Best Use Coalition Survey, 2006.

³ Some fleet members indicated they paid ASMI taxes, but the number of members reporting ASMI taxes was too low to include the taxes within any of the tables in this report. However, those taxes are included in the impact calculations.

Fleet members pay community sales, use, and hotel taxes during the course of conducting their businesses. These taxes totaled \$509,000 in 2004 and \$537,000 in 2005. The largest category reported in the survey data was "not specified," which means the survey respondents didn't specify a location. The largest identified location in both years was Dutch Harbor followed by "other Aleutian Islands," Kodiak, and "other locations."

Table 2. Community Sales, Use, and Hotel Taxes Paid by Location, 2004 and 2005

Location	2004	2005
Dutch Harbor	\$241,000	\$184,000
Kodiak/Gulf of Alaska Communities	\$4,000	\$4,000
Other Aleutian Islands	\$17,000	\$11,000
Other Locations	\$4,000	\$4,000
Not Specified	\$244,000	\$333,000
Total Community Sales, Use, and Hotel Taxes	\$509,000	\$537,000

Source: NEI estimates based on Best Use Coalition Survey, 2006.

In addition to landings taxes and local taxes, fleet members also pay state permits and fees. These fees totaled \$25,000 in 2004 and \$34,000 in 2005.

Table 3. State Permits and Fees, 2004 and 2005

Location	2004	2005
Total State Permits and Fees	\$25,000	\$34,000

Source: NEI estimates based on Best Use Coalition Survey, 2006.

The fleet spends money on a wide variety of products and services in Alaska. However, overall expenditures are dominated by one large category—in 2004, the fleet spent \$22.7 million on fuel and lubricants (see Table 4). This amounted to 45.3 percent of all fleet expenditures in that year. In 2005, the fleet spent \$24.4 million on fuel and lubricants (44.8 percent of all expenditures). The next largest categories according to 2005 data are repairs and maintenance (\$8.7 million), food (\$3.3 million), airfare (\$3.3 million), pilots (\$2.9 million), freight forwarding (\$2.6 million), fishing gear (\$2.3 million), supplies and non-durable goods (\$1.2 million) and dockage/storage (\$1.0 million). The remaining 13 categories of expenditures are less than \$1 million each and account for less than ten percent of total expenditures.

Table 4. Expenditures by Category, 2004 and 2005

Other expenses:	2004	2005	IMPLAN Economic Sectors
Fuel/Lube	\$22,738,000	\$24,445,000	Petroleum Refineries ⁴
Repairs/maintenance/parts/diving services/welding etc.	\$6,540,000	\$8,699,000	Ship Building & Repair
Food (retail and restaurant/bar)	\$3,218,000	\$3,333,000	See Footnote ⁵
Airfare/travel agency services	\$3,657,000	\$3,256,000	Air Transportation
Pilots	\$2,220,000	\$2,865,000	Support Activities for Transportation
Freight forwarding	\$2,080,000	\$2,627,000	Water Transportation
Fishing gear	\$2,161,000	\$2,340,000	Other Miscellaneous Textile Mills
Supplies/non-durable goods	\$1,079,000	\$1,205,000	See Footnote ⁶
Dockage/storage	\$1,134,000	\$1,031,000	Support Activities for Transportation
Medical/dental/emergency services	\$684,000	\$747,000	Offices of Physicians, Dentists, etc.
Surface transport	\$650,000	\$617,000	Water Transportation
Fleet support/logistics	\$434,000	\$427,000	Management of Companies & Enterprises
Lodging	\$536,000	\$379,000	Hotels and Motels
Observers	\$947,000	\$926,000	All Other Misc. Pro & Tech Services
Vehicle rental/truck repair/vehicle licensing	\$128,000	\$131,000	Automobile Rental
Safety equipment and servicing	\$99,000	\$119,000	Ship Building and Repair
License fees	\$204,000	\$99,000	State & Local Govt. Non-Education
Cell phones	\$102,000	\$94,000	Telecommunications
Cab service	\$79,000	\$68,000	Ground Transportation
Product quality assurance	\$53,000	\$35,000	Management of Companies & Enterprises
Water sampling	\$17,000	\$13,000	Support Activities for Transportation
P.O.Box rentals	\$1,000	\$2,000	Business Services
Uncategorized expenses	\$734,000	\$928,000	See Footnote ⁷
Total	\$49,494,000	\$54,386,000	

Source: NEI estimates based on Best Use Coalition Survey, 2006.

Table 4 includes not only fleet expenses by category but also the economic sector to which we assigned the expense category. Multiple types of expenses can fall within the same economic category. For example, spending for repairs as well as safety equipment and servicing both fall into the ship building and repair sector. When multiple expenditure categories fall into the same economic sector, they have the same set of multipliers in the IMPLAN model. Different economic sectors will have different multipliers within the model. Typically sectors which include the creation of goods and the supply of services (e.g., ship building) will have higher multipliers than retail or wholesale sectors that simply provide existing goods.

Table 5 outlines expenditures by economic sector in 2004 and 2005. As one would expect, this list looks very similar to the list in Table 4 except with fewer entries. The largest expenditure falls into the

⁴ 2.5 percent of this value is distributed to local and state governments because of the \$0.05 per gallon marine fuels tax.

⁵ Food supplies are distributed between frozen food manufacturing, food service and drinking places, fluid milk, meat processed from carcasses, bread and bakery product manufacturing, & other snack food manufacturing.

⁶ Supplies and durable goods are distributed between cut and sew apparel manufacturing, hand and edge tool manufacturing, and sanitary paper product manufacturing.

⁷ Uncategorized expenses are split between support activities for transportation, insurance carriers, paperboard container manufacturing, water transportation/air transportation, and machinery and equipment Rental.

petroleum refineries sector. Ship building and repair is the next largest sector. These two sectors combined account for more than 56 percent of all economic activity by the fleet.

Table 5. Expenditures by Economic Sector, 2004 and 2005

Sector ⁸	2004	2005
Petroleum Refineries	\$22,170,000	\$23,834,000
Ship Building and Repair	\$6,639,000	\$8,819,000
Support Activities for Transportation	\$3,540,000	\$3,993,000
Water Transportation	\$2,731,000	\$3,246,000
State & Local Govt. Non-Education	\$2,952,000	\$2,756,000
Air Transportation	\$2,790,000	\$2,488,000
Other Miscellaneous Textile Mills	\$2,161,000	\$2,340,000
Insurance Carriers	\$475,000	\$762,000
Offices of Physicians, Dentists, etc.	\$684,000	\$747,000
Frozen Food Manufacturing	\$547,000	\$567,000
Fluid Milk	\$547,000	\$567,000
Meat Processed from Carcasses	\$547,000	\$567,000
Bread and Bakery Product Manufacturing	\$547,000	\$567,000
Other Snack Food Manufacturing	\$547,000	\$567,000
Food Services and Drinking Places	\$483,000	\$500,000
Management of Companies & Enterprises	\$487,000	\$462,000
All Other Misc Professional & Technical Services	\$450,000	\$440,000
Cut and Sew Apparel Manufacturing	\$360,000	\$402,000
Sanitary Paper Product Manufacturing	\$360,000	\$402,000
Hand and Edge Tool Manufacturing	\$360,000	\$402,000
Hotels and Motels	\$536,000	\$379,000
Automobile Rental	\$128,000	\$131,000
Telecommunications	\$102,000	\$94,000
Paperboard Container Manufacturing	\$88,000	\$78,000
Ground Transportation	\$79,000	\$68,000
Advertising & Related Services	\$33,000	\$31,000
Machinery and Equipment Rental	\$0	\$2,000
Business Services	\$1,000	\$2,000
Total allocated in-state	\$50,343,000	\$55,209,000
Allocated out-of-state	\$1,364,000	\$1,254,000
Total Expenditures	\$51,708,000	\$56,463,000

Source: NEI estimates based on Best Use Coalition Survey, 2006.

Some expenditures take place within the State of Alaska, but they also effectively leave the state immediately with no economic effects. For example, if one purchases an Alaska Airlines/PenAir ticket to Dutch Harbor from Seattle, a certain portion of that purchase stays in Seattle to fund ground crew, flight attendants, fuel, and other operating expenses incurred within Washington to support that flight. Using Alaska Airlines annual reports and research on tickets prices, the analysis team concluded that approximately 75 percent of each ticket purchased to Dutch Harbor stays in Alaska, but the remainder leaves the state's economy without adding to it. We make a similar assumption about

⁸ The analysis only uses local margins for sectors where the sector's manufacturing or production are occurring outside of the analytical area.

observers in that 5 percent of the amount for observers goes for airfare (with the same caveats as above); and that the remainder is split equally between money that stays in state (observer company costs) and money that leaves the state immediately (observer wages).⁹ Approximately \$50.9 million of the \$52.3 million spent in 2004 and \$55.5 million of the \$56.5 million spent in 2005 are counted as in-state expenditures that remain in-state to affect the local economy.

State-Level Effects of Expenditures

The data in the HG-TCP fleet survey indicate that total Alaska-based expenditures were \$51.7 million as shown in Table 6 these expenditures generated:

- between 455 and 485 indirect and induced full or part-time jobs;¹⁰ and
- between \$20.0 million and \$21.3 million in indirect and induced personal income to Alaska residents not directly employed by the fleet.

For 2004, we estimate that every million dollars in 2004 fleet expenditures resulted in additional income between \$0.39 and \$0.41 million, and supported nine full or part-time jobs within Alaska.

Table 6. Indirect and Induced Effects and Multipliers of HG-TCP Expenditures, State Level, 2004

Category		Indirect	Induced	Total
Estimated Impact				
High Estimate	Income (\$millions)	17.9	3.4	21.3
	Employment (# of jobs)	385	100	485
Conservative Estimate	Income (\$millions)	16.8	3.2	20
	Employment (# of jobs)	360	95	455
Estimated Multipliers (per \$Million in Alaska Expenditures)				
High Estimate	Income (\$millions)	0.35	0.07	0.41
	Employment (# of jobs)	7	2	9
Conservative Estimate	Income (\$millions)	0.33	0.06	0.39
	Employment (# of jobs)	7	2	9

Source: NEI estimates based on Best Use Coalition Survey, 2006.

The data in the HG-TCP fleet survey indicate that total Alaska-based expenditures in 2005 were \$56.5 million As shown in Table 7 these expenditures generated:

- between 480 and 520 indirect and induced full or part-time jobs; and
- between \$21.6 million and \$23.2 million in indirect and induced personal income to Alaska residents not directly employed by the fleet.

For 2005, we estimate that every million dollars in fleet expenditures resulted in additional income between \$0.38 and \$0.41 million, and supported nine full or part-time jobs within Alaska.

⁹ Interviews with key informants indicate that very few observers are Alaska residents.

¹⁰ The difference between the conservative estimate and the high estimate is driven by uncertainty in how much of the money is spent on freight forwarding and surface transportations activities. The conservative estimates assume that none of the money is stays in Alaska, while the high estimate assumes that all of the money stays in Alaska.

Table 7. Indirect and Induced Effects and Multipliers of HG-TCP Expenditures, State Level, 2005

Category		Indirect	Induced	Total
Estimated Impact				
High Estimate	Income (\$millions)	19.4	3.7	23.2
	Employment (# of jobs)	415	105	520
Conservative Estimate	Income (\$millions)	18.2	3.5	21.6
	Employment (# of jobs)	385	100	485
Estimated Multipliers (per \$Million in Alaska Expenditures)				
High Estimate	Income (\$millions)	0.34	0.07	0.41
	Employment (# of jobs)	7	2	9
Conservative Estimate	Income (\$millions)	0.32	0.06	0.38
	Employment (# of jobs)	7	2	9

Source: NEI estimates based on Best Use Coalition Survey, 2006.

Dutch Harbor Effects of Expenditures

The analysis also broke all reported expenditures into two categories: expenses that flowed through the Dutch Harbor economy and those that were made in other parts of the state. Respondents did not break down their expenditures into these categories. Thus, the analysis had to estimate the portion of each category spent in Dutch Harbor. The analysis assumes that the portion of expenditures spent in Dutch Harbor is in general equal to the portion of landings taxes (82 percent) generated by Dutch Harbor landings. The analysis then adjusted each category from this level based upon our knowledge of the fishery and the services in question. For example, the analysis estimates that zero percent of license fees flowed into the Dutch Harbor economy. However, we assume that 100 percent of repairs conducted in Alaska were associated with the Dutch Harbor economy. It should be noted that these assumptions are rough estimates of reality and do not represent category level empirical data as reported by survey respondents. Based on the assumptions, in combination with the survey data, we estimate that the HG-TCP fleet put \$39.7 million and \$44.1 million directly into the Dutch Harbor economy in 2004 and 205 respectively (see Table 8).

Table 8. Dutch Harbor Expenditures by Category, 2004 and 2005

Expense Categories	Portion Estimated Spent in Dutch Harbor (%)	Amount Spent In Dutch Harbor	
		2004	2005
Fuel/Lube	82	\$18,672,000	\$20,074,000
Repairs/maintenance/parts/diving services/welding etc.	100	\$6,540,000	\$8,699,000
Food (retail and restaurant/bar)	82	\$2,638,000	\$2,733,000
Airfare/travel agency services	15	\$548,000	\$488,000
Pilots	82	\$1,820,000	\$2,349,000
Freight forwarding	82	\$1,705,000	\$2,154,000
Fishing gear	100	\$2,161,000	\$2,340,000
Supplies/non-durable goods	100	\$1,079,000	\$1,205,000
Dockage/storage	82	\$930,000	\$846,000
Medical/dental/emergency services	82	\$561,000	\$612,000
Surface transport	82	\$533,000	\$506,000
Fleet support/logistics	82	\$356,000	\$350,000
Lodging	100	\$536,000	\$379,000
Observers	5	\$47,000	\$46,000
Vehicle rental/truck repair/vehicle licensing	100	\$128,000	\$131,000
Safety equipment and servicing	100	\$99,000	\$119,000
License fees	0	\$0	\$0
Cell phones	100	\$102,000	\$94,000
Cab service	82	\$64,000	\$56,000
Product quality assurance	100	\$53,000	\$35,000
Water sampling	82	\$14,000	\$10,000
P.O.Box rentals	82	\$1,000	\$1,000
Uncategorized Expenses ¹¹	14	\$227,853	\$150,177
State and Local Taxes ¹²	43	\$853,000	\$763,000
Total		\$39,668,000	\$44,140,000

Source: NEI estimates based on Best Use Coalition Survey, 2006.

As shown in Table 9, the analysis estimates that the HG-TCP fleet's \$39.7 million in Dutch Harbor expenditures in 2004 resulted in:

- between 200 and 210 indirect and induced full or part-time jobs in the local economy;¹³ and
- between \$10.5 million and \$11.0 million in indirect and induced personal income in the Dutch Harbor economy.

Every million dollars spent in Dutch Harbor resulted in additional personal income between \$0.20 and \$0.21 million, and supported four full or part-time jobs within the local area. Again we note that these estimates are a sub-set of the state-wide estimates.

¹¹ The analysis estimates that 14 percent of uncategorized expenses would have been spent in Dutch Harbor.

¹² Dutch Harbor's share of state and local taxes comes to a weighted average of 42.6 percent of all taxes paid by the fleet.

¹³ The indirect and induced job estimates are in addition to any jobs that Dutch Harbor resident may have had working on board the vessels.

Table 9. Indirect and Induced Effects and Multipliers of HG-TCP Expenditures, Dutch Harbor, 2004

Category		Indirect	Induced	Total
Estimated Impact				
High Estimate	Income (\$millions)	10.5	0.5	11.0
	Employment (# of jobs)	200	10	210
Conservative Estimate	Income (\$millions)	10.1	0.5	10.5
	Employment (# of jobs)	190	10	200
Estimated Multipliers (per \$Million in Alaska Expenditures)				
High Estimate	Income (\$millions)	0.20	0.01	0.21
	Employment (# of jobs)	4	0	4
Conservative Estimate	Income (\$millions)	0.19	0.01	0.20
	Employment (# of jobs)	4	0	4

Source: NEI estimates based on Best Use Coalition Survey, 2006.

As shown in Table 10, the analysis estimates that the HG-TCP fleet's \$44.1 million in 2005 Dutch Harbor expenditures resulted in:

- between 225 and 235 indirect and induced full or part-time jobs; and
- between \$12.0 million and \$12.6 million in indirect and induced personal income in the local economy;

We estimate that every million dollars spent in Dutch Harbor resulted in additional local income between \$0.21 and \$0.22 million, and approximately four additional full or part-time local jobs.

Table 10. Indirect and Induced Effects and Multipliers of HG-TCP Expenditures, Dutch Harbor, 2005

Category		Indirect	Induced	Total
Estimated Impact				
High Estimate	Income (\$millions)	12.0	0.6	12.6
	Employment (# of jobs)	220	15	235
Conservative Estimate	Income (\$millions)	11.5	0.5	12.0
	Employment (# of jobs)	210	15	225
Estimated Multipliers (per \$Million in Alaska Expenditures)				
High Estimate	Income (\$millions)	0.21	0.01	0.22
	Employment (# of jobs)	4	0	4
Conservative Estimate	Income (\$millions)	0.20	0.01	0.21
	Employment (# of jobs)	4	0	4

Source: NEI estimates based on Best Use Coalition Survey, 2006.

We hope that this report meets your needs. Please feel free to contact Northern Economics if you have questions or concerns.

Sincerely,

Marcus L. Hartley

Marcus Hartley, M.S.
Vice-President

AMENDMENT 80, COMPONENT 6 - CRAB

Initial crab cap deliberations and subsequent discussions on crab PSC levels indicate that such caps are not conservation driven and do not effect the stocks of the crab species (See attached Tagart letter). Therefore both the allocations, which are lower than the crab caps, and the subsequent bycatch reductions that the Council seeks are not issues of conservation.

Deleted: , they conform rather to the mandate of the Sustainable Fisheries Act to reduce bycatch. Under rationalization programs, bycatch reductions are expected under the MSA. ¶

Under the preliminary preferred alternative, the Council has identified percentages of the cap that would become the H&G sector's allocation. These percentages most closely resemble the 95-02 sector average crab usage. Twenty percent reductions are imposed on top of that.

The red king crab allocation in the preliminary preferred alternative represents 43% reduction from the H&G sector's 2005 usage. Red king crab is critical to both the prosecution of the rock sole with roe and the yellowfin sole fisheries. The rock sole with roe fishery has seen very minimal to no participation from other sectors for the past decade, however those sectors are given more red king crab than the H&G sector. Red king crab usage from the other trawl sectors was 2757 crab in 2005.

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Bairdi and opilio usage to the H&G sector would be cut significantly from the cap, while the other sectors are funded with the full AFA sideboard amounts. There is no conservation purpose in these reductions to the H&G fleet, nor is there an overall reduction to crab bycatch in the BSAI as much of the balance is still available for harvest by the other trawl sectors.

Requiring the level of reductions in PSC allocations contained in the Council's PPA will further jeopardize the ability of the H&G fleet to take advantage of the gains afforded by coops, with no conservation benefit. Under-funding of the critical limiting bycatch species that drive the multi-species fisheries set the fleet up for failure from the outset because of the competing nature of halibut and crab bycatch avoidance.

HALIBUT vs CRAB

In the rock sole with roe fishery, avoiding areas of red king crab bycatch drives vessels into areas with halibut bycatch. Alternatively, avoiding halibut will put the fleet into the red king. It is a balancing act that the fleet has managed well through gear modifications, area avoidance, communication and working with Seastate monitoring programs. This same halibut/ bairdi and opilio dilemma occurs in the other flatfish and cod fisheries. Similar efforts are made by the fleet to manage crab and halibut bycatch through gear modifications, moving grounds, and communication facilitated by Seastate and bycatch teleconferences.

It is difficult to quantify the red king crab loss as it is coupled with a fleet wide reduction of halibut. Suffice to say that the fleet now gets a "double-whammy" effect from such excessive PSC reductions. As stated on page 136 of the analysis, "Significant reductions from the sector's historical PSC usage could strand a portion of the sector's allocation, if PSC catch rates cannot be reduced substantially from current levels under cooperative fishing." The fleet has already taken a substantial reduction, prior to the ability to work in coops.

When crab bycatch avoidance strategies shift vessels into areas of similarly under-funded halibut, there is nowhere for the fleet to go. Gear modifications and moving away from crab are proven strategies for bycatch avoidance. When gear modifications are not adequate to avoid crab, then vessels must move out of areas of such high incidence. When moving puts vessels into areas of

higher halibut, which the Council PPA has also cut by atleast 20%, vessels are squeezed from both ends and there is nowhere to go except to exit the fishery. The only effect of such simultaneous reductions in PSC will be stranded target fish.

The net result, ultimately, will be that the fleet which has been 100% dependent on the Amendment 80 fisheries will be forced out of the fisheries due to inadequate funding of critical limiting species. The fleets that have no real economic dependence¹ on the Amendment 80 species will have an excessive amount of crab and halibut with which to pursue these fisheries. Ultimately, due to stranded fish, the Council will be forced to make reallocations to the limited access trawl fishery. Such effects are surely contrary to the intent of Section 211 protections for non-AFA fishermen or any National Standard of the MSA.

H&G SECTOR PSC ALLOCATIONS

PSC Species	red king crab	bairdi zone 1	bairdi zone 2	opilio
2005 cap	182,225	906,500	2,747,250	4,494,569
H&G - actual 2005 total catch	96,723	200,922	424,382	3,175,780
H&G catch under 6.3, w/ 20% reduction	54,668	420,180	715,806	2,206,833
difference (animals)	(42,055)	219,258	291,424	(968,947)
% change	-43%	109%	69%	-31%

LIMITED ACCESS TRAWL PSC ALLOWANCE

PSC Species	red king crab	bairdi zone 1	bairdi zone 2	opilio
Non-H&G trawl actual 2005 total catch	2,757	33,908	24,257	61,616
Non-H&G catch under 6.3, PPA	56,074	382,299	712,661	1,647,511
difference (animals)	53,317	348,391	688,404	1,585,895
% change	1934%	1,027%	2,837%	2,573%

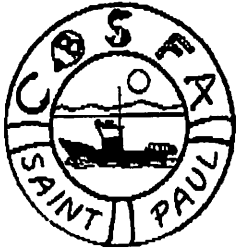
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¹ (Table 1, C-1 Supplemental June 2006, shows under that Amendment 80 species account for less than 1% of first wholesale value to AFA CPs in 2002-2002 and 2004; and less than 2% in value for 1999 and 2003 .)

W170



CENTRAL BERING SEA FISHERMEN'S ASSOCIATION

Post Office Box 288 ▲ St. Paul Island, Alaska 99660 ▲ Phone (907) 546-2597 ▲ Fax (907) 546-2450

May 30, 2006

Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W 4th Avenue, Suite 306
Anchorage, AK 99501-2252

RECEIVED
MAY 30 2006
N.P.F.M.C.

Re: Amendment 80
Halibut and crab bycatch reduction

Dear Ms. Madsen:

I am writing on behalf of Central Bering Sea Fishermen's Association (CBSFA) regarding our position on halibut and crab bycatch reduction, an element of Amendment 80. The North Pacific Fishery Management Council is scheduled to take final action on Amendment 80 at their June meeting. We support the Council's preferred alternative (Alt. 4) for halibut and crab bycatch reduction in the multi-species non-pollock groundfish fisheries, which calls for a phased reduction in the bycatch of 20%, a 5% reduction each year for four consecutive years.

CBSFA is the Community Development Quota (CDQ) group for St. Paul Island in the Pribilofs, and is heavily invested in both the halibut and crab fisheries in the Bering Sea. St. Paul's economy is almost totally dependent on these fisheries. Halibut IFQ and CDQ, mostly in Area 4C surrounding the Pribilofs, is the basis for the largest single source of local employment and household income on St. Paul. In addition, crab fisheries make up more than 80% of the local economic activity in St. Paul, and provide the majority of the municipal tax revenues.

Regarding halibut bycatch reduction, we ask the Council to consider the following:

1. A 20% reduction would amount to a 680 ton reduction from the 3400 Mt trawl cap, or a 1,360,000 pound reduction of halibut bycatch. This halibut, according to IPHC, is approximately 50 percent adult and 50 percent juvenile. Areas 4C, 4D, and 4E would benefit instantly from the reduction of adult halibut mortality as they are taken off the TAC annually. After the full phase-in of this reduction, these areas would benefit collectively by 680,000 lbs. annually.

2. The approximate value of this would be \$2 million (about \$3/lb) annually to the communities and \$6.8 million in increased asset value annually.
3. The 50% juvenile component would then recruit into the fishery in about four years at a rate of 1.6 adult equivalents, or an additional 1,088,000 pounds annually. These fish would benefit Areas 4CDE, 4A and 3B, based on tagging experiments, though migration from the Bering Sea does occur east of 3B.
4. The recruiting component would add an additional \$3 million to the westward communities annually.
5. Magnuson-Stevens Act (MSA) mandates a reduction in bycatch with approval of Amendment 80.

Regarding crab bycatch reduction, we ask the Council to consider the following:

1. Bycatch allocations and reductions should be based on historic usage, not total allowances (or caps) for the Initial Review of Amendment 80, EA/RIR/IRFU. Failure to use historic usage as the basis for determining reduction of bycatch will result in no reduction of bycatch, since the cap levels are much higher than historic or current usage.
2. Section 313(g) of the MSA should be used for guidance on the development of a PSC bycatch reduction program for H & G cooperatives. Concern that the use of 313(g) is appropriate under Amendment 80 continues in light of NOAA correspondence to NPFMC dated February 2, 2006, regarding notification to the Council of NOAA consideration of MSA legal, policy and operational issues, and application of cost recovery fees for Amendment 80 cooperatives if they are classified as IFQs under the MSA definition.
3. The problem statement for Amendment 80 prioritizes the reduction of bycatch and discards in the non-pollock groundfish fisheries.
4. These options are recommended for Component 6, PSC allowances and reductions for crab to the Non-AFA Trawl CP sector.

Option 6.3: PSC allocations to the sector, to be based on historic usage, using a select percentage for each species that approximates the mid-point of ranges from the February Council motion (based on tables 3-42 to 3-45 in the January analysis).

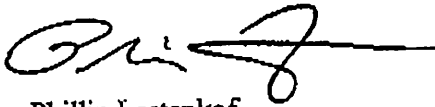
Option 6.2: Suboption 6.2.2 Reduce apportionments to 75% of calculated level.

In summary, our general recommendations are as follows:

- Council preferred alternative #4.
- Option 3.2: Retained legal catch of the sector over retained legal catch by all sectors.

Thank you for considering the bycatch reduction alternative which would have the most positive effects on the Bering Sea halibut and crab fisheries on which our island economy depends.

