

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver *Chris*
Executive Director

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| ESTIMATED TIME 2 HOURS |
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DATE: May 26, 2004

SUBJECT: IR/IU

ACTION REQUIRED

- (a) Receive staff discussion papers on Pacific cod area split, groundfish retention pools, and a multiple cooperative option for Amendment 80b
- (b) Receive Committee report on refining Component 10 (underutilized species threshold) of Amendment 80a and take action as necessary

BACKGROUND

In April 2004, the Council made several modifications to the components and options for Amendment 80. Primary among these changes was clarifying that Amendment 80 is intended to create a license-based program for both sector allocations and the cooperative structure for the non-AFA trawl catcher processor sector. Some other modifications included new options for the <60' pot and H&L, expanded the PSC reduction option so that it could apply to any PSC allocation option included in Amendment 80a, and clarifying the language for the excessive share option (Component 7 of Amendment 80b). A copy of the most recent version of the components and options is attached as Item C-6(a).

In addition, the Council directed staff to prepare three discussion papers for the June meeting. The first paper examines splitting BSAI Pacific cod by subarea. The second paper examines groundfish retention pools as a management tool for the non-AFA trawl catcher processor sector to bridge the implementation gap between Amendment 79 and Amendment 80. The final paper examines multiple cooperatives as an option for Amendment 80b. A copy of these discussion papers are attached as Item C-6(b).

Finally, the Council reconstituted the IR/IU Technical Committee and tasked them with preparing recommendations for revising Component 10 (underutilized species threshold) of Amendment 80a in time for the June 2004 meeting. The IR/IU Committee met in May, and the minutes from the meeting are attached as Item C-6(c).

Amendment 80 Component and Options
April 10, 2004

The Council in December 2003 finalized Amendment 80 components and options for analysis. At the February and April 2004 meetings, the Council made some modifications to the components and options for Amendment 80a and 80b. The Council is scheduled to initial review Amendment 80 in October 2004 and take final action in December 2004.

Components and Options for Amendment 80.a—BSAI Sector Allocations

Issue 1: Sector Allocations of Groundfish in the BSAI

The following is a list of the sectors for purposes of groundfish and PSC apportionment:

| | | | | |
|-------------------|---------------|-------------------|---------------|-----------------|
| Non-AFA Trawl CPs | AFA Trawl CPs | Non-AFA Trawl CVs | AFA Trawl CVs | Longline CPs |
| Pot CPs | Pot CVs | Longline CVs | Jig CVs | <60' H&L/Pot CV |

Component 1 Identifies which species will be included in the sector allocations

Option 1.1 Include all groundfish species except AFA allocated pollock and fixed gear sablefish.

Suboption 1.1.1 Exclude certain species to prevent allocations that are so small that they preclude sectors from harvesting their allocation of species typically taken in directed fisheries. Allocations of species that are excluded would be allocated as they are under status quo, and managed as in the following component.

Option 1.2 Include only the following target species—Pacific cod, yellowfin sole, rock sole, flathead sole, Atka mackerel, Greenland turbot, AI Pacific ocean perch. Species could be added or deleted through an amendment process. Allocations of species that are excluded would be allocated as they are under status quo, and managed as in the following component.

Suboption 1.2.1 Sectors that do not participate in target fisheries for a species in this option would not be allocated sector specific apportionments for that species. These species would be managed as in the following component.

Component 2 Management of non-target species.

Option 2.1 Use the current management system.

Option 2.2 Use ICAs for all non-target species—ICAs would be managed with soft caps

Option 2.3 Use ICAs for all non-target species—ICAs would be managed with hard caps

Component 3 CDQ allocations for each species in the program (except pollock and fixed gear sablefish) shall be removed from the TACs prior to allocation to sectors at percentage amounts equal to one of the following.

Option 3.1 7.5%

Option 3.2 10%

Option 3.3 15%

Option 3.4 20%

Component 4 Identifies the sector allocation calculation (*after deductions for CDQs*). Each of the species selected in Component 1 will be allocated to the sectors.

Option 4.1 Each sector shall be allocated the percentage of the TAC that is equal to the sector's average of the annual harvest percentages,¹ during the years specified in the following component. The sectors harvest is defined as that legal catch, taken by vessels when operating in the mode that defines the sector². These percentages will be calculated based on the method selected in Component 6.

Option 4.2 Each sector allocation of the TAC shall be based on a percentage rather than a set of years. (*The intent of this option is to provide the Council with the ability to select an industry agreed percentage for allocative purposes rather than selecting a set of catch history years.*)

Component 5 Sector Catch History Years

- Option 5.1 1995–1997
 - Suboption 5.1.1 Exclude AFA-9 catch history
- Option 5.2 1995–2002
 - Suboption 5.2.1 Exclude AFA-9 catch history
 - Suboption 5.2.2 Exclude 2001 because of the biological opinion
- Option 5.3 1995–2003
 - Suboption 5.3.1 Exclude AFA-9 catch history
 - Suboption 5.3.2 Exclude 2001 because of the biological opinion
- Option 5.4 1998–2002
 - Suboption 5.4.1 Exclude AFA-9 catch history
 - Suboption 5.4.2 Exclude 2001 because of the biological opinion
- Option 5.5 1998–2003
 - Suboption 5.5.1 Exclude AFA-9 catch history
 - Suboption 5.5.2 Exclude 2001 because of the biological opinion
- Option 5.6 2000-2003
 - Suboption 5.6.1 Exclude 2001 because of the biological opinion

The Council, at the December meeting, requested staff to provide in the analysis for Amendment 80a catch by sector, CPUE, and any other relative data associated with the 2001 Stellar sea lion biological opinion and its impacts on the BSAI groundfish fisheries.

¹ The equation shown describes the allocation for a given sector, species, and year:
where:

x is the sector,
y is the species,
z is the year for which the allocation is to be determined,
n is the year used in the allocation determination (starting with year *N*₁ and ending with year *N*₂),
*C*_{*n,x,y*} is the catch of species *y* by vessels in sector *x* in year *n*,
*TAC*_{*y,z*} is Total Allowable Catch for species *y* in year *z*, and
A(*x,y,z*) is the allocation for a given sector (*x*), species (*y*), and year (*z*).

$$A(x,y,z) = TAC_{y,z} \cdot \frac{\sum_{n=N_1}^{N_2} C_{n,x,y}}{\sum_{x=1}^y \sum_{n=N_1}^{N_2} C_{n,x,y}}$$

² The catch of vessels that meet the sector's definition and were operating in that mode, during the qualifying years, is assigned to the sector. This means that only the portion of a vessel's catch when it was operating in that sector, would count towards the sector's allocation. It also means that a vessel's catch history would be assigned to a sector even if they do not qualify to participate in the sector based on the criteria selected in Issue 4.

Component 6 For purposes of apportionments, annual catch percentages will be defined using one of the following:

- Option 6.1 Total legal catch of the sector over total legal catch by all sectors
- Option 6.2 Retained legal catch of the sector over retained legal catch by all sectors

Component 7 Options for determining Pacific cod allocations

Option 7.1 Pacific cod shall be allocated in the same method used to allocate the other targeted species. This option would supercede all existing apportionments of Pacific cod in the BSAI, including splits among the fixed gear sectors. Pacific cod rollovers between sectors shall administered using regulations at the time of final Council action. Further, Pacific cod rollovers will continue to be hierarchical in nature flowing from the most precise definition of a sector to the next more inclusive definition before unused Pacific cod is reallocated to a different gear type³.

Suboption 7.1.1 The <60' catcher vessels fixed gear (pot and hook-and-line) sector and jig sector combined allocation from TAC (after CDQ apportionment) is to be:

- a. 2%
- b. 3%
- c. 4%

Suboption 7.1.2 Jig sector will receive an allocation from the TAC (after CDQ apportionment).

Suboption 7.1.3

- a. <60' pot and hook-and-line catcher vessel sector will receive an allocation from TAC (after CDQ apportionment).
- b. <60' pot and hook-and-line catcher vessel sector will receive an allocation from the fixed gear sector TAC as is done under existing regulations.

Apportionments to the jig and <60' pot and hook-and-line sectors under Suboption 7.1.2 and 7.1.3 shall not collectively exceed:

- a. 2%
- b. 3%
- c. 4%

³Trawl CP sector (AFA and Non-AFA) Pacific cod quota that is projected to remain unused shall be reallocated to the other trawl CP sector (AFA or Non-AFA). If that trawl CP sector is not able to harvest the rollovers, it would then be reallocated to trawl CV sector (Non-AFA and AFA) proportional to their initial apportionments if both sectors can use it, or disproportionately if one sector appears less likely to use its full share. If both trawl CP and CV sectors are unable to fully utilize the rollover, then 95 percent would be reallocated to the hook-and-line CP sector and 5 percent to the pot sectors. Unused quota in the pot sector (CP and CV) would be reallocated to other pot sector before being reallocated to the hook-and-line CP sector. Hook-and-line catcher vessel sector and <60' hook-and-line/pot catcher vessel sector quota that is projected to remain unused shall be reallocated to the hook-and-line CP sector. Any jig sector quota that is projected to remain unused will first be reallocated to the <60' hook-and-line/pot catcher vessel sector before being reallocated to the hook-and-line CP sector.

Option 7.2 Pacific cod shall be allocated based on apportionments in regulation as modified by Amendment 77 with an additional split of the Trawl CP apportionment as follows:

- Non-AFA Trawl CPs will be allocated 18.3 percent of the Pacific cod TAC available after deduction for the CDQ program.
- AFA Trawl CPs will be allocated 5.2 percent of the Pacific cod TAC available after deduction for the CDQ program.

Pacific cod rollovers between sectors shall administered using regulations at the time of final Council action. Further, Pacific cod rollovers will continue to be hierarchical in nature flowing from the most precise definition of a sector to the next more inclusive definition before unused Pacific cod is reallocated to a different gear type (see footnote 3 for a description of the rollover procedures).

Note: At the December 2003 meeting, the Council removed the component that would have deducted any state water fishery allocation in the BSAI from TAC before the allocations to a specific sector were calculated. In its place, the Council requested a discussion addressing the impacts of a state water fishery in the BSAI on federal water fisheries in the BSAI be included in the Cumulative Impacts section of the NEPA analysis that is scheduled for initial analysis in April 2004.

Issue 2: Sector Allocations of Prohibited Species Catch Limits in the BSAI

Component 8 PSC is allocated to the CDQ program as PSQ reserves (except herring) equal to one of the following:

- Option 8.1 7.5% of each PSC limit
- Option 8.2 8.5% of each PSC limit
- Option 8.3 10% of each PSC limit
- Option 8.4 Proportional to the CDQ allocation under Component 3 for each PSC limit

Component 9 Sector allocations of PSC limits (Council must choose one suboption from both Option 9.1 and 9.2 in order to apportion PSC to sectors).

- Option 9.1 Apportion PSC to each fishery group that it has historically been accounted against (e.g, yellowfin sole, rockfish, rocksole/flathead sole/other, etc.).
 - Suboption 9.1.1 Through annual TAC setting process (the current method).
 - Suboption 9.1.2 In proportion to the historic fishery group's apportionment using the most recent five years.
 - Suboption 9.1.3 In proportion to a 5-year rolling average of that fishery group's PSC allocations using the most recent five years.
 - Suboption 9.1.4 In proportion to the actual amounts of PSC mortality attributed to the fishery group over a defined set of years.

- Option 9.2 Apportion PSC allotments made to fishery groups in Option 9.1 to sectors
- Suboption 9.2.1 In proportion to TAC allocated to the sector.
 - Suboption 9.2.2 In proportion to the PSC usage by the sector for the years used to determine the groundfish sector apportionments.
 - Suboption 9.2.3 In proportion to the total groundfish harvested by the sector for each PSC fishery group for the years used to determine the groundfish sector apportionments.
 - Suboption 9.2.4 In proportion to the target species harvested by the sector in that PSC fishery group for the years used to determine the groundfish sector apportionments.
- Option 9.3 Select a PSC reduction option from the following that would apply to any PSC apportionment suboption selected in 9.2. PSC reduction options can vary species by species, and sector by sector.
- Suboption 9.3.1 Reduce apportionments to 60% of calculated level.
 - Suboption 9.3.2 Reduce apportionments to 75% of calculated level.
 - Suboption 9.3.3 Reduce apportionments to 90% of calculated level.
 - Suboption 9.3.4 Reduce apportionments to 95% of calculated level.
 - Suboption 9.3.5 Do not reduce apportionments from calculated level.