Sincerely,



Phillip Lestenkof
President

Cc: NPFMC Council Members

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

RECEIVED
MAY 30 2006
N.P.F.M.C.

Re: Agenda Item C-1, Amendment 80 (H&G Cooperatives)

Dear Madam Chair,

The following testimony and attached white papers are presented to you on behalf of the Best Use Coalition, which includes the majority of the non AFA trawl catcher processors (the H&G fleet). The Coalition is unified in its goal to work with the Council to modify the Council's preferred alternative so that the resulting rationalization program addresses the problem statement of Amendment 80 and also results in the type of fair and equitable allocation decision required by law and sound public policy.

The Coalition believes that the preferred alternative as currently envisioned reaches far beyond the problem statement and reallocates a significant portion of the fisheries upon which the sector is 100% dependent. The result would have severely negative consequences for the fleet and the fishery-dependent communities that rely upon it. Provisions in the preferred alternative would also constrain the ability of cooperatives to operate in an efficient manner and provide remedies for some of the concerns that Amendment 80 was designed to address.

Over the past two months, the Coalition has contracted studies and prepared white papers to assist the Council and others to understand the profound negative impacts of the preferred alternatives and to develop a series of recommendations to revise the preferred alternative and lead to a final product that will achieve the goals of Amendment 80. The following testimony summarizes some of this information.

Background

The non-AFA trawl catcher processor ('H&G') sector targets bottom-dwelling groundfish such as flatfish, rockfish and Atka mackerel. These types of fish can only be economically harvested using bottom trawls. Any sector targeting these fish will use bottom trawls, and will encounter crab and halibut as well as unmarketable fish. Some sectors – such as AFA catcher-processors and shorebased catcher vessels – have access to meal plants and can turn otherwise unmarketable fish into fishmeal. H&G vessels do not (and in most cases cannot) have meal plants, so the fish that others turn into meal are instead put back over the side.

The H&G sector is no more 'dirty' or 'clean' than any other sector would be if they were targeting these species.

Allocations

No other sector targets Atka mackerel, Aleutian Islands POP, rock sole or flathead sole. Some AFA catcher-processors have consistently spent a couple of weeks a year in yellowfin sole. Given the current value of yellowfin, it is of interest to other sectors and Amendment 80 contains components to allow access to this resource in the future.

As shown in our white paper on allocation, the 82.5% allocation which the Council recommends for our sector amounts (after the set-aside for CDQ and an ICA for all non-H&G incidental catch) to only 70% of the TAC. This is significantly less than our current catch of 87% of the TAC. On the other hand, the threshold component (Component 13) allows other sectors increased access to yellowfin sole when the ITAC reaches 125,000 metric tons (an increase of about 40,000 tons from the current level – less than 3% of the current pollock TAC).

Given that there is a means to provide yellowfin sole for other sectors with a minimal reduction in other TAC levels, why would the Council choose to take away fish that the H&G sector is currently catching and retaining¹ and is economically dependent upon²? This is a particularly difficult question to answer given that there has been public testimony from both AFA catcher processors and AFA catcher vessels that they are not able to target yellowfin sole at this time because the pollock TACs are so high.

The very fact that the pollock TAC is 75% of the total BSAI 2.0 million ton cap indicates the influence that AFA sectors have in TAC negotiations. Surely if either of these sectors want increased access to yellowfin, they can agree to a minimal drop in the pollock TAC to allow yellowfin sole to reach the threshold amount.

Similarly, as the final arbiter of TAC levels, the Council can choose to set the yellowfin sole TAC above the threshold if they wish to provide increased access for new entrants.

We strongly encourage the Council to allocate to the H&G 95% of the yellowfin sole ITAC, in accordance with the dependence and usage in recent years by the H&G fleet. Using the formula prescribed in the motion, this still allows for a 10% allocation to CDQ, a 5% allocation for directed harvest in the limited access fishery, and an ICA to cover all non-H&G bycatch needs.

Prohibited Species

PSC is the lynchpin to the long term success of Amendment 80. As such, the Coalition is particularly concerned about the PSC allocations made available to the H&G fleet. As with target allocations, we request that the Council provide the Amendment 80 sector with a PSC allocation based on the sector's recent usage.

¹ Yellowfin retention in 2005 was 91%

² See c-1 Supplement Table 1, which states that yellowfin accounts for over 20% of first wholesale revenue of the fleet since 2002.

Most of the Amendment 80 species are harvested at levels well below the allowable biological catch. The combined ABCs for flatfish, for example, generally run from 500,000 to over 1 million tons per year. Even today, with reduced Amendment 80 TACs, a number of fisheries are PSC limited.

Future fluctuations in stock sizes could result in the need and ability to more fully exploit these species. Reducing the PSC levels up front not only makes fully harvesting current TACs difficult, but could make it nearly impossible to access future increases in allowable harvests. PSC levels are already very low relative to the biomass of the prohibited species and pose no conservation concerns. Further, the ability of the cooperative management scheme as currently envisioned to produce psc catch reductions is not known. It seems a future Council action would be more appropriate in the design of stepwise psc reductions.

Vessel Use Caps

As you will have read in the white paper on vessel use caps, the proposed level of 10% frustrates the fleet's ability to coop and negates the very purpose of Amendment 80. We request that if a vessel use cap is chosen it be set at no less than 20%.

Economic Dependency

The economic dependency tables in the addendum to the analysis for Amendment 80 very clearly show that the H&G sector is highly dependent on the species being allocated, while other sectors have very minimal dependence. Again, we ask the Council to consider this when making allocations and to provide our sector with its recent history. This is especially critical given the action which the Council took in April on Amendment 85, which effectively reduced our target cod fishery to 50% of its current level.

The H&G fleet supports a large number of Alaskans through purchases of goods and services in Alaskan ports. The economic analysis provided by Northern Economics, along with numerous letters from vendors, attests to our contribution to the Alaskan economy. An allocation less than our current harvest will have a negative impact on the Alaskan communities that depend on our business. Many of these vendors are already reeling from the impacts of crab rationalization, and cannot withstand another loss.

The Upside of Rationalization

The problem statement for Amendment 80 says that it is intended to mitigate, to some extent, the costs of reducing discards to the H&G fleet. Certainly the ability to coop will provide us with new tools to stop the race for fish and extract more value from the catch. However, the benefits of this action will not be the same as the dramatic benefits seen in previous (pollock, halibut, sablefish, etc) rationalization programs, for a number of reasons.

Many of the anticipated benefits in terms of PSC reduction have already been realized by the sector's participation in the SeaState monitoring program. Our vessels typically participate in two teleconferences per week and frequently conference every day to determine and enforce bycatch avoidance plans.

The multi-species nature of these fisheries means that there will always be a 'limiting' factor, or weak link. Coops will be better able to manage this than vessels in a race for fish, but no one can predict with absolute certainty what the composition of a given tow will be. Unlike the pollock fishery, where a vessel only needs to have a good estimate of the tonnage they catch, H&G vessels will also have to estimate the amount of each species in the catch.

The threshold component ensures that the H&G fleet will not receive full benefit from an increase in the yellowfin sole TAC. This is in stark contrast to the American Fisheries Act, which gave AFA qualified vessels the exclusive right to target pollock even when – as we have seen – the TAC is 500,000 tons higher than when the Act was passed.

Amendment 85 resulted in a substantial cut of the H&G sector's pacific cod allocation – which with yellowfin sole, has comprised the top two species that the sector depends on. This cut, unanalyzed as yet in any Council documents, is certain to disrupt the fleet's fishing patterns and increase discards of cod – further siphoning away the potential up-side of this package.

Finally, the H&G sector will be constrained by Amendment 79 (the groundfish retention standard), which has not been applied to any other rationalization program. Vessels in this fleet exist because of our development of a wide range of high quality round and head and gutted human food products for widely dispersed and niche markets both domestic and abroad. Without access to meal plants, and with regulatory limitations on processing, it is unclear the degree to which further value added or increased uses are realistically attainable.

These are but some reasons why the magnitude of benefits resulting from rationalizing this fishery may not be similar to experiences in other fisheries.³ In short, we ask the Council not to assume that it is okay to skim the perceived benefits of rationalization off before we have had the chance to rationalize. Our sector could easily wind up worse off if we're not allocated sufficient target and PSC amounts, and if the coops are so restricted that they can't function. This is contrary to the problem statement.

Monitoring requirements in the Gulf of Alaska

The M&E requirements for the rationalized fishery under Amendment 80 are both extensive and costly. We do not believe these should be required for non-AFA trawl catcher processors fishing in the Gulf of Alaska fisheries, which are not rationalized. The H&G fleet still participates in a race for fish in the Gulf, does not have a sector-specific allocation and will be constrained by sideboards eliminating increases in effort. We believe that under these circumstances, 100% observer coverage should suffice.

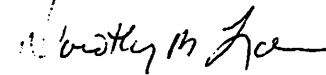
³ For more information, see the testimony submitted by Dr. Jim Wilen.

Summary

In conclusion, we refer the Council to the numerous white papers and other documents which have been submitted to you on behalf of the H&G sector. We believe that Amendment 80 can achieve its intended goals only if our sector is allocated our recent catch levels, commensurate with our demonstrated dependence on these species, along with adequate PSC to harvest these fish even when TACs increase, and with the flexibility to allow coops to function.

Thank you for the opportunity to comment.

Sincerely,



Dorothy Lowman, on behalf of

F/T Alliance; F/T American No. 1; F/T Arica; F/T Cape Horn; F/T Constellation
F/T Defender; F/T Enterprise; F/T Legacy; F/T Ocean Alaska; F/T Ocean Peace; F/T Rebecca
Irene; F/T Seafisher; F/T Seafreeze Alaska; F/T Tremont; F/T US Intrepid; F/T Unimak; F/T
Vaerdal

Attachments:

Vessel Use Cap White Paper
Allocation White Paper
Crab PSC White Paper
Letter from Jack Tagart regarding Crab PSC
Alaska Expenditure Study

Alaska Crab Coalition
3901 Leary Way N.W. Suite #6
Seattle, Washington 98107
206.547.7560
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accrabak@earthlink.net

REC-10
MAY 30 2006
N.P.F.M.C.

May 30, 2006

Ms Stephanie Madsen, Chair
NPFMC
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

RE: ACC comments on Agenda item, C-1, final action on Amendment 80

Introduction:

The ACC represents the owners and operators of forty Bering Sea crab vessels and thirty service and supply companies based in the States of Washington and Alaska. The focus of our comments and concerns in the proposed Amendment 80 analysis are on the reduction of king, tanner and snow crab bycatch in the multi-species non-pollock groundfish fisheries rationalization program.

The ACC has provided numerous comments during the development of the analysis, most recently we filed comprehensive written comments for the administrative record of the NPFMC on April 6, 2006; February 9, 2006, and September 28th, 2005, noting the need to base bycatch allocations and reductions on historic usage, as distinguished from total allowances (or Caps) for the Initial Review of the Amendment 80, EA/RIR/IRFU. Failure to use historic usage as the basis for determining reduction of bycatch will result in no reduction of bycatch, since the cap levels are much higher than historic or current usage.

The ACC also notes once again, that the Problem Statement that motivates action on Amendment 80 prioritizes the reduction of bycatch and discards in the non-pollock groundfish fisheries (Analysis, March 16, 2006, page 1).

General recommendations: Component 6

- ACC supports adoption of the Council preferred alternative from the April 6, 2006 motion, reduction of king, bairdi and snow crab PSCs, based on historical usage by the non-AFA sector, 5 percent per year starting the second year until the reduced allocation is 80 percent of the initial allocation.
- ACC also supports the Council preferred alternative on halibut PSC reduction, a phase in of 20 percent reduction, starting in the second year at 5 percent per year.

Sincerely,


Arni Thomson, Executive Director



Purchasing
Solutions for Your Business

420-3 South 96th Street
Seattle, WA 98108
www.thebuyingnetwork.com

Phone: 206.764.5560
Fax: 206.764.5779
Toll-Free: 800.9.BUYNET



ASHLAND

VIA TELEFAX

May 30, 2006

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West 4th, Suite 306
Anchorage, Alaska 99501-2252

RE: Decision on Amendment 80

Dear Stephanie:

It's been a real long time since I saw and talked with you last. In fact, I believe it was on the plane heading out to Dutch Harbor not too long after you and your family had re-located to Juneau (how long ago??). Hope all is well with you in Anchorage. I wanted to drop you a few lines to express my company's support for the H&G fleet. The Council's final decision on Amendment 80 will have a profound affect on the viability of all those who participate in the H&G fishery as well as all of those businesses (such as ours) that provide logistical and service-related support to them. Simply put, the success of our business is DIRECTLY linked to the success of the H&G fleet. A reduction in the fleet's ability to operate (be it in the form of reduced harvest rates or reduced prohibitive species catch allowances) could also DIRECTLY affect the viability of the many coastal communities in Alaska who also rely on the fleet for part/most of their livelihood. A reduction in revenues generated from landing taxes, fuel and grocery purchases, as well as maintenance and services rendered to the fleet in these communities could be detrimental.

For the reasons listed above, it is important that the Council's decision(s) on Amendment 80 result in the H&G fleet's ability to continue to successfully operate long-term in their traditional BSAI fisheries. The Council's decision will ultimately affect us all. Thank you for your time & consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Brady A. Coleman". The signature is fluid and cursive, written over a white background.

Brady A. Coleman, V.P.
The Buying Network, Inc.

RECEIVED
MAY 30 2006
N.P.F.M.C.



RECORDED
MAY 26 2006
N.P.F.M.C.

May 26, 2006

North Pacific Fishery Management Council
605 West 4th, Suite 306
Anchorage, AK 99501-2252

Attn: Ms. Stephanie Madsen, Chair

Dear Ms. Madsen,

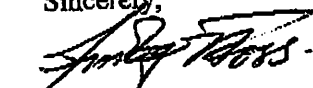
I am writing to you and the NPFMC as an owner of Rena International. Our company supplies essential products to the H&G fleet operating in the Bearing Sea and Aleutian Islands. It is my understanding that the council will soon make decisions that could have a major impact on the fishing quota available to our customers.

Rena International was established in 1988, and although we're a small company, we have a long history of successful operation, tied directly to the success of our customer base. I'm concerned because the future existence of our company will be impacted by the council's resolutions in June.

We understand and respect the need to manage allowable quotas and limits on by-catch. Current commercial fishing regulations in Alaska are already recognized internationally as providing the most well managed fisheries in the world. But please keep in mind that further restrictions on prohibited species catch will also limit our customers' ability to harvest available target species. Our customers' financial condition directly affects our financial condition. Your decisions in June will have a ripple effect reaching far beyond the H&G fleet.

Thank you for your consideration of this topic.

Sincerely,


Jan E. Foss, President
Rena International

**OFFSHORE SYSTEMS, INC.**

P.O. Box 920427
DUTCH HARBOR, AK 99692-0427
BUS: (907) 581-1827
FAX: (907) 581-1630

May 26, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, Alaska 99501
Fax : 907-271-2817

RECEIVED

MAY 26 2006

N.P.F.M.C.

RE: Agenda Item C-1, Amendment 80 (H & G Cooperative)

Dear Madam Chair,

In June the North Pacific Fishery Management Council is scheduled to take final action on Amendment 80, determining how much fish will be available to the non-AFA trawl catcher-processor (H & G) sector. I represent an Alaskan business which will be affected by this decision.

The H & G fleet spends most of the year in the Bering Sea. They come into Dutch Harbor for fuel, food, repairs, crew changes and other goods and services. It is important to my business that these vessels receive enough fish and PSC that they can continue to operate successfully.

Not only does the H & G fleet bring in dollars for my business, they do it throughout the year, even when other fishing boats are not here or not working. They also bring our community a significant amount of money through landing taxes. If these boats don't work, we lose money.

Please recognize that the H & G fleet depends on the species you are allocating, and make sure that what they receive is comparable to what they're using now so that they are able to continue operating. We all need their business.

Sincerely,


Robert L. Schasteen
V.P of Operations-Offshore Systems Inc/ Dutch Harbor, Alaska

West

Construction Company, Inc.



Marine Work
Bridges
Pile Driving
Heavy Structures
Construction Management

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

Re: Agenda Item C-1, Amendment 80 (H&G Cooperatives)

Dear Madam Chair,

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Please recognize that the H&G fleet depends on the species you are allocating, and make sure that what they receive is comparable to what they're using now so that they are able to continue operating. We all need their business.

Sincerely,

PO Box 920145 Dutch Harbor, AK 99692
Office: (907) 581-5766 Fax: (907) 581-5765

Hydra-Pro Dutch Harbor Inc.

May 23, 2006

Ms Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK. 99501
Fax 907-271-2817

Re: Agenda Item C-1, Amendment 80 (H&G Cooperatives)

Dear Madam Chair,

The Council is about to take final action on Amendment 80, determining how much fish will be available to non-AFA trawl catcher-processor (H&G) sector. I am an Alaskan business that will be affected by this decision.

This fleet works through out the year coming and going every ten days or so. During their time in port they purchase our products and services. They also support the local fuel dock, restaurants, hotels, and many more service company's here in Dutch Harbor. Our community receives a significant amount in landed fish taxes also.

It is important that these vessels receive enough fish and PSC that they can continue to operate successfully. These allocations need to be at least comparable to what they are using now. This fleet is very important to our business they comprise 38% (\$364,000) of our income over the year and provide much needed work during the slower times of the year.

Some fleets such as the off shore AFA Vessels comprise 0.6% of our income over the year do not believe in supporting our local businesses. I strongly feel that the fish should go to the fleet that does support Alaskans more completely.

I am very concerned that they (the H&G fleet) have enough resource to continue on without a contraction of the fleet such as happened with crab fleet. That disaster started with a 20% loss of income for us from the begining. And we can not suffer another such occurrence.

Regards; Tim Tilleman
V.P. Hydra-Pro Dutch Harbor Inc.
PO Box 920686
Dutch Harbor, AK. 99692
Ph 907-581-3878
Fax 907-581-3879
Email hydrapro@arctic.net





Magone Marine Service, Inc.

P.O. Box 920247
Dutch Harbor, Alaska 99692
Phone: (907) 581-1400
Fax: (907) 581-1495
Email: magone@arctic.net

May 23, 2006

TO: North Pacific Fishery Management Council

ATTN: Stephanie Madsen, Chairman

RE: Agenda Item C-1, Amendment 80 (H&G Cooperatives)

Dear Stephanie,

From a distance it would appear you are doing well, you are obviously still in the thick of it with the Fishery Council, and your fortitude has made you a respected and influential person in the industry, enough so that people are asking me to write you letters on their behalf.

To begin with let me say that although I am interested and concerned that we do a good job of fisheries management in our region I know very little about it and am in no position to suggest anything concerning fisheries management policy.

These H&G fleet guys have come to me recently saying they are at risk of getting their quota of yellowfin sole among other things cut due to reallocations of the stocks. I understand that this is not so much a fish stock management issue that is biology driven but more of a political one. Now I don't pretend to know anymore about the politics than the biology but there is one thing I do know and that is these boats are a significant consumer of materials and services for our business in Dutch Harbor.

The idea they are putting forward to rationalize their fishery by forming a co-op makes sense to me since stability is the framework for efficiency and efficiency should promote better stock management as well as stable clients for our business.

So I just wanted you to know that we take this fleet seriously and hope that their position and contribution to the industry is appreciated by the Fisheries Council in any decisions that you make. And by all means know that whatever side you take on these controversial issues you will always have my highest respect and none of this stuff is more important than the friendship we have developed over all these years.

Have a great day,

A handwritten signature in black ink, appearing to read "Dan Magone", is written over a circular stamp. The signature is fluid and extends to the right.

Dan Magone, President
Magone Marine Service, Inc.

MAC Enterprises

JIMMER McDONALD
PO BOX 920452 DUTCH HARBOR, ALASKA 99692
(907) 581-1386 • FAX (907) 581-3124

RECEIVED
MAY 31 2006
ALPHEC

Ms. Stephanie Madsen Chairwoman
North Pacific Fishery Management Council
605 West 4th Ave
Anchorage, AK 99501

RE: Agenda Item C-1, Amendment 80

Dear Stephanie:

On behalf of Mac Enterprises Inc, a small, family owned company, located in Dutch Harbor, we would like to request that the council takes into consideration the impact that reducing the fish available for the H&G fleet, will have on our business.

Since the rationalization of the crab fleet in 2005, our company's revenues for diving, welding and boat watch, has been reduced by 25%, and the full impact of this fleet reduction is not yet in. We are not the only vessel husbandry type of company that will be affected by this decision to reduce the fish available to the H&G fleet; Alpha Welding and Magone Marine will also feel the pain. It is a good thing to have competition in this town and to have multiple companies that are able to offer competitive products and services.

Imagine, if you will, that you are the captain of a fishing vessel, pulling into the Port of Dutch Harbor, with a glob of line in the wheel. You call the only company that is still in business to help you fast, but their divers and welders are all tied up with other commitments. Worse yet, you lost your rudder, and you need someone faster, but your up a creek without a paddle.

The bottom line is, if you want a fleet in Dutch Harbor, someone has to be there to service their needs. The rising cost of workers compensation*, insurance, fuel, steel, and shipping, coupled together with a reduced fleet of over 100 vessels, will push locally owned, tried and true, old timers, like Mac Enterprises, to the edge of the dock ,,without a dry suit!

In closing, we do thank the council for the hard work and commitment that you have all put into the tough assignment you have undertaken. Keep us in mind when you make your decision with regard to amendment 80 and how the "little local guys" will be affected by yet another cut of the fish.

Sincerely

Jimmer and Alyssa McDonald

Jimmer and Alyssa McDonald

*(Commercial Divers= \$33.00 per \$100.00 paid to employees.)

Aleutian Freight Service, Inc.

P.O. Box 920402

Dutch Harbor. AK 99692

June 23, 2006

RECEIVED
MAY 23 2006
N.P.F.M.C.

**Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501**

To Whom It May Concern:

This letter is written to protest your council position regarding the enforcement and adoption of Amendment 80, (H & G Cooperatives) that you are about to consider.

As owner of Aleutian Freight Service, Inc. and North Port Rentals, Inc. located in Dutch Harbor, I take an opposing stance with your adoption of Amendment 80 when a factor used in your consideration is that the H&G fleet has little, or no, economic bearing on local communities.

The question I would put to you is the following; "Does your Council have a mandate to combine fishery managing issues with the economics of a community?" I believe that your council should concern itself with fish management and not with community economic issues.

I also feel that, as a local business owner I am more knowledgeable than your council is, concerning the down sizing of the H&G fleets quota and how it will affect my economics.

I am fortunate enough to associate my companies with fleet/freight support and vehicle rentals with an H&G fleet that constitutes 23 vessels. If your adoption of this amendment reduces each vessels trip count by one less a year that actually means that 23 offload landings and the generated revenue stream involved will "go away". I have personally signed off on fuel receipts for one vessel as high as \$93,000. It is clear that some vessels generate a revenue stream that is well over \$100,000 for each offload landing. Multiply this by the 23 vessels and now you start to understand the huge economic issues you will create.

More specific to my rental company, I will loose 138 rental days, (2 vehicles per vessel for a three day offload at \$85.00 per day.) resulting in a cash loss of \$11,700 per year. This also means that the State of Alaska would loose \$1,170 per year of the "vehicle rental tax" revenues. These numbers are generated based on the fleet being reduced by only one landing for each vessel per year. The adoption of this amendment could in fact result in a greater reduction of offload landings.

Dollar figures as high as \$50 million have been stated as the amount that this fleet spends in Dutch Harbor annually. The idea that you are considering reducing the quota for this fleet by as much as 20% and believe that it will not reduce the number of offload landings, creating an economic backlash in this community is beyond the realm of your council mandate.

I ask that this Amendment 80, be very carefully reviewed and that your decision does not harshly impact *my* economy and the H&G fleets' quota.


**Rodnie Hester
AFS & NPR, owner**

ALASKA VESSEL AGENTS
P.O. Box 920785
Dutch Harbor, Alaska 99692
Tel: 907.581.4591 Fax: 907.581.4592
Email: ava@arctic.net

30 May 2006

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W. 4th Ave.
Anchorage, AK, 99501

ALASKA VESSEL
MAY 30 2006
NPFMC

Re: Agenda Item C-1, Amendment 80 (H&G Cooperatives)

Dear Madam Chair,

This month the NPFMC is scheduled to decide on Amendment 80, determining how much fish will be available to the H&G Trawl sector. We work directly with all of the H&G trawlers in various capacities, all of which will be affected by this decision.

The H&G fleet spends most of the year in the Bering Sea, and come to Dutch Harbor for all of their goods and services. Especially at this time (between major seasons), it is almost exclusively the H&G fleet providing income the companies I represent. It is important to all of us that the H&G fleet be allowed to catch enough fish to continue to operate successfully.

The H&G trawlers bring income not only to our company and principals, but to the community as whole through landing taxes. Please recognize the H&G fleet is important to us and the community, and make sure what they receive is comparable to what they are fishing now so they can continue operating.

Thank You and Regards,

Dan Bergert
Alaska Vessel Agents as agents for:
Transports International
Boyang LTD.
Khana Marine
Oswego LTD.

5/28/06

RECEIVED

MAY 8 2006

OFFICE

To whom it may concern,

My name is Andrew Murphy. I own and operate a shipping agency and stevedore company in Dutch Harbor, Alaska. I'm writing this letter to express concerns regarding the proposed upcoming amendments. It has recently come to my attention that in addition to the rationalization of the Pollock Fishery and the Crab Fishery it now appears highly likely that the remaining Bering Sea bottom fish will also be rationalized.

I have lived in Dutch Harbor for the last 10 years and have witnessed first hand the impact of the previous rationalizations, and observed both the positives and negatives of these actions. I must confess that I am quite ignorant to the process. I can only assume that there must be a great deal of debate prior to these amendments being passed and that the people in charge of these decisions are doing what they feel is best for the fishing industry and for those who rely on the fishing industry.

I would like to ask the Council when considering the proposed changes to take into account the significant financial contributions the H&G fleet makes to the Alaskan Economy and the community of Dutch Harbor in particular. The H&G fleet because of its diversity and because they have targeted and developed a greater number of species to market, they fish in the Bering Sea for longer periods allowing for sustained employment in Dutch Harbor. As a result when many of the other fisheries in the Bering Sea have shut down the H&G fleet continues to fish allowing vendors and operators in Dutch Harbor to have continued business and be prosperous as a result.

It is also very important to note that the persons who work supporting the H&G fleet either directly or indirectly tend to have higher paying jobs. The companies that I own have about 100 stevedores and agents and they inject close to \$3 million annually into the Dutch Harbor economy, buying homes and raising families.