Issue 3 Underutilized Species Threshold

Component 10 For species that may have TAC (amounts) available in excess of historical harvest amounts, sector allocations may apply only to the historical harvest threshold (utilization threshold). TAC amounts in excess of such thresholds would be available to sectors whose ability to harvest that TAC exceeds its sector allocation of that species. *(The intent of this language is that after a sector has harvested it's allocation of species with a threshold and if the sector has PSC available, then the sector may target the TAC in excess of the threshold.)* Council must select one suboption from each of the options below in order to establish a threshold fishery. *(Note, this component is not meant to be a mandatory option. The Council may choose to develop sector allocations without an underutilized species threshold program.)*

- Option 10.1 Species that would be assigned an utilization threshold:
- Suboption 10.1.1 Rock sole
 - Suboption 10.1.2 Yellowfin sole
 - Suboption 10.1.3 Flathead sole
 - Suboption 10.1.4 Alaska Plaice
 - Suboption 10.1.5 Rock sole, yellowfin sole, flathead sole in aggregate
 - Suboption 10.1.6 Rock sole, yellowfin sole, flathead sole, and Alaska Plaice in aggregate
- Option 10.2 Options for determining utilization threshold for each species or complex (Council must select one from each of the following suboptions in order to establish utilization threshold):

- Suboption 10.2.1 Average threshold percentage will be based on:
 - a. Total catch
 - b. Retained catch
- Suboption 10.2.2 Threshold percentage of average catch will be:
 - a. 100%
 - b. 125%
 - c. 150%
- Suboption 10.2.3 Years for determining the average catch will be:
 - a. 1995-1998
 - b. 1995-2002
 - c. 1998-2002
 - d. 2000-2003

Issue 4 Eligibility to Participate in a Sector

Component 11 Except as provided in component 13, a LLP license holder will be determined to be eligible for a given sector if they have proper area, gear, vessel type, and vessel length endorsements and meet minimum legal landings requirements (see the next component) in the years selected from the following:

- Option 11.1 1995-1997
- Option 11.2 1995-2002
- Option 11.3 1997-2002
- Option 11.4 1998-2002
- Option 11.5 1999-2002
- Option 11.6 2000-2002
- Option 11.7 For <60' H&L/Pot CV sector
 - a. 1996-2002
 - b. 1997-2002
 - c. 1998-2002
 - d. 1999-2002
 - e. 2000-2002

Component 12 A holder of a license with the proper endorsements will be determined to be eligible for a given sector if, during the previously specified sets of years the vessel meets the minimum legal landings criteria selected from the following:

- Option 12.1 At least one landing
- Option 12.2 50 MT
- Option 12.3 100 MT
- Option 12.4 250 MT
- Option 12.5 500 MT
- Option 12.6 1,000 MT
- Option 12.7 For <60' H&L/Pot CV sector
 - a. At least one landing
 - b. 5 MT
 - c. 10 MT
 - d. 20 MT
 - e. 50 MT

Suboption 12.7.1 Exclude jig vessels and <60' fixed gear catcher vessels from minimum landings requirements.

Suboption 12.7.2 Exclude jig vessels

Component 13 License holders with the following endorsements on their LLP:

- BS or AI or BSAI
- non-trawl
- Pacific cod

Eligibility of pot and longline vessels greater than or equal to 60' to participate in the directed Pacific cod fishery is determined by Amendment 67.

Components and Options for Amendment 80.b—Establishment of a Non-AFA Trawl CP Cooperative Program

The following “single-option” components are common for any cooperative program that might be developed.

- The Program would limit its scope to selected groundfish and prohibited species catches with trawl gear by **qualified license holders** in the Non-AFA Trawl CP Sector in the BSAI. Groundfish species not included in the program as well as other non-specified fish species or marine resources would not be explicitly managed within the Program. Existing regulations regarding these other marine resources would not be superceded.
- All catch history used for allocation and eligibility purposes will be legal and documented catch.
- The Program will not supercede pollock and Pacific cod IRIU programs. All qualified license holders participating in the fisheries included in the program will need to have trawl and catcher processor endorsements with general licenses for BSAI and the additional endorsement created by and required for participation in this program. Length limits within the license will also be enforced such that any new vessel entering the fishery may not exceed the Maximum Length Overall (MLOA) specified on the license.
- 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 Program, but would not necessarily be excluded from other rationalization programs.
- New PSC limits for the following species will be created and allocated to the non-AFA trawl catcher processor sector.
 - BSAI non-AFA trawl catcher processor multi-species halibut cap consisting of an apportionment of species identified in Component 1.
 - BSAI non-AFA trawl catcher processor multi-species red king crab cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries.
 - BSAI non-AFA trawl catcher processor multi-species snow crab (*C. opilio*) cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries (includes apportionments of the trawl sablefish/turbot/arrowtooth limits).
 - BSAI non-AFA trawl catcher processor multi-species Tanner crab (*C. bairdi*) Zone 1 cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries.
 - BSAI non-AFA trawl catcher processor multi-species Tanner crab (*C. bairdi*) Zone 2 cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries.
- Disposition of groundfish species not allocated to the Non-AFA Trawl CP sector would not change from the status quo which includes any provisions of amendment 80A.
- Bycatch limits for non-specified species or marine resources specifically for this program would not be established. However, should unreasonable bycatch or other interactions occur, specific regulations to minimize impacts will be considered.
- To participate in any fishery included in the Non-AFA Trawl CP cooperative program, a person must hold a valid groundfish LLP license with a Sector Eligibility Endorsement.
- Annual allocations to the cooperative will be transferable among cooperative members. Such transfers would not need to be approved by NOAA Fisheries. Any member of the cooperative will be eligible to use the catch history of any other member regardless of vessel length limitations of the LLP that carries the catch history.

- Permanent transfers of Sector Eligibility Endorsements would be allowed if transferred with the associated Groundfish LLP. Sector Eligibility Endorsement, the associated groundfish LLP license, and associated catch histories would not be separable or divisible. All transfers must be reported to NOAA Fisheries in order to track who owns the Sector Eligibility Endorsements. The purchaser must be eligible to own a fishing vessel under MarAd regulations or must be a person who is currently eligible to own a vessel.
- The Groundfish Retention Standards (GRS) (Amendment 79) would be enforced on the cooperative as an aggregate and on the open access vessels as individuals. If the cooperative cannot meet the standard in the aggregate over a period of two years then the standard would be imposed on individual vessels within the cooperative.
- Participants in the open access portion of the program will be subject to all the same regulations they would be without the Program including all restrictions of the LLP and the GRS if they are approved.
- A cooperative created under this program must have adequate internal rules. Evidence of binding private contracts and remedies for violations of contractual agreements are required to be provided to NOAA Fisheries. The cooperative must demonstrate an adequate mechanism for monitoring and reporting prohibited species and groundfish catch. Participants in the cooperative must agree to abide by all cooperative rules and requirements.
- Specific requirements for reporting, monitoring and enforcement, and observer protocols will be developed for participants in the cooperative portion of the Program in the rulemaking process and will not be the purview of the cooperative. The NPFMC and the Non-AFA Trawl CP Sector need to specify their goals and objectives for in-season monitoring and for program evaluation. Recordkeeping and reporting portions of the program can then be developed to ensure that goals and objectives of the program are met in a cost effective manner.
- Review of the non-Trawl CP program will be accomplished by requiring a detailed annual report from any cooperative formed. Fishery managers will review the annual report and determine if the program is functioning as desired. It is recommended that in-depth assessments of program be undertaken under the auspices of the Council/NOAA Fisheries periodically (every five years, for example). Such in-depth studies will report the accomplishments of the program and indicate whether any changes are necessary.
- Economic and socioeconomic data collection programs have been included in AFA, and crab rationalization programs, and are proposed in the GOA Rationalization program. Therefore the analytical team assumes that an economic and socioeconomic data collection initiative would be developed and implemented under the Non-AFA Trawl CP Cooperative Program. The collection would include cost, revenue, ownership and employment data on a periodic basis to provide the information necessary to study the impacts of the program. Details of the collection will be developed in the analysis of the alternatives.

Component 1 Identifies which species will be allocated among the non-AFA trawl catcher processor sector under this program

Option 1.1 Include all groundfish species allocated under amendment 80A for which trawling is allowed, except pollock (already allocated to AFA fishery cooperatives).

Suboption 1.1.1 Exclude certain species to prevent allocations that are so small that they preclude persons from harvesting their allocation of species that are typically taken in directed fisheries. Allocations of groundfish species that are excluded would be regulated as they are under the status quo.

Option 1.2 Include only the following target species—Pacific cod, yellowfin sole, rock sole, flathead sole, Atka mackerel, Greenland turbot, AI Pacific Ocean perch. Species could be added or deleted through an amendment process. Allocations of groundfish species that are excluded would be regulated as they are under the status quo.

Component 2 Establishes procedures for reducing prohibited species catch limits for the non-AFA Trawl CPs Sector. *Options selected from this component would be in addition to those PSC options selected in Component 9 from Amendment 80a.*

Option 2.1 No change in overall amount of the current PSC limits.

Option 2.2 Reductions in the PSC limit for halibut is accomplished by taxing in-season non-permanent transfers of PSC within the cooperative. The halibut PSC limit is restored to its original level the following year

Suboption 2.2.1 Transfers of PSC after August 1 are not taxed .

Suboption 2.2.2 Only un-bundled transfers of PSC are taxed.

Option 2.3 Reduce halibut PSC limits by 5% when PSC limits are linked to estimated biomass levels.

Component 3 Identifies the license holders that are in the non-AFA trawl CP sector which would receive Sector Eligibility Endorsements. (It may be that some license holders identified as part of the sector in Amendment 80a, may not be issued Sector Eligibility Endorsements. License holders that do not meet the criteria identified in this component will not be eligible to participate in the cooperative or open access components of the fisheries included in the program.) Non-AFA qualified license holders with a trawl and catcher processor endorsement would be issued a Sector Eligibility Endorsement that will be attached to that holder's LLP identifying it as a member of the non-AFA Trawl CP Sector.

Option 3.1 Qualified license holders must have caught 500 mt. of groundfish with trawl gear and processed that fish between 1998-2002

Option 3.2 Qualified license holders must have caught 1,000 mt. of groundfish with trawl gear and processed that fish between 1998-2002

Option 3.3 Qualified license holders must have caught 500 mt. of groundfish with trawl gear and processed that fish between 1997-2002

Option 3.4 Qualified license holders must have caught 1,000 mt. of groundfish with trawl gear and processed that fish between 1997-2002

The original list included 100 mt and 150 mt, but subsequent analysis indicates that these lower levels have no impact on the number of qualified license holders.

Component 4 Establishes the percentage of eligible licenses that must join a cooperative before the cooperative is allowed to operate. No later than December 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, members, as a percent of eligible LLP licenses with non-AFA Trawl CP endorsement, must be:

- Option 4.1 At least 51 percent
- Option 4.2 At least 67 percent
- Option 4.3 At least 75 percent
- Option 4.4 At least 80 percent
- Option 4.5 At least 90 percent
- Option 4.6 At least 100 percent
- Option 4.7 All less one distinct and separate harvesters using the 10 percent threshold rule.

At least 30%
Engly. Am.
no OPS

Two ways of looking at the threshold - licenses or license holders - if vessels was used in the past, licenses is the parallel (since a person may hold two licenses)

Component 5 Determines the method of allocation of PSC limits and groundfish between the cooperative and open access pools.

- Option 5.1 Catch history is based on total catch
- Option 5.2 Catch history is based on total retained catch

Component 6 Determines which years of catch history are used in the calculation. The allocation of groundfish between the cooperative and open access pool 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 open access pool in same proportions as those species that have associated PSC limits. The catch history as determined by the option selected under this component will be indicated on the Sector Eligibility Endorsement which indicates the license holder's membership in the Non-AFA Trawl CP Sector. The aggregate histories will then applied to either the cooperative or the open access pool.

- Option 6.1 1995-2002, but each license holder drops its lowest annual catch during this period
- Option 6.2 1995-2003, but each license holder drops its lowest annual catch during this period
- Option 6.3 1998-2002, but each license holder drops its lowest annual catch during this period
 - Suboption 6.3.1 Each license holder does not drop its lowest annual catch during this period
- Option 6.4 1998-2003, but each license holder drops its lowest annual catch during this period
 - Suboption 6.4.1 Each license holder drops two years during this period
- Option 6.5 1999-2002, but each license holder drops its lowest annual catch during this period
- Option 6.6 1999-2003, but each license holder drops its lowest annual catch during this period

Component 7 Determines if excessive share limits are established in the non-AFA trawl catcher processor sector.

Option 7.1 There is no limit on the consolidation in the non-AFA trawl catcher processor sector.

Option 7.2 Consolidation in the non-AFA trawl CP sector is limited such that no single company can hold more than a fixed percentage of the overall sector apportionment history. The cap will be applied across the total allocation to the sector of all species combined. The cap will be applied using the individual and collective rule. Persons (individuals or entities) that exceed the cap in the initial allocation would be grandfathered.

Component 8 Establishes measures to mitigate negative impacts of the cooperative on fisheries not included in the cooperative program (e.g. fisheries in the GOA).

Option 8.1 Sideboards for cooperative members would be established by regulation using the same years used to calculate the apportionment of PSC and groundfish between the cooperative and open access pool until such time as these other fisheries are rationalized, when the allocations determined in these newly rationalized fisheries.

Option 8.2 The cooperative is required to prohibit members in the aggregate from exceeding their maximum percent of harvests in other target fisheries. Sideboards would not be established by regulation. This restriction would be discussed in the annual report of the cooperative submitted to the Council and NOAA Fisheries.

IR/IU Discussion Paper June 2004 Council Meeting

The Council, at the April 2004 meeting, directed staff to prepare three discussion papers for the June 2004 meeting. Specifically, the Council requested staff prepare a paper on splitting the BSAI Pacific cod allocation into separate allocations for the BS and AI, to explore further the concept of groundfish retention pools as a means for bridging the implementation gap between Amendment 79 and 80b, and to examine multiple cooperatives as an option for the non-AFA trawl catcher processor sector cooperative structure under Amendment 80a. The following discussions are the staff's response to the Council's request.

I. Subdividing TACs in the Future

Any management system developed under Amendment 80a must be adaptable to future changes in TAC groupings that may occur. Without devising a plan to allocate the sector allotments, if new TAC groupings are implemented, NMFS' ability to issue future sector allocations in a timely fashion may be at risk. A management structure that provides NMFS direction on how to treat TAC changes would allow them to implement changes without going through a process that requires Council action and public comment. If those procedural steps must be taken to accommodate TAC changes before allocations can be issued, it is unlikely that the sector allocations would be made in time to start fisheries either on January 1st for hook-and-line and pot gear vessels or January 20th for trawl gear vessels.

Proper oversight of the Bering Sea and Aleutian Islands (BSAI) groundfish fisheries could require revising TAC groupings in the future to meet biological or management objectives. Changes to TAC groupings can be made either by altering the list of species assigned a TAC or by altering the geographic regions the TAC for a species represents.

This issue is complicated by the fact that as better genetic information becomes available, for species like rockfish, there are new species being identified and sub-populations may be identified that need to be protected. Pacific ocean perch are showing genetic structure within the ABCs defined in the GOA and roughey rockfish appear as though they may be composed of two sub-species. Given the increased biological information that is becoming available, new management systems that allocate TAC among sectors must acknowledge and make provisions for additional species that may require explicit management. Policy makers must not only consider future management needs from the stand point of breaking up species complexes like 'other species', other rockfish, and other flatfish, but also subdividing current single species ABCs.

Future TAC changes may be foreseeable, or they may not have been considered yet. The BSAI Plan Team has been considering breaking the Pacific cod assessment into two ABC recommendations - one for the Bering Sea subarea and one for the Aleutian Islands subarea. Because the TAC is currently set for the entire BSAI management area, both the current allocations under BSAI Amendment 77 and the allocation formula being developed under Amendment 80a issues sector allotments based on the member's catches in the combined areas. If the TAC definitions are changed in the future, the formula for allocating the new TACs must account for those changes.

Also complicating this issue is whether PSC species will also need to be adjusted if TAC definitions are changed. This issue will only be discussed briefly in this paper, but it may be critical if a goal is rationalizing the BSAI Pacific cod fisheries.

The issue of altering TAC categories has been primarily discussed in terms of the Pacific cod fisheries at the IR/IU Technical Committee and in other forums. Pacific cod has been highlighted because the Plan Team is currently discussing changing the Pacific cod TAC area designations. Discussing this issue using Pacific cod as the primary example seems reasonable since many of the management issues and problems associated with splitting the Pacific cod TAC into finer areas could also potentially apply to altering other species TACs. This paper explores how TAC changes could be implemented, in terms of inseason management, with particular emphasis placed on the impacts sectors could realize under Amendment 80a.

Relevant Background Information on the Pacific Cod Fishery

Consider an example that could have resulted if separate BSAI Pacific cod TACs were set in 2004. The Pacific cod TAC was set at 215,500 mt in 2004 for the BSAI management area. After a 7.5% deduction was taken for the CDQ program, the remaining 199,338 mt were divided among the sectors. The SSC noted, at their December 2003 meeting, that if the 2004 Pacific cod ABC was apportioned to the Aleutian Islands and Bering Sea using the "same multiplier" used for the combined areas, the Aleutian Islands subarea and Bering Sea subarea would have had ABCs of 32,000 mt and 191,000 mt, respectively. Combined, the total ABC for the two areas was 223,000 mt. Differences between the estimated ABCs in the two areas and the TACs that would have been set cannot be determined with certainty. However, if the difference between the TAC and ABC for the entire BSAI were applied to the two areas, TACs of 30,924 mt and 184,576 mt would have been set for the Aleutian Islands subarea and Bering Sea subarea, respectively. After CDQ deductions the Aleutian Islands subarea and Bering Sea subarea would have been allocated 28,605 mt and 170,733 mt, respectively.

Groundfish licenses are currently required to participate in the BSAI groundfish fisheries in Federal waters. Groundfish licenses contain endorsements that define what the vessel using the license can do. Area endorsements define the geographic locations the licenses allow a vessel to fish. Under the Groundfish License Limitation Program, separate endorsements were issued for the Bering Sea subarea and Aleutian Islands subarea. Subarea endorsements were earned based on historic fishing patterns. Licenses may contain endorsements for both subareas, one of the two subareas, or neither of the subareas. Gear endorsements define what type of gear may be used: non-trawl, trawl, or both. Further, gear endorsements are required for vessels >60' to participate in the BSAI fixed gear Pacific cod fishery: hook-and-line catcher processors, pot catcher processors, hook-and-line catcher vessel, and pot catcher vessel.

Table 1 shows the endorsements that have been issued on groundfish licenses with a Bering Sea and/or Aleutian Islands endorsement. The far right column is the number of licenses that have been issued to fish in the BSAI. The other columns provide information on how the vessels using those licenses may operate. The first two columns on the left side of the table identify the gear endorsements on the licenses. "No" in the column indicates that they are not endorsed to use that gear type; "Yes" in the column means they may legally use that gear type. Using the "Grand Total" column and the "Gear Endorsements" columns we know that 343 of the 563 licenses may be used by vessels deploying only non-trawl gear. The remaining 220 licenses may be used on trawl vessels, with 85 of the 220 also endorsed for non-trawl gear. In the "Fixed Gear Cod Endorsement" columns, licenses are grouped by fixed gear Pacific cod endorsements. The BSAI endorsement section of the table shows whether the license includes an endorsement for the Bering Sea, Aleutian Islands, or both.

Table 1: Groundfish licenses that are endorsed for the Bering Sea/Aleutian Islands.

| Gear Endorsements | | Fixed Gear Cod Endorsements | | | | BSAI endorsements | | | Total Licenses | | |
|---|-----------|---|--------|--------|--------|-------------------|---------|---------|----------------|-----|-----|
| TRAWL | NON TRAWL | CP HAL | CP POT | CV POT | CV HAL | Both AI & BS | AI Only | BS Only | | | |
| No | Yes | No | No | No | No | 80 | 10 | 135 | 225 | | |
| | | | | | Yes | 5 | | | 5 | | |
| | | | | Yes | No | 9 | | 55 | 64 | | |
| | | | | | Yes | | | 2 | 2 | | |
| | | | | Yes | No | No | 2 | | 3 | 5 | |
| | | | | | Yes | Yes | 1 | | | 1 | |
| | | Yes | No | No | No | No | 32 | | 2 | 34 | |
| | | | | | Yes | 1 | | | 1 | | |
| | | | | | Yes | No | 1 | | 1 | | |
| | | | | Yes | No | No | 3 | | 3 | | |
| | | | | | Yes | 1 | | | 1 | | |
| | | Yes | No | 1 | | | 1 | | | | |
| | | Total Licenses with No Trawl Gear Endorsement | | | | | | 136 | 10 | 197 | 343 |
| Yes | No | No | No | No | No | 76 | | 59 | 135 | | |
| | | | | | | Yes | No | 23 | 2 | 50 | 75 |
| | Yes | | | | | | | | 1 | | 1 |
| | Yes | | | | | | No | 1 | | 3 | 4 |
| | Yes | | | | | No | No | No | 5 | | |
| Total Licenses with Trawl Gear Endorsement | | | | | | 105 | 3 | 112 | 220 | | |
| Grand Total of All Bering Sea/Aleutian Islands Licenses | | | | | | 241 | 13 | 309 | 563 | | |

Source: NMFS Groundfish LLP database.

Information contained in Table 1 shows that 13 licenses are endorsed for the Aleutian Islands subarea only. All of those licenses may be used on non-trawl gear vessels, but only one is endorsed to participate in the directed fixed gear Pacific cod fishery (as a hook-and-line catcher vessel). Three of the 13 licenses are also endorsed for use on trawl vessels. They may participate in the directed Pacific cod fishery, but only with trawl gear.

About 40% of the non-trawl gear licenses are endorsed to fish both subareas, and about 50% of the licenses endorsed for trawl gear are endorsed to fish both subareas. The majority of licenses are endorsed for the Bering Sea subarea only.

Fishing patterns of vessels using the BSAI groundfish licenses will play an important role in determining the economic impacts of the splitting the Pacific cod ABC into Bering Sea and Aleutian Islands subareas. The two figures below are based on 2004 SAFE data and show the Aleutian Islands subarea and Bering Sea subarea Pacific cod catches by gear type from 1998-2003. The information in those figures indicates that in recent years trawl vessels have harvested almost all of the Aleutian Islands Pacific cod whereas, harvest patterns in the Bering Sea appear to be more stable.

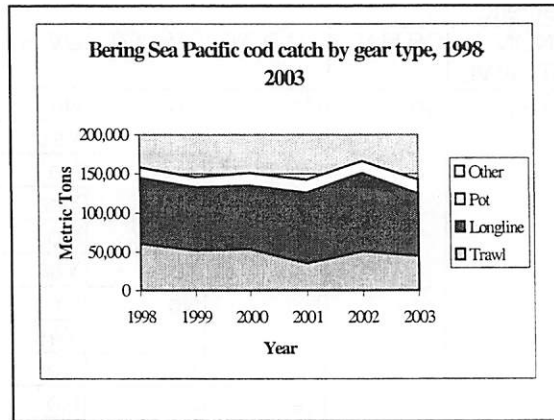
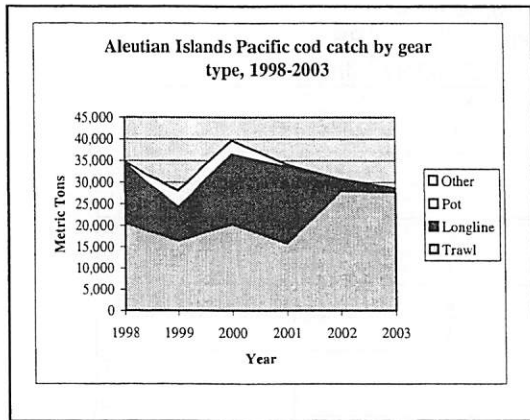


Table 2 shows the historic Pacific cod harvests in the Bering Sea subarea and Aleutian Islands subarea over the years 1995-2002 by fishing sector. Data in Table 2 is not broken out by all the sectors defined in Amendment 80a. The data to provide those breakouts has not yet been compiled by staff. While these categories are, in some cases, broader than those used in Amendment 80a, they provide insights into where sectors have harvested Pacific cod in the Aleutian Islands subarea and Bering Sea subarea over the 1995-2002 time period.

Pacific cod harvests with trawl gear accounted for 63% of the harvest in the Aleutian Islands from 1995 - 2002 (Table 2). In 2002 and 2003, vessels using trawl gear harvested 91% and 97%, respectively (SAFE, 2003). That information indicates that trawl vessels have traditionally harvested the majority of the Pacific cod catch in the Aleutian Islands, and over the past two full fishing years that percentage has dramatically increased. Vessels using hook-and-line gear harvested the remainder of the Aleutian Islands Pacific cod in 2002 and 2003. Based on these observations, the years used to allocate Aleutian Islands and Bering Sea TACs among sectors would greatly impact the distribution. Also recall that if the TAC were divided according to the current gear splits for the combined BSAI, trawl vessels would only be assigned 47% of the Aleutian Islands TAC.

Table 2. Historic fishing patterns of vessels in the Bering Sea and Aleutian Islands Pacific cod fishery by sector, 1995-2002

| Year | BS Catch (mt) | AI Catch (mt) | Total Catch (mt) | Percent of Total BS Catch | Percent of Total AI Catch |
|---|------------------|------------------|---------------------|------------------------------|------------------------------|
| AFA Trawl Catcher Processors | | | | | |
| 1995 | 11,293 | 3,621 | 14,913 | 4.9% | 21.9% |
| 1996 | 8,170 | 4,122 | 12,292 | 3.9% | 13.0% |
| 1997 | 5,780 | 4,333 | 10,113 | 2.5% | 17.3% |
| 1998 | 5,033 | 3,973 | 9,006 | 3.1% | 11.4% |
| 1999 | 2,836 | 3,957 | 6,793 | 1.9% | 14.1% |
| 2000 | 1,959 | 1,838 | 3,797 | 1.3% | 4.6% |
| 2001 | 2,161 | 2,192 | 4,353 | 1.5% | 6.4% |
| 2002 | 2,633 | 1,388 | 4,021 | 1.6% | 4.5% |
| Avg. 95-02 | 4,983 | 3,178 | 8,161 | 2.6% | 11.7% |
| Non-AFA Trawl Catcher Processors | | | | | |
| 1995 | 30,770 | 4,189 | 34,959 | 13.5% | 25.3% |
| 1996 | 19,537 | 9,446 | 28,983 | 9.3% | 29.9% |
| 1997 | 28,026 | 1,820 | 29,846 | 12.1% | 7.3% |
| 1998 | 20,281 | 5,699 | 25,980 | 12.6% | 16.3% |
| 1999 | 20,199 | 5,167 | 25,366 | 13.9% | 18.4% |
| 2000 | 21,488 | 7,302 | 28,790 | 14.2% | 18.4% |
| 2001 | 18,831 | 6,854 | 25,685 | 13.2% | 20.0% |
| 2002 | 22,066 | 11,141 | 33,207 | 13.3% | 36.2% |
| Avg. 95-02 | 22,650 | 6,452 | 29,102 | 12.8% | 21.5% |
| Pot Catcher Processors | | | | | |
| 1995 | 3,608 | 1,021 | 4,629 | 1.6% | 6.2% |
| 1996 | 4,104 | 3,463 | 7,567 | 2.0% | 11.0% |
| 1997 | 4,037 | 406 | 4,443 | 1.7% | 1.6% |
| 1998 | 2,970 | 348 | 3,318 | 1.8% | 1.0% |
| 1999 | 2,256 | 917 | 3,174 | 1.5% | 3.3% |
| 2000 | 1,605 | 1,041 | 2,645 | 1.1% | 2.6% |
| 2001 | 2,649 | 492 | 3,141 | 1.9% | 1.4% |
| 2002 | 2,842 | 6 | 2,849 | 1.7% | 0.0% |
| Avg. 95-02 | 3,009 | 962 | 3,971 | 1.7% | 3.4% |
| Catcher Processors | | | | | |
| 1995 | 96,126 | 4,014 | 100,140 | 42.1% | 24.3% |
| 1996 | 89,903 | 5,788 | 95,692 | 43.0% | 18.3% |
| 1997 | 117,323 | 7,284 | 124,608 | 50.4% | 29.0% |
| 1998 | 86,260 | 13,757 | 100,016 | 53.7% | 39.4% |
| 1999 | 80,944 | 7,977 | 88,921 | 55.5% | 28.4% |
| 2000 | 81,185 | 15,508 | 96,693 | 53.6% | 39.1% |
| 2001 | 89,809 | 17,682 | 107,491 | 63.0% | 51.7% |
| 2002 | 99,141 | 2,759 | 101,900 | 59.8% | 9.0% |
| Avg. 95-02 | 92,586 | 9,346 | 101,933 | 52.6% | 29.9% |
| Non-AFA Surimi and Fillet Catcher Processors (Trawl) | | | | | |
| 1995 | 20,431 | 2,733 | 23,164 | 8.9% | 16.5% |
| 1996 | 9,033 | 5,422 | 14,455 | 4.3% | 17.2% |
| 1997 | 4,423 | 8,590 | 13,014 | 1.9% | 34.3% |
| 1998 | 2,144 | 9,871 | 12,016 | 1.3% | 28.3% |
| Avg. 95-02 | 4,504 | 3,327 | 7,831 | 2.1% | 12.0% |