In conclusion, I believe it is important that all the different fishing sectors are strong and like most vendors in Dutch Harbor we rely on all of them and I am not in a position to say who is more important. However I believe it is safe to say and I would suspect other employees and employers would agree, we would all find it very difficult to survive in Dutch Harbor without the contributions of a strong H&G fleet.

I would like to thank you for your time and request that the council consider very carefully the impact on the Alaskan economy and the Dutch Harbor community when making these difficult decisions. Please consider not only the loss to the fishermen but the potential lost work for those who support the fishermen.

Sincerely,

Andrew Murphy

Ms. Stephanie Madsen, Chairman
RE: Final Action On Amendment 80
Date: May 23, 2006

RECEIVED
MAY 23 2006
FISH & WILDLIFE
DEPARTMENT

Dear Ms. Madsen,

In June, the North Fishery Management Council is scheduled to take final action on Amendment 80 which will determine how much fish will be available to the Non-AFA trawl catcher-processor (H&G) sector. Our Company, Highliner Food Services Inc. is an Alaskan business which will be affected by the outcome of this decision.

The H&G fleet spends most of the year in the Bering Sea. They come into Dutch Harbor, Alaska for fuel, food, repairs, crew changes and other goods and services. It is important for Highliner Food Services Inc. that these vessels receive enough PSC so they may continue to operate successfully without interruptions. Not only does H&G fleet bring in profit for our business, Highliner Food Services Inc., but they are a benefit for the community in general due to the significant commerce generated while on island, i.e. landing tax. If these fishing vessels do not operate, we as a community are hurt by the lack of revenue!

Please recognize that the H&G fleet depends on the marine species that Amendment 80 will be allocating. Therefore, I request on behalf of Highliner Food Services Inc. and all the businesses represented in Dutch Harbor, AK that the PSC limits set will exceed the needed allotment allowing the fishing fleets to continue in our area, benefiting not only Highliner Food Services Inc. but the community for years to come.

Thank you for your assistance in this matter.

Sincerely,



Blair Richards

Manager/Highliner Food Services Inc.

Dutch Harbor, AK
Highliner Food Services
e-mail: hfs@arctic.net
phone :(907) 581 3366
fax: 907 581 3370
cell: 907 359 3066

Mike's Fire Equipment
Po Box 273
Unalaska, AK 99685
907-581-1864 / 907-581-5681 Fax

May 23, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, Ak 99501
FAX: 907-271-2817

RECEIVED
MAY 30 2006
N.P.F.M.C.

RE: Agenda Item C-1, Amendment 80 (H & G Cooperatives)

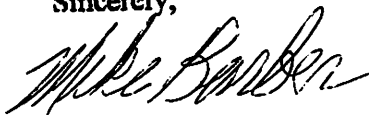
Dear Madam Chair,

In June the North Pacific Fishery Management Council is schedules to take final action on Amendment 80, determining how much fish will be available to the non-AFA trawl catcher-processor (H & G) sector. I represent three Alaskan businesses which will be affected by this decision.

It is important that these boats receive enough fish and PSC that they continue to operated successfully. Not only does the H & G fleet bring in dollars for my businesses, Mike's Fire Equipment, Western Alaska Appliance, and Aleutian Fresh Seafood's, they help our community bring in significant amount of money through landing taxes.

Please recognize that the H & G fleet depends on the species' you are allocating, and make sure what they receive is comparable to what they're using now so that they can continue to operate successfully. This community needs their business.

Sincerely,



Hydra-Pro Dutch Harbor Inc.

May 23, 2006

Ms Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK. 99501
Fax 907-271-2817

RECEIVED
MAY 23 2006
N.P.F.M.C.

Re: Agenda Item C-1, Amendment 80 (H&G Cooperatives)

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I am very concerned that they (the H&G fleet) have enough resource to continue on without a contraction of the fleet such as happened with crab fleet. That disaster started with a 20% loss of income for us from the begining. And we can not suffer another such occurrence.

Regards; Tim Tilleman
V.P. Hydra-Pro Dutch Harbor Inc.
PO Box 920686
Dutch Harbor, AK. 99692
Ph 907-581-3878
Fax 907-581-3879
Email hydrapro@arctic.net



USTRavel - Dutch Harbor Office
P.O. Box 920627
Dutch Harbor AK 99692
99692 USA
Telephone: 907-581-3133
Fax: 907-581-3244
In State: 907-581-3133
Outside Alaska: 907-463-7412



USTRAVEL
BTI AMERICAS PARTNER

May 23, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage AK 99501

RECEIVED
MAY 30 2006
NPFMC

Re: Agenda Item C-1, Amendment 80 (H&G Cooperatives)

Dear Madame Chair,

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The H&G fleet spends most of the year in the Bering Sea. They come into Dutch Harbor for fuel, food, repairs, crew changes and other goods and services. It is important to my business that these vessels receive enough fish and PSC that they can continue to operate successfully.

Not only does the H&G fleet bring in dollars for my business, they do it throughout the year, even when other fishing boats are not here or not working. They also bring our community a significant amount of money through landing taxes. If these boats don't work, we lose money.

Please recognize that the H&G fleet depends on the species you are allocating, and make sure that what they receive is comparable to what they're using now so that they are able to continue operating. We all need their business.

Sincerely,

Rita Spencer
USTRavel
P.O. Box 920627
Dutch Harbor AK 99692
907-581-3133
907-581-3244 fax

ANCHORAGE:

6120 A St.
Anchorage, Ak 99518
PH 907 561-9811 FX 907 561-9844

AMAKNAK CAMP, INC.

DUTCH HARBOR:
PO Box 920194
Dutch Harbor, Ak 99692
PH 907 581-3176 FX 907 581-3177

May 30, 2006

Ms. Stephanie Madsen, Chairwoman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

RECEIVED
MAY 3 2006
N.P.F.M.C.

Re: Agenda Item C-1, Amendment 80 (H&G Cooperatives)

Dear Madam Chair,

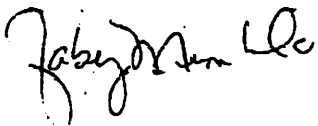
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Sincerely,





RECEIVED
 MAY 31 2006
 N.P.F.M.C.

May 30, 2006

Ms. Stephanie Madsen, Chairman
 North Pacific Fishery Management Council
 605 West 4th Ave.
 Anchorage, AK 99501
 FAX: 907-271-2817

Re: Agenda Item C-1, Amendment 80 (H&G Cooperatives)

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Sincerely,

A handwritten signature in black ink, appearing to read "MacMillan (Cap) Pringle Jr.", written over a horizontal line.

MacMillan (Cap) Pringle Jr.

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

RECEIVED
MAY 31 2006
NPFMC

Re: Agenda Item C-1, Amendment 80 (H&G Cooperatives)

Dear Madam Chair,

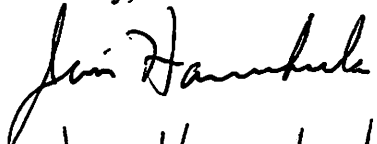
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Please recognize that the H&G fleet depends on the species you are allocating, and make sure that what they receive is comparable to what they're using now so that they are able to continue operating. We all need their business.

Sincerely,


Jim Hannukela
Alaska Marine Pilots

RECEIVED
MAY 8 2006

NPFMCC

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

Re: Agenda Item C-1, Amendment 80 (H&G Cooperatives)

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Sincerely,



LISA TRAN - manager
Airport Restaurant & Lounge

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

RECEIVED
MAY 8 2006
N.P.F.M.C.

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Sincerely,


PETERKIN DISTRIBUTORS

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

RECEIVED
MAY 8 2006
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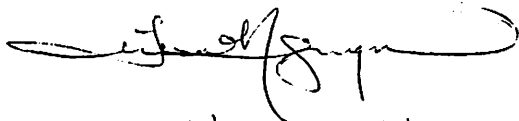
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Sincerely,



Teresa Nguyen, Manager
• B.C. Vehicle Rentals, Inc.

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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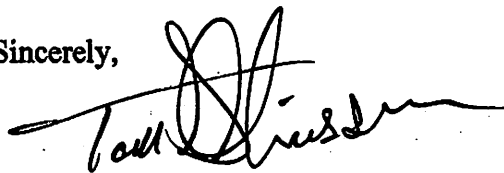
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Sincerely,


ALASKA COMMERCIAL Co.

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

RECEIVED
MAY 3 2006
R.F.F.R.C.

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Sincerely,



BRYNN DECKER
HARRIS ELECTRIC, INC.
DUTCH HARBOR

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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Sincerely,

MBL

M. HORNE

ALASKA WIRELESS COMMUNICATIONS, LLC

May 30, 2006

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North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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Sincerely,

Dana Walk
PENAIR

RECEIVED
MAY 31 2006
NPFMC

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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Sincerely,



Dunlap Towing Co.

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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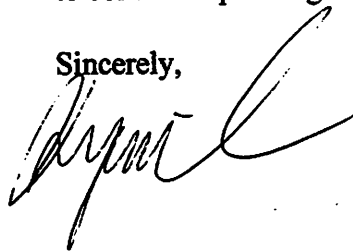
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Sincerely,



AIRPORT Restaurant

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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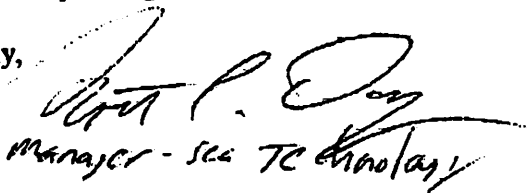
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Sincerely,


Manager - see TC 1/10/06

May 24, 2006

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, AK 99501
FAX: 907-271-2817

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MAY 31 2006
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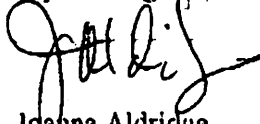
Dear Madam Chair,

In June the North Pacific Fishery Management Council is scheduled to take final action on Amendment 80, determining how much fish will be available to the non-AFA trawl catcher-processor (H&G) sector.

Throughout my 10 years in Unalaska I have managed several businesses and been active within this community. The H&G fleet has been a steady contributor to our economy by supporting local businesses for food, fuel, repairs, crew changes, and other goods and services. I work for a business that relies on the support of this fleet.

I urge you to recognize that the H&G fleet depends on the species that you are allocating, and take into consideration the impact your decision will have on the businesses that this fleet utilizes in Unalaska. Please make sure that they receive what is comparable to what they are using now so that they can continue operating and supporting the economic welfare of our community.

My best regards,



Joanna Aldridge
PO Box 565
Unalaska, AK 99685

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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Sincerely,

Caroline S. Wilke (Vicki) W.F.W.
Sergei Koraback W.F.W.
Andrew Mordousko W.F.W.
WATERFRONT WELDING

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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Sincerely,

*Mr. Kal Gours
Sheila Jaranto*

*We've already lived the
nightmare of Crab Rationalization
Let's not underdevelop our community
more.*

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
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Sincerely,

Carol L. Barnes
Mountain View Coffee
(907) 581-4049

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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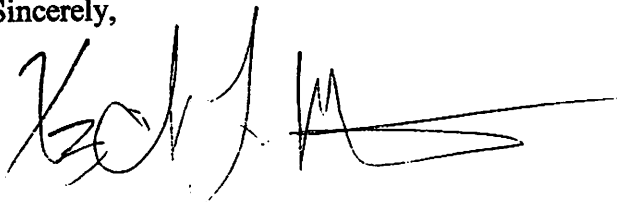
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Sincerely,



KHALIVAR L. WHITE
NETS - DUTCH HARBOR

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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Sincerely,

Edluisa Cortez
Amelia Restaurant

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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Sincerely,

Rodney Diaz

MR. Kab Lewis

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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Sincerely,

Shawn O'Malley

(I am not a business owner. However, I support what this letter says.)

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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Sincerely,

Tim Moyer

Tim Moyer

OWNER ALASKAN TAXI

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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Sincerely,

Michael M. Hayer
LUNDE NORTH

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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N.P.F.M.C.

Re: Agenda Item C-1, Amendment 80 (H&G Cooperatives)

Dear Madam Chair,

In June the North Pacific Fishery Management Council is scheduled to take final action on Amendment 80, determining how much fish will be available to the non-AFA trawl catcher-processor (H&G) sector. I represent an Alaskan business which will be affected by this decision.

The H&G fleet spends most of the year in the Bering Sea. They come into Dutch Harbor for fuel, food, repairs, crew changes and other goods and services. It is important to my business that these vessels receive enough fish and PSC that they can continue to operate successfully.

Not only does the H&G fleet bring in dollars for my business, they do it throughout the year, even when other fishing boats are not here or not working. They also bring our community a significant amount of money through landing taxes. If these boats don't work, we lose money.

Please recognize that the H&G fleet depends on the species you are allocating, and make sure that what they receive is comparable to what they're using now so that they are able to continue operating. We all need their business.

Sincerely,



(Ocean Safety Services)

RECEIVED

MAY 30 2006

N.P.F.M.C.

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

Re: Agenda Item C-1, Amendment 80 (H&G Cooperatives)

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Sincerely,

ALPHA WELDING
HARVEY MACHINERY
OWNER



May 23, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, AK. 99501
Fax: 907-271-2817

RECEIVED
MAY 30 2006
N.P.F.M.C.

Re: Agenda Item C-1, Amendment 80 (H&G Cooperatives)


STEPH
Dear ~~Madam~~ Chair,

In June the North Pacific Fishery Management Council is scheduled to take final action on Amendment 80, determining how much fish will be available to the non-AFA trawl catcher-processor (H&G) sector. Throughout my 20 years in Unalaska I have managed and owned service businesses and spent many years on the City Council.

The H&G fleet spends most of the year in the Bering Sea. They come into Dutch Harbor for fuel, food, repairs, crew changes and other goods and services. They have been a steady contributor to our economy.

Please consider their contribution to the economic stability of our community as you work your way through these allocations. Depending on where you might reassign some of these fish, we could lose a fair amount of service work.

Thanks,


Gregg R. Hanson
P.O. Box 920827
Dutch Harbor, AK. 99692

RECEIVED
MAY 26 2006
N.P.F.M.C.

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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Heather Barnhart
OptimERA, Inc.
Controller

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

RECEIVED
MAY 25 2006
N.P.F.M.C.

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Employee of OptimERA, Inc.

KEVIN KERR / SALES DIRECTOR

(907) 581-4125

Kevin Kerr

May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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Sincerely,

CHRISTIAN NEWKIRK / NORTH POLE RESTAURANT



May 30, 2006

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North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

RECEIVED
MAY 25 2006
N.P.F.M.C.

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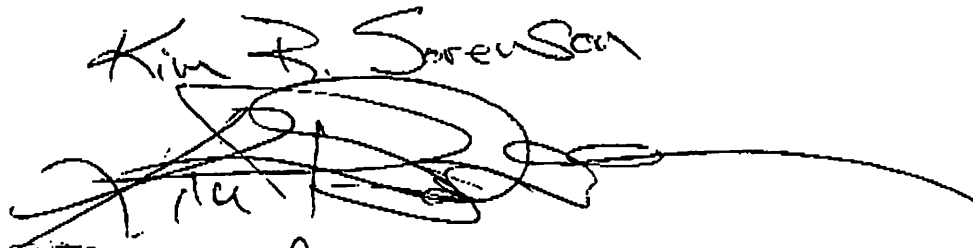
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Sincerely,

Kim B. Sorensen

TAC Steve

RECEIVED
MAY 25 2006
N.P.F.M.C.

May 30, 2006

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Anchorage, AK 99501
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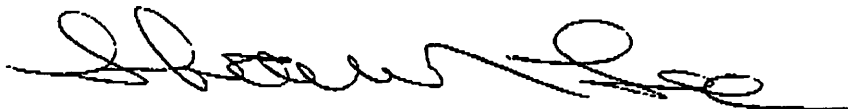
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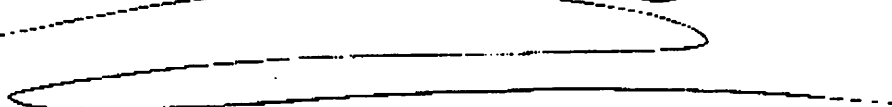
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Sincerely,

Shawn Lee



Pac Steve



RECEIVED

MAY 23 2006

N.P.F.M.C.

May 30, 2006

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North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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Sincerely, *Mike Murphy*
ILWU Unit 200 Local 223
Dutch Harbor AK

RECORDED
MAY 25 2006

N.P.F.M.C.

May 30, 2006

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North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
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Sincerely, Emmett Fitch

founder & owner of optimera/cybershop/wescom

907 391 4983

May 30, 2006

RECEIVED
MAY 25 2006
N.P.F.M.C.

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Anchorage, AK 99501
FAX: 907-271-2817

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Success,
Jeff Ferguson
Jeff Ferguson

founder
owner of Optimera / Cybershop / Wescom
907 581 2182

RECEIVED
MAY 27 2006
N.P.F.M.C.

May 30, 2006

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Anchorage, AK 99501
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Reno
AKA Steve Butler

Previous owner of Wescom

907 581 4725

May 30, 2006

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North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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Sincerely,

UNALASKA BUILDING SUPPLY
TRUE VALUE
BOX 250
UNALASKA, ALASKA 99685

05-
5410-6



May 30, 2006

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

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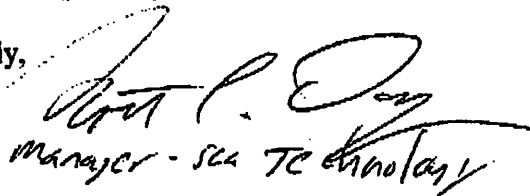
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Sincerely,


manager - sea technology

Public Testimony Sign-Up Sheet

Agenda Item C1(a/b) Amendment 80

page 1
IRIU + data

I did
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	NAME (PLEASE PRINT)	AFFILIATION
1 X	John Beaul + Tom	
2	John Beaul + Tom	City of Unalaska / Peterkin Dist.
3 X	Paul Ostrander	Alaska Wireless Communications
4 X	Damon L. Masman	Global Insurance Specialists
5 X	Jim Wiken	H+G Fleet
6 X	Dorothy Lowman	Best Use Coalition
7 X	Nancy Kercheval / Tim Mente	Cascade Fishery
8 X	Janna Aldridge	City of Unalaska / Peterkin Dist.
9 X	Nathan Jankowiak	self
10 X	Alyssa McDonald	Mac Enterprises Inc
11 X	Arac Thomson	A.C.C.
12 X	Bob Alverson / Buck Knutson	F.V.OA - Seattle
13 X	SANDRA MOLLEE	ALEUT ENTERPRISE
14 X	Cap Pringle	MacHenry Provisions
15 X	GLENN REED	PSPA
16 X	Peter Trost	Icelandic Seafood
17 X	Bob Reinson	Tradex
18 X	Ms. Park	Fishermen's Trust
19 X	Fred Mullan	F/American No. 1
20 X	Bob Hezel	FV Admiral U.S. Intrepid
21 X	Wayne Okino	HIP, LLC Hillside Totty
22 X	Keith Britton	O'Hara Corp.
23 X	Donna Parker <u>Wig Bisbee</u>	Summit Seafoods <u>Golden Fleece</u>
24 X	Donna Parker	Arctic Stum + Hscc
25 X	Mark Landhouse	Kodiak Fish Co.

NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

Public Testimony Sign-Up Sheet

Agenda Item Amendment 80 IRTU

Page 2

	NAME (PLEASE PRINT)	AFFILIATION
1 X	BRENT PAINE	UCB
2 X	DAVE WOOD	US Seafoods
3 X	PAUL MAC GREGOR	At Sea Processors
4 X	Steve Minor	ST. Paul
5 X	Susan Robinson	North Pacific Fishing
6 X	Bill Orr	Tiquique US.
7 X	Middle Highway/Dorothy Childers	AMCC
8 X	Mike Szymanski	FCA
9 X	SHAUN GEEHAN	KELLEY DRYE ^{FOR BEST USE COALITION} COLLIER SHANNON
10 X	Mike Hyde	American Seafoods
11 X	dave Fraser	Adak Fishermen/Adak City
12 X	Julie Bonney	AGDB
13 X	JOHN HENDRICKSON	PRIMIER PACIFIC SEAFOODS
14 X	JOHN GRUVER	AFA CU IASTA COOP
15 X	Ken Tippet	Alaska BOAT CO.
16 X	GREGG WILLIAMS	IPHC
17 X	TERESSA KANDIANIS	FT LEGACY
18 X	LORI SWANSON	GROUND FISH FORUM
19 X	Paul Puytm	BBEDC
20		
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22		
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24		
25		

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59861

Public Testimony Sign-Up Sheet
Agenda Item 20.11.10

U.S.B.	X	BRANT - FRANK	10
U.S. Forest Service	X	DALE WOOD	11
U.S. Fish & Wildlife Service	X	FRANK WOOD	12
U.S. Forest Service	X	STEVE MINOR	13
U.S. Forest Service	X		14
U.S. Forest Service	X		15
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Amendment 80

June 2006

Changes Since April 06

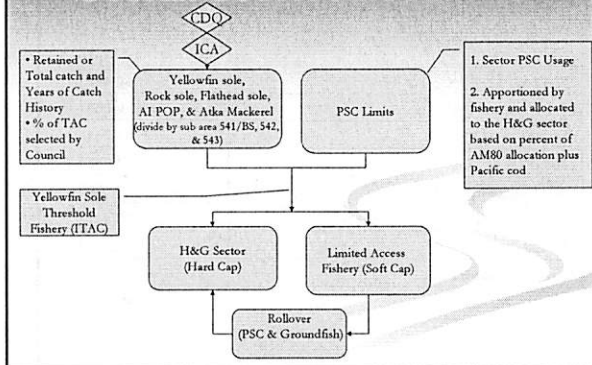
- Revised discussion on annual TAC deductions (pages 91-92)
- Revised minimum allocation tables from Component 10 based on April action (pages 151-152)
- Revised the Atka mackerel and AI POP allocation within the sector based on Council action (pages 154-157)

Changes Since April 06

- Revised the excessive share analysis (pages 165- 169)
- Revised the sideboard analysis (pages 169-194)
- Revised the Economic and Socioeconomic Data Collection component (pages 214-228)
- Revised the Alternative 4 analysis

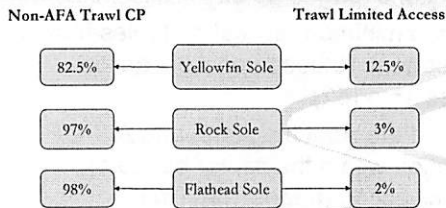
Sector Allocation Components 3 - 6

Overall Sector Allocations

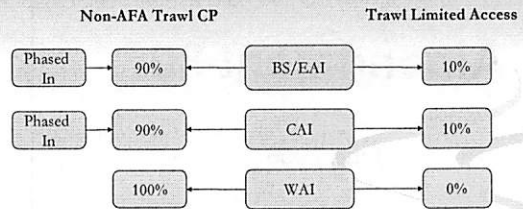


Groundfish Allocation Components 3 - 4

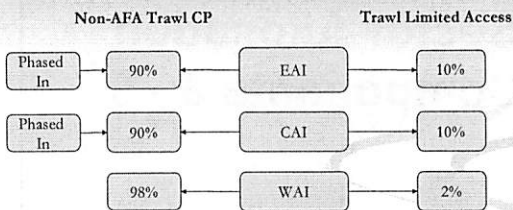
PPA Decisions for Sector Allocations for Yellowfin Sole, Rock Sole and Flathead Sole



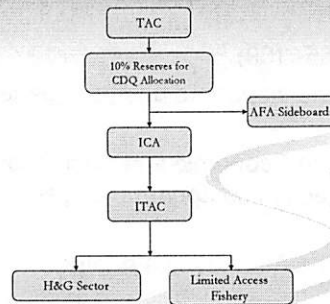
PPA Decisions for Sector Allocations for Atka Mackerel



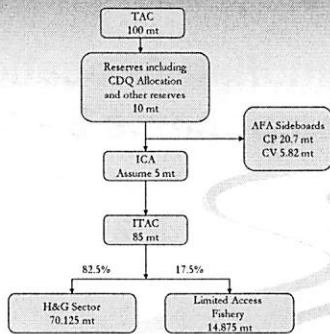
PPA Decisions for Sector Allocations for AI POP



PPA Annual Deductions



PPA Annual Deductions for Yellowfin Sole



PPA Component 3 and 4 – Allocation to the H&G sector for Yellowfin Sole

	Yellowfin sole (mt)
2005 TAC	90,686
CDQ allocation (10%)	9,069
ICA (Assumed 5%)	4,081
2005 ITAC	77,537
Trawl limited access allocation	13,569
Non-AFA Trawl CP Sector allocation	63,968
AFA CV Sideboard	5,281
AFA CP Sideboard	18,772

PPA Component 3 and 4 – Allocation to the H&G sector for Rock Sole

	Rock sole (mt)
2005 TAC	41,500
CDQ allocation (10%)	4,150
ICA (Assumed 5%)	1,868
2005 ITAC	35,483
Trawl limited access allocation	1,064
Non-AFA Trawl CP Sector allocation	34,418
AFA CV Sideboard	1,274
AFA CP Sideboard	1,382

PPA Component 3 and 4 – Allocation to the H&G sector for Flathead Sole

	Flathead sole (mt)
2005 TAC	19,500
CDQ allocation (10%)	1,950
ICA (Assumed 5%)	878
2005 ITAC	16,673
Trawl limited access allocation	333
Non-AFA Trawl CP Sector allocation	16,339
AFA CV Sideboard	886
AFA CP Sideboard	632

PPA Component 3 and 4 – Allocation to the H&G sector for AI POP

	AI POP (mt)		
	EAI	CAI	WAI
2005 TAC	3,080	3,035	5,085
CDQ allocation (10%)	308	304	509
ICA (Assumed 5%)	139	137	229
2005 ITAC	2,633	2,595	4,348
Trawl limited access allocation	263	259	0
Non-AFA Trawl CP Sector allocation	2,370	2,335	4,348
AFA CV Sideboard	21	7	0
AFA CP Sideboard	55	3	18

PPA Component 3 and 4 – Allocation to the H&G sector for Atka Mackerel

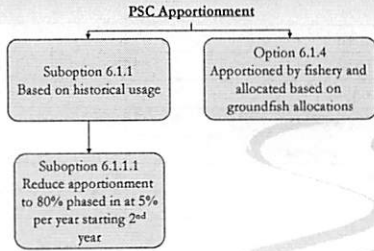
	Atka Mackerel (mt)		
	EAI/BS	CAI	WAI
2005 TAC	7,500	35,500	20,000
CDQ allocation (10%)	750	3,550	2,000
Jig allocation (1% of Atka mackerel for EAI/BS)	68	-	-
ICA (Assumed 5%)	334	1,598	900
2005 ITAC	6,348	30,353	17,100
Trawl limited access allocation	635	3,035	342
Non-AFA Trawl CP Sector allocation	5,714	27,317	16,758
AFA CV Sideboard	22	3	0
AFA CP Sideboard	0	3,674	3,600