| Hook-and-line Catcher Vessels | | | | | | |
|--------------------------------------|---------------|--------------|---------------|--------------|--------------|--|
| 1995 | 1,104 | 920 | 2,024 | 0.5% | 5.6% | |
| 1996 | 179 | 31 | 210 | 0.1% | 0.1% | |
| 1997 | 129 | 33 | 163 | 0.1% | 0.1% | |
| 1998 | 45 | 40 | 85 | 0.0% | 0.1% | |
| 1999 | 169 | 142 | 311 | 0.1% | 0.5% | |
| 2000 | 353 | 675 | 1,028 | 0.2% | 1.7% | |
| 2001 | 551 | 135 | 686 | 0.4% | 0.4% | |
| 2002 | 311 | 106 | 417 | 0.2% | 0.3% | |
| Avg. 95-02 | 355 | 260 | 615 | 0.2% | 1.1% | |
| Pot Catcher Vessels | | | | | | |
| 1995 | 15,666 | 3 | 15,669 | 6.9% | 0.0% | |
| 1996 | 23,001 | 1,148 | 24,149 | 11.0% | 3.6% | |
| 1997 | 17,028 | 3 | 17,031 | 7.3% | 0.0% | |
| 1998 | 10,016 | 37 | 10,053 | 6.2% | 0.1% | |
| 1999 | 10,426 | 2,588 | 13,013 | 7.2% | 9.2% | |
| 2000 | 14,278 | 2,066 | 16,344 | 9.4% | 5.2% | |
| 2001 | 13,823 | 86 | 13,908 | 9.7% | 0.3% | |
| 2002 | 12,812 | 0 | 12,812 | 7.7% | 0.0% | |
| Avg. 95-02 | 14,631 | 741 | 15,372 | 8.2% | 2.3% | |
| Trawl Catcher Vessels | | | | | | |
| 1995 | 48,899 | 31 | 48,930 | 21.4% | 0.2% | |
| 1996 | 54,870 | 2,189 | 57,060 | 26.2% | 6.9% | |
| 1997 | 55,647 | 2,606 | 58,253 | 23.9% | 10.4% | |
| 1998 | 33,684 | 1,214 | 34,898 | 21.0% | 3.5% | |
| 1999 | 28,869 | 7,313 | 36,182 | 19.8% | 26.0% | |
| 2000 | 30,431 | 11,221 | 41,652 | 20.1% | 28.3% | |
| 2001 | 14,664 | 6,746 | 21,410 | 10.3% | 19.7% | |
| 2002 | 25,927 | 15,393 | 41,320 | 15.6% | 50.0% | |
| Avg. 95-02 | 36,624 | 5,839 | 42,463 | 19.8% | 18.1% | |
| Jig Catcher Vessels | | | | | | |
| 1995 | 599 | 0 | 599 | 0.3% | 0.0% | |
| 1996 | 267 | 0 | 267 | 0.1% | 0.0% | |
| 1997 | 173 | 0 | 173 | 0.1% | 0.0% | |
| 1998 | 192 | 0 | 192 | 0.1% | 0.0% | |
| 1999 | 100 | 69 | 169 | 0.1% | 0.2% | |
| 2000 | 38 | 33 | 71 | 0.0% | 0.1% | |
| 2001 | 52 | 19 | 71 | 0.0% | 0.1% | |
| 2002 | 164 | 0 | 164 | 0.1% | 0.0% | |
| Avg. 95-02 | 198 | 15 | 213 | 0.1% | 0.0% | |

Source: NMFS Blend data, 1995-2002

Options for Managing TAC Modifications

The next sections discuss how sector allocations that result from changes in TAC groupings could be implemented in a timely fashion. A discussion of the impacts that the various allocation alternatives would have on the participants will also be presented.

Three different options will be presented for allocating Bering Sea subarea and Aleutian Islands subarea Pacific cod TACs to the Amendment 80a sectors. The options presented are the author's attempt to provide alternative approaches to dealing with this problem. Other reasonable options could be developed to resolve this problem that has not been considered in this paper. Each option assumes that the current gear allocations remain in place. The Council could select an option that supercedes those splits at the time of final action. However, this assumption was made to simplify this discussion. In other words, the three options are assumed to be subject to the hook-and-line and pot gear (51%), trawl gear (47%), and jig gear (2%) allocations. TAC subdivisions within the hook-and-line and pot gear sector (Amendment 77 allocations) are also assumed to be included under these options.

The first option would calculate the percentage of each TAC based on the sector's historic harvest in each area during the qualification period. This approach would likely result in sectors being allocated different percentages of the Aleutian Islands and Bering Sea TACs. The second option would calculate the percentage of the combined Bering Sea/Aleutian Islands TAC they would be allocated and allow sectors to harvest that percentage from each area. This option would result in a sector being allocated the same percentage of TAC in the Bering Sea and Aleutian Islands areas, without regard to historic harvest patterns. The final option would use the second option to determine the sector allocations, but would not assign a specific amount of catch to the Bering Sea or Aleutian Islands. Instead, sectors would be allowed to harvest their allotment from either area. NMFS would close a subarea to directed fishing when the TAC for that sector is reached. That sector would then be required to move its entire directed Pacific cod fishing activity to the subarea that remains open.

Option 1: Allocations Based on Historic Harvest in Area

Option 1 would define the sector allocations for each area based on the relative percentages of Pacific cod that were harvested by the sectors during the qualifying period. This allocation split would be implemented in conjunction with the gear splits that are currently in place (this assumption was made by the author). The gear splits would be determined at the combined BSAI level and the sector allocations would be calculated at the individual subarea level. This would ensure that current gear allocations for the combined BSAI TAC remain in place, but sectors would be allocated different percentages of each area based on their historic harvest patterns. Because the formula for calculating the sector allocations is predetermined by Amendment 80a, it would be possible for inseason management staff to calculate the sector allocation formulas in a timely manner.

The steps for calculating the Pacific cod allocation under Option 1 are:

1. Multiply the gear allocation percentages, defined prior to Amendment 80a¹, by the combined BSAI region's TACs to determine the overall number of metric tons a gear group will be allowed to harvest.

This example assumes that the combined BSAI Pacific cod TAC is set at 199,338 mt after deductions are made for CDQ and ICAs. The Aleutian Islands TAC is 28,605 mt and the Bering Sea TAC is

¹ The 51% percent of the BSAI Pacific cod TAC that is allocated to the hook-and-line and pot gear sector was further subdivided under BSAI Amendment 77. Amendment 77 allocated 80% of the hook-and-line and pot gear allocation to hook-and-line catcher/processors, 15% to pot catcher vessels, 3.3% to pot catcher/processors, 0.3% to hook-and-line catcher vessels, and 1.4% to <60' pot/hook-and-line catcher vessels.

170,733 mt, combined they equal 199,338 mt. Given the current allocations by gear type the table below shows the total amount of Pacific cod each group would be allowed to harvest in the two areas combined.

| | <i>Gear Allocations Metric Tons</i> | |
|-------------------|-------------------------------------|---------|
| Trawl CV | 23.500% | 46,844 |
| Trawl CP | 23.500% | 46,844 |
| Trawl Total | 47.000% | 93,688 |
| Jig | 2.000% | 3,987 |
| H&L CP | 40.800% | 81,330 |
| Pot CV | 7.650% | 15,249 |
| Pot CP | 1.683% | 3,355 |
| H&L CV | 0.153% | 305 |
| <60' H&L - Pot | 0.714% | 1,423 |
| H&L and Pot Total | 51.000% | 101,662 |

Note: The trawl, jig, and H&L and pot totals reflect the gear allocations made under Amendment 67.

- Assign each sector their historic percentage of the Aleutian Islands TAC (this percentage would need to be defined and it could be linked to the sector allocation years). In this example the average of the years 1995-2002 was used. That is not to be considered as a recommendation, it is simply used for illustrative purposes.

| <i>Sector</i> | <i>AI Historic %</i> | <i>AI allocation</i> |
|--------------------------------------|----------------------|----------------------|
| AFA CP (Trawl) | 11.7% | 3,333 |
| Non-AFA Trawl CP(Trawl) | 21.5% | 6,142 |
| Pot CP | 3.4% | 969 |
| Hook-and-line Catcher Processors | 29.9% | 8,549 |
| Non-AFA Surimi and Fillet CP (Trawl) | 12.0% | 3,440 |
| Hook-and-line Catcher Vessels | 1.1% | 317 |
| Pot CV | 2.3% | 659 |
| Trawl CV | 18.1% | 5,183 |
| Jig | 0.0% | 14 |
| Total | 100.0% | 28,605 |

- Adjust each sector's percentage of the Bering Sea TAC to ensure that they are allocated their assigned percentage of the combined Pacific cod TACs. This adjustment is needed to ensure that each sector is given their entire allocation of the combined BSAI quota. The H&L CP sector is assigned 40.8% of the Pacific cod. In this example that equals 81,330 mt in the BSAI. Therefore, because they were assigned 8,549 mt in AI, they are assigned the remainder of their 81,330 mt (72,781 mt) in the BS. In cases where multiple sectors receive their Pacific cod allocation from the same gear allotment, an additional adjustment must be made to account for the relative catches of each sector. For example, in the trawl catcher/processor sector, the AFA and Non-AFA trawl CP sectors would need to divide 23.5% of the TAC (half of the 47% of the Pacific cod TAC allocated to trawl gear vessels). The amount of Pacific cod the sectors were allocated in the Aleutian Islands (in step 2) would be subtracted from the total amount that is available to the two sectors. The remainder of the trawl CP

allocation would be allocated in the Bering Sea based on each of the sector's relative harvest amounts in the Bering Sea. For example, the AFA Trawl CPs harvested 18.1% of the trawl CP total in the BSAI, Non-AFA Trawl CPs harvested 64.5%, and the Non-AFA Surimi & Fillet CPs (recall that a decision needs to be made on how to treat this sector's catch) harvested 17.4% from 1995-2002 (based on catches reported in Table 2). Therefore, each sector's allocation for the BS and AI combined is equal to those percentages multiplied by the 46,844 mt available them in this example. That number is reported in the "Total" column in the table below. Their BS allocation is equal to the amount of Pacific cod available to them (as reported in the "Total" column) minus their allocation in the AI. That calculation is reflected in the "BS Allocation" column.

| <i>Sector</i> | <i>AI Percent</i> | <i>AI allocation</i> | <i>BS Allocation</i> | <i>Total</i> |
|------------------------------------|-------------------|----------------------|----------------------|----------------|
| AFA CP (Trawl) | 11.7% | 3,333 | 5,146 | 8,475 |
| Non-AFA Trawl CP (Trawl) | 21.5% | 6,142 | 24,072 | 30,214 |
| Pot CP | 3.4% | 969 | 2,386 | 3,355 |
| Longline CP | 29.9% | 8,549 | 72,780 | 81,330 |
| Non-AFA Surimi & Fillet CP (Trawl) | 12.0% | 3,440 | 4,712 | 8,152 |
| Longline CV | 1.1% | 317 | 1,412 | 1,728 |
| Pot CV | 2.3% | 659 | 14,591 | 15,249 |
| Trawl CV | 18.1% | 5,183 | 41,661 | 46,844 |
| Jig | 0.0% | 14 | 3,973 | 3,987 |
| Total | 100.0% | 28,605 | 170,733 | 199,338 |

An advantage of selecting Option 1 is that it takes into account the percentages of Pacific cod that each sector historically harvested in the most restrictive subarea. Those percentages may not reflect the current fishing patterns, but they could more closely reflect historic reliance on a subarea than assigning catch based on their average harvests in both areas combined. An important decision using this method would be selecting the years to determine the historic dependence in the Aleutian Islands. The example above, allocates trawl CVs only about 30% of their 2002 Aleutian Islands harvest. This shows the importance of selecting the years to be used to calculate the split between the Bering Sea and Aleutian Islands subareas.

One concern that has been expressed regarding Option 1 is that TAC fluctuations would have disproportionate impacts on the sectors that are allocated the greatest percentage of the subarea with the declining TAC. Option 2 mitigates that concern, but creates new issues.

Option 2: Allocate Equal Percentages in Both Areas

NMFS would be directed to allocate sectors the same percentage of the Bering Sea subarea and Aleutian Islands subarea TACs. Therefore, since the hook-and-line CP sector is allocated 40.8% of the BSAI Pacific cod TAC under the current regulations, they would be allocated 40.8% of the Bering Sea TAC and 40.8% of the Aleutian Islands TAC.

Sector allocations in this option are calculated the same as they were under Option 1, except that step 2 would be omitted. In cases where the allocations that are currently in regulation are assigned the same group of vessels as defined in Amendment 80a sectors, the allocation percentages would simply be set at the Bering Sea and Aleutian Islands levels. This is the case for the Hook-and-Line CPs. They would be allocated 40.8% of both subarea's TACs when the current TAC groups are split by subarea. In this example, the Trawl CP allocation would be divided among the Amendment 80a sectors, based on a percentage that must be defined. In Option 1 it was assumed that those percentages were based on relative catch of the sectors in that group. The example used in Option 1 shows that the AFA Trawl CPs harvested 18.1% of the trawl CP total, Non-AFA Trawl CPs harvested 64.5%, and the Surimi & Fillet

CPs harvested 17.4% from 1995-2002 (based on catches reported in Table 2). Based on those harvests the sectors would be allocated their percentage of the group's total catch, multiplied by the 23.5% of the TAC that was available to them.

Option 2 solves the problem of disproportionate impacts that result from TAC fluctuations, but may force vessels to fish areas they have not historically fished and do not want to fish. This issue impacts all sectors, but would likely be most onerous on the sectors comprised of smaller vessels. They would be required to travel greater distances to fish in conditions that may not be well suited for their vessels. When this option was discussed at the IR/IU Committee meetings it was generally considered to be inferior to Option 1.

Option 3: No Allocations by Area

Sectors would not be allocated a specific percentage of the individual Aleutian Islands subarea and Bering Sea subarea TACs. Instead, sectors would continue to be issued an overall amount of Pacific cod that could be harvested from the BSAI. That allocation could be fished from either subarea, if TAC is available and the subareas are open to directed fishing. Once the directed fishing allowance for a TAC is reached, for either the Bering Sea or Aleutian Islands, NMFS would issue a closure notice and all the sectors fishing would be required to fish the open subarea if they wanted to participate in the directed fishery for Pacific cod.

This option provides the greatest flexibility for sectors and is, perhaps, the easiest for inseason management. NMFS would not be required to manage separate subarea allocations for each sector. They would only be required to monitor a single harvest limit for each area and use traditional management tools to open and close fisheries. It would provide flexibility to the fleet since they would be able to fish either subarea if they were open.

A possible drawback of this option is that it could cause sectors to race for Pacific cod in the subarea they expect to close first. This could impact a sector's ability to rationalize their harvest, especially if some members of the sector wanted to fish the subarea that is expected to close later in the year. When considering this option the policy makers will need to weigh the negative impacts of a possible race to catch the Aleutian Islands quota versus the flexibility that sectors would be provided when determining where to fish.

Altering TACs for Other Fisheries

A discussion of how the three options discussed above would be implemented for other fisheries is provided next. An important consideration in this discussion is which species will be allocated to sectors. If the TAC of a species or species group is altered that is not allocated to sectors, the issue is moot. The species would be managed as a non-target species. Management options for non-target species that are currently included in Amendment 80a are the current management system, ICAs managed as soft caps, and ICAs managed as hard caps. It is likely that many of the alterations made to TACs will be for the species defined as "non-target".

Assume that rougheye rockfish are broken into two species (rougheye A and rougheye B) and the Council defines them as target species in Amendment 80a. It is unlikely that they will be defined as target species, but that assumption is made in this example to aid the discussion. TACs are set for the BSAI for the two species, and each of the defined sectors is allocated a percentage of the overall TAC.

Option 1 would rely on the same formula defined in Amendment 80a to allocate the two species. That formula will likely be based on the relative catch of the two species over a set of years defined by the Council. Historic catch data for each sector, relative to the catch of all sectors, based on either annual averages or for the entire time period, would be the basis for the calculations. NMFS would be able to

calculate each sector's allocation based on that direction from the Council, if the historic catch data breaks out those two species. However, if the same years are used to determine the allocation as is defined in Amendment 80a, the data for those years are unlikely to contain the detail necessary to do the calculations. In that case, the allocation may need to be based on Option 2, and the Council could revise the allocation percentages on a slower time line as better harvest information becomes available.

Under Option 2, NMFS would use the same percentage that was used to allocate rougheye rockfish before the TAC was split, to allocate the new species. Therefore, if the Non-AFA Trawl CPs sector was allocated 25% of the rougheye rockfish TAC before the split, they would be allocated 25% percent of the TAC for rougheye A and 25% of rougheye B after the split. The outcome does not take differential harvest rates of the two species, by sector, into account.

Finally, Option 3 would set a limit on the amount of the two species that could be harvested by each sector. That limit would be based on their allocation of the two species combined. NMFS would monitor the removal of each TAC and close those fisheries to directed fishing when the TAC available for directed fishing is harvested. All sectors will be required to stop directed fishing for that species when the fishery is closed. They must then harvest their remaining allocation from the rougheye TAC that is open to directed fishing.

II. Groundfish Retention Pools

This section describes groundfish retention pools for the non-AFA trawl catcher processor sector as a method for meeting the groundfish retention standard (GRS) set out in Amendment 79 and provides some suggestions for applying the GRS pool concept.

Mechanics of Groundfish Retention Pools

Groundfish retention pools, as discussed at the April 2004 meeting, would allow non-AFA trawl catcher processor vessels to form contractual agreements for the purpose of combining each vessel's harvests to calculate groundfish retention rates. The rate from the combined harvests would then be compared to the GRS set out in Amendment 79 to determine if the "pool" of vessels met the required retention rate. To help illustrate the vessel retention pool concept, the following is an example using a pool composed of two fictitious vessels. Vessel A has a year ending total catch of 25,000 mt of which 6,250 mt was not retained. Since the annual retention rate for vessel A is 75 percent, it would be in violation of the GRS of 85 percent that is scheduled to be implemented for the 2008 fishing year. Vessel B had 100,000 mt of catch for the year, of which 10,000 mt was not retained. Vessel B is in compliance with the GRS with an end-of-year retention rate of 90 percent. If these two vessels have formed a contractual agreement to combine their annual harvest and retention, for the purposes of meeting the GRS, the annual retention rate for vessels A and B combined is total retention of the two vessels (108,750 mt) divided by total catch of the two vessels (125,000 mt) or 87 percent. A retention rate of 87 percent is sufficient to meet the 85 percent GRS.

General Requirements Necessary for Groundfish Retention Pools

In June 2003, the Council selected, as the preferred alternative in Amendment 79, a GRS that applies individually to vessels over 125' in the non-AFA trawl catcher processor sector, rather than to vessel pools or the fleet as a whole. In the EA/RIR/IRFA for Amendment 79, it was noted that the vessel pool option presents enforcement problems unless the pool is deemed a "responsible entity." NOAA Fisheries Enforcement indicated that it could not apply a groundfish retention standard to a voluntary cooperative in which all vessels are not legally bound. If a formal cooperative exists, a penalty for a GRS violation (e.g., a TAC reduction) could be meted out to the cooperative as whole or individually to any member.

Members of the cooperative, in turn, would have the ability to determine how the penalty would be borne by members.

In a vessel retention pool, vessels pooling their catch would enter a contractual agreement. To satisfy the concern raised in the Amendment 79 EA/RIR/IRFA, that contractual agreement would be filed with the agency to ensure enforceability of the retention requirements. NMFS likely would require contractual terms that create joint and several liability in vessel pool members (similar to those required of AFA cooperatives). These contractual requirements are similar to those that would be required of Amendment 80B, but would be narrower in scope since vessel pooling would only apply to retention determinations, not other harvesting activity.

Incentives for Vessels to Pool

An owner with multiple vessels could be provided some flexibility in meeting the retention standard through, pooling annual retention of groundfish. The non-AFA trawler catcher processor sector is composed of only 10 companies, of which 7 companies have more than one vessel. For the companies owning more than one vessel, allowing vessels to pool their groundfish retention to meet GRS could provide flexibility. Some participants believe that companies that own only one vessel may have no incentive to pool their groundfish retention with other companies since clean vessels would risk exposing themselves to an enforcement action as a result of the actions of other members of the pool, even if they did not violate the standard. A potential incentive that could provide a rationale for clean vessel owners to pool their retention is monetary or other compensation. For example, a vessel owner could choose not to meet the groundfish retention standard and instead compensate other vessel owners in their pool that have a higher retention levels that offset their substandard retention rate. Combined the pool of vessels could meet the GRS, even if some of the members would not exceed the standard individually.

Under this scenario, vessels within the pool for which retention is relatively costly could maintain their low retention of groundfish and instead purchase the needed retention from other vessels in the pool. If increasing retention would cost more than adding retention through purchase, the vessel will likely purchase retention. In this sense, the vessel pool concept is a market-based approach to optimizing the level of production and discards, that adds flexibility for pool participants.

Using a market-based approach to add flexibility for vessel owners in meeting the GRS is in many ways similar to innovative and successful programs used around the world to reduce pollutants. One such program allows companies the flexibility to best determine how to meet the overall pollution control standards. It does this by creating an imaginary bubble around each plant or group of plants. The companies can undertake the most efficient means of controlling the emissions as a whole. For example, if the cost of controlling emissions from one plant is higher than the cost of controlling emissions at another plant, then the company could choose to reduce emissions at the less costly of the two plants, provided no reduction in overall environmental quality would occur. The bubble approach also creates incentives for development of pollution control technology. For example, if a company develops a new technology that would reduce the emissions substantially below allowable levels, the bubble allows that company to realize a return on its investment by trading emissions with other plants. The "bubble" approach is similar to the vessel retention pool concept because the bubble approach applies an emission standard collectively in the same manner that the retention pool concept, applies a retention standard collectively on a group of vessels.

Disadvantages of Groundfish Retention Pools

While the proposed retention pool concept could offer some advantages to the non-AFA trawl catcher processor sector, retention pools could reduce the overall groundfish retention rate for the sector, and, thus, reduce the benefits of Amendment 79. In June 2003, the Council took final action on Amendment

79 voting to phase in the groundfish retention rate starting in 2005 at 65 percent and gradually increasing to 85 percent in 2008. Under this program, all non-AFA trawl catcher processors over 125' in length will have to meet the minimum groundfish retention standard. As a result, under full compliance the groundfish retention rate for the non-AFA trawl catcher processor over 125' will at a minimum equal 85 percent in 2008 and may exceed 85 percent if some vessels in the fleet have retention rates higher than 85 percent. However, under the vessel retention pool concept, overall retention rates will likely be lower, albeit at or above 85 percent. For example, under Amendment 79 regulations, vessel A may be limited by the standard and retain catch beyond 80 percent retention strictly to comply with the 85 percent retention requirement. Vessel B, on the other hand, might not be limited by the standard, and would have a 90 percent retention rate, regardless of the standard. Assuming the catch for each vessel is equal, the combined retention rate of the two vessels is 87.5 percent. Under retention pooling, vessel A may choose to pool with vessel B rather than to increase retention beyond 80 percent. Vessel B would maintain its retention rate at 90 percent. Combined, the retention rate of the two vessels is 85 percent. This type outcome is more likely when there is a wide degree of variability in production capabilities of the sector's participants or a large number of fisheries with very unique characteristics and retention rates. In general, under full compliance, retention pooling could reduce the fleet wide retention rate, but fleetwide retention would meet or exceed the 85 percent standard.

Monitoring and Enforcement Considerations for Groundfish Retention Pools

The same level of enforcement and monitoring requirements as stipulated under Amendment 79 would be necessary for groundfish retention pools. NOAA Fisheries staff has indicated that to accurately measure total catch, all vessels regulated under Amendment 79 are required to use NOAA Fisheries-approved scales and, either maintain observer coverage for every haul to verify that all fish are being weighed, or use an alternative scale-use verification plan approved by NOAA Fisheries. NOAA Fisheries stated that errors in retention rates estimated from bin volumetrics would be too large for enforcement agents to successfully prosecute suspected violations of a groundfish retention standard. Anything less than NOAA-approved scales and observer coverage of every haul is unworkable. Thus under retention pools, the requirements stipulated by NOAA Fisheries would not change, so regulated vessels will still need NOAA-approved scales and observer coverage of every haul.

One proposal is to include under 125' non-AFA trawl catcher processor vessels in the pools. The Council voted to exempt vessels less than 125' LOA because these vessels have "specific and particular operational concerns" associated with the enforcement and monitoring requirements. Primary among these concerns is the inability to accommodate the additional space necessary for a flow scale and an observer station on board these vessels. However, as noted above, NOAA Fisheries has made it clear that anything less than NOAA-approved scales and observer coverage of every haul is unenforceable. As a result, if the under 125' non-AFA trawl catcher processor vessels were brought into the GRS via retention pools, these vessels would be required to install NOAA-approved scales and to maintain observer coverage of every haul for verification that all fish are being weighed, or use an alternative scale-use verification plan approved by NOAA Fisheries.

Finally, the additional costs of administering groundfish retention pools, in comparison to the administrative costs of Amendment 79, would likely be limited to reviewing cooperative agreements at the beginning of the year and combining annual catch data for pool members at the end of the year.

Procedure for Developing a Program of Groundfish Retention Pools

The Council in April 2004 requested staff to provide some guidance on integrating vessel retention pools into the amendment process in order to bridge the implementation gap between Amendment 79 and Amendment 80. Currently, Amendment 79, which the Council took final action in June 2003, is being reviewed by NOAA Fisheries. Amendment 80, which addresses sector allocations and develops the

cooperative structure for the non-AFA trawl catcher processor sector, is scheduled for initial review in October 2004 with final action in December 2004. Although implementation dates for these amendment packages cannot be determined, one can assume that based on their current status of the packages, Amendment 79 would likely be implemented well ahead of Amendment 80.

In order for vessel retention pools to be used to bridge the potential implementation gap between Amendment 79 and 80, the Council could take one of two approaches. The first approach would be to reconsider Amendment 79. Since Amendment 79 has not been formally submitted to the Secretary for approval, the Council could reconsider its June 2003 action. In that amendment, the Council voted to apply the GRS on each individual vessel. The option of applying GRS to vessel pools was considered, but was ruled out because the option lacked formal cooperative structure and thus had enforcement problems. The concept presented in this discussion paper would in theory address the enforcement problems and thus could potentially be a viable option. However, the Council in October 2002, considered a number of different options for reducing groundfish discards, including an option for the non-AFA trawl catcher processor sector to form a cooperative. The Council, recognizing that development of a cooperative for the non-AFA trawl catcher processor sector would be a lengthy process, decided to separate the groundfish reduction program into separate amendments on different tracks. The amendment establishing the groundfish retention standard (Amendment C) was viewed as a more immediate priority whereas the amendment establishing a formal cooperative structure for the non-AFA trawl catcher-processor sector (Amendment A) was viewed by the Council as less of a priority. Any approach that reconsiders Amendment 79 would slow the implementation process considerably. Language would have to be added to Amendment 79 that would allow for formal development of cooperatives, and the EA/RIR/IRFA would also likely require an extensive restructuring. At a minimum, voting to reconsider Amendment 79 for the purposes of allowing vessels to form cooperatives could delay implementation of the amendment package 6 months or more.