PPA Component 13 – Allocation (mt) to the H&G sector for Yellowfin Sole under the Threshold Program

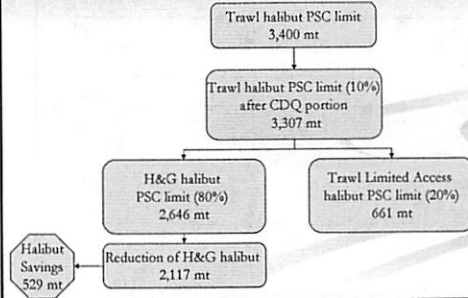
TAC	125,000	140,000	160,000	160,000	170,000
CDQ allocation (10%)	12,500	14,000	15,000	16,000	17,000
ICA (Assumed 5%)	5,625	6,300	6,750	7,200	7,650
2005 ITAC	106,875	119,700	128,250	138,800	145,350
Non-threshold Trawl limited access allocation (17.5%)	18,703	20,948	21,875	21,875	21,875
Non-threshold Non-AFA Trawl CP Sector allocation (82.5%)	88,172	98,753	103,124	103,124	103,124
Threshold allocation to trawl limited access (40%)	0	0	1,300	4,720	8,140
Threshold allocation to Non-AFA Trawl CP sector (60%)	0	0	1,950	7,060	12,210
Total allocation for trawl limited access	18,703	20,948	23,175	26,595	30,015
Total allocation for Non-AFA Trawl CP sector	88,172	98,753	105,074	110,204	115,334

PSC Allocation Component 6

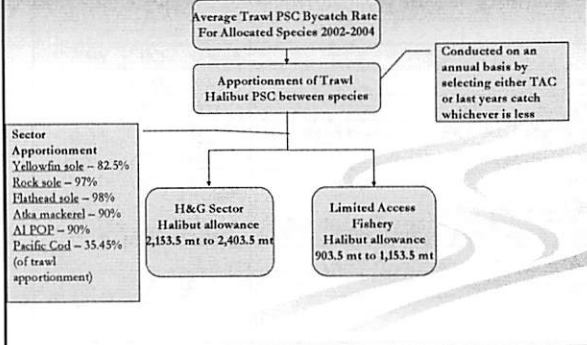
PPA Decisions for Sector Allocations for Halibut PSC



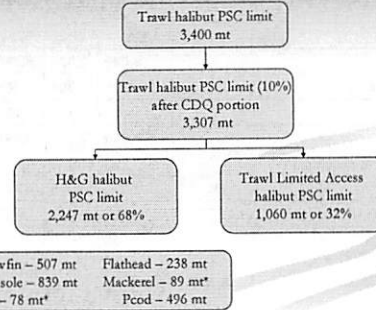
Allocations for Halibut PSC Suboption 6.1.1



PSC Apportionment Option Suboption 6.1.4



Allocations for Halibut PSC Suboption 6.1.4 (2005 TAC)



* 90% allocation for all subareas combined

Allocations for Halibut PSC Suboption 6.1.4

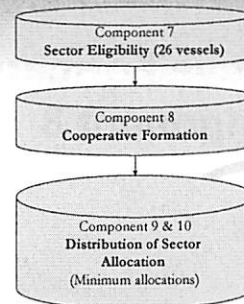
- No PSC savings under this option
- Any potential PSC saving is shifted to the trawl limited access fishery
- Potential options for increasing PSC savings
 - Reduce minimum allocation below 2,153.5 mt
 - Increase halibut deductions from PSC rollovers

PPA Allocations for Crab PSC

	PSC Apportionment	PSC Reduction (20%)	Average Usage 99-02
Red King Crab	37.52%	30.02%	56%
<i>C. opilio</i>	61.44%	49.15%	42%
Zone 1 <i>C. bairdi</i>	52.64%	42.11%	43%
Zone 2 <i>C. bairdi</i>	29.59%	23.67%	26%

Cooperative Formation and Allocation Components 7 -10

Cooperative Formation



Sector Eligibility Component 7

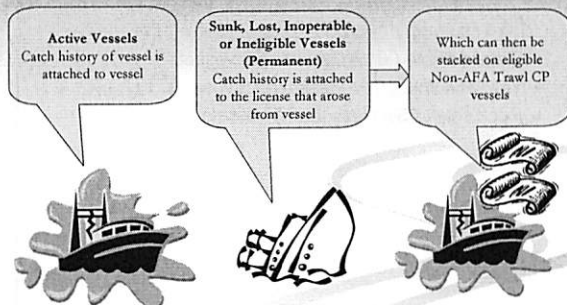
PPA Sector Eligibility

- A) that is not a AFA Trawl CP
- B) to whom a valid LLP license that is endorsed for BSAI Trawl CP fishing activity has been issued, and
- C) that the Secretary determines who has harvested with trawl gear and processed not less than a total of 150 mt of non-pollock during the period Jan 1, 1997 through December 31, 2002

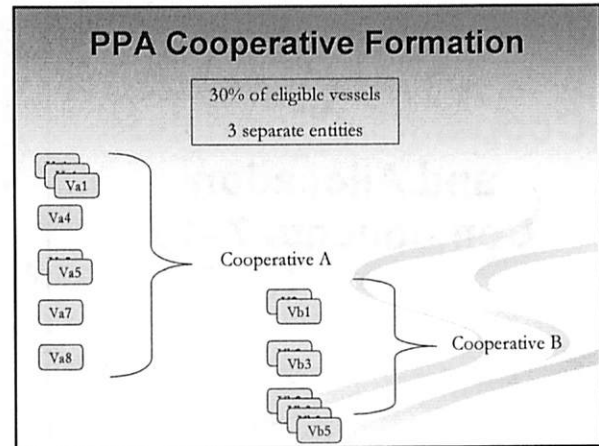
PPA Sector Eligibility

26 vessels appear to qualify for the program

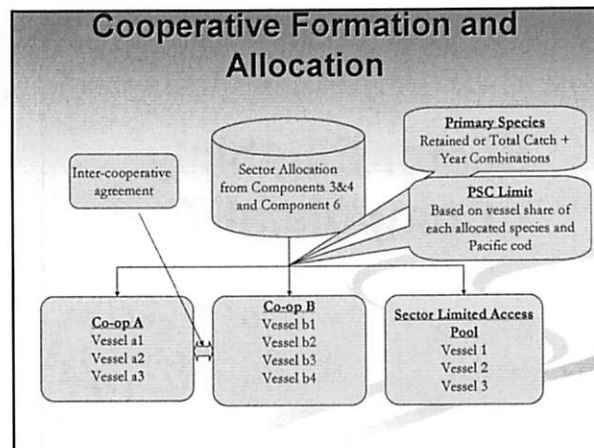
PPA Sector Eligibility Where is the Catch History Attached?



Cooperative Formation Component 8



Cooperative Allocation Component 9 - 10



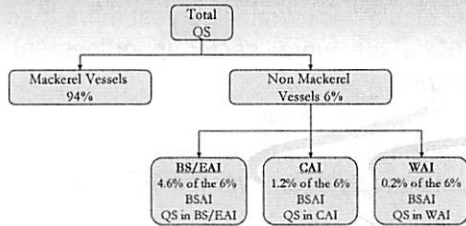
PPA Cooperative Allocation: Effect of Minimum Allocation

- Using Total from 1998-2004 Drop 2 years
 - Flathead sole (.01%) less than 3 vessels
 - Yellowfin sole (.05%) less than 3 vessels
 - Rock sole (.05%) less than 3 vessels

PPA Cooperative Allocation: AI POP

- Distribution of AI POP to cooperative by subarea (541, 542, & 543)
 - Equal percentage in each subarea

PPA Cooperative Allocation: Atka Mackerel



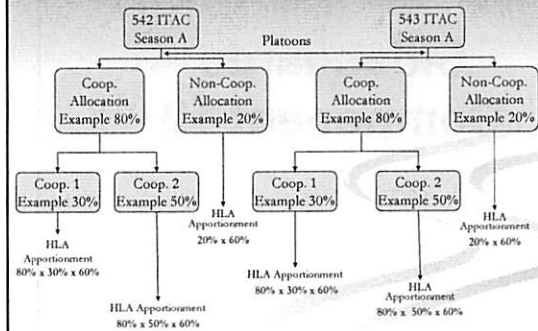
PPA Cooperative Allocation: Atka Mackerel

Allocation Option	Number of non-mackerel vessels	Bering Sea/Eastern Aleutian Islands		
		allocation as percent of combined TAC	allocation as percent of area TAC	percent of total catch from the area
1995-2003 drop 3	18	1.9	15.7	6.3
1997-2003 drop 2	16	2.5	21.0	8.7
1997-2004 drop 2	16	3.9	32.5	14.5
1997-2004 drop 3	16	4.4	36.8	14.5
1998-2002	15	1.5	12.6	6.6
1998-2002 drop 1	15	1.7	14.4	6.6
1998-2003 drop 1	15	2.7	22.4	11.0
1998-2003 drop 2	15	3.1	25.7	11.0
1999-2003 drop 1	15	3.1	26.3	12.6
1998-2004 drop 2	15	4.6	38.6	17.8

Cooperative Allocation: Atka Mackerel Fisheries in HLA

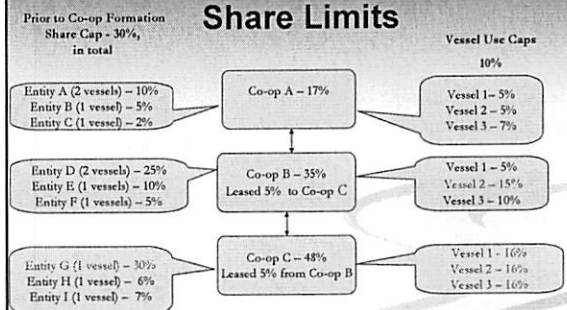
- Current Management Structure
 - Two equal seasonal allowances:
 - A Season Jan 20th through Apr 15th
 - B Season Sept 1st through Nov 1st
 - Steller sea lion protection measures (limit rate of mackerel removals from critical habitat)
 - Areas 542 and 543 open 48 hours after 541 closes
 - Restrict catch in HLA to 60% of seasonal TAC
 - Must register vessel with NMFS to fish in A Season HLA
 - Registered vessels assigned to area by lottery
 - Each platoon of vessels switch areas/HLA

Atka Mackerel Allocations Under Amendment 80



Excessive Share Component 11

Component 11 – Excessive Share Limits



PPA Ownership Caps

- No single person (individual and collective rule) can hold catch history more than 30% of the overall sector apportionment history
 - Cap would be applied on an aggregated bases
 - Grandfather clause
- 3 or fewer companies over the 30% cap

PPA Vessel Caps

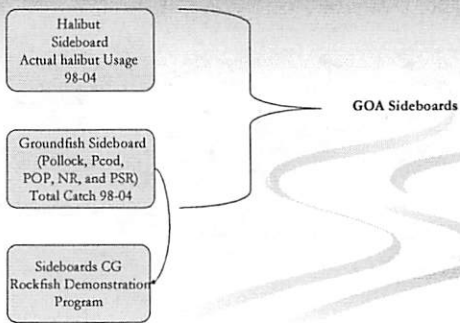
- No single vessel shall harvest more than 10% of the overall sector apportionment history
 - Grandfather clause
- Since 1995, 4 or fewer vessels have consistently been over the 10% cap

Sideboards Component 12

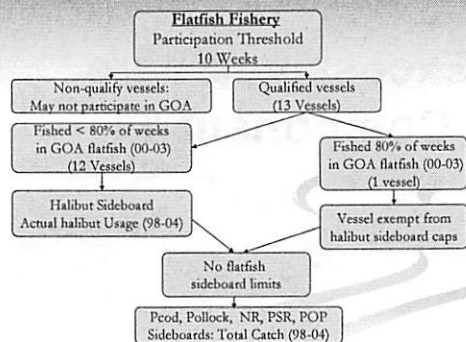
PPA BSAI Sideboards

No BSAI Groundfish Sideboards

PPA GOA Sideboards



PPA GOA Sideboards



PPA Sideboards

- Each cooperative will receive its GOA sideboards
- Cooperatives can sign an inter-cooperative agreement allowing aggregation of sideboards
- Sideboards can not be traded between cooperatives
- Cooperative sideboards managed as hardcaps

PPA Sideboards

Species	Alternative 4		Average Catch of Non-AFA Trawl CPs (95-03)
	Sideboard %	Estimated Sideboard (mt)	
Pollock			
Pollock 610	0.3%	91	120
Pollock 620	0.2%	34	100
Pollock 630	0.2%	19	
Pollock 640	0.2%	4	
Central Gulf			
Pacific Ocean Perch	RDP	RDP	4,179
Pelagic Shelf Rockfish	RDP	RDP	1,620
Northern Rockfish	RDP	RDP	1,156
Pacific Cod	4.4%	1,355	2,024
Western Gulf			
Pacific Ocean Perch	89.4%	2,549	1,456
Pelagic Shelf Rockfish	76.4%	268	135
Northern Rockfish	100.0%	808	443
Pacific Cod	2.0%	314	553
West Yakutat			
Pacific Cod	3.4%	*	*
Pacific Ocean Perch	95.1%	808	754
Pelagic Shelf Rockfish	89.6%	182	116

PPA Sideboards

Alternative	Quarter				Total
	1	2	3	4	
Trawl Halibut PSC Allotment to Deep Water, by Quarter (mt)					
Alt 4	56.82 (2.84%)	238.49 (11.92%)	231.91 (11.60%)	81.87 (4.09%)	609.09 (30.45%)
Percent of Trawl Halibut Allotment to Shallow Water by Quarter					
Alt 4	16.93 (0.85%)	38.47 (1.92%)	41.19 (2.06%)	54.79 (2.74%)	151.38 (7.57%)

Other Elements of Amendment 80

Other Elements of Amendment 80

- Economic and Socioeconomic data collection
 - Cost, Earnings and Employment Survey (Appendix 3)

TABLE 15.—2006 AND 2007 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI¹

[Amounts are in metric tons]

PSC species	Target fishery category ²	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2006 and 2007 PSC limit	2006 and 2007 AFA catcher vessel PSC sideboard limit
Halibut	Pacific cod trawl	0.6183	1,434	887
	Pacific cod hook-and-line or pot	0.0022	775	2
	Yellowfin sole	n/a	n/a	n/a
	January 20–April 1	0.1144	262	30
	April 1–May 21	0.1144	195	22
	May 21–July 1	0.1144	49	6
	July 1–December 31	0.1144	380	43
	Rock sole/flathead sole/other flatfish ⁵	n/a	n/a	n/a
	January 20–April 1	0.2841	448	127
	April 1–July 1	0.2841	164	47
	July 1–December 31	0.2841	167	47
	Turbot/Arrowtooth/Sablefish	0.2327	0	0
	Rockfish (July 1–December 31)	0.0245	69	2
Red King Crab	Pollock/Atka mackerel/other species	0.0227	232	5
	Pacific cod	0.6183	26,563	16,424
	Yellowfin sole	0.1144	33,843	3,872
Zone 1 ^{3,4}	Rock sole/flathead sole/other flatfish ⁵	0.2841	121,413	34,493
	Pollock/Atka mackerel/other species	0.0227	406	9
<i>C. opilio</i>	Pacific cod	0.6183	184,402	114,016
	Yellowfin sole	0.1144	4,103,752	469,469
COBLZ ³	Rock sole/flathead sole/other flatfish ⁵	0.2841	810,091	230,147
	Pollock/Atka mackerel/other species	0.0227	106,591	2,420
	Rockfish	0.0245	62,356	1,528
	Turbot/Arrowtooth/Sablefish	0.2327	62,356	14,510
	Pacific cod	0.6183	183,112	113,218
<i>C. bairdi</i>	Yellowfin sole	0.1144	340,844	38,993
	Rock sole/flathead sole/other flatfish ⁵	0.2841	365,320	103,787
	Pollock/Atka mackerel/other species	0.0227	17,224	391
	Pacific cod	0.6183	324,176	200,438
Zone 2 ³	Yellowfin sole	0.1144	1,788,459	204,600
	Rock sole/flathead sole/other flatfish ⁵	0.2841	596,154	169,367
	Pollock/Atka mackerel/other species	0.0227	27,473	624
	Rockfish	0.0245	10,988	269

¹ Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

² Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).

³ Refer to § 679.2 for definitions of areas.

⁴ In December 2005, the Council recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole/flathead sole/other flatfish" fishery category (see § 679.21(e)(3)(ii)(B)).

⁵ "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

6-8-06
C-1 #0
from staff

TABLE 13.—2006 AND 2007 BSAI AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR PROHIBITED SPECIES
SIDEBOARD LIMITS ¹

PSC species	1995–1997			2006 and 2007 PSC available to trawl vessels	2006 and 2007 C/P sideboard limit
	PSC catch	Total PSC	Ratio of PSC catch to total PSC		
Halibut mortality	955	11,325	0.084	3,400	286
Red king crab	3,098	473,750	0.007	182,225	1,276
<i>C. opilio</i> ²	2,323,731	15,139,178	0.153	5,329,548	815,421
<i>C. bairdi</i>	n/a	n/a	n/a	n/a	n/a
Zone 1 ²	385,978	2,750,000	0.140	906,500	126,910
Zone 2 ²	406,860	8,100,000	0.050	2,747,250	137,363

¹ Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

² Refer to § 679.2 for definitions of areas.

C-lab Tom Casey
w/John Bruce
PT
6.8.06 2p

Testimony of Tom Casey to the NPFMC
concerning
Final Action on Amendment 80

Kodiak, Alaska
7 June 06

“Any” definition
“even the slightest amount”

Webster’s New World Dictionary 2005



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
P O Box 21109
Juneau, Alaska 99802-1109

February 9, 2005

MEMORANDUM FOR: Chris Oliver, Executive Director
North Pacific Fishery Management Council

FROM: Lisa L. Lindeman
Alaska Regional Counsel *Lisa Lindeman*

SUBJECT: Non-Pollock Catch History of the Nine Catcher Processors Listed
in Section 209 of the American Fisheries Act

This responds to your request for reaffirmation or clarification of any previous NOAA General Counsel legal opinions regarding the above-referenced subject. By this memorandum, we reaffirm the legal opinion we issued on June 4, 2004. We are attaching a copy of the opinion for the Council's further consideration.

In summary, the opinion states that pursuant to section 211(b)(2) of the American Fisheries Act (AFA)¹, the Council may consider the combined non-pollock groundfish fishing history of the twenty catcher processors listed in section 208(e) and the nine vessels listed in section 209 of the AFA in determining non-pollock groundfish sector allocations during its development of Amendment 80 to the Bering Sea and Aleutian Islands Fishery Management Plan (proposed allocations of flatfish species and development of a cooperative management structure for the head-and-gut catcher processor sector). However, under the AFA, this combined non-pollock groundfish fishing history is in the nature of a cap, not an allocation to which the twenty catcher processors have a statutory right under the AFA. In addition, the opinion points out that in making such non-pollock groundfish sector allocations, section 211(a) of the AFA requires that the Council consider conservation and management measures necessary to protect the other participants in the non-pollock groundfish fisheries from any adverse impacts from the increased competition caused by the AFA or fishery cooperatives in the directed pollock fishery. *

Attachment

cc: Sam Rauch

¹ Div. C, Title II, Pub. L. No. 105-277, 112 Stat. 2681 (1998), 16 U.S.C. 1851nt



2

3.2.12 Component 13

MAY 2006

CP sector will result in little change in the distribution between the two groups. Under this scenario, the importance of threshold level is diminished since the allocation below and above the threshold is similar. Selecting 30 or 50 percent distribution of yellowfin sole to the Non-AFA Trawl CP sector above the threshold increases the level of importance the threshold program. The lower the threshold, the greater chance the ITAC will exceed the threshold resulting in the overall redistribution of yellowfin sole for the two groups that is different what was allocated under Component 3.

Allocation of yellowfin sole ITAC above the threshold could adjust some of the disparity between historical fishing patterns and allocations that could be created under Component 3 for traditional participants. The allocation of yellowfin sole ITAC above the threshold could also be used to provide some opportunity for future participants in periods of high TAC. For example, at a ITAC of 110,000 mt and a distribution of 50 percent of the yellowfin sole ITAC above a threshold of 80,000 under Option 3.1 would result in a total allocation of yellowfin sole between 75,960 mt and 88,360 mt to the Non-AFA Trawl CP sector and 24,640 mt and 34,040 mt to the general limited access fishery. At a 70 percent distribution for the Non-AFA Trawl CP sector, the allocation to the Non-AFA Trawl CP sector would be between 83,460 mt and 95,860 mt, while the allocation to the general limited access fishery would be between 14,140 mt and 26,540 mt.

If the Non-AFA Trawl CP sector's allocation is limited to their historic average and additional yellowfin sole is on the market, prices of yellowfin could drop sharply, resulting in the sector generating less revenue. It has been argued in the past the market for yellowfin sole is limited, and if the available supply of product reaches a given level, the price drops to a level that does not support harvesting more yellowfin sole. If this is true and more vessels enter the fishery, the members of the Non-AFA Trawl CP sector could actually be worse off even though they have their historic allocation. It could also negate some of the benefits of the cooperative as companies race to get their product to market first.

BSEA?

Many of the same issues in this component are similar to those raised in the analysis of the allocation calculations options in Components 3 and 4. Specifically, depending on the threshold selected and the distribution of yellowfin sole over the threshold, there is potential for some portion of the yellowfin sole allocation to go unharvested due to bycatch constraints. Bycatch of halibut by the Non-AFA Trawl CP sector is routinely cited as the primary reason for closure of the yellowfin sole fishery prior to harvesting the entire ITAC. Although development of a cooperative structure for the sector may slow the fishery enough to allow cooperative members to avoid high bycatch areas thus extend the fishery, the sector will likely continued to be challenged to avoid high halibut bycatch. Over the past several years, participants in the general limited access fishery have focused mostly on pollock (for those vessels that are AFA qualified) and Pacific cod. If their focus were to shift to yellowfin sole in the future, these participants would likely also face the same issue as the Non-AFA Trawl CP sector, to limit their bycatch of halibut.

The Council in June 2005 removed the AFA sideboard restrictions for threshold distributions.

The intent of removing sideboard restrictions for threshold distribution is to allow AFA sectors the potential to expand their harvest of yellowfin sole in periods of diminished availability of pollock. Currently, the AFA Trawl CP sector has a yellowfin sole sideboard limit of 25 percent, while the AFA Trawl CV sector has a limit of 6.47 percent. Combined these two sector have a sideboard limit of 29.47 percent of the yellowfin sole TAC. Depending on the Council's selection of the different options in this component as well as the options selected in Components 3 and 4, there is the potential for the general limited access fishery to get an allocation of yellowfin sole over the 29.47 percent of TAC. Although the AFA sideboards would apply for allocations of yellowfin sole below the thresholds, the portion from the threshold program would not be restricted by AFA sideboards regulations, thus allowing the sectors in the general limited access to harvest their entire allocation.

W. Peng
P. Wenzler

civil penalties and permit sanctions applicable to prohibited acts under section 308 of such Act (16 U.S.C. 1858), any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have violated a requirement of this section shall be subject to the forfeiture to the Secretary of Commerce of any fish harvested or processed during the commission of such act.

SEC. 211. PROTECTIONS FOR OTHER FISHERIES; CONSERVATION MEASURES.

(a) **GENERAL.**—*The North Pacific Council shall recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.*

(b) **CATCHER/PROCESSOR RESTRICTIONS.**—

(1) **GENERAL.**—*The restrictions in this subsection shall take effect on January 1, 1999 and shall remain in effect thereafter except that they may be superceded (with the exception of paragraph (4)) by conservation and management measures recommended after the date of the enactment of this Act by the*

APPENDIX 3

*One Hundred Eighth Congress
of the
United States of America
AT THE SECOND SESSION*

*Begun and held at the City of Washington on Tuesday,
the twentieth day of January, two thousand and four*

An Act

Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2005, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Consolidated Appropriations Act, 2005'.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. References.
- Sec. 4. Statement of appropriations.

(g) NON-POLLOCK GROUND FISH FISHERY-

(1) PARTICIPATION IN THE FISHERY- Only a member of a catcher processor subsector may participate in--

- (A) the catcher processor sector of the BSAI non-pollock groundfish fishery; or
- (B) the fishing capacity reduction program authorized by subsection (b).

(2) PLANS FOR THE FISHERY- It is the sense of Congress that--

- (A) the Council should continue on its path toward rationalization of the BSAI non-pollock groundfish fisheries, complete its ongoing work with respect to developing management plans for the BSAI non-pollock groundfish fisheries in a timely manner, and take actions that promote stability of these fisheries

*shall
NSX4*

consistent with the goals of this section and the purposes and policies of the Magnuson-Stevens Fishery Conservation and Management Act; and

(B) such plans should not penalize members of any catcher processor subsector for achieving capacity reduction under this Act or any other provision of law.

§ 679.64 Harvesting sideboards limits in other fisheries

§ 679.64 *Harvesting sideboards limits in other fisheries*

(a) Harvesting sideboards for listed AFA catcher/processors.

The Regional Administrator will restrict the ability of listed AFA catcher/processors to engage in directed fishing for non-pollock groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the BS subarea directed pollock fishery.

(1) How will groundfish sideboard limits for AFA listed catcher/processors be calculated?

(i) Except for Aleutian Islands pollock, the Regional Administrator will establish annual AFA catcher/processor harvest limits for each groundfish species or species group in which a TAC is specified for an area or subarea of the BSAI as follows:

(ii) Pacific cod. The Pacific cod harvest limit will be equal to the 1997 aggregate retained catch of Pacific cod by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the amount of Pacific cod caught by trawl catcher/processors in 1997 multiplied by the Pacific cod TAC available for harvest by trawl catcher/processors in the year in which the harvest limit will be in effect.

(2) Aleutian Islands Pacific ocean perch.

(i) The Aleutian Islands Pacific ocean perch harvest limit will be equal to the 1996 through 1997 aggregate retained catch of Aleutian Islands Pacific ocean perch by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the Aleutian Islands Pacific ocean perch catch in 1996 and 1997 multiplied by the Aleutian Islands Pacific ocean perch TAC available for harvest in the year in which the harvest limit will be in effect.

(ii) If the amount of Pacific ocean perch calculated under paragraph (a)(2)(i) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs of AFA catcher/processors in other directed fisheries for

groundfish, the Regional Administrator will prohibit directed fishing for Aleutian Islands Pacific ocean perch by AFA catcher/processors and establish the sideboard amount equal to the amount of Aleutian Islands Pacific ocean perch caught by AFA catcher/processors incidental to directed fishing for other groundfish species.

(3) Atka mackerel.

The Atka mackerel harvest limit for each area and season will be equal to:

(i) Bering Sea subarea and Eastern Aleutian Islands, zero;

(ii) Central Aleutian Islands, 11.5 percent of the annual TAC specified for Atka mackerel; and

(iii) Western Aleutian Islands, 20 percent of the annual TAC specified for Atka mackerel.

(4) Remaining groundfish species.

(i) Except as provided for in paragraphs (a)(1)(ii) through (a)(3) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in paragraphs 208(e)(1) through (e)(20) and section 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the TAC of that species available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(ii) If the amount of a species calculated under paragraph (a)(4)(i) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs for AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for that species by AFA catcher processors and establish the sideboard amount equal to the amount of that species caught by AFA catcher/processors incidental to directed fishing for other groundfish species.

(5) How will halibut and crab PSC sideboard limits be calculated?

For each halibut or crab PSC limit specified for catcher/processors in the BSAI, the Regional Administrator will establish an annual listed AFA catcher/processor PSC limit equal to the estimated



U.S. Environmental Protection Agency

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[Federal Register: January 5, 2000 (Volume 65, Number 3)]
 [Rules and Regulations]
 [Page 380-390]
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 [DOCID:fr05ja00-13]

processor and agree to deliver the bulk of their catch to that processor; required harvesting and processing restrictions (commonly known as "sideboards") on fishermen and processors who have received exclusive harvesting or processing privileges under the AFA to protect the interests of fishermen and processors who have not directly benefitted from the AFA; and established excessive share harvesting caps for BSAI pollock and directed the Council to develop excessive share caps for BSAI pollock processing and for the harvesting and processing of other groundfish.

Since the passage of the AFA in October 1998, NMFS has begun to implement specific provisions of the AFA through a variety of mechanisms. For the 1999 fishing year, NMFS implemented the new AFA pollock allocations and harvest restrictions on catcher/processors through the interim and final BSAI harvest specifications (64 FR 50, January 4, 1999; and 64 FR 12103, March 11, 1999). Required changes to the CDQ program were implemented through an emergency interim rule (64 FR 3877, January 26, 1999; extended at 64 FR 34743, June 29, 1999). The increase in observer coverage levels for pollock catcher/processors and regulatory authority to manage AFA catcher/processor sideboard limits through directed fishing closures were implemented through a separate emergency interim rule (64 FR 3435, January 22, 1999; corrected at 64 FR 7814, February 17, 1999; and extended at 64 FR 33425, June 6, 1999). In December 1998, NMFS administered the buyout of the nine catcher/processors declared ineligible under the AFA, and is currently overseeing the scrapping of the eight vessels scheduled for scrapping under the AFA.

The Council has taken an active role in the development of management measures to implement the various provisions of the AFA. The

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APPENDIX D

Ecosystem Considerations for 2000

Reviewed by
The Plan Teams for the Groundfish Fisheries
of the Bering Sea, Aleutian Islands, and Gulf of Alaska

Edited by
Pat Livingston
Resource Ecology and Ecosystem Modeling Program
Resource Ecology and Fisheries Management Division
Alaska Fisheries Science Center
7600 Sand Point Way NE
Seattle, WA 98115

November 1999

American Fisheries Act (AFA)

The AFA, passed in late 1998, among other things limited the number of harvesting and processing vessels that would be allowed to participate in the BSAI pollock fishery. Only harvesting and processing vessels that met specific requirements, based on their participation in the 1995-97 fisheries will be eligible to harvest BSAI pollock. Preliminary estimates indicate that 21 catcher/processors and 120 catcher vessels will qualify under the AFA. Nine large capacity catcher/processors were retired from the fishery by the AFA. Under the fishery cooperative structure now in place, not all 21 eligible catcher/processors fished during the 1999 late winter and early spring pollock seasons. The AFA also restricts eligible vessels from shifting their effort into other fisheries. "Sideboard" measures, as they have become known, prevent AFA eligible vessels from increasing their catch in other fisheries beyond their average 1995-97 levels. Sideboard restrictions reduce the likelihood that the fishing capacity of AFA eligible vessels will be increased to better compete in those fisheries.

Groundfish and crab fleet composition

Contributed by Joe Terry (groundfish) and Dave Witherell (crab)

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Report to the U.S. Congress and the Secretary of Commerce

Impacts of the American Fisheries Act



Prepared by the Staff of the North Pacific Fishery Management Council
Award Number NA96FC0339

September 10, 2001

2.1.2.5 Protecting Other Fishery Participants

Protecting participants in other U.S. fisheries, that could be negatively impacted by the BS/AI pollock fleet, is required by the AFA. Development of these protective measures can be divided into two basic sections. The first section describes protections for persons/companies that harvest fish and are not part of the BS/AI pollock fleet as defined in the AFA, and the second section is protection of non-AFA fish processors.

North Pacific Fishery Management Council

News and Notes



Stephanie Madsen, Chair
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Volume 5-05

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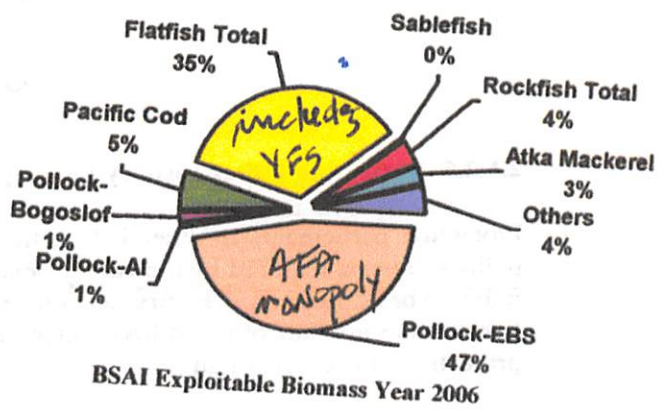
Bering Sea Aleutian Islands

The Council established final catch specifications for the 2006 and 2007 fisheries. The sum of the recommended ABCs for 2006 is 3,013,000 mt, approximately 31,000 mt below the sum of the 2005 ABCs. This is still about 1 million mt above the 2 million mt cap implemented by the Council as a conservation measure. Overall, the status of the stocks continues to appear favorable, although some stocks are declining due to poor recruitment in recent years. Total biomass for 2006 (17.4 million mt) is roughly equal to last year's estimate.

A The 2005 bottom trawl survey estimated a pollock biomass of 5.13 million mt, up 37% from the 2004 estimate. This is due in part to an increase in the estimated strength of the 2000 year class. All other year classes spawned after 1996 appear weaker than average, except for an average 1999 year class. This year's EBS shelf bottom trawl survey resulted in a Pacific cod biomass estimate of 604,000 mt, nearly the same as the 2004 estimate and near the minimum for the time series (534,000 mt). Abundance is projected to continue to decrease during 2006-2009 because recent (2001-2004) recruitments are below average. Sablefish spawning biomass is projected to remain stable from 2005 to 2006. The 1997 and 2000 year classes appear to be important parts of the total biomass and together are projected to account for 38% of 2006 spawning biomass. The 1998 year class, once expected to be strong, appears average. The yellowfin sole stock is predicted to be fairly stable or decrease slightly in the near future due to below average recruitment in the last 5 years. Greenland turbot continues to be the only flatfish species that remains low in abundance compared to 1970 levels. Both the EBS and AI arrowtooth flounder biomass estimates are peaking. Two species of rock sole, northern and southern, inhabit the Bering Sea; their combined biomass estimate increased 8 percent from last year and is expected to decline due to the low recruitment in the last decade. Biomass estimates for Atka mackerel have increased for the last three surveys with four back-to-back years of above-average recruitment (1998-2001 year classes). None of the groundfish stocks are overfished or approaching an overfished condition.

the allowable biological catch. This decrease was reallocated to pollock, yellowfin sole, and arrowtooth flounder. Based on new biomass estimates, the prohibited species catch limits were changed for two species. The PSC for *C. opilio* (snow) crabs increased to 5.76 million crabs. The PSC for herring dropped to 1,770 mt. Remaining PSC limits remained the same as in 2005.

The Council tasked staff with developing alternatives for a future analysis that would amend the BSAI Groundfish FMP to allow the Council flexibility in the sablefish fixed gear/trawl allocations in the Bering Sea and Aleutian Islands management areas to allow for maximizing catch in the IFQ and CDQ fixed gear sectors, without leaving fish unharvested. Contact Jane DiCosimo for more information on this issue.



Pollock TAC, Yellowfin Sole TAC and Catch from 1995 to 2005

	Pollock TAC	Yellowfin Sole TAC	Yellowfin Sole Catch
1995	1,307,600	190,000	124,740
1996	1,226,600	200,000	129,659
1997	1,159,000	230,000	181,389
1998	1,134,800	220,000	101,154
1999	995,000	207,980	67,320
2000	1,142,000	123,262	83,850
2001	1,403,000	113,000	63,395
2002	1,486,100	86,000	72,999
2003	1,492,810	83,750	74,418
2004	1,493,050	86,075	69,046
2005	1,497,510	90,686	87,787

Source: NMFS Catch Statistics, 1995-2005.

(11)

Pacific Fishery Management Council Information Sheet

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based management, the effects of sonar on marine mammals, and other matters. Further action on MSA reauthorization may take place in 2005.

The MSA is complemented by other federal laws, including the Marine Mammal Protection Act, the Endangered Species Act, the Coastal Zone Management Act, and the National Marine Sanctuaries Act. International agreements and organizations, such as the International Convention for the Conservation of Atlantic Tunas, Inter-American Tropical Tuna Commission, and the United Nation's Code of Conduct for Responsible Fisheries, also play a role in shaping management of U.S. fisheries.

The MSA is available online at <http://www.nmfs.noaa.gov/sfa/magact/>.

More information on marine-related legislation is available at <http://cnie.org/NLE/CRS/Detail.cfm?Category=Marine>.

Last updated January 28, 2005.

National Standards of the Magnuson-Stevens Act (a summary)

Conservation and management measures shall:

- (1) Prevent overfishing while achieving optimum yield.
- (2) Be based upon the best scientific information available.
- (3) Manage individual stocks as a unit throughout their range, to the extent practicable; interrelated stocks shall be managed as a unit or in close coordination.
- (4) Not discriminate between residents of different states; any allocation of privileges must be fair and equitable.
- (5) Where practicable, promote efficiency, except that no such measure shall have economic allocation as its sole purpose.
- (6) Take into account and allow for variations among and contingencies in fisheries, fishery resources, and catches.
- (7) Minimize costs and avoid duplications, where practicable.
- (8) Take into account the importance of fishery resources to fishing communities to provide for the sustained participation of, and minimize adverse impacts to, such communities (consistent with conservation requirements).
- (9) Minimize bycatch or mortality from bycatch.
- (10) Promote safety of human life at sea.

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(3) Each SAFE report should contain a description of the maximum fishing mortality threshold and the minimum stock size threshold for each stock or stock complex, along with information by which the Council may determine:

(i) Whether overfishing is occurring with respect to any stock or stock complex, whether any stock or stock complex is overfished, whether the rate or level of fishing mortality applied to any stock or stock complex is approaching the maximum fishing mortality threshold, and whether the size of any stock or stock complex is approaching the minimum stock size threshold.

(ii) Any management measures necessary to provide for rebuilding an overfished stock or stock complex (if any) to a level consistent with producing the MSY in such fishery.

(4) Each SAFE report may contain additional economic, social, community, essential fish habitat, and ecological information pertinent to the success of management or the achievement of objectives of each FMP.

* * * * *

6. In § 600.320, the last sentence of paragraph (c) is revised to read as follows:

§ 600.320 National Standard 3—Management Units.

* * * * *

(c) * * * The Secretary designates which Council(s) will prepare the FMP, under section 304(f) of the Magnuson-Stevens Act.

* * * * *

7. In § 600.325, paragraph (c)(3)(ii) is revised to read as follows:

§ 600.325 National Standard 4—Allocations.

* * * * *

(c) * * *

(3) * * *

(ii) *Promotion of conservation.*

Numerous methods of allocating fishing privileges are considered "conservation and management" measures under section 303 of the Magnuson-Stevens Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or, it may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product. To the extent that rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary, any harvest restrictions or recovery benefits must be allocated fairly and equitably among the

commercial, recreational, and charter fishing sectors of the fishery.

* * * * *

8. In § 600.330, paragraphs (a) and (b)(1), the first sentence of paragraph (c) introductory text, the last sentence of paragraph (c)(1), and paragraph (c)(2) are revised to read as follows:

§ 600.330 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) * * *

(1) *General.* The term "utilization" encompasses harvesting, processing, marketing, and non-consumptive uses of the resource, since management decisions affect all sectors of the industry. In considering efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: Given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

* * * * *

(c) *Limited access.* A "system for limiting access," which is an optional measure under section 303(b) of the Magnuson-Stevens Act, is a type of allocation of fishing privileges that may be considered to contribute to economic efficiency or conservation. * * *

(1) * * * Two forms (i.e., Federal fees for licenses or permits in excess of administrative costs, and taxation) are not permitted under the Magnuson-Stevens Act, except for fees allowed under section 304(d)(2).

(2) *Factors to consider.* The Magnuson-Stevens Act ties the use of limited access to the achievement of OY. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Magnuson-Stevens Act and in § 600.325(c)(3). In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Magnuson-Stevens Act's limitations on returning economic rent to the public under section 304(d). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

* * * * *

9. In § 600.340, paragraph (b)(1) is amended by revising the second sentence to read as follows:

§ 600.340 National Standard 7—Costs and Benefits.

* * * * *

(b) * * *

(1) * * * The Magnuson-Stevens Act requires Councils to prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. * * *

* * * * *

10. Sections 600.345, 600.350, and 600.355 are added to subpart D to read as follows:

§ 600.345 National Standard 8—Communities.

(a) *Standard 8.* Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to:

- (1) Provide for the sustained participation of such communities; and
- (2) To the extent practicable, minimize adverse economic impacts on such communities.

(b) *General.* (1) This standard requires that an FMP take into account the importance of fishery resources to fishing communities. This consideration, however, is within the context of the conservation requirements of the Magnuson-Stevens Act. Deliberations regarding the importance of fishery resources to affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP. Where the preferred alternative negatively affects the sustained participation of fishing communities, the FMP should discuss the rationale for selecting this alternative over another with a lesser impact on fishing communities. All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative.

(2) This standard does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community.

(3) The term "fishing community" means a community that is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic

6 CONSISTENCY WITH OTHER APPLICABLE LAWS OR POLICIES

6.1 Consistency with the Magnuson-Stevens Act

6.1.1 National Standards

Below are the 10 National Standards as contained in the Magnuson-Stevens Act (Act), and a brief discussion of the consistency of the proposed alternatives with those National Standards, where applicable.

National Standard 4 - Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

Allocation percentages being considered are based on industry sectors. Nothing in the alternatives considers residency as a criteria for the Council's decision. Residents of various states, including Alaska and the Pacific Northwest, participate in each of the major sectors affected by these allocations. Within each sector, no further allocations are made to individual fishermen by NOAA Fisheries²⁴, nor are discriminations made among fishermen based on residency or any other criteria. While allocations are made based on industry sectors, it is possible for entities to have exclusive privileges to harvest amounts of a species inside the cooperative. The excessive share options considered would limit the total amount of species a permit holder would be allowed to take into the cooperative. This amendment also contains discussions of potential caps on the amount of fish individual vessels in the cooperative could harvest.

National Standard 5 - Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

The wording of this standard was changed in the recent Magnuson-Stevens Act authorization, to 'consider' rather than 'promote' efficiency. Efficiency in the context of this change refers to economic efficiency, and the reason for the change, essentially, is to de-emphasize to some degree the importance of economics relative to other considerations (Senate Report of the Committee on Commerce, Science, and Transportation on S. 39, the Sustainable Fisheries Act, 1996). The analysis presents information relative to these perspectives and provides information on the economic improvements that could be realized under a cooperative harvesting system. The impacts of the flatfish retention standards set to be implemented in 2006 were a driving force in the development of this amendment. Flatfish fishermen were concerned that without an improvement in their operating environment (in this case those that can be obtained under cooperatives), it would not be possible to remain economically viable under the new retention standards.

National Standard 6 - Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

This amendment contains options that would allow portions of the TAC that are projected to go unharvested to be rolled-over from the general trawl allocation to the Non-AFA Trawl CP sector. This contingency plan was established to take into account the possibility that members of that sector

²⁴ Allocations are made to the cooperatives and the cooperatives are then allowed to divide the allocation among its members based upon a predefined agreement.

No discussion of "FAIR & EQUITABLE"

**TESTIMONY OF KEVIN C. DUFFY
AT-SEA PROCESSORS ASSOCIATION
BEFORE THE HOUSE SUBCOMMITTEE ON FISHERIES AND OCEANS
MAGNUSON-STEVENS FISHERY CONSERVATION
AND MANAGEMENT ACT**

**KODIAK, ALASKA
July 8, 2005**

A Thank you, Mr. Chairman and Members of the Subcommittee for the invitation to testify on fisheries management successes in Alaska. I am Kevin Duffy, Executive Director of the At-sea Processors Association (APA). APA is a trade association composed of seven member companies that operate U.S.-flag catcher/processor vessels, primarily in the Bering Sea/Aleutian Islands Alaska pollock fishery. The seven companies own and operate 19 U.S.-flag catcher/processor vessels that are allocated 40 percent of the annual Bering Sea/Aleutian Islands pollock catch.

B The sustainability certification of the fishery is a notable achievement for many reasons, not the least of which is the significance of Alaska pollock in the world marketplace. Alaska pollock production is a dominant player in the world whitefish market because it is valued as a consistent and dependable source of high quality product. In 2005, three billion pounds of Alaska pollock will be harvested, accounting for approximately one-third the weight of all U.S. seafood landings. While few seafood consumers might know Alaska pollock by name, most have likely eaten pollock. Alaska pollock is the principal whitefish used in frozen fish products in retail stores as well as "quick service" restaurants. Alaska pollock fillets reportedly account for 90 percent of the 275 million McDonald's fish sandwiches served each year in North America. Alaska pollock is also processed into *surimi*, a minced, frozen product used to make imitation crab products. The harvesting and primary processing of pollock in Alaska generates

C \$800 million in revenue annually. The U.S., Japan and the European Union are important markets for Alaska pollock products.

Science and the Management of Alaska Pollock

D NOAA Fisheries has a long time series of reliable data on Alaska pollock abundance, data derived from hydro-acoustic surveys, bottom trawl surveys and from fishery dependent data collected under a comprehensive federal fishery observer program. NOAA Fisheries' scientists use state-of-the-art stock assessment models in analyzing data to determine pollock abundance levels. Currently, the adult spawning biomass of Alaska pollock exceeds 20 billion pounds.

McKie Campbell & Joe Sullivan
Comments on GOA Rationalization
ComFish/Kodiak
March 17, 2006

The following exchange occurred during a public forum convened by the State of Alaska:

McKie Campbell: Basically what happens is anytime we get into a hard question on technical details, we say 'here Denby' (laughs)...

Joe, a couple things - we are concerned... well, first off, the constitutional issues that you're talking about apply obviously to state waters, because we're talking about state constitution. In federal waters, we at least have quite a few rationalization programs that seem to have survived the various court challenges and court tests on legality in federal waters, and it's federal waters here that I'm focusing on.

I do believe that if you rationalize, that people who have pioneered a fishery and invested in it over the years should have some level of reward. I will also freely say that in some fisheries, like AFA, I think the level of reward bordered on the "obscene" and that would be an issue there that would sort of hold down that because it would hold down share prices.

Conclusion of Tom Casey's testimony

If

1. AFA is *obscenely profitable* for the BSAI pollock fleet according to the Governor of Alaska's representative, a full voting member of the NPFMC,
2. and if Amendment 80 is *not obscenely profitable* for the H&G sector by any indicator in your EARIR:
3. then the NPFMC is not being "*fair and equitable*" with the H&G sector under AFA or National Standard 4.

Therefore, the Council needs to select "fairer and more equitable" alternatives when taking final action at this meeting, especially after reducing the H&G sector's annual P. Cod income by \$20-million annually under Amendment 85.

C-1 ab Peter Trust^{PT}
6.8.06 4:20p

June 7, 2006

North Pacific Management Council
605 West 4th, Suite 306
Anchorage, AK 99501-2252

Re: Amendment 80

Dear Council Members,

My name is Peter Trost and I am the President CEO of Icelandic Northwest. Icelandic Northwest is a procurement company owned by The Icelandic Group in Reykjavik Iceland. We purchase seafood from a number of "at sea processors" in the H&G fleet as well as from other processors throughout Alaska. The majority of the products we purchase will be used in one of the many processing facilities owned by The Icelandic Group of Companies. We process most of the species that are presently harvested by the H&G fleet. Our finished products range from twice frozen fillets, portions and blocks produced in Thailand and China, to breading and refreshing a variety of shapes and forms in the US.

Amendment 80 and its potential impact on the H&G fleet are of grave concern to us as an end-user. We strongly feel that any reduction in the percentage of the H&G sector's TAC will result in unknown and less equipped entities harvesting a resource that the H&G fleet has made tremendous efforts to refine to its present state.

For a number of years we have been extremely pleased with the performance of the H&G fleet, both from a quality and quantity stand point. The H&G fleet is constantly listening to its customers and adapting to the increased quality and production demands that are put upon them. Their commitment to their customers has increased the utilization of available resources and retention of previously undesirable sizes and species such as "under sized flat fish", male flatfish during roe season, Arrowtooth Flounder, Alaskan Plaice, and Yellowfin Sole, etc. We consider the H&G fleet to be a leader in maximizing the value of their production outside the state of Alaska.

Quality: We rate the quality of products from the H&G fleet as second only to the long line fleet (and in our case this only applies to Cod). For years they have refined their catch and processing methods to ensure a very desirable product, suitable for re-processing in any of the plants that The Icelandic group owns and operates. In contrast, we have also experienced the poor quality of products from processors that use a multitude of vessels to pack Alaskan H&G species under one label. I have no doubts what-so-ever that this would also be the case in a GENERAL LIMITED ACCESS FISHERY. Secondary quality is extremely costly and will have devastating effects on the end-product, and the reputation of Alaskan Seafood in general. This is not the time to experiment with alternative fisheries if maximum value and utilization is the goal.

Quantity: The H&G fleet has the capability to provide their customers with larger parcels caught in one general area over a short period of time which is then immediately processed, and frozen in a timely manner at sea. This method is of great importance to us when processing the raw material in order to minimize costly adjustments and enable us to ship finished products; that does not differ within the production run. We do not think this would be the case when procuring raw material from a GENERAL LIMITED ACCESS FISHERY.

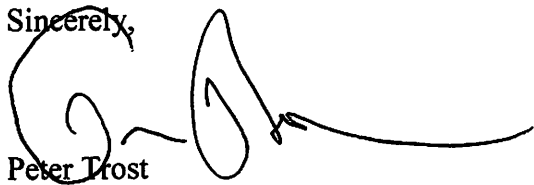
Logistics: With constantly increasing shipping costs and logistical difficulties out of Alaska, we would be faced with new challenges in procuring raw material from a multitude of vendors. In the world of shipping, quick and accurate off loads and the ability to access trampers in remote locations in key. Unless we have enough volume to offer the trampers, we would be faced with additional expenses in an already difficult market place.

Multiple Species: Most of the H&G fleet is now selling a multitude of species to their customers in one shipment. Although this could be accomplished through smaller vessels accessing a percentage of the TAC, we need "production size" lots to make it financially feasible. Small "partials" have always been a big problem from a production stand point and in a GENERAL LIMITED ACCESS FISHERY the value of smaller parcels would not be maximized.

I am asking the council to re-evaluate the impacts of Amendment 80 from our and other customer's points of view and, in the meantime, allow the present allocations of the TAC to remain intact.

Thank you for the opportunity to address this matter before the Counsel.

Sincerely,



Peter Trost
President and CEO
Icelandic Northwest

June 2, 2006

North Pacific Management Council
605 West 4th, Suite 306
Anchorage, Alaska 99501-2252

Re: Amendment 80

Dear Council members:

Thank you for the opportunity to address you today on the important issue of Amendment 80 and groundfish rationalization. My name is Robert Reiersen. I am the CEO of Tradex Foods, a company based in Victoria, Canada that trades and processes frozen seafood. Tradex deals in a variety of Alaskan frozen seafood products, but H&G groundfish is our core business.

On average Tradex Foods purchases 15,000 metric tons (MT) of Alaskan H&G groundfish products per year. Our supplies originate almost entirely from non-American Fisheries Act (AFA) trawl producers. We buy from approximately 15 suppliers in Alaska including firms such as Fisherman's Finest.

We worry that the Council's Amendment 80 proposals in their current form do not adequately guarantee the economic rights of the non-AFA fleet, thereby jeopardizing access to quality H&G product for companies such as Tradex and its processing clients. We believe that if the Council enacts any of the Amendment 80 proposals in their present form, it will threaten earnings and employment in our non-AFA based supply chain by: 1) cutting the supply available to the non-AFA fleet and its market, and 2) exposing the sector to the inconsistency of supply and quality from the shore-based plants linked to the AFA fleet.

Cutting supply

Tradex either produces fillets itself or sells H&G product to processors, the majority of which operate in the eastern USA and Canada. As the Council is aware North American seafood processors have already struggled in recent years with economic trends such as low cost competition from China and a scarcity of affordable raw material.

In addition to Tradex Foods and its customers, our supply chain includes the dock, logistics and cold storage businesses that we contract to deliver our product from vessel to customer.

We believe that the current Amendment 80 proposals threaten the supply chain I have described. Were the Council to include AFA vessels in a potential IFQ management system, it would endanger the economic viability of the non-AFA fleet and its market in the following ways:

- Initial removal of quota from established non-AFA vessels in favour of AFA vessels.
- Subsequent consolidation of quota under the AFA fleet as it uses its economies of scale to buy or price its smaller competitors out of the market.

For Tradex Foods and its customers the AFA fleet is not a viable supply alternative. The scale of the pollock fishery means that large buyers dominate the supply at the expense of relatively smaller buyers such as Tradex Foods. Should the Council give the AFA fleet the opportunity to control Alaska's groundfish fisheries as well, we worry that we will be similarly shut out of that market.