The second approach the Council could take is to shift its focus from Amendment 80 to an Amendment 79 trailing amendment. The advantage of this approach is that retention pools cooperatives don't have to deal with allocation issues and thus could be implemented sooner than Amendment 80. The disadvantage of this approach is that it would delay implementation of Amendment 80, which is viewed as a significant step towards rationalizing the BSAI groundfish fisheries. No matter the approach, the Council's time line for Amendment 79 and Amendment 80 would be in jeopardy of being delayed by as much as 6 months to a year if the Council shifts focus to vessel retention pools.

III. Allowing Multiple Cooperatives Under Amendment 80b

Amendment 80a defines the sector allocations for the Bering Sea/Aleutian Islands in Amendment 80. Amendment 80b defines the cooperative structure for the Non-AFA Trawl CP sector that would receive an allocation under Amendment 80a. Depending on the alternatives that are selected, it appears that about 20 vessels will qualify to have the option to join a cooperative in the Non-AFA Trawl CP sector. Given recent discussions regarding cooperatives, the Council is considering whether the alternatives should include an option that would allow the Non-AFA Trawl CP sector to form multiple cooperatives. Those options would be in addition to the options that allow a single cooperative plus a limited access fishery.

Under a single cooperative, the owners of vessels qualified to harvest from the Non-AFA Trawl CP allocation would either join the cooperative or send their vessel and crew to fish from the limited access pool of fish. It is anticipated that vessel owners would elect to participate in the open access pool under two conditions. The first condition is that they would be able to generate less profit within the cooperative than they expect to be able to generate in the limited access fisheries. These vessels likely have had relatively small catch histories during the time period that defines the cooperative allocations relative to their catching ability in the limited access fishery. The second reason for not joining the cooperative would be when vessel owners cannot agree to the terms and conditions defined in the

cooperative agreement that do not directly impact profits, and they do not have the power to change those terms and conditions to meet their requirements. For example, the vessel owner may not want to be involved in the internal cooperative politics, adhere to the cooperative's reporting requirements, may have other philosophical differences with a majority of the members of the cooperative, or simply do not want to be part of a cooperative. However, because profits will ultimately determine whether most members of the sector will join the cooperative, balancing the power between the owners and their competing interests is a critical part of developing a cooperative structure.

The power to force changes in a cooperative can be redistributed based on the requirements established for cooperative. Within a program that allows only a single cooperative, changing the percentage of vessels/owners that must join the cooperative before it can form will shift power within the cooperative. For example, if 100% of the Non-AFA Trawl CP sector were required to join the cooperative before it could form, the majority of the sector could be forced to accept more of the demands of owners that hold out from initially joining the cooperative. If the demands by the vessels holding-out from signing the cooperative agreement were too burdensome, the cooperative simply would not form. That may not be a great hardship on owners who feel they have little to gain from a cooperative, but could be very costly for owners that would benefit from joining a cooperative.

Fishing in a share-based fishery, such as a cooperative, will increase profits for participants enough to allow for some amount of compromising between the majority and minority views. The majority may be willing to concede some of the increase in profits to the demands of the other vessel owners to attain the benefits from cooperative fishing. On the other hand, vessel owners that have less to gain from a slower paced fishery (or who hold a different view from the group of owners that control enough votes to form the cooperative) would likely want to require a higher percentage (or even 100%) of the sector to join the cooperative before it could form. The ability to veto the cooperatives' formation could increase their power to negotiate terms and conditions within the cooperative agreement that they could not otherwise.

If the percentage of vessels/owners that are required to form a cooperative were reduced from 100%, then the power structure within the Non-AFA Trawl CP sector would change. For example, if only 80% of the eligible members were required to join a cooperative before it could form, and there are 20 eligible members², only 16 of the 20 need to join the cooperative for it to form. The break-point where power changes from being in the hands of those that have agreed to the terms of the cooperative and those that have not is set at 16 members. That point is critical because before that point is reached the persons that have not agreed to the terms of the cooperative wield a considerable amount of power in the cooperative negotiations. However, after the sixteenth member joins, those that have not joined have very little leverage in cooperative negotiations. In this case the four members that have not joined the cooperative may have to agree to the terms negotiated by the other members of the cooperative or they could be excluded from its membership. Once the threshold for formation is reached, the bargaining power of those vessel owners that have not agreed to its terms decreases, and the bargaining power of the members of the cooperative increases. For a cooperative to form the majority needs to meet the minimum demands of the minimum number of members required for cooperative formation. This holds for any of the percentages under consideration, and should result in a cooperative structure that more closely reflects the views of majority, relative to requiring 100% membership, as the percentage required for formation declines. When selecting the minimum percentage required for cooperative formation, the Council should consider the percentage at which the power to control cooperative formation should move from the majority of members to the minority.

² If 20 vessels do qualify to participate in the sector, then each 5% reduction in the percentage required to form a cooperative means that one less vessel is required to join the cooperative. This assumes the percentages are based on the number of vessels and not the number of owners, since some owners have more than one vessel in the sector.

The debate within the sector will probably reflect concern over who is allowed to control the terms and conditions of the cooperatives' bylaws. The power to change the bylaws results from several factors³, one of the most important is the percentage of members required to join the cooperative that was discussed above. Now consider individuals within the sector. If we continue the example of requiring 16 of 20 members are required to join the cooperative before it can form, and assume that part way through the negotiation process 15 members have agreed to join and 5 have not agreed to terms. The 15 members can come to terms with the demands of one of the remaining 5 sector members and the cooperative will form. However, the majority is likely to agree to terms with the person that has terms most like the other 15 members (or a person that would fair about the same under the cooperative or open access). That person may be able to improve their position within the cooperative by agreeing to join. People that have different requirements than the majority or with the most to lose from joining the cooperative under the other member's terms are least likely to join.

By allowing multiple cooperatives to form, the bargaining power changes in the cooperative formation process. Depending on the requirements for a cooperative to form, it could shift the power among individuals in the sector. When multiple cooperatives are allowed to form the Council needs to identify the minimum number of participants in a cooperative (the Council also needs to define the alternatives that would set the minimum membership level for a cooperative to form if this alternative is included in the analysis). The smaller the number of members required cooperative formation, the greater the number of cooperatives that can form. If the minimum number of members required for a cooperative to form is one, then it is basically an IFQ program and each individual decides on their own whether to rationalize and also whether coordinating fishing in a cooperative will bring additional benefits. For some members of the sector, IFQs may be the most attractive alternative. For other members, the flexibility to manage quota cooperatively may result in cooperatives with multiple members.

Now consider an example where the minimum number of members required for cooperative formation is four. If there were 20 members in the sector, then 20% of the sector's members would be required to agree to terms before a cooperative could form. It should be relatively easy for a cooperative to form, if the minimum standard is set at 4 members. Other members of the sector could also join that cooperative if they agree to the terms of the cooperative's bylaws. That provision should help to ensure that each vessel is given the opportunity to join a cooperative. However, it may mean that the "odd-person-out" has little voice in deciding the terms of the cooperative agreement. If they did not like the terms of that cooperative, they could review the terms and conditions of the other cooperatives that may form to see which one best meets their needs. Sector members that do not like the conditions for membership in cooperatives that have formed would have the option of finding three other members of the sector willing to form a separate cooperative or join the limited access sector. If there were not three other members that have yet to join a cooperative, that vessel would need to accept⁴ the terms of one of the cooperatives or be forced to fish in the limited access fishery.

If multiple cooperatives are allowed to form, the above discussion highlights the need for setting up a structure for individuals to negotiate with representatives of the various cooperatives that may form. To facilitate those negotiations the Council will likely need to define a deadline for cooperative formation.

³ Other factors could include negotiating skills, charisma of some members, business ties within the sector, etc.

⁴ Because the cooperative had already formed in this case, it is likely that the terms and conditions for membership in the cooperative have already been defined. Persons wishing to join the cooperative would not be precluded from attempting to renegotiate those terms; however, the cooperative members would have control over any changes that were proposed. If this is a concern, the Council could define the requirements for cooperative formation in more detail to help ensure that all members of the sector have the right to negotiate the terms of a cooperative's structure before it is formed. For the Council to manage the formation of multiple cooperatives to ensure that everyone was given an opportunity to participate in their formation, they would likely need to devise a set of overall guidelines and set up an approval process for each cooperative that is formed. The approval process would likely require a timeline for negotiating cooperative terms and conditions, a period of time for allowing members to join, and a review process to ensure that everyone was given an opportunity to join their cooperative of choice.

Sector members will be given a period of time before that deadline to negotiate with other members of the sector to form a cooperative. At the end of that period, the parties would be required to submit their request to form a cooperative either to the Council, NOAA Fisheries, or both. The cooperative proposals would be reviewed, and if approved NOAA Fisheries would issue the cooperative their allocation, based on the catch history of its members, at the start of the fishing year. The actual steps in this process and the actual timelines would need to be developed by the Council and NOAA Fisheries.

Some members of industry have argued that allowing multiple cooperatives to form would provide a better opportunity for the entire sector to rationalize. They are concerned that the under a single cooperative structure, with less than a 100% membership requirement, the majority of the members of the sector could dictate their will over others that find those terms unpalatable. Those outside of the cooperative would either be forced to accept the will of the majority or become part of a limited access fishery. This highlights the need for the Council to consider the impacts of a percentage threshold for cooperative formation will have on the balance the power within the sector. Too much power within a group, either in the hands of the majority or the minority, is probably not optimal.

Finally, multiple cooperatives could result in problems with management of small quotas. Under a system that allows multiple cooperatives, there is the possibility that a cooperative would not be able to access sufficient amounts of incidentally caught fish to prosecute their target fisheries. Whether this is a problem or not depends on the management structure selected for the non-target species. For example, if only target species are assigned to sectors under Amendment 80a, then only target species will be assigned to cooperatives under 80b⁵. In that case, incidental catch of non-target species will only limit the harvest of target species if their harvest approaches the Over Fishing Level (OFL). At that point, NOAA Fisheries would issue closure notices for all target fisheries that take the species approaching the OFL. If non-target species are assigned to sectors and are managed using “hard caps” then issues with small quotas may arise.

⁵ This may create a race for non-target species that are valuable to harvesters. However, it is anticipated that most of those species will be included in the target species category. Other valuable non-target species catches can be limited by directed fishing standards.

**IR/IU Technical Committee Report
May 17-18, 2004**

The reconstituted IR/IU Technical Committee met at the Alaska Fishery Science Center in Seattle, May 17-18, 2004, to refine the threshold option for underutilized species (Component 10 of Amendment 80a) as requested by the Council at the April 2004 meeting. The Committee was chaired by Dr. Dave Hanson. Committee members present were Earl Krygier, Bill Orr, Dave Wood, Donna Parker, and John Henderschedt. Jon McCracken (NPFMC), Sue Salvason (SF), and Lauren Smoker (NOAA GC) served as primary support staff. Rachel Baker (ADF&G) and Jeff Hartman (SF) were also in attendance. Other industry members attending the meeting were Ed Luttrell, Susan Robinson, and Joe Plesha.

I. Adjustments to the Original Component 10

After hearing a presentation by staff summarizing the Component 10 discussion paper, the Committee agreed to address the issues raised by staff in the discussion paper. After some discussion, the Committee agreed to the following recommendations for revising Component 10.

1. Remove all species except yellowfin sole from Component 10.

The Committee agreed that Component 10 is a pilot program that should focus on yellowfin sole, currently the highest valued flatfish of those considered for the program. The structure of the program, when fully developed, would provide the methodology necessary for including other flatfish fisheries (e.g., rock sole and flathead sole) in the program if, in the future, TACs for these fisheries increase dramatically. The Committee noted that fishing effort in the other flatfish fisheries is lower than in the yellowfin sole fishery, and including them in the program might result in large portions of the threshold reserve (*i.e., the available TAC in excess of the threshold*) remaining unharvested. In addition, halibut bycatch rates for these other flatfish fisheries could potentially constrain participants from harvesting the full TAC. In general, the Committee agreed that the value of the other flatfish fisheries, at this time, does not warrant including them in the program given the additional management cost that would be incurred.

2. Establish a poundage threshold for yellowfin sole.

The Committee recommends the following thresholds be included as options in Component 10. These threshold options would replace the options currently being considered for defining the threshold:

- a. 125,000 mt
- b. 150,000 mt
- c. 175,000 mt

During the discussion of thresholds, the Committee agreed that the goal of the program should be to develop a procedure for allocating the unharvested portion of flatfish TAC to sectors that could utilize it. The Committee felt that the threshold should be high enough to allow traditional participants to catch their historic share and increase their harvest within their capacity, while not

too low to allow stranded TAC or hamper future growth in the sector. In addition, the Committee noted that including actual threshold amounts should reduce confusion surrounding those thresholds and allow the industry to more clearly understand the impacts of the threshold.

3. *Allocate the threshold reserve only to the trawl sectors defined in Amendment 80a.*

The Committee recommends the following ranges for allocating the threshold reserve to the trawl sectors defined in Amendment 80a:

| CV/CP Allocation Option A | | | | | |
|-------------------------------------|------------|----------------|-------------------------------------|------------|----------------|
| Catcher Vessels @ 25% | | | Catcher Processors @ 75% | | |
| CV Sector Allocation Options | AFA | Non-AFA | CP Sector Allocation Options | AFA | Non-AFA |
| i). | 24.00% | 1.00% | i). | 25.00% | 50.00% |
| ii). | 22.00% | 3.00% | ii). | 37.50% | 37.50% |
| iii). | 20.00% | 5.00% | iii). | 50.00% | 25.00% |

| CV/CP Allocation Option B | | | | | |
|-------------------------------------|------------|----------------|-------------------------------------|------------|----------------|
| Catcher Vessels @ 50% | | | Catcher Processors @ 50% | | |
| CV Sector Allocation Options | AFA | Non-AFA | CP Sector Allocation Options | AFA | Non-AFA |
| i). | 42.00% | 3.00% | i). | 12.50% | 37.50% |
| ii). | 45.00% | 5.00% | ii). | 25.00% | 25.00% |
| iii). | 42.50% | 7.50% | iii). | 37.50% | 12.50% |

| CV/CP Allocation Option C | | | | | |
|-------------------------------------|------------|----------------|-------------------------------------|------------|----------------|
| Catcher Vessels @ 75% | | | Catcher Processors @ 25% | | |
| CV Sector Allocation Options | AFA | Non-AFA | CP Sector Allocation Options | AFA | Non-AFA |
| i). | 72.00% | 3.00% | i). | 6.25% | 18.75% |
| ii). | 70.00% | 5.00% | ii). | 12.50% | 12.50% |
| iii). | 67.50% | 7.50% | iii). | 18.75% | 6.25% |

The Committee structured the allocation of the threshold reserve as a two-step process. First, the Council would select the percent of reserve to be allocated between the catcher vessel sectors and the catcher processor sectors. The recommended options are 25/75, 50/50, and 75/25. Second, the Council would then allocate the catcher vessel quota and catcher processor quota between the AFA and non-AFA sectors. Allocations within the catcher vessel and catcher processor sector would be independent from one another but when combined should add to 100 percent. For example, the Council could select Option B which would allocate 50 percent of the threshold reserve to the catcher vessel sectors and 50 percent to the catcher processor sectors. Next, the Council could select Option ii (45/5) for allocations between AFA and non-AFA vessels within the catcher vessel sectors and Option iii (37.50/12.50) for allocations between AFA and non-AFA vessels within the catcher processor sectors.

The Committee noted that the allocation of the threshold reserve would be combined with the initial allocation, allowing participants to harvest both allocations together as one block. License holders eligible to participate in the threshold allocation fishery would be based on the eligibility criteria in Issue 4 of Amendment 80a. The Committee spent some time discussing the criteria for selecting the threshold allocation percentages. That discussion included selecting allocation percentages that best develop the underutilized fishery, while continuing to conserve PSC and reduce discards. In addition, the allocation percentages selected should allow traditional participants to maintain their historic catch and increase their harvest within their harvesting and processing capacity. Other factors that should be considered when selecting the allocation percentages are the ability of the sector to harvest the threshold allocation, the sector's dependence on the yellowfin sole and pollock fisheries, and the different communities' dependence on the yellowfin sole and pollock fisheries.

4. *PSC may be transferred within cooperatives and between cooperatives in the same sector, and also develop a program that enables transfer of PSC and TAC between sectors for future use.*

The Committee recognized that transfers of PSC between sectors in the yellowfin sole fishery would likely be problematic, especially if rollovers of yellowfin sole TAC are included in the threshold program, and thus recommended transfers only within a sector. However, the Committee noted that allowing transfers of PSC between sectors could result in a more efficient use of PSC and could allow the industry to better meet the OY. It was also noted by the Committee that under Amendment 80a, PSC will be allocated to the sectors and that sectors need to be responsible for their own PSC management when harvesting the threshold reserves. However, if a sector does not have enough PSC to continue targeting yellowfin sole and there is PSC remaining from other fisheries within that sector or another sector, then the PSC should be allowed to be transferred from these fisheries to the yellowfin sole fishery. The Committee noted that transfers of PSC within a sector and between sectors currently take place. These transfers are made to better accommodate harvest of the Pacific cod rollovers.

5. *Include a rollover provision for unharvested yellowfin sole, allocated as part of the threshold reserve, that is not harvested by a given date.*

The following are recommended guidelines for the rollover provision:

- a. Rollovers of yellowfin sole would flow from the sectors with projected unharvested reserve to the trawl sectors that are projected to fully utilize their allocation. September 1 would serve as a soft date where a sector could voluntarily relinquish their unharvested threshold reserve. October 15 would serve as a hard date where inseason managers could reallocate unused yellowfin sole reserve to other sectors.
- b. The program would be fashioned similar to the Pacific cod rollover program in that the yellowfin sole reserve would first rollover quota to the sector most similar to the relinquishing sector, followed by the next most similar sector.
- c. The program would require a cooperative to file a plan for using additional yellowfin sole quota.

In addition, the Committee also noted that being able to lease yellowfin sole threshold reserve to other sectors would be problematic for the rollover provision, so the Committee recommends that sectors not be allowed to lease their threshold reserve allocation.

The Committee noted that rollovers are needed because the allocation of the threshold reserve will not necessarily be based on historical fishing patterns. Rollovers would allow adjustments to the sector allocations later in the year if some sectors are unable to harvest their entire allocation.

II. New Proposals for Component 10

1. Lease Auction Program

The Committee recommends that the proposal to lease the threshold reserve through a lease auction program not be included in Component 10 of Amendment 80a. Instead, the Committee recommends the lease auction program be reviewed as a fishery wide policy that would be implemented as a separate plan amendment to be integrated into future Council actions.

During the discussion of Component 10, the Committee was presented a proposal to lease the threshold reserve to the highest bidder through a lease auction program rather than allocate it to sectors. The Committee agreed that one of the potential benefits of the leasing program would be to help pay for future fishery management costs. It was noted in the discussion that the success of the North Pacific fishery has been in part due to the outside funding, and the leasing program could help augment future funding for fishery management costs. It was also noted that the lease auction program would eliminate the "race for fish" in the threshold reserve fishery. The Committee also recognized that each sector has different levels of capital available to them, and one or two sectors or companies could purchase all of the threshold overage. It was also pointed out in the discussion, that the flatfish fisheries would be a good starting point for the leasing program because portions of those TACs have historically, in years of large flatfish TACs, gone unutilized. However, the Committee noted that it is fundamentally unfair to only lease flatfish while not reviewing other fisheries for including in a lease auction program. Finally, the Committee spent some time discussing some of the legal issues surrounding a lease auction program with regard to the MSA. In addition, there was some discussion on the treatment of auction proceeds. NOAA GC expressed concern with the concept, but was not willing to rule it out as an option. NOAA GC will examine the concept within the provisions of MSA to determine if any legal barriers exist.

2. Shore Processor Consideration

The Committee agreed that BSAI cooperatives are the tool of choice for rationalization. However, they were concerned that interjecting shore plant allocations into the components and options could potentially create difficulties in rationalizing the BSAI groundfish fisheries.

During the discussion concerning Component 10 and the lease auction program, the Committee heard a proposal to allocate groundfish to shore based processors. The Committee discussed the proposal briefly. In the end, the Committee agreed that the proposal was not germane to the task assigned to them, and that the lack of shorebased processor representatives at the meeting hampered their ability to fully explore the issue.

3. Include a PSC only allocation option in for Amendment 80

A proposal for allocating only PSC to trawl sectors was presented and the Committee elected not to recommend this proposal.

Western Gulf of Alaska Fishermen

222 Seward St, Suite 201
Juneau, Ak 99801
Tel (907) 723-5257
Email jmchilders@gci.net

May 25, 2004

Ms. Stephanie Madsen
Chair,
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99601

RECEIVED
MAY 26 2004
N.P.F.M.C.

Re: **C-6 IRIIU -- Amendment 80A**

Dear Madam Chair:

I write today on behalf of the Western Gulf of Alaska Fishermen (WGOAF), which is a groundfish trawl, pot, and longline harvester's association. WGOAF members participate in many Gulf of Alaska groundfish fisheries and also in the winter pacific cod trawl fishery around Adak, Alaska. I write in order to express concern at the lack of consideration of our situation in the scoping process, and to highlight and question some specific changes made to the Amendment 80A motion at the April Council meeting.

In an earlier letter dated March 21, 2004, I described our involvement and increasing reliance on the federal cod fishery in the Aleutian Islands. WGOAF members have been participating in the fishery around Adak for the past 5 seasons. None of the WGOAF members have LLPs for the Aleutian Islands area and they are restricted to fishing inside state waters in the so-called parallel fishery. Their financial dependence on this cod fishery increases every year and is now crucially important to their economic survival. Our previous letter described WGOAF member involvement in the Aleutian fishery and established our concern that we have not been part of the scoping process for this issue that is so very important to us.

At the April Council meeting changes were made to the Amendment 80 Component and Options motion. Some of these changes are of great concern to us, and highlight our distress at not being included fully in the scoping process. Specifically, the following changes are very troubling.

1. Issue 1; Component 6, was modified to include the qualifier "legal" for catch apportionments to be used in sector allocations.

February 10, 2004 motion:

Issue 1; Component 6 For purposes of apportionments, annual catch percentages will be defined using one of the following:

- Option 6.1 Total catch of the sector over total catch by all sectors
- Option 6.2 Retained catch of the sector over retained catch by all sectors.

April 10, 2004 motion:

Issue 1; Component 6 For purposes of apportionments, annual catch percentages will be defined using one of the following:

- Option 6.1 Total **legal** catch of the sector over total **legal** catch by all sectors
- Option 6.2 Retained **legal** catch of the sector over retained **legal** catch by all sectors.

We agree with and support this language change in Issue 1; Component 6. It is correct to include all legal landings in the sector allocations, and we point out that our member's landings are legal federal landings made as part of the Non-AFA Trawl CV Sector.

2. Issue 4; Component 11 was significantly changed in April. Previously, eligibility to participate in a sector, simply satisfaction of some minimum landings requirements. In April eligibility was modified to include only LLP license holders.

February 10, 2004 motion:

Component 11 Vessels will be determined to be eligible for a given sector if they meet minimum landings requirements (see the next component) in the years selected from the following:

April 10, 2004 motion:

Component 11 **Except as provided in component 13, a LLP license holder will be determined to be eligible for a given sector if they have the proper area, gear, vessel type, and vessel length endorsements and meet minimum landings requirements (see the next component) in the years selected from the following:**

3. Issue 4; Component 13 was not part of the February 10, 2004 motion, but was added to the April 10, 2004 motion. It is included here:

Component 13: License holders with the following endorsements on their LLP;

- BS or AI or BSAI
- Non-trawl
- Pacific cod

Eligibility of pot and longline vessels greater than or equal to 60' to participate in the directed Pacific cod fishery is determined by Amendment 67.

Taken together, amended Components 6, 11, and the new Component 13 will cause WGOAF member p-cod harvests in the Aleutian Islands to be counted in the Non-AFA trawl sector for allocation purposes and at the same time deny sector eligibility to WGOAF members! Hopefully this is unintended. Regardless, it certainly highlights the need to include WGOAF members in the scoping process for Amendment 80. Our member cod fish landings in the Aleutians are legal federal landings made as part of the Non-AFA Trawl sector. The fact that our landings are made in the parallel fishery rather than in the LLP fishery is irrelevant. WGOAF members have participated legally in the AI federal cod fishery and have become dependent on the fishery. Any future sector allocations or potential rationalization programs for AI cod must recognize and include their history of participation.

We request at this time that WGOAF be included formally in any further scoping sessions regarding Amendment 80.

Sincerely,



Joe Childers

Director, Western Gulf of Alaska Fishermen

RECEIVED

MAY 28 2004

May 25, 2004

N.P.F.M.C.

To whom it concerns:

My name is Robert Nekus. I am a commercial fisherman and a resident of Utnalaska, Ak. I have an opinion concerning Amendment 80, i.e., in regards to vessels under 60', both longline and pot.

It is my opinion, and an opinion shared by other small boat fishermen in Utnalaska, that the present management plan now in place in the Eastern Aleutians should remain as is for two reasons. First of all the basic criteria for rationalization have not been met. Secondly, this is the 1st year that the jig rollover would add poundage to the longline/pot quota.

It is my understanding that there are a number of basic problem areas considered before a fishery is rationalized. The areas of concern are economic, safety and management.

Briefly then, is there too many fishermen chasing too few fish? Is the fishery overcapitalized? Are fishermen forced out in rough weather because of short openings or seasons? Are the biologists having difficulty managing the fishery? The answers to the above questions are all no.

Additionally, this is the first year of the jig rollover. This added poundage to the quota would aid in the creation of a year around fishery for all gear types.

Also, the jig rollover will be an important assist for the developing Alaska small boat fleet.

The HA < 60' Halibut fleet will also benefit from the rollover. Fishermen will be able to retain fish that for the past few years have had to throw back because of the April or May closure. With the extended season they will be able to keep these fish.

Therefore, retain the current management plan. Rationalization is not necessary. The fishery is still developing economically, more boats can participate, so far the fishery is safe and not pressured, easily managed and could expand into a year around endeavor for residents of Umanaska and for those others who must come to the Alutians to participate.

Sincerely

Robert Nelson
Box 1002
Umanaska Ak.
99605

UNITED STATES SEAFOODS, L.L.C.

May 28, 2004

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99601

Re: C-6 IR/IU

Dear Stephanie:

I am writing on behalf of United States Seafoods, LLC ("USSF") to comment on Amendment 80. USSF manages three catcher processors and two catcher vessels that depend on the BSAI non-pollock trawl groundfish fisheries. For better or worse, our vessels will be greatly affected by your final decision on Amendment 80.