With a diminished supply for our core H&G groundfish business, Tradex Foods may have to scale down its operations, with a resulting loss of earnings and jobs. Effects may be more severe for our North American processing clients who will no longer have access to enough raw material to operate efficiently. We also worry about the loss of earnings and jobs at our numerous logistics suppliers.

Inconsistency

For Tradex's processing needs and for those of its customers, there is a wide gap between non-AFA frozen-at-sea (FAS) H&G product and that of the shore-based plants associated with the AFA fleet.

Since the non-AFA fleet harvests and produces solely groundfish products for processors such as Tradex and its customers, these producers are suppliers of choice for a number of reasons, including:

- Products designed to meet our specific needs means efficient processing and satisfied customers.
- Top quality FAS production ensures maximum returns on resale.
- Consistent quality minimizes claims from end users.
- Established, mutually beneficial business relationships facilitate problem resolution.

By contrast we have experienced more problems in our dealings with the shore-based plants associated with the AFA fleet. These plants produce groundfish products only during lulls in the pollock fishery and in general produce their products for customers with different needs. Problems we have experienced include:

- Product specifications ill-suited to our specific needs lower processing efficiency and frustrate customers.

- When AFA vessels return to their primary pollock fishery, supply becomes inconsistent, affecting Tradex's ability to meet customers' orders.
- Generally lower quality of shore-frozen product drags down our returns on resale.
- Inconsistency of quality creates more claims from customers, further damaging our returns.
- Since groundfish is a side business for these plants, our relationships with them are characterized by indifference on their part and higher risk on ours.

In conclusion I believe that the Amendment 80 proposals in their present form threaten the economic livelihood of Tradex Foods, its customers and the non-AFA based supply chain. I urge the Council to develop a management model for Amendment 80 that:

1. Guarantees to the non-AFA trawl fleet at minimum its current level of groundfish quota access.
2. Safeguards the non-AFA fleet from the noncompetitive economies of scale of the AFA fleet.

Thank you for your time and consideration.

Sincerely,



Robert Reiersen
CEO, Tradex Foods

KT/kt

C-1 Helen Park PT
6.8.06 445p

Georgetown Economic Services, LLC

3050 K Street, N.W.
Washington, D.C. 20007

Telephone: (202) 945-6660
Writer's Direct Dial Number

June 7, 2006

Ms. Helena Park
President
Fishermen's Finest, Inc.
1532 NW 56th Street
Seattle, WA 98107

Re: Review of Your Concern of the Impact of North Pacific Fishery Management Council's Amendment 80 Preferred Alternative

Dear Ms. Park:

I have completed my review of your concerns regarding how the Council's preferred alternative pertaining to Amendment 80 could affect the non-AFA sector. I started by reviewing the letter, dated April 6, 2006 that you sent to Council Chair Stephanie Madsen. I also have made an extensive review and study of many other documents concerning the American Fisheries Act, the so-called AFA sector, the BSAI pollock industry, and numerous documents published by the Council and the National Marine Fisheries Service, to name a few. I also reviewed trade press literature on the industry, the U.S. Department of Justice opinions involving fishery management, and economic literature.

It is my opinion that Fishermen's Finest and the other head-and-gut firms should be concerned about the Council's preferred alternative. However, the focus of your concern should not be that if the Council passes its preferred version of Amendment 80 and the Secretary of Commerce signs off on it, that it would violate the antitrust laws. The application of the antitrust laws generally requires a showing that output will be restricted – a showing that would be very difficult in the fishery management setting. Further, the Antitrust Division at the Department of Justice has stated a number of times, perhaps not in these same words, that the restriction on fishery participation to eliminate waste and reduce the cost of harvesting a fixed number of fish is not an antitrust violation in and of itself.

So does this mean you should not be concerned? The short answer is absolutely not. The AFA participants (not many in number either) have been provided a very comfortable position in the pollock industry by the U.S. government. It is a unique position, at least in the United States. The AFA protected companies do not fear entry into BSAI pollock harvesting. If anyone enters

Ms. Helena Park
June 7, 2006
Page 2

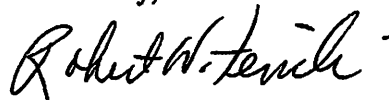
that region and targets pollock, the U.S. government will step in, and stop and heavily fine them. I am sure you would like to have arrangements like that.

This unique position provides BSAI pollock processors with almost a guaranteed profitable position, especially if the Russian pollock fishery is in its weakened state. Your concern is that the BSAI pollock processors will use these "protected-status" profits to undertake a classic below-cost predatory campaign to drive Fisherman's Finest and other head-and-gut companies out of business. I share your concern about being worried about the BSAI pollock processors muscling into nonpollock groundfish fisheries. However, I think a more threatening and imminent prospect is that they will use their profits in combination with political resources to move in on your businesses. In short, they have proven rent-seeking abilities and have friends in high places. More likely, they will use the regulatory and legislative arenas to limit your participation in those fisheries.

I have submitted a summary and a short paper outlining my opinions.

If you have any questions, please do not hesitate to call me.

Sincerely,



ROBERT N. FENILI

Attachment

**Report of Robert N. Fenili, Ph.D. on the Potential Impacts of the
North Pacific Fishery Management Council's Preferred Alternative for
Amendment 80 to the Bering Sea/ Aleutian Island Groundfish Fishery Management Plan
on the non-AFA Trawl Catcher-Processor Sector**

June 7, 2006

Summary

The American Fisheries Act ("AFA"), enacted in 1998, created a government-protected pollock fishery in the Bering Sea and Aleutian Islands ("BSAI") region. The impetus for passage of the AFA was the difficulty the North Pacific Fishery Management Council ("Council") was having in designing a durable regulatory alternative to the increasingly short, chaotic, and inefficient annual derby for pollock. The "race-for-the-fish" at sea was not the only race for pollock either. There was also a "race-for-the-Council" by various pollock fishery interests seeking more favorable pollock regulations. These two "races-for-the-fish," one at sea and another for the Council resulted in costly, unproductive, and wasteful pollock fishing and processing. These inefficiencies led to the enactment of the American Fisheries Act ("AFA")

Enactment of the AFA ended both of the pollock races, resulting in much more stable and profitable pollock fishery and processing operations. Part of the trade-off inherent in the deal struck between the offshore and onshore interests in the AFA is a ban on any vessel not explicitly mentioned in the language of the Act from targeting pollock in the BSAI region. By way of compensation to non-AFA vessels, both for the lost opportunities to target pollock in the future and as a means of protection from the released productive capacity and economic power, the AFA granted the named vessel owners, the AFA also required the Council to limit entry and expansion by AFA sector vessels from targeting non-pollock fish.

Since enactment of the AFA, the AFA-protected businesses have enjoyed increasing revenues and profits. Yet at the same time, pollock and processed pollock prices have remained stable. From all perspectives, the AFA has resulted in benefits in terms of fishery management and business performance. In addition, pollock consumers are also better off today than they were before the AFA was enacted.

Amendment 80 is the Council's attempt to, in part, apply AFA-like regulations to nonpollock groundfish affecting primarily the non-AFA trawl catcher-processor sector (i.e., the head-and-gut fleet). The Council's current preferred approach to Amendment 80 is flawed. It is flawed because it allows for, and even encourages, AFA sector fleets to target the various species of nonpollock groundfish covered by the Amendment. In addition, Amendment 80 restricts the non-AFA fleet from obtaining their recent harvests of the species covered by the Amendment, and fails to recognize this sector's exclusive current and historical dependence on these resources.

The effect of the Council's current course of action, moreover, would be to create a series of perverse and, likely, unintended consequences. For example, even as the Council implements a plan to allow the industry to gain efficiencies through capacity reduction (and Congress is seeking the same end through its vessel buy-back program), Amendment 80 expands fishing capacity through directed set-asides and the threshold provision. Worse yet, the Council will create conditions for a continuing conflict between the AFA fleet and the head-and-gut fleet. This conflict will result in competition not only at sea, but also competition for favorable treatment by the Council. This rent-seeking activity will be wasteful from a fishery management perspective as well as for the industry and consumers.

The Council's preliminary preferred alternative for Amendment 80 will provide the AFA-sector vessels (including AFA protected processors) with the critical mass to make inroads into head and gut businesses. Not only do they have an assured source of profits from their pollock businesses due to the AFA, to help them finance their expansion into other fisheries, but it is my opinion that they also have significantly more political capital than the head-and-gut fleet.

How will that take over occur? It is my opinion that the AFA sector's concern of a classic predatory campaign as outlined in the letter from Fisherman's Finest to Stephanie Madsen of April 6, 2000, in which AFA participants use the rents from their pollock operations to reduce prices of the groundfish covered by Amendment 80 and to drive out non-AFA trawl catcher-processor participants from the BSAI is problematic.

Of more concern to the head and gut sector is the AFA sector's status as a "politically protected group." Its status provides it with regulatory benefits that are unique. The enactment of the AFA alone shows the political might the AFA sector participants hold. No doubt, the Council understands that as well too. The non-AFA trawl catcher-processor sector, even acting in a cooperative, will lack the rent-seeking abilities that the AFA has shown. In short, the AFA sector will "game" the regulations to their advantage and continue to successfully lobby the Council for more favorable treatment. In this, the AFA sector will use pollock profits to finance campaigns to change and alter the way they are treated in the multi-species groundfish industry

The only way out of this potential regulatory mess is for the Council to follow the original prescripts of the AFA. The AFA represented a compromise between onshore and at-sea processors that was pieced together by the U.S. government financing the elimination of excess capacity and banning expansion by others outside the group. Part of that agreement, as I read the

AFA, requires the Council to restrict their expansion of AFA participants into non-AFA fisheries.

The BSAI Pollock Industry and the American Fisheries Act

1. The American Fisheries Act provides 21 catcher-processor vessels, three motherships, and 112 catcher vessels associated with seven on-shore processors an exclusive government charter to target and harvest pollock in the Bering Straits and Aleutian Islands region. (These protected businesses are now often referred to as the AFA fleet or the AFA sector.) There are few other situations where the United States government has created a government-protected charter on a scale such as this one. Not only did the AFA sector receive an exclusive charter to harvest BSAI pollock, but some of its members also received significant payments financed by the U.S. government to decommission vessels, thereby reducing fishing capacity. In virtually any other business, if one company purchased another company with the clear and sole intention of closing it down, the federal antitrust agencies would open an investigation to determine the competitive impact of the transaction. If the U.S. Department of Justice's Antitrust Division or the U.S. Federal Trade Commission determined that there was a probability of competitive injury (i.e., market prices would increase) because of such an acquisition, they would move to stop it. However, in the case of the AFA, it is the U.S. government itself which provided the mechanism to eliminate capacity and reduce the number of competitors in the BSAI pollock industry.

2. The AFA has also been cited a number of times as being the force behind ending the “race-for-the-fish” among competitors to target and harvest pollock.¹ The North Pacific Fishery Management Council has shown that the benefits of ending that race have resulted in improved pollock retention and utilization rates, among others.

3. The AFA was, in purpose and effect, an end run around the normal Council process. The end run was required in part because there was a significant division among pollock competitors, primarily divided between at sea catcher-processors and on-shore processors. Not only was there a race-for-the-fish at sea among vessels and processors, there was also a race-for-the-fish at the Council among these same pollock competitors. Both races led to undesirable results. At sea, the race-for-the-fish led to inefficient fishing methods and inefficient processing economies. Not only were there too many vessels catching a fixed number of fish, the fishing methods and the speed of catch resulted in sub-optimal processing operations, both in terms of economies of scale as well as economies of scope. Onshore, the race-for-the-Council resulted in a continued barrage of lobbying by lawyers, economists, and industry consultants with one group of pollock competitors trying to obtain a regulatory advantage over another group of competitors, and *vice versa*. If one side is successful in obtaining a rule change from the Council, it would lead to the other side beginning a lobby campaign to get the Council to fix or modify the newly enacted regulations.²

¹ The BSAI pollock fishery is not simply some scale go-kart race. It is the equivalent of the Indianapolis 500 of the Alaskan fishing industry. Indeed, Alaskan pollock (which is almost entirely from the BSAI region) accounts for nearly 33% of total U.S. fisheries landings.

² This race-for-the-Council’s favor was captured nicely by Helen Jung in an article in the *Anchorage Daily News* in 1997.

(...continued)

4. The regulatory fix and re-fix, etc. scenario ended when the AFA was enacted. The final provisions of the AFA were a compromise between the at-sea and on-shore pollock processors brokered by two Senators (each representing one side in the dispute) in Washington, D.C. The AFA mandated how the Council would treat these two groups.

(...continued)

Tensely camped in a Kodiak conference room for a week in June, hired guns for the two most powerful factions in Alaska's bottom-fish industry battled each other in a fight as bloody as a barroom brawl. Representatives for factory trawlers, which catch and process fish at sea, squared off against onshore processing companies, which buy catches from fishing vessels and process the fish in their plants.

Mediating the battle is the North Pacific Fishery Management Council, the powerful policy-making body for federal fisheries off Alaska's coast. Under the council's direction, the two sectors since 1991 have split the available harvest 65-35, with the larger share going to factory trawlers.

Now onshore processing plants want a bigger cut of the pollock catch. The battle and its high-stakes politicking already have led to the resignation of a staff economist for the fishery council. The fight threatens to shake up the industry, drive companies out of business and redefine how pollock is caught off Alaska's coast.

Who will win is anybody's guess. . . .

"I love the competition," said Clem Tillion, a longtime Alaskan, former state legislator and former council member. "If I were still on the council, I'd keep quiet about which way I was going to vote until I see who makes commitments that are in the best long-term interests of Alaska."

The fight before the fishery council will extend at least until next month and possibly until the end of next year.

"Trawlers, Alaska Processors Renew Battle for Bering Sea Pollock." (Originated from Anchorage Daily News) Knight Ridder/Tribune Business News; 8/11/1997; Jung, Helen

Impact of the AFA on Competition

5. The AFA not only ended the race among competing fleets to harvest pollock, it also decided the winner and the finish order of the race. It determined not only the order of this year's race, but also the order of next year's race and every future race. The salient question from an antitrust point of view is: Does fixing the order of the race and prohibiting entry of non-AFA fleets into the BSAI pollock industry injure competition?

6. The *sin qua non* of competition theory holds that a monopolist must restrict or withhold the amount it sells to increase price. Put differently, a monopolist can raise its selling price but when it does so, then the amount it can sell will decrease. What has been the trend in the pollock harvests and associated prices?

7. From 1999 to 2002, the Council increased the allowable BSAI pollock harvest from about 1.0 million metric tons to nearly 1.5 million metric tons. Since 2002, the total allowable catch has remained at 1.5 million metric tons. In each year since 1999, the industry responded by catching the total allowed. Besides this straight-forward increase in supply, the higher utilization rates that were a consequence of elimination of the race resulted in even more pollock being made available to the market.

8. The slower pace of pollock fishing made not only for more efficient fishing but also for more efficient pollock processing. Pre-AFA, in 1998, 1.0 million metric tons of BSAI pollock was caught with a wholesale value (after processing) of \$500 million. In 2004, under the AFA, the quantity and value of the pollock harvest was 1.5 million metric tons and \$1.1 billion. Between 1998 and 2004, the amount of pollock harvested increased by 50%, and the wholesale value of the processed pollock increased by over 100%.

9. Average annual selling prices per pound for all categories of processed pollock aggregated together as well as the top four types of processed pollock are shown in the table below. These data were obtained from Economic Status Reports published by the National Marine Fisheries Service. The table (reported in \$/pound format) shows that prices of processed pollock have decreased since passage and implementation of the AFA in 1998 and 1999.

Year	All products	Surimi	Roe	Deep-skin	Other fillets
1996	1.13	0.86	6.06	1.23	1.03
1997	1.34	1.15	5.07	1.28	0.78
1998	1.08	1.03	3.52	1.43	1.12
1999	1.35	1.19	6.03	1.64	1.21
2000	1.16	0.79	9.31	1.11	0.70
2001	1.21	0.82	8.30	1.20	0.87
2002	1.09	0.81	6.16	1.08	0.88
2003	1.04	0.73	5.67	1.13	1.01
2004	1.16	0.75	6.68	1.21	0.97

Source: "Economic Status Report for the Groundfish Fisheries Off Alaska 2000," November 15, 2001 and "Economic Status Report for the Groundfish Fisheries Off Alaska 2004," November 17, 2005.

The downward trends in processed pollock prices does not support the proposition that enactment of the AFA led to higher processed pollock prices after implementation of the AFA.

10. Given that the global nature of the geographic markets involved in the pollock industry, as well as the number of other fish that compete with pollock in the production of surimi and fillets, it is not clear that BSAI pollock (i.e., the AFA sector) businesses could affect pollock prices even if they were to openly collude. In February 2000, the Department of Justice's Antitrust Division in letters approving cooperatives for pollock processors and, in effect, signing off on the fixing of the pollock race-for-the-fish stated:

... From a consumer perspective, the harvesting agreement does not reduce the output of processed Alaskan Pollock or the end products into which it is incorporated -- e.g., surimi. On the contrary, if the Applicant's assertion that

“haste makes waste” is true, then eliminating the race will increase processing efficiency and concomitantly the output of Alaskan Pollock products. Since the prices paid for Alaskan Pollock products by consumers will be determined by the intersection of supply and demand for those products, elimination 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.³ (Emphasis added.)

The Division’s conclusion, highlighted above, has been borne out. By any measure, the pollock catchers and processors have not in any way increased the ex-vessel price of pollock or the price of processed pollock, and they certainly did not restrict output (i.e., supply) since the AFA was enacted.

The Dark Side of the AFA and the Reason for Section 211

11. Congress recognized the exclusive pollock sector it was creating would be an economically and politically powerful one. Therefore, through Section 211 of the AFA, Congress called on the Council to “recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.” This measure was designed to address the concern that the eliminated pollock capacity would be redeployed in other fisheries, primarily targeting other BSAI groundfish, and thus creating even more vessels (i.e., more capacity) in races for non-pollock groundfish.

³ Business review letter from Joel L. Klein, Assistant Attorney General for Antitrust to Charles E. Yates, attorney for the Offshore Pollack Catcher Cooperative, dated February 29, 2000. A similar letter with the same conclusion and same language was sent by Klein to Joseph M. Sullivan, attorney for the Pollock Catchers Cooperative on February 29, 2000.

12. The Council, for its part, has long recognized its obligation under Section 211. In its February 2002 report to Congress on the impacts of the AFA,⁴ for instance, the Council stated: "Protecting participants in other U.S. fisheries that could be negatively impacted by the BSAI pollock fleet, is required by the AFA." Indeed the Council has repeated noted that the writers of the AFA anticipated that the rationalizing the pollock industry could have spillover effects on other sectors, including the head and gut sector.

13. However, the Council's Amendment 80 recommendations to (1) limit the non-AFA sector allocations to less than its recent levels; and (2) encourage the expansion of the AFA sector into other nonpollock groundfish, if enacted, means the full benefits of creating an AFA-like environment for the management and conservation other groundfish will not be realized. While the race for Amendment 80 species at-sea may be curtailed, there will still be a race for allocations of these stocks before the Council, with each side spending increasing resources trying to alter Council actions.⁵

14. With the passage of Amendment 80, the competition of the at sea race-for-the-fish for nonpollock groundfish will end. However, unlike the pollock fishery where the end of the race-for-the-fish resulted in permanent winners (and permanent spectators), in the nonpollock groundfish businesses, the elimination of the race-for-the-fish at sea will be replaced by a race-for-the-Council's favors. And unlike in the race-for-the-fish at sea where the head and gut fleet clearly has the advantage over the AFA sector fleets in targeting and harvesting nonpollock groundfish, in the race-for-the-Council the AFA sector clearly dominates this non-AFA sector.

⁴ North Pacific Fishery Management Council, "Impacts of the American Fisheries Act: Report to the U.S. Congress and the Secretary of Commerce," February 20, 2002, p.20.

⁵ In effect, Amendment 80 sets up a division between the AFA sector and the non-AFA sector that will look very similar to the division in 1997 between on-shore and at-sea pollock processors.

The AFA sector has a strong combination of deep pockets and political muscle. In short, in the race-to-the-Council, the AFA sector's rent-seeking skills are vastly superior to the head and gut fleet.

15. Additionally, the non-AFA trawl catcher-processor sector is also concerned over what investments the AFA sector will undertake with its profits that are virtually guaranteed by government entitlements. Given the track record of federally mandated entitlements, the risk to this sector of repeal or an expiration of the AFA is unlikely. And even if such repeal were to occur, the Council will likely continue to protect that sector.

16. The primary fear is that the AFA sector participants will try to edge the head and gut fleet out of remaining non-pollock groundfish markets. Indeed, this is a matter of record in public regulatory filings of one-AFA processor.

We generate most of our revenues from at-sea processing, primarily comprised of pollock-based products. In addition, we participate in a number of other fisheries, such as the cod, Pacific whiting, and yellowfin sole fisheries. We plan to continue expanding our operations in these and other fisheries, especially within the yellowfin sole fishery, where the market has improved and three of our vessels have extensive catch history. (Emphasis added.)

The head and gut sector considers the regulations in Amendment 80 which decrease its historical allocations and also provide for increased allocations of multi-species groundfish to the AFA sector to be the first phase of a takeover of the head and gut sector by the AFA sector. How will that take over occur?

17. The Council's preliminary preferred alternative for Amendment 80 will provide the AFA-sector vessels (including AFA protected processors) with the critical mass to make inroads into head and gut businesses, and will use "rents" earned from their government provided cartel to ultimately drive non-AFA trawl catcher-processors out of business. On one

level, Fisherman's Finest fears that the AFA will use the profits from one business as an investment to leverage their power in Fisherman's Finest businesses.⁶

18. A more significant concern is that the AFA sector's status as a "politically protected group" provides it with regulatory benefits that are unique. The enactment of the AFA alone shows the political might the AFA sector participants hold. No doubt, the Council understands that as well too. The non-AFA trawl catcher-processor sector, even acting in a cooperative, will lack the rent-seeking abilities that the AFA has shown. On the sea, it appears to me that the head and gut vessels are clearly much more adept than the AFA sector at harvesting such species as yellowfin sole, rock sole, Atka mackerel, and Pacific Ocean perch. However, in the legislative and regulatory environment, the non-AFA trawl catcher-processor sector is no match for the AFA sector.

19. The leveraging of the AFA sector cartel into other groundfish fisheries could be achieved via a combination of means. While it is uncertain precisely how the AFA will use its rent-seeking powers, we do know that once it obtains significantly greater nonpollock groundfish allocations -- given the zero-sum nature of the multi-species business -- it will squeeze out many existing non-pollock businesses from the industry. The only way out of this problem is to limit the AFA sector's participation in the remaining competitive fisheries. Preventing them from leveraging their political and regulatory entitlements into other markets will assure that those markets will remain competitive.

⁶ Letter from Helena Park, Fisherman's Finest, Inc. to Stephanie Madsen, Chairman, North Pacific Fishery Management Council, April 6, 2006.

Conclusions

20. The Council's management of fisheries is moving in the direction that is at the core of the AFA which provides property rights or quasi-property to pollock harvests. Initially, the head and gut sector viewed Amendment 80 as a move to create a system for nonpollock groundfish that mirrored the system that the AFA created for the pollock fishery. However, providing greater access and the potential for ever greater inroads for AFA sector fleets into non-AFA businesses will result in a race-to-the-Council for continuing regulatory favors and fixes of prior favors. Given that the Council can direct the AFA sector into head and gut sector fisheries *but not vice versa*, in the race-to-the-Council, the head and gut sector has an inherent disadvantage.

21. Last year, it appeared that the Council understood this too. In May 2005, in its statement regarding Amendment 79, the Council wrote that the AFA caused additional burdens on the head and gut fleet. In addition, the Council indicated that the AFA required it to protect the non-AFA sector from spillover effects created by the AFA. The AFA requires that participation of the AFA sector into non-pollock groundfish should be limited, not expanded. That in one year, the Council has backtracked on this issue, demonstrates the non-AFA trawl catcher-processor sector's comparative disadvantage relative to the AFA sector in dealing with the Council.

22. The only way out of this regulatory mess is for the Council to follow the original precepts of the AFA that requires the Council to restrict their expansion into non-AFA fisheries.

C-lab Helena Park PT
6.8.06 445p



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June 6, 2006

HAND DELIVERED

North Pacific Fishery Management Council
Lauren Smoker, NOAA Staff Attorney

Re: June 7, 2006 Public Hearing
Amendment 80
Adequacy of Comment Period

Dear Council Members:

We are writing to you on behalf of our client, Fishermen's Finest. Fishermen's Finest is concerned that witnesses representing the H&G Trawl sector at the Council's public hearing on Wednesday, June 7, will not be given a meaningful opportunity for oral testimony as required by law.

The Council's Standard Operating Practices and Procedures (SOPP) state that "individuals will be allowed 3 minutes and organizations 6 minutes" to present oral comments. The Council has interpreted the term "individual" as meaning each individual fishing company or natural person, and the term "organization" to mean fishery or community organizations with multiple membership, such as, e.g., groundfish forum). Given the gravity and severity of the amendment's potential impact, as discussed below, three minutes is a grossly inadequate time frame for an individual (interested company or natural person) to present oral comments.

We have examined applicable legislation, regulations and case law. Based upon our research, the Council is under a clear Congressional mandate to afford interested parties with a meaningful opportunity to provide oral comments. Failure to afford an opportunity that is truly meaningful may result in the invalidation of any action taken by the Council.

Our conclusion is based on the following reasons:

1. The Administrative Procedure Act ("APA"), which governs the North Pacific Fishery Management Council, does not mandate that interested persons in a proposed rule be provided an opportunity for oral presentation. 5 U.S.C. § 553 (c). Instead, it provides that, "the

Portland, OR 503-222-9981 | Salem, OR 503-399-7712 | Bend, OR 541-749-4044
Seattle, WA 206-622-1711 | Vancouver, WA 360-694-7551 | Washington, DC 202-488-4302

SEA/033333/077771/DAO/343909.1

agency shall give interested persons an opportunity to participate in the rule making...with or without opportunity for oral presentation.”

2. When creating the North Pacific Fishery Management Council, however, Congress explicitly provided interested parties a meaningful opportunity to present oral testimony. The Council’s enabling statute, the Magnuson-Stevens Fishery Conservation and Management Act (“Act”), states “Interested persons *shall* be permitted to present *oral or* written statements regarding the matters on the agenda at meeting.” 16 U.S.C. § 1852 (i)(2)(D).

3. In other words, Congress explicitly granted to interested persons the right to present statements to the Council either orally or in writing. Under the Magnuson Act, interested persons, not the Council, decide the manner in which statements will be presented.

4. Congress, in creating the Council, departed from the procedure that generally applies to federal agencies. In making this departure, Congress obviously believed, in the case of Council action, that it is especially important to assure interested parties a meaningful opportunity to present their comments orally.