USSF requests that Amendment 80 include an option that allocates trawl PSC only. Such an approach could be incorporated into the existing Amendment 80 package rather easily by adding the following:

- **To 80A Component 1 add:** Option 1.3, "Include trawl PSC only."
- **To 80A Component 4 add:** Option 4.3, "Each sector allocation of PSC shall be based on a percentage or actual number rather than a set of years."
- **To 80B Component 1 add:** Option 1.3, "Include PSC only."

The Dilemma.

Amendment 80 was intended to help the H&G sector cope with the IR/IU discard regulations contained in Amendment 79. Unfortunately, the goal of timely action on Amendment 80 is being jeopardized by the scope, complexity, and contentiousness of this package. Ten distinct harvesting sectors with very different

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SEATTLE 9461 Olson Pl. S.W. Seattle, WA 98106; (206) 763-3133

interests and concerns are now involved in Amendment 80A. Given the number of stakeholders involved and the issues currently in play with Amendment 80, we do not see how it can be implemented in concert with Amendment 79.

While, USSF has consistently advocated for getting rationalization right, rather than getting it right now, we believe that Amendment 80 should have an alternative that can realistically meet the Amendment 79 timetable. This trawl PSC-only approach is such an alternative.

A Solution.

A trawl PSC-only approach would make Amendment 80A more manageable, and would be a systematic step towards a more comprehensive multi-species multi-sector rationalization program. Under a PSC approach Amendment 80A would allocate PSC between the four trawl sectors (AFA-CP, H&G, AFA-CV, and Non-AFA-CV). This approach to Amendment 80A offers the following:

- Simplified Sector Allocations. Under a PSC-only approach the Council would not be required to make any decisions regarding target species allocations, and the existing Pacific cod trawl apportionments and the roll-over regulations would simply remain in place. Also, only four similar sectors, instead of ten very different sectors, would be impacted by this approach.
- Avoidance of Difficult Time Consuming Issues. The trawl PSC-only approach does not require resolution of issues that are unrelated to the issue of retention and utilization of BSAI groundfish species. Such issues include: the potential Bering Sea and Aleutian Islands cod split, fixed gear issues, and the parallel fishery issue.
- Uses existing Amendment 80 Framework. The trawl PSC-only options do not create much additional analytical work as they fit neatly within the existing Amendment 80 package.
- Consistency with IR/IU. A trawl PSC-only approach targets the solution on the only gear type with the capability of harvesting the Bering Sea flatfish species which are the current focus of IR/IU. Further, by not allocating target species this approach does not institutionalize the very discard practices that IR/IU was intended to address.

As it relates to Amendment 80B, a trawl PSC-only approach offers significant benefits to the H&G sector. Cooperative management of PSCs in concert with Amendment 79's management of target species through discard restrictions will stabilize and "slow the race for fish" in the H&G sector. On top of these regulatory measures, the H&G sector will undoubtedly expand upon its already successful fleet cooperation program. This new management environment (created by the combination of the GRS, PSC Coops, and fleet cooperation) would promote high retention and responsible PSC usage, without restricting the flexibility that is the hallmark of the BSAI multi-species fisheries. An additional benefit of rationalizing the H&G sector through PSC coops is that it would not require the installation of flow-scales on the under-125 foot vessels.

In short, we believe that a trawl PSC-only option for Amendment 80 merits consideration, and request that the options suggested by this letter be added to Amendment 80 for analysis.

Thank you for the opportunity to submit these comments. If you or any other Council members have any questions regarding U.S. Seafoods' position on these issues we will be happy to address them at the upcoming meeting in Portland. We look forward to continuing our work together on these issues.

Sincerely yours,

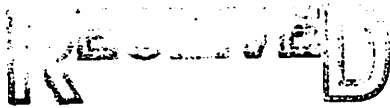
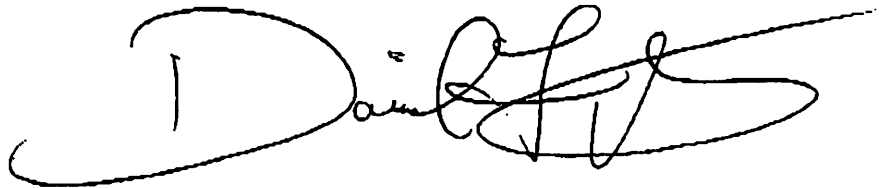


David Wood
United States Seafoods, LLC

I would like to see the bsal pacific cod stay as it is, for boats 60 ft and under. The National marine fishery applied LLPS for vessels fishing in fedral waters so we would not have any more boats coming into the fishcry. There is no reason to have any other system installed at this time. Rance at the Dutch Harbor NMFS office states that the pacific cod fishery is still manageable for the 60 ft and under, since the jig boats do not catch their quota the 60 ft and under pot and hook and line boats catch the roll over. LLP were installed so these fisheries could not be over fished. There is no biologic reason to impose any other system at this time. I have been jig, pot and longing boats out of Dutch Harbor since 1995 . I have been fishing in Dutch Harbor for 25 years and own a 32 ft boat that I jig and long line with.. The jig fishery is attend for the community of Dutch Harbor at an entry level fishery, as of this year I have seen 6 new boats come to town to start fishing for pacific cod and other fisheries. It is true we jig boats do not catch our quota now, but we will in the future at which time we can start talking about making some sort of system. I welcome other boasts to come to my town and help us catch our fish so we can have a strong fishery in this town for boats 60 and under. Dutch Harbor needs more 60 ft and under boats to help the community generate more revenue for the town. I do not want to see the money leave this town and make Dutch Harbor just a service Island for out side boats.

Sincerely

David Fulton



MAY 28 2004

N.P.F.M.C.

P.O. Box 344
Kodiak, Alaska 99615
907-486-4302
907-317-6017 Cell

May 29, 2004

Stephanie Matson, Chairman, NPFMC
North Pacific Fishery Management Council
605 West 4th Avenue Suite 306
Anchorage, Alaska 99501

Re: C-6 IR/IU Amendment 80

Dear Madam Chair:

My name is Robert Gunderson and I am the owner / operator of the 58' fishing vessel Icy Mist. I write to you today to express concern about the IR/IU process, specifically Amendment 80 Issue 4. The eligibility to participate cuts off at 2002. This Fishery for vessels under 60 foot was only conceived in September of 2000 with NO deliveries in that year. The first delivery was in 2001. This is trying to limit a fishery that has only been around for 4 years. We have participated for 2 years now (2003 & 2004) but under the current plan would be shut out of this fishery. This fishery has a very small number of boats, is easy to manage, and is the last entry level fishery for small boats. I join with the City of Unalaska in asking that this fishery stay status quo or the qualifying years be added to so that this can remain an entry level fishery.

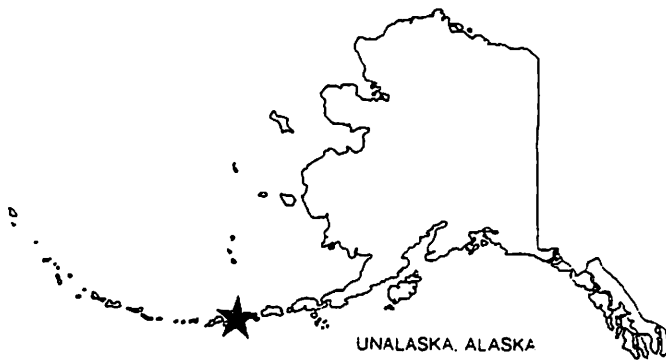
Thank you,



Robert Gunderson
P.O. Box 344
Kodiak, Alaska 99615
907-486-4302
907-317-6017 cell
bjmist@gci.net

CITY OF UNALASKA

P.O. BOX 610
UNALASKA, ALASKA 99685-0610
(907) 581-1251 FAX (907) 581-1417



May 28, 2004

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

Received
JUN - 1 2004
N.P.F.M.C.

Subject: C-6 IR/IU Amendment 80

Dear Ms. Madsen:

On behalf of the City of Unalaska, I am writing to you today in support of the Unalaska resident small boat fixed-gear fleet. We are particularly concerned with the proposals listed under Issue 4 in Amendment 80 for the Pacific Cod 60' and under fixed-gear pot, hook-and-line, and jig vessels.

The local fleet does not support their sector shifting to qualifying years and landing requirements for eligibility to participate in this fishery. They prefer that this fishery remain at status quo with open-access and continue to be an entry-level fishery. They would like to see this be the case not just for the Unalaska small boat fleet, but also for 60' and under vessels from other communities in Southwest Alaska that fish for cod in this area. The majority of Unalaska's fishers feel that if the qualifying years that are listed in Amendment 80, with the cut-off years for qualifying ending with 2002, remain in place, local fishers would be disenfranchised from their own local fishery due to their lack of history and amount of tonnage delivered during the qualifying years. The qualifying years and landing requirements that are in place now would mean that the majority of the qualifying vessels would come from outside the community.

This issue is of further concern to the local fixed-gear fleet because of the changes made to the Pacific Cod rollover provisions in Amendment 77, which just went into effect this fishing season. These changes allow the jig quota, which is 2% percent of the TAC, to be rolled over first to the 60' and under pot and hook-and-line vessels. The rollover from the jig sector, plus the fixed-gear allocation of 1.4% of the TAC, has turned this fishery around by providing enough quota and allowing for a year-round fishery that is now attracting more markets better ex-vessel prices and will allow for new entrants. At meetings that we held with the local fishers, we were told that at least five local harvesters are coming on line with new vessels to participate in

this fishery. If the qualifying years that are listed now in Amendment 80 stay in place, these new entrants would not qualify. They would have to purchase someone's LLP license to fish, which would be very expensive and which would also make the jig roller provision be of little benefit to the local Unalaska fixed gear harvesters. With the jig rollover, we now have a fishery that could have 7 to 8 million pounds to harvest, making this fishery a fishery in which harvesters can now make a living participating in.

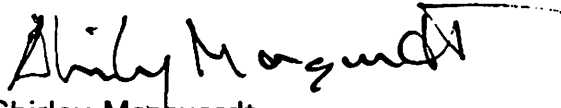
We would ask that the Council look at this fishery to see if there really is a need for it to have qualifying years and landing requirements. We certainly feel that this fishery doesn't warrant these types of restrictions at this time. This cod fishery is not over-capitalized. There are about 5 pot vessels, approximately 35 hook-and-line, and 15 jig vessels that would be qualified if 2002 were the cut-off year to get into this fishery. This fishery does not have any management problems. It does not have large catch rates, and it is open for long periods of time and is fairly easy to manage. It is a safe fishery, and it does not have many problems with injuries and vessel sinkings.

As a community, we feel that if this fishery stays in an open-access form, it will play an important part in the development of a small boat fleet for this community. We see this sector as an area that will see some growth. The City is planning a 20 million dollar boat harbor that should be under construction within two years, and that will provide moorage and services for several vessels in this sector. The harvesters in the small boat sector are an important part of this community. Many of them are land owners in the community and support our local businesses. We would expect, as this fishery expands, that vessel owners from other communities may set up operations in Unalaska and invest in the community. Clearly, we have good reasons to support maintaining this fishery as open-access or in status quo mode.

We have provided an attachment to this letter that addresses changes in Issue 4 on page 6 of the April council motion on this issue. The attachment outlines new options that we would like to see added for analysis; they include adding a status quo option; an increase in the qualifying years; and two new sub-options on no qualifying years and exemptions for jig vessels.

We hope the council will take into account our concerns and the options provided in the attachment. Thank you for taking the time to consider our request.

Sincerely


Shirley Marquardt
Mayor

CC: Unalaska City Council
Chris Hladick, City Manager

[Faint, illegible text covering the majority of the page, likely representing a meeting agenda or minutes.]

ISSUE 4 Eligibility to Participate in a Sector

Component 11 Except as provided in component 13, a LLP license holder will be determined to be eligible for a given sector if they have proper area, gear, vessel type, and vessel length endorsements and meet minimum legal landing requirements (see the next component) in the years selected from the following.

Option 11.0 Status Quo LLP license required

- Option 11.1 1995-1997
- Option 11.2 1995-2002
- Option 11.3 1997-2002
- Option 11.4 1998-2002
- Option 11.5 1999-2002
- Option 11.6 2000-2002
- Option 11.7 For < 60' H&L/Pot CV sector
 - a. **1995-2004**
 - b. **1996-2004**
 - c. **1997-2004**
 - d. **1998-2004**
 - e. **1999-2004**
 - f. **2002-2004**

Sub-option 11.7.1 No qualifying years, exempt 60' < H&L/Pot/Jig vessels

Sub-option 11.7.2 Exclude jig vessels

Component 12 A holder of a license with the proper endorsements will be eligible for a given sector if, during the previously specified sets of years the minimum legal landings criteria selected from the following.

- Option 12.1 At least one landing
- Option 12.2 50 MT
- Option 12.3 100 MT
- Option 12.4 250 MT
- Option 12.5 500 MT
- Option 12.6 1,000 MT
- Option 12.7 For <60' H&L/Pot CV sector
 - a. **At least one landing**
 - b. 5 MT
 - c. 10 MT
 - d. 20 MT
 - e. 50 MT

Suboption 12.7.1 Exclude jig vessels and < 60' fixed gear catcher vessels from minimum landing requirements

Suboption 12.7.2 Exclude jig vessels

Note: Changes an preferred options in bold type.

TO Whom it May Concern

In reference to Amendment 90

Issue 4, Component 11.

I ask that you might Consider leaving things as they are in the Dutch Harbor area or include eligibility up to 2004. The reason I request this is because if this issue continues on its present course another fishery will be closed to me. For years I fished in the crab industry and 2 1/2 years ago I bought my own 32 Foot so I could jig fish and someday acquire some halibut quota. I live in Dutch Harbor and am trying to make a living at cod fishing with my boat. If the Federal area is closed to me it will eliminate a good area for me and others who are trying there best.

MAY 23 2004

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Thank you Klaus M. Czerny
FIV Dolce Vita

Kristjan