4. Judicial decisions consistently hold that the opportunity for comment must be *meaningful*. *Idaho Farm Bureau Federation v. Babbitt*, 58 F.3d 1132, 1404 (9th Cir. 1995). An agency action which allows for comment, but fails to provide a *meaningful* opportunity for comments, will fail to meet the requisite procedural standards for agency rulemaking. *Id.* at 1405. *See also Union Pacific Railroad Co. v. Reilly Industries, Inc.*, 215 F.3d 830, 836 (8th Cir. 2000). Comments must be permitted so long as they are meaningful, *i.e.*, helpful in developing the facts, issues and consequences which the Council should consider in making a decision.

5. Because Congress mandated that interested parties be provided the opportunity to present oral statements to the Council, the Council cannot by rule or otherwise – no matter how well intentioned – cut off the right to present comments that are meaningful and helpful to the decision-making process. “When Congress creates a procedure that gives the public a role in deciding important questions of public policy, that procedure may not lightly be sidestepped by administrators.” *Action for Children’s Television v. FCC*, 564 F.2d 458, 472 (D.C. Cir. 1976) citing *P.A. News Corp. v. Hardin*, 440 F.2d 225, 259 n6 (D.C. Cir. 1971).

6. The time limit in the Council’s SOPP is arbitrary and unlawful as applied, to the extent it denies interested persons their statutory right to present meaningful oral comments to the Council.

7. If the Council does not provide interested parties with a meaningful opportunity to provide oral comments, any rule promulgated under this inadequate procedure may be invalid. “Ordinarily when a regulation is not promulgated in compliance with the APA, the regulation is invalid.” *Id.* citing *Western Oil and Gas v. EPA*, 633 F.2d 803, 813 (9th Cir. 1980), *see also*, 5 U.S.C. 706 (2)(D).

The proposed action has potentially devastating consequences for the H&G Trawl sector. Businesses have made large capital investments in vessels, equipment and to develop the skills

North Pacific Fishery Management Council
June 6, 2006
Page 3

of their employees. The proposed action could result in business failures, and the loss of capital investment and employment.

Let's assume that 20 people wish to provide you their oral comments on the effects of the proposed action on the H&G Trawl sector. If you limit each person to only three minutes of oral comment, then the Council will hear at most one hour of comment from the entire H&G Trawl sector. There is no compelling reason why the Council members cannot set aside substantially more time than one hour for the comments of an entire sector, especially when the proposal has such potentially devastating consequences for that sector.

For these reasons, we respectfully request on behalf of our client, Fishermen's Finest, that you allow each interested person to present oral comments so long as those comments are meaningful. You may ask each person to stick to the point and limit their comments to those which will be helpful in making a decision. However, you should not arbitrarily cut off a person's statutory right to make meaningful comment. If you do, Fishermen's Finest will likely seek review of any agency action taken.

Sincerely,

SCHWABE, WILLIAMSON & WYATT, P.C.



Dennis A. Ostgard

DAO:akm

C-lab Wayne Okino PT
6.8.06 455p

June 7, 2006

North Pacific Management Council
605 West 4th, Suite 306
Anchorage, AK 99501-2252

Re: Amendment 80

Dear Council Members,

Thank you for the opportunity to comment on the issue of Amendment 80 and the associated rationalization of the ground fish fishery. My name is Wayne Okino and I am the Sales and Marketing Manger for Hillside Jetty Pelagic, LLC., a company based in Seattle that markets products directly from a number of vessels involved in the Headed & Gutted (H&G) fishery.

Over the past several years, we have built up a successful business by providing quality Frozen at Sea (FAS) H&G products for the domestic and foreign markets. The customers and markets we are currently involved with are very particular on the products received with respect to overall appearance, freshness, and quality. The vessels we are dealing with have consistently produced superior products over the years that meet or exceed our buyers and their buyer's high quality standards.

The catching and processing in a multi-specie fishing industry is one of tailoring each caught specie to the rigorous demands of specific market niches. In the exhibit photos "A" and "B" of Rock Sole with Roe, the frozen blocks from the H&G vessels and the final processed product ready for the consumer is shown. The packing style used is based on many years of experience and assures that the end product will be superior in nature and command the best price. Even before the product is frozen, extreme care is taken in keeping the individual tows small to ensure that the product is not bruised in the catching or the unloading process. Each and every specie caught has its own specific packing and processing requirement.

Failure to adhere to these tried and true methods for handling these various species of product will cause bruising to occur from overly large tows as seen in these Yellow Fin Sole photos (Exhibit C) and the resulting fillets (Exhibit D) that are not up to the quality of the fillets shown in Exhibit E.

Like all businesses, the core of our ongoing existence is linked to the steady supply of products to acquire and the following sale of that product for a profit. I realize that products from the North Pacific Fishery are not infinite in nature and cannot be grown exponentially, but at the same time it does not seem rational to divide up a successful fishery and place products outside of a market that individuals and companies have tried

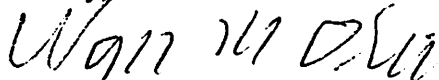
so hard to establish. To place any portion of the current H&G Fishery's allocation in the hands of a sector that has very little experience or interest in these species would almost guarantee that the maximum utilization or financial benefit from each and every pound of fish will not be achieved.

In discussing utilization, one should not confuse maximum utilization with full utilization. In some fisheries, an almost full utilization of a single species is possible through the use of very specialized and large machinery to extract all edible protein from the fish and then process the remainder into fishmeal. These smaller H&G vessels, though unable to achieve the same utilization of species, can achieve the maximum financial return to vessel owners, crew members, and buyers of these varied products.

The current changes being proposed under Amendment 80 do not reflect a full grasp or understanding of the beneficial role of the H&G fleet in the North Pacific Fishery. A great number of individuals are reliant upon this fishery to survive and any reduction to quotas will have a devastating and long lasting effect on the individuals directly involved in this fishery as well as those who have built their business on what is taken from these waters. The movement of quotas from one fishery to another does not guarantee the same economic returns as those seen with the current H&G fleet. If these same species were caught by vessels and processing platforms that are unfamiliar with these multi-species, any reduction in overall quality will have a negative effect on the entire market for those species.

Any transfers of quotas for non-conservatory purposes are of no benefit to the industry, fishery, or consumers. Until a fair and equitable means is available to distribute or rationalize this fishery, any and all efforts to that end should be terminated at this time.

Sincerely,



Wayne Okino
Sales and Marketing Manager



B.



A.



C.



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Li.

NICHIMO INTERNATIONAL INC.

C-lab Wayne Okino PT
6.8.06.455p

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IMPORT-EXPORT
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FOOD PROCESSING MACHINES

May 31, 2006

North Pacific Fishery Management Council
605 West 4th, Suite 306
Anchorage, Alaska 99501-2252

Dear Council members:

As a major buyer of multi-species groundfish produced by the Non-AFA Trawl CP sector (H&G Sector), we wish to provide written comments for your consideration prior to final action on Amendment 80. Nichimo has been actively involved in the purchase of H&G products from the H&G Sector since the 1990's. We have worked diligently with our partner vessels to expand the business with marketing H&G products in Japan both directly and via secondary processing in China. We purchased over 22,000 MT of H&G product comprised of 17 different species in 2005 and are the second largest Japanese importer of H&G Sector product. As such, we serve an important role in the Council's goal of maximizing value and benefits produced from fishery resources.

The H&G Sector has been producing and selling multi-species groundfish from BSAI and GOA areas to Japan and other countries for many years. During this time, the H&G Sector has continued to make strides in achieving greater utilization of fishery resources. This includes efforts to reduce bycatch as well as developing markets for relatively undervalued or underutilized resources. For example, these efforts have lead to maximizing values in relatively low value species such as Arrowtooth Flounder and Yellow Fin Sole as well as establishing markets for other non-roe flatfish.

We can proudly say that we have done our part in this maximization process by continuously working with our H&G Sector partners to create greater value. But value can never be achieved without quality. In fact, we believe the success of species such as Arrowtooth and Yellow Fin Sole in today's market is the direct result of the sector's ceaseless efforts to produce a quality product through properly managing freshness, size sorting, etc., and could not have been achieved by other sectors.

Japan continues to be the primary market for many of the H&G Sector's products. In particular, Rock Sole and Flathead Sole with Roe are prime examples of fish that produce maximum value due to specialized market demand. However, that demand is contingent on strict quality guidelines. This requires maintaining freshness of the fish, manually V-cutting the fish to expose the roe without damaging the sacs, packing the product to strict specifications to enhance appearance and achieving good freezing. This requires skill and expertise as well as the ability to produce at sea. Given the requirements of the market place, we do not believe that other sectors outside of the H&G Sector would have been able to create such value from these

June 5, 2006

Page 2

resources. It is the same ability by the sector to maintain freshness, sorting, packing and freezing quality that has led to the rapid growth in Yellow Fin Sole and Arrowtooth Flounder markets as well as other non-roe flatfish. And our ability to expand or in some cases create markets abroad for multi-species groundfish has been founded on the trust and knowledge of procuring, on a consistent long-term basis, quality groundfish from the H&G Sector.

The H&G Sector differs fundamentally from other sectors in that their target species necessitates the catching of multiple-species at one time. Unlike other sectors that can afford to specialize in the processing of a single species within a certain time frame, the H&G Sector must deal with the challenge of utilizing multiple-species, often within more limiting circumstances. While taking on greater challenge than their counterparts, their efforts ensure greater utilization and value maximization of natural resources that would otherwise remain untapped. One could even make the argument that the H&G Sector excels over other sectors in resource utilization considering the unique challenges to their fishery. Regardless, the H&G Sector is an important participant to the BSAI/GOA fisheries whose products serve a defined marketplace which depends on their output as only they could supply.

As a major buyer and marketer of H&G Sector product, we can appropriately comment on the sector's output value from marketplace perspective. To this end, the current market and economic value produced by this sector can only be preserved through maintaining the high quality standards and longstanding stable supply adhered to by the H&G Sector. We believe the H&G Sector is uniquely suited to this goal and ask that the Council strongly consider the sector's contribution to the worldwide marketplace in arriving at final action on Amendment 80. Whatever alternative is chosen, it should ensure that the H&G Sector's contributions to maximum utilization are not impeded.

Any Amendment 80 outcome that results in less quantity, quality or variety in species of H&G product from the BSAI/GOA area would have devastating impacts on markets dependent on this supply and would lead to a large loss of value to the overall fisheries and all participants throughout the chain, from fishermen, associated fishing industry sectors, supporting communities, to end-consumers without whom the fishery would not exist. We respectfully request that your final decision ensure the H&G Sector be allowed to continue producing at no less than their historical catch levels so they may continue to truly maximize value from finite resources as only the H&G Sector can. Thank you very much for your consideration.

Sincerely,



Toshikazu Omatsuzawa
President



GTI

Golden-Tech International, Inc. • 2461 152nd Ave. N.E. • Redmond, WA U.S.A. 98052-5573 Tel: (425) 869-1461 • Fax: (425) 867-1368

June 5, 2006

North Pacific Fishery Management Council
605 West 4th, Suite 306
Anchorage, Alaska 99501-2252

Dear Council members:

Golden-Tech International, as an exporter, reprocessor and importer of frozen seafood products produced by the H&G vessels since 1991, wishes to provide a written statement for the Council to review before the final decision is made on Amendment 80. We pride ourselves in our partnership with the H&G vessels, which strongly promotes quality, value, and the utilization of resources. Golden-Tech International purchases annually over 20,000 MT of H&G product from the various H&G vessels. The majority of our purchase is produced by the Non-AFA Trawl Catcher Processors which may be negatively impacted by the Amendment 80.

In our experience with the Trawl H&G vessels during the past 15 years, they have grown to become a reliable source providing high quality product. This was not an easy process; through teamwork with the buyers/exporters/distributors of the H&G product, they learned to adopt the market's needs and find ways to increase profitability in the market by reducing bycatch and creating markets for undervalued resources.

We have supplied Japan, China and Korea with products from the H&G vessels for many years. Our export to these specialized markets is contingent on strict quality guidelines and specifications on catching, freezing, processing, preserving freshness, cutting, packing, ability to produce at sea and the ability to utilize multi-species at once. These are specialized skills and require a high level of expertise and knowledge in order to maximize the value of the natural resources. We do not believe such high standards could be achieved by other sectors. Relationships are an important factor, and throughout the many years, the H&G vessels have managed to build a strong foundation with the market worldwide, which has come to highly depend on the sector to provide species at a superior quality.

The final actions of the Amendment 80 will have a great impact not only to the fishermen, but also to all parties involved globally, including the end users - the consumers all over the world. For this reason, we implore that the Council will make its decision to allow the H&G sector to maintain the current species, quantity and quality to the marketplace. Thank you very much for your time.

Sincerely yours,


T. K. Kim
President

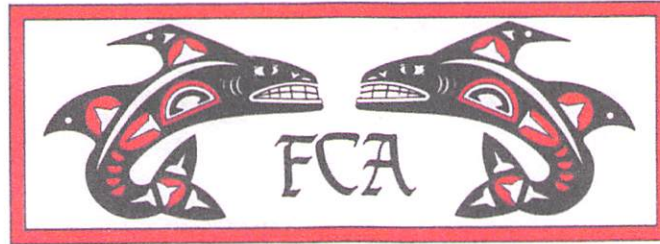
C-1 Bill Orr PT
6-9-06 8:50a

Economics of Halibut Reallocation

	Price per mt	Halibut Bycatch Rate/mt table 3-47	Target Species/mt halibut	Target Species Retention Rate	Target Species Retained	Target Species Recovery	Target Species Product mt	Target Species Product Value
Halibut	\$8,816							\$8,816
Cod	\$3,306	0.0142	70	1.00	70	0.65	46	\$151,331
Yellowfin Sole	\$1,800	0.0074	135	0.85	115	0.65	75	\$134,392

Prepared by Bill Orr

Cl Mike Szymanski
6-9-06 9:03a



June 7, 2006

Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W. 4th Ave., Suite 306
Anchorage, Alaska 99501

Re: Amendment 80 to the BSAI Groundfish FMP Item C-1

Dear Chairwoman Madsen:

I submit these comments on behalf of The Fishing Company of Alaska Inc (FCA) in relation to certain aspects of Amendment 80 preliminary preferred alternatives of April 7th, to the BSAI Groundfish Fishery Management Plan ("FMP").

FCA has owned and operated six non-AFA catcher processor vessels for the past 16 years that are part of the head and gut trawl fleet, the focus of Amendment 80. Our vessels are each approximately 220 feet long and although not the largest vessels in the Head & Gut fleet, they are considered large and are capable of fishing each of the various fisheries despite the extreme weather conditions that preclude smaller vessels from operating in some areas. FCA's vessels operate with a crew of 49 and due to the operational cost and the relatively low value of the target species; we are compelled to operate our fishing and processing operations 24 hours per day as efficient as possible.

It is significant to note that the problem statement for this action addresses the need to **reduce bycatch and improve retention and utilization** of groundfish harvested by catcher/processor trawl vessels in the Bering Sea and Aleutian Island management area (BSAI) that are not listed American Fisheries Act (AFA) catcher /processors. The problem statement doesn't appear to support the significant reallocation of the already fully utilized H&G species.

FCA has been an active participant in the development of both Amendment 80 and its companion Amendment 79, since its inception back in October of 2002. Throughout the development of these amendments FCA has always believed that it could meet or exceed the stated objectives of the proposed programs without being significantly impacted. FCA had hoped to see significant benefits derived from the programs when finally adopted and implemented by NMFS. Unfortunately it appears that the preliminary preferred alternatives (PPA) being considered by the council will result in significant negative impacts on FCA.

These negative impacts result from the following:

- A 2.5% reallocation of FCA traditional target species
- Additional reallocation of 12.5% to 15% Yellowfin sole
- 10% reallocation of AI POP and Mackerel
- PSC reallocations and reductions

Quantifying the financial and operational impacts of these actions is almost impossible to determine at this time from the analysis. We are confident, however, that the negative financial impact to FCA alone will be millions of dollars per year, just from the reallocation of target species.

In addition to the above, the effects and the costs of the anticipated management, monitoring and enforcement (MME) on our vessels will be staggering.

Amendment 80 by reference incorporates all the Amendment 79 MME provisions and adds a few of its own. The following comments are made in reference to those provisions provided for in the May 5th analysis starting on page 271.

- Prohibition from having more than one operational line
- Observer viewing of all activities inside the holding bin
- Prohibition of unsorted fish on deck
- Documentation of flow of fish within the vessel's factory
- Sample station space requirements for 10 baskets

Prohibition on more than one operational line

FCA has historically and now currently meets or exceeds the bycatch and utilization standards set forth in companion Amendment 79, by maintaining highly efficient and productive processing factories that utilize two processing lines out of the live tank.

The Amendment 80 language is for all practical purposes the same operable wording as found in the Amendment 79 rule making that indicates observer sampling will be at a single point along the conveyor of unsorted fish. Until publication of the Amendment 79 rule and now MME language in the May 5th analysis, we had the understanding vessel owners could install two flow scales so as not to impede the flow of fish out of the fish bin. The rule limiting a vessel to one flow scale and the resulting reduction in productivity and financial impact was never fully analyzed during the council process. Altering the existing fish bins to allow for a single conveyor which would allow the observer to sample all catch from a single point along the conveyor is not a viable option for our vessels. We can not simply bring the existing conveyors forward to a single point to allow for sampling because the sorting bins and heading tables that are in the way. This provision results in an estimated \$800,000 per vessel expense above and beyond what will be incurred by the reduced production.

When FCA meets 100% of the stated objectives and bycatch standards, being forced to expend millions of dollars to comply with these MME provisions that bring about no tangible benefit (COSTS VS BENEFITS) to our company, the groundfish fishery, or the Nation is a violation of National Standards 7 and 9.

The COSTS VS BENEFITS language contained in National Standard 9 and the legislative congressional record by Representative Don Young (Congressional Record - House, September 27, 1996) gives meaning to the definition of "PRACTICABILITY." We feel that you must admit that the extreme costs and negligible (if any) benefits don't justify the regulations as proposed. They simply don't meet the red face test established in the act and the Congressional Record.

The MAGNUSON-STEVENSON ACT'S MANDATE TO REDUCE BYCATCH contains National Standard 9 which requires that bycatch be reduced "to the extent practicable." The implementing regulations explain that bycatch is a concern because of unobserved mortality and/or because it may pre-empt other uses of the resource. Neither of these circumstances applies in the BSAI flatfish fisheries, where all removals are accounted for and no one else targets the discarded species. The exact citation is in 50 CFR Part 600, Subpart D, §600.350 (b): *"Bycatch can, in two ways, impede efforts to protect marine ecosystems and achieve sustainable fisheries and the full benefits they can provide to the Nation. First, bycatch can increase substantially the uncertainty concerning total fishing-related mortality, which makes it more difficult to assess the status of stocks, to set the appropriate OY and define overfishing levels, and to ensure that OYs are attained and overfishing levels are not exceeded. Second, bycatch may also preclude other more productive uses of fishery resources."*

In Representative Don Young's Congressional Record (House, September 27, 1996) he states: *"In order to avoid confusion on the part of those affected by these provisions – including the National Marine Fisheries Service, the regional councils, and the seafood industry – I will take this opportunity to clarify in legislative history the intent of these parts of the bill... Section 106 of S. 39 establishes a new national standard regarding bycatch... The use of the term 'to the extent practicable' was chosen deliberately by both the Senate and the House. Both bodies recognized that bycatch can occur in any fishery, and that complete avoidance of mortality is impossible. Councils should make reasonable efforts in their management plans to prevent bycatch and minimize its mortality. However, it is not the intent of the Congress that the councils ban a type of fishing gear or a type of fishing in order to comply with this standard. 'Practicable' requires an analysis of the cost of imposing a management action; the Congress does not intend that this provision will be used to allocate among fishing gear groups, nor to impose costs on fishermen and processors that cannot reasonably be met."* (emphasis added.)

This MME provision not only results in significant costs, but will also reduce production and decrease bycatch utilization. This is counter to the intent of National Standard 9.

Observer viewing of all activates inside the holding bin

This requirement coupled with the proposed Amendment 79 regulation Section 679.27(j) (iii) Observer Sampling Station requiring that the observer be able to sample all catch from a single point along the conveyor of unsorted catch will have a significant cost impact.

It is almost impossible to accomplish both of these requirements from a single point in the factory without employing some form of video monitoring. We can't simply add glass panels to the tanks to allow viewing of the inside of tanks. To our knowledge the video monitoring option is not viable at this time because the legal questions related to ownership, care, custody and control issues. There are still legal issues related to the permissible use of the confidential information contained on the recordings by third parties.

It is likely the proposed MME provisions may actually force our company to increase bycatch and reduce utilization downward to the levels established by the rule, where we currently exceed the standards. *We will likely increase discards down to the standards while we high grade the more valuable size fish to maximize profit to offset the reduced production.*

We would recommend this provision be modified to allow for multiple scales or at least language directing NMFS to add multiple scale sampling procedures to the observer program. The combined weight measured on multiple scales could be added together to determine the total gross haul weight and a random sample from lines could be used for species composition. Taking a composition sample from both sides of a bin should actually improve the reliability and accuracy of the stratified sample, because it would account for any shift of composition within the tank. We feel the redundancy in scales not only helps maintain production, but also provide backup if one scale failed during a fishing trip. If we are unable to form or are forced to fish outside of the cooperative system FCA will still be in a race for fish under Amendment 80. The loss of a scale during the fishery could be devastating. If the worry is watching both scales simultaneously, video cameras or additional observers could be employed.

Prohibition of unsorted fish on deck

This provision that prohibits unsorted fish from being on deck without being in the cod end, coupled with proposed Amendment 79 regulation Section 679.7(m) (5) which makes it unlawful to combine the catch from two or more hauls, creates significant operational problems which will slow production and force FCA's vessels to fish at times when bycatch rates are higher and employ practices that reduce the marketability of our catch, increasing discards.

This combined provision would prohibit FCA vessels from deploying a net until the cod end is completely empty and likewise prohibit bringing onboard our vessel an additional catch of fish until the complete prior nets fish had cleared the fish bin and passed over the scale. If this rule is implemented as written we will likely be forced to fish while processing and retain the full net off bottom on short wires behind the vessel to increase efficiency of fishing operations.

The effect of fishing in this manner is four fold. First it forces you to hold a cod end on deck until it is completely empty. This means that the net cannot be redeployed during those hours when the fishery is able to cleanly take target species such as Atka mackerel and yellowfin sole. Rather, to maintain harvests and feed its plants, these boats will have to fish during periods with higher bycatch. Second the combined procedure drastically reduces the quality of fish in the net being towed on short wires, which will increase discards. Third, it would create a safety problem related to stability of the vessel when towing a large full net astern of the vessel especially when operating in close proximity to other vessels. Fourth, it decreases the production rate by at least 30 percent.

Documentation of flow of fish within the vessels factory

Given the absolutely inflexible nature of the proposed MME requirements, the documentation requirement appears to be an unwarranted, far reaching and cumbersome requirement that provides no utility other than the bland statement in the analysis that, "These descriptions will assist observers in assessing sampling procedures, and identifying potential violation."

If this sort of information is collected, it can and should be used to provide for more flexible MME requirements. For instance, this information should provide a basis for sampling multiple lines, which would reduce compliance costs substantially. If this documentation is going to be done, why not allow the documentation to establish an approved observer sampling procedure for multiple scales. In other words, it is reasonable to expect that if the only difference between the single sampling method and the multiple sampling of scales is the "established observer sampling procedure" employed by the observer program, why can't this incorporate a multiple sampling station procedure as a part of the NMFS approved operational plan.

In addition, we are concerned about the security of the information provided? Will this proprietary information be kept confidential once produced?

What is meant by ... identifying potential violations"? How would this be possible, and is this an appropriate goal of an observer program?

The testing of scales portion of this requirement is justified, and we have no problem with it.

Sample station space requirements for 10 baskets

The analysis indicated that NMFS will only approve observer sampling stations that could store 10 observer samples. It further notes that "Depending on the vessel, sample station space requirements could be insufficient to store basket samples".

So does mean a vessel must meet this requirement or not fish? What is the financial impact on vessels to make modifications or changes to the factory to meet this requirement? Has feasibility study been made to test if it's a practical requirement on all vessels?

None of these questions were addressed in the analysis.

FCA's vessels high production rate enables our vessels to **reduce bycatch and improve utilization**. This was pointed out in the council analysis when you see the difference in production by different sized vessels. It is estimated that the financial impact to our vessels over the duration of the fishing year will be substantial.

We are afraid that while our vessels already exceed the proposed GRS we will be forced to partially mitigate Amendment 80 impact through "high grading." From a practical perspective vessels would be forced to discard the small less valuable fish and retain the larger more profitable fish to maintain a profitable operation. These issues have not been taken into account by the Council, even though FCA pointed out these facts in its comments on Amendment 79. This suggests that the Council is ignoring an important aspect of the problem, in violation of the law, and the MME measures are not rationally related to the purpose of the action.

Furthermore, this MME imposed production loss is estimated to produce 40 more fishing days per year to harvest the same quotas. For FCA this translates into a significant increase in overhead. Fuel costs will increase by nearly \$1.7 million. We will be paying additional crew and observer's costs, adding hours on machinery, etc.

This provision adds up to an estimated additional \$5 million in annual operational costs which are not recoverable through any discernable element of this action.

Component 8 requires that three separate entities (3 of 9) and at least 30% (8) of the eligible vessels will be required to form a cooperative.

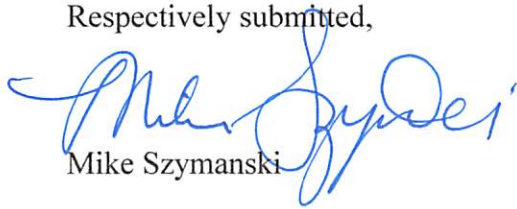
With the estimated number of eligible vessels being 26, it would mean at least 8 vessels would be required to form a cooperative incorporating at least three separate entities. At first blush this may seem practical and reasonable until you consider the combined effects of a small number of potential cooperatives and the potential that certain cooperatives may impose burdensome standards on cooperative participation. In fact, as certain rollovers in the Amendment are targeted for cooperative participants, there may be an unfair financial interest in excluding certain fishery participants and forcing them to fish outside the cooperative structure. We would thus suggest that one or two separate entities and 15% of the vessels be allowed to form a cooperative to preclude the potential for this kind of unfair business practices. After all, the intent is to encourage cooperative formation and not create obstacles to their formation.

Component 11 determines excessive share limits.

Sub Op 11.3 The vessel harvest limit of 10% will prohibit or severely limit the stacking of harvest opportunities on the vary vessels that could and should effectively use the quota from smaller vessels. This prohibition should be eliminated all together. It simply makes no sense to establish this limitation.

In conclusion and despite the efforts by many to develop a good rationalized fishery for the Non AFA H&G sector that would reduce bycatch, increase retention and utilization, we find that this proposed Amendment 80 and the PPA is inadequate and should be set aside in favor of status quo.

Respectively submitted,



Mike Szymanski

C-1 Julie Bonney (PT)
6-9-06 10:30a

Groundfish Data Bank

Alaska

PH: 907-486-3033 FAX: 907-486-3461 P.O. BOX 788 - KODIAK, AK. 99615

Julie Bonney, Executive Director jbonney@gci.net

Jennifer Washburn, Fisheries Analyst agdb@gci.net

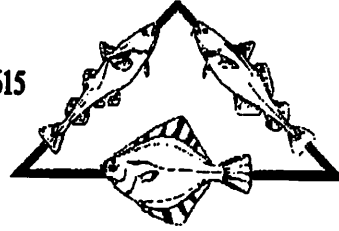


Table 1. Number of distinct trawl CP vessels that participated in the directed GOA flatfish fisheries from 1998 to 2005.

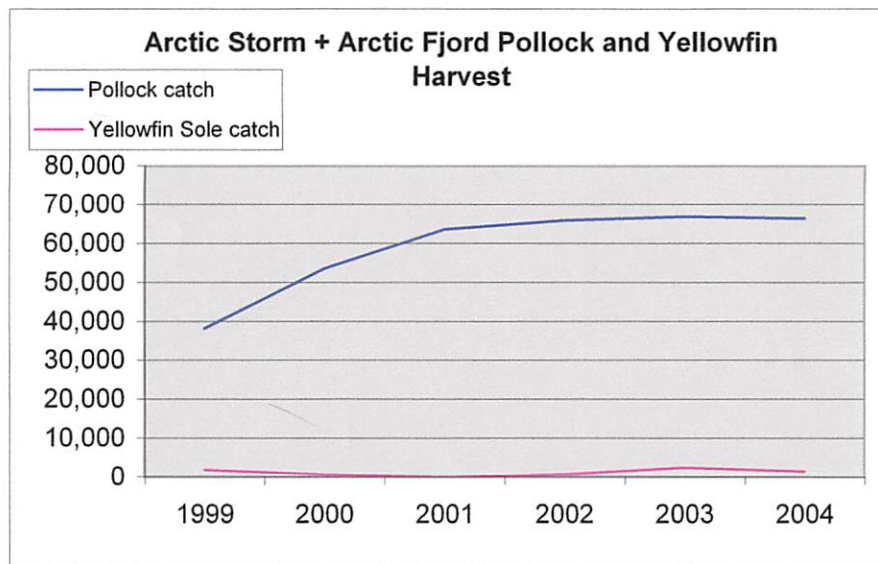
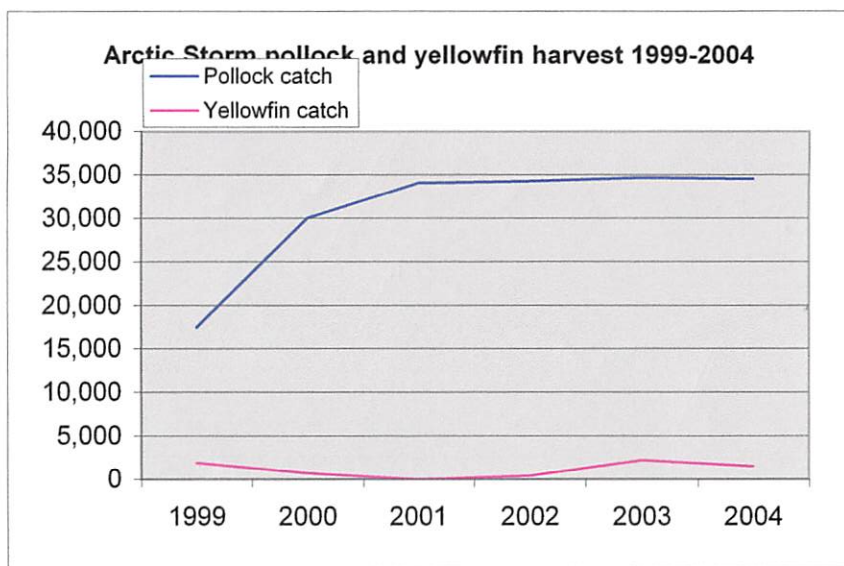
Year	Trawl CP Participation
1998	14
1999	11
2000	11
2001	11
2002	9
2003	16
2004	8
2005	9
Total	89
Average	11

Data Source: NMFS blend and catch accounting system.

F/T Arctic Storm and F/T Arctic Fjord pollock and yellowfin harvest, 1999-2004*

Year	Arctic Storm		Arctic Fjord		Total	
	Pollock	Yellowfin Sole	Pollock	Yellowfin Sole	Pollock	Yellowfin Sole
1999	17,533	1,948	20,784	0	38,317	1,948
2000	30,069	718	23,596	0	53,665	718
2001	34,087	0	29,630	0	63,717	0
2002	34,329	429	31,643	371	65,972	800
2003	34,726	2,233	32,215	320	66,941	2,553
2004	34,575	1,525	31,932	18	66,507	1,543

*From Pollock Conservation Cooperative annual reports, 1999 - 2004



Cl Lori Swanson (PT)
Groundfish Forum
6.9.06 11:07a

Addendum to Best Use Coalition white paper on allocations under Amendment 80: effect of preliminary preferred alternative on yellowfin sole allocations compared to actual harvest, 2002 to 2005

Year	TAC (mt)	ITAC (mt)*	H&G allocation under PPA (mt)	H&G actual catch (mt)	H&G % of TAC	Difference actual - allocated (mt)	Difference as percent of catch
2005	90,686	77,537	63,968	78,890	87%	-14,922	-19%
2004	86,075	73,594	60,715	63,117	73%	-2,402	-4%
2003	83,750	71,606	59,075	70,021	84%	-10,946	-16%
2002	86,000	73,530	60,662	69,522	81%	-8,860	-13%
Average percent of TAC					81%		

*Assuming 10% CDQ and a 5% ICA for the fixed gear and trawl limited access fisheries

Source: H&G catch statistics 1995 to 2005, Mary Furuness, NMFS,

with total catch from NMFS Alaska Region website; Table ES-12, pg xvi Amendment 80 EIS (May 5, 2006).

CI Lori Swanson (PT)
Groundfish For.
6-9-06 11:07a

2000 - 2004 Yellowfin Catch

	Retained	Total
Pg 94 Table 3.32 (H&G)	48,683	60,170
Pg 103 Table 3.34 (Non-H&G)	4,405	6,598
	53,088	66,768

	% Retention	% of Retained Catch	% of Total Catch
H&G	80.91%	91.70%	90.12%
Non H&G (Limited Access)	66.76%	8.30%	9.88%

Best Use Coalition
9-Jun-06

Draft

Amendment 80 – Council Motion (Final Action) – June 10, 2006

The Council adopts the following components and options for analysis as a Preferred Alternative:

Issue 1: Sector Allocation of BSAI Non-Pollock Groundfish to the Non-AFA Trawl Catcher Processor Sector and CDQ Program

Component 1 Allocate only the following primary target species to the Non-AFA Trawl CP sector: yellowfin sole, rock sole, flathead sole, Atka mackerel, and Aleutian Islands Pacific Ocean perch. Species could be added or deleted through an amendment process.

Component 2 CDQ allocations for each primary target (Component 1) species in the program shall be removed from the TACs prior to allocation to sectors at percentage amounts equal to 10%

For Amendment 80 species, the reserves would be set at 10% of the TAC and all would be allocated to the CDQ reserves.

CDQ allocations for secondary groundfish species (except Pacific cod) taken incidental in the primary trawl target fisheries shall be removed from the TACs prior to allocation to sectors at percentage amounts equal to 10%.

Component 3 Identifies the sector allocation calculation (after deductions for CDQs, ICAs, and other existing fishery allocations, i.e., Atka mackerel jig) for the Non-AFA Trawl CP sector. The remaining portion of the primary species TAC included in this program would be allocated to the BSAI trawl limited access fishery.

For purpose of allocation to the Non-AFA Trawl CP sector, each primary species allocation is:

Yellowfin Sole	<u>ITAC (mt)</u>	<u>H&G/Limited Access</u>
	<= 87,500	93% / 7%
	87,500 – 95,000	87.5% / 12.5%
	95,000 – 102,500	82% / 18%
	102,500 – 110,000	76.5% / 23.5%
	110,000 – 117,500	71% / 29%
	117,500 – 125,000	65.5% / 34.5%
	>125,000	60% / 40%

AFA Yellowfin sole sideboards are removed when the Yellowfin sole ITAC is 125,000 mt or greater.

Rock Sole 100%

Flathead Sole 100%

Atka Mackerel 98% in 541/EBS and 542, in the first year of the program, decreasing by 2% increments over 4-yr period to 90%. 100% in 543.

AI POP 95% in 541 and 542 in the first year of the program, decreasing to 90% in the second year of the program. 98% in 543.

Allocations would be managed as a hard cap for the H&G sector, and for the Non H&G sector, an ICA would be taken off the top to accommodate incidental bycatch by the non-H&G sector. AFA vessel sideboard amounts will be determined after CDQ reserve amounts are deducted from TAC.

Legal landing means, for the purpose of initial allocation of QS, fish harvested during the qualifying years specified and landed in compliance with state and federal permitting, landing, and reporting regulations in effect at the time of the landing. Legal landings exclude any test fishing, fishing conducted under an experimental, exploratory, or scientific activity permit or the fishery conducted under the Western Alaska CDQ program.

Target species, PSC, and ICA rollover: any unharvested portion of the Amendment 80 target species or unharvested portion of PSC or ICA in the limited access fishery that is projected to remain unused shall be rolled over to vessels that are members of Amendment 80 cooperatives.

Any roll over of halibut PSC to the Non-AFA Trawl CP sector shall be discounted by 5%. That is, if 100 mt of halibut is available for roll over, then 95 mt of halibut would be re-allocated to the Non-AFA Trawl CP sector. Once the initial allocation has been determined, the Non-AFA Trawl CP sector may re-allocate the PSC among the target species.

NMFS shall perform a review on or before May 1 and August 1 each year, and at such other times after August 1 as it deems appropriate. In making its determination, NMFS shall consider current catch and PSC usage, historic catch and PSC usage, harvest capacity and stated harvest intent, as well as other relevant information.

Component 4 Elements of Component 4 were integrated in Component 3 with selection of percentages.

Issue 2: PSC Allowance for the Non-AFA Trawl Catcher Processor Sector and the CDQ Program

Component 5 Increase PSQ reserves allocated to the CDQ program (except herring, halibut, and Chinook salmon) to levels proportional to the CDQ allocation of primary species under Component 2.

Component 6 PSC allowances of halibut and crab to the Non-AFA Trawl CP Sector. The halibut and crab PSC levels shall be reviewed by the Council during the fifth year of the program and adjusted as necessary (through the normal amendment process).

Halibut PSC

BSAI Trawl limited access sector: 875 mt

Non-AFA Trawl CP sector: 2525 mt initial allocation with a 50mt reduction in the second, third, fourth and fifth year after program implementation. In the sixth year and subsequent years, the allocation would be 2325mt unless adjusted. In the third year only, the 50 mt reduction would be reallocation to the CDQ/PSQ reserve program.

Crab PSC

Allocation of crab PSC to the non-AFA Trawl CP sector shall be based on the % of historic usage of crab PSC in all groundfish fisheries from 2000-2002 for red king crab (62.48%) and from 1995 to 2002 for opilio (61.44%) and bairdi (zone 1: 52.64% and zone 2: 29.59%) (resulting percentages are reported in the far right column in Table 3-43 May 5, 2006 EA/RIR/IRFA). The initial allocation will be reduced by 5% per year starting in the second year until the Non-AFA Trawl CP sector is at 80% of their initial allocation. Trawl limited access sectors shall receive an allowance of the sum of the combined AFA CV/CP sideboards. (Note – basing usage on a % of annual PSC limits, results in a calculation that is crab abundance based.)

If Amendment 85 is implemented prior to Amendment 80, the Non-AFA Trawl CP sector would receive an allocation of PSC in accordance with Amendment 85. Upon implementation of Amendment 80, no allocation of PSC will be made to the Non-AFA Trawl CP sector under Amendment 85.

Issue 3: Cooperative Development for the Non-AFA Trawl Catcher Processor Sector

Component 7 The BSAI non-pollock groundfish CP buyback legislation establishes the vessels eligible to participate as a catcher processor in the BSAI non-pollock groundfish fisheries. The members of the Non-AFA Trawl Catcher Processor subsector are defined as the owner of each trawl CP:

- a.) that is not an AFA Trawl CP
- b.) to whom a valid LLP license that is endorsed for BSAI Trawl CP fishing activity has been issued; and
- c.) that the Secretary determines who has harvested with trawl gear and processed not less than a total of 150 mt of non-pollock groundfish during the period January 1, 1997 – through December 31, 2002.

This definition establishes the vessels that can participate in the Amendment 80 program.

Restrict LLPs that are used for eligibility in Amendment 80 (either to be included in the Non-AFA CP sector or to be used in Amendment 80 cooperative formation) from being used outside of the Amendment 80 sector, except that any eligible vessel which is authorized to fish Pollock under the AFA would still be authorized to fish under the statute.

Only history from eligible vessels will be credited in the program. The catch history credited to an eligible vessel will be catch history of that vessel. The catch history credited to an eligible vessel for the first license assigned to that vessel will only be the catch history of the eligible vessel. In the event of the actual total loss or constructive total loss of a vessel, or permanent inability of a vessel to be used in the Program as documented by the vessel owner and NMFS either before or after the qualifying period, the vessel owner may transfer the catch history of the vessel that meets the non-AFA and catch criteria of Component 7 from that vessel to the LLP license that was originally issued for that vessel. Any such license assigned to an eligible vessel will be credited with the catch history during the Component 10 period of the eligible non-AFA trawl CP from which the license arose, except that no history can be assigned to more than one vessel at a given time. Once the catch history has been assigned to the license, that license must be used on an eligible Non-AFA Trawl CP vessel.

Component 8 Component 8 establishes the number of vessels required before the cooperative is allowed to operate. No later than November 1 of each year, an application must be filed with NOAA fisheries by the cooperative with a membership list for the year.

In order to operate as a cooperative, membership must be comprised of at least three separate entities (using the 10% AFA rule) and must be:

- Option 8.2 At least 30% of the eligible vessels, including LLP licenses with associated catch history for an eligible vessel that has been transferred to that LLP license under Component 7.

Component 9 Determines the method of allocation of PSC limits and groundfish between the cooperative and eligible Non-AFA Trawl CP participants who elect not to be in a cooperative.

- Option 9.1 Catch history is based on total catch

Assign PSC within the sector to allocated target species and Pacific cod based on the average use of PSC in each target species from the years 1998-2004, expressed as a percent of the total PSC allocation to the sector.

Each eligible vessel will then receive an allocation percent of PSC for catch of allocated target species and Pacific cod equal to its proportion of the catch history of the allocated fishery.

This PSC allocation will not change from year to year (i.e., will not fluctuate annually with the TAC).

Component 10 Determines which years of catch history are used for establishing cooperative allocations. The allocation of groundfish between the cooperative and those eligible participants who elect not to join a cooperative is proportional to the catch history of groundfish of the eligible license holders included in each pool. Applicable PSC limits are allocated between the cooperative and non-cooperative pool in same proportions as those species that have associated PSC limits. The catch history as determined by the option selected under this component would be indicated on the Sector Eligibility Endorsement, which indicates the license holder's membership in the Non-AFA Trawl CP sector. The aggregate histories would then be applied to the cooperative and the non-cooperative pool.

Notwithstanding the qualifying history of the vessel, a qualified vessel that has not fished after 1997 will receive an allocation under the program of no less than:

0.5 percent of the yellowfin sole catch history

0.5 percent of the rock sole catch history

0.1 percent of the flathead sole catch history

For all other qualified vessels, the allocation will be based on 1998 – 2004, but each vessel drops its two lowest annual catches by species during this period.

For AI POP, all vessels will receive their allocation equally in 541, 542 and 543.

Each vessel will receive its historic share of the sector's Atka mackerel allocation based on component 10 (all areas combined). Vessels less than 200' in length having less than 2% of the sector's Atka mackerel history ("Non-mackerel vessels") will receive their allocation distributed by area according to each individual vessel's catch distribution during the component 10 years. The remainder of EBS/541, 542 and 543 sector allocation after "Non-mackerel vessels" have been removed will be allocated to vessels that are greater than 200' in length or have more than 2% of the sector's Atka mackerel allocation ("mackerel vessels"). Mackerel vessels will receive their respective percentages (adjusted to 100%) equally in each area.

In the event that the Non-AFA Trawl CP sector receives an exclusive allocation of Pacific cod, that allocation will be divided between cooperatives and the sector's limited access fishery in the same manner (and based on the same history) as the division of the other allocated species within the sector.

Component 11 Determines if excessive share limits are established in the Non-AFA Trawl CP sector.

Option 11.2 Consolidation in the Non-AFA Trawl Catcher Processor sector is limited such that no single person (using the individual and collective rule) can hold catch history more than a fixed percentage of the overall sector apportionment history. The cap would be applied on an aggregate basis at 30%, of the sector's allocation).

Suboption 11.2.2 Persons (individuals or entities) that exceed the cap in the initial allocation would be grandfathered based on catch history held at the time of final Council action.

Option 11.3 No vessel shall harvest more than 20% of the entire Non-AFA Trawl CP sector allocation.

Suboption 11.3.1 Vessels that are initially allocated a percentage of the sector allocation that is greater than the vessel use cap shall be grandfathered at

their initial allocation based on catch history held at the time of final Council action.

If a buyback program proceeds, any person or vessel that exceeds a cap due to the buyback removing catch history would be grandfathered in at that new level.

Component 12 Establishes measures to maintain relative amounts of non-allocated species until such time that fisheries for these species are further rationalized in a manner that would supersede a need for these sideboard provisions. Sideboards shall apply to eligible licenses and associated vessels from which the catch history arose.

Option 12.3 In the BSAI, Pacific cod will be managed under existing sector apportionments, with rollovers, until new Pacific cod sector allocations are implemented. Pacific cod will be allocated between the cooperative and non-cooperative sub-sectors based on the same formula as Component 10.

In the BSAI, management of unallocated species should remain status quo.

Option 12.4 GOA sideboard provisions

Sideboard provisions for Amendment 80 qualified non-AFA trawl CP sector with valid GOA LLP with appropriate area endorsements are as follows:

Suboption 12.4.1 Vessels associated with LLPs that have Gulf weekly participation of greater than 10 weeks in the flatfish fishery during the years defined in Component 10 will be eligible to participate in the GOA flatfish fisheries.

Suboption 12.4.2 Non-AFA trawl CP vessel(s) that fished 80% of their weeks in the GOA flatfish fisheries from January 1, 2000 through December 31, 2003 will be exempt from GOA halibut sideboards in the GOA. Vessel(s) exempted from Amendment 80 halibut sideboards in the GOA and may participate fully in the GOA open-access flatfish fisheries. Vessel(s) will be prohibited from directed fishing for all other sideboarded species in the GOA (rockfish, Pacific cod, and Pollock). The history of this vessel will not contribute to the Non-AFA Trawl CP sideboards and its catch will not be subtracted from these sideboards.

Suboption 12.4.2.1 Vessel(s) exempted from Amendment 80 GOA sideboards may lease their BSAI Amendment 80 history.

Suboption 12.4.3 Gulf-wide halibut sideboards for the deep and shallow complex fisheries would be established by season based on the actual usage of the Amendment 80 qualified non-AFA trawl sector for the years defined in Component 10. That calculation results in the following percentages, less the percentage attributed to GOA PSC sideboard exempt vessel:

GOA Halibut PSC Sideboard Limits for Non-AFA Trawl CP Sector (as percent of GOA total sideboard limit, ie, 2,000mt in 2006)						
	Season 1	Season 2	Season 3	Season 4	Season 5	Total
Deep Water Trawl Fisheries	2.84%	11.92%	11.60%	n/a	Combined w/shallow water	26.36
Shallow Water Trawl	0.85%	1.92%	2.06%	1.73%	5.15%	11.71%

Fisheries						
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Note: The F/V Golden Fleece data still needs to be deducted from the above table.

- Suboption 12.4.4 GOA Pollock, Pacific cod, and directed rockfish species (POP, NR and PSR) sideboards for the Amendment 80 qualified non-AFA trawl CP sector would be established using the years defined in Component 10, where catch is defined as retained catch by Gulf area as a percentage of total retained catch of all sectors in that area.
- Suboption 12.4.5 While the CGOA rockfish demonstration program is in place, the CGOA rockfish demonstration program takes precedence. The demonstration program would remove the need for catch sideboards for the CGOA directed rockfish species. The Amendment 80 CPs deep halibut mortality sideboard cap for the 3rd seasonal allowance (in July) will be revised by the amount of the deep complex halibut mortality allocated to the rockfish demonstration program for the Amendment 80 qualified non-AFA trawl CP sector while the demonstration program is in effect.
- Suboption 12.4.6 Sideboards apply to vessels (actual boats) and LLPs used to generate harvest shares that resulted in allocating a percentage of the Amendment 80 species TACs to the non-AFA trawl CP sector. The intent is to prevent double-dipping with respect to GOA history related to sideboards.
- Suboption 12.4.7 On completion of a comprehensive rationalization program in the GOA, any sideboards from the BSAI Amendment 80 plan amendment will be superseded by the allocations in the GOA rationalization program.
- Suboption 12.4.8 GOA PSC and groundfish sideboard limits will be established. An aggregate sideboard limit for each sideboarded species will be established for all vessels subject to sideboards

Other Elements of Amendment 80

This section provides additional specifics and elements for the Non-AFA Trawl CP cooperative program. These specifics and elements are common for any cooperative program that might be developed.

- The cooperative program developed in Amendment 80 would not supersede pollock and Pacific cod IR/TU programs.
- The Groundfish Retention Standards (GRS) (Amendment 79) would be applied to the cooperative as an aggregate on an annual basis and on those vessels who did not join a cooperative as individuals.
- Non-AFA Trawl CP sector participants that did not elect to join a cooperative would be subject to all current regulations including all restrictions of the LLP and the GRS if approved.
- All qualified license holders participating in the fisheries of the Non-AFA Trawl CP sector for Amendment 80 species would need to have trawl and catcher processor endorsements with general licenses for BSAI and the additional sector eligibility endorsement. Length limits within the license would also be enforced such that any replacement vessel entering the fishery would not exceed the Maximum Length Overall (MLOA) specified on the license.
- Permanent transfers of an eligible vessel, its associated catch history, and its permit would be allowed. Eligible vessels, their associated catch history, and a sector eligibility endorsement would not be separable or divisible. In the event of the actual total loss or constructive total loss of a vessel, or

permanent inability of a vessel to be used in the Program, catch history would be attached to the license that arose from the vessel and would not be separable or divisible. All transfers must be reported to NOAA fisheries in order to track who owns the sector eligibility permit and harvest privileges of a vessel. The purchaser must be eligible to own a fishing vessel under MarAd regulations or any person who is currently eligible to own a vessel.

- Annual allocations to the cooperative will be transferable among Non-AFA Trawl CP cooperative members. Such transfers will not need NOAA Fisheries approval.
- Annual allocations to the cooperative will be transferable among Non-AFA Trawl CP cooperatives. Inter-cooperative transfers must be approved by NOAA Fisheries.
- Any non-trawl or non-BSAI catches by qualified license holders that are considered part of the Non-AFA Trawl CP sector will not be included in the defined cooperative program. In addition, these non-trawl or non-BSAI catches allocated to the Non-AFA Trawl CP sector would not necessarily be excluded from other rationalization programs.
- Catch history used for allocation and eligibility purposes will be legal and documented catch.
- Disposition of groundfish species not allocated to the Non-AFA Trawl CP sector will not change as a result of the cooperative program developed in Amendment 80.
- Bycatch limits for non-specified species or marine resources would not be established. However, if the Council deems that bycatch is unreasonable, specific regulations to minimize impacts would be considered.
- AFA halibut PSC Sideboard limits will be fixed at the 2006/2007 level. (The intent is to fix the AFA halibut sideboard amounts, in metric tons, at the level listed in the 2006/2007 NMFS reports).
- The allocation of halibut PSC between the AFA trawl CP and trawl CV sector under Amendment 85 will incorporate the reallocation of halibut PSC to the Amendment 80 sector.
- The cooperative(s) would need to show evidence of binding private contracts and remedies for violations of contractual agreements would need to be provided to NOAA Fisheries. The cooperative would need to demonstrate adequate mechanism for monitoring and reporting prohibited species and groundfish catch. Participants in the cooperative would need to agree to abide by all cooperative rules and requirements.
- Specific requirements for reporting, monitoring and enforcement, and observer protocols will be developed in regulations for participants in the Non-AFA Trawl CP sector. These monitoring and enforcement provisions are described in Section 3.3.7 of the April 2006 EA/RIR/IRFA. Revisions to 3.3.7 have been described in March 27, 2006 letter from NMFS to the Council. Modifications to the monitoring and enforcement requirements described in the current version of the EA/RIR/IRFA necessary to accommodate changes in GOA sideboard provisions, or other issues, will be incorporated in the Secretarial review draft of the EA/RIR/IRFA.
- A socioeconomic data collection program as described in section 3.2.12.15 of the May 5, 2006 draft EA/RIR/IRFA for Amendment 80 will be implemented for the non-AFA trawl CP sector. The program will collect economic data from the non-AFA trawl CP sector similar to the types of cost, revenue, ownership, and employment data included in the draft Cost, Earnings and Employment Survey in Appendix 3 of the May 5, 2006, draft EA/RIR/IRFA prepared for Amendment 80. Data will be collected on a periodic basis.

The purpose of the data collection program is to understand the economic effects of the Amendment 80 program on vessels or entities regulated by this action, and to inform future management actions. The data is needed to assess whether Amendment 80 addresses some goals in the problem statement to mitigate, to some degree, the costs associated with bycatch reduction. Data will be used by Council and agency staff, recognizing that confidentiality is of extreme importance.

Economic data collected under this program include employment data by vessel collected to determine the labor amounts and costs for the sector. In addition, revenue and cost data by vessel will be collected to evaluate trends in returns to the sector that may be compared with elements of the Amendment 80 program, such as bycatch reduction measures.

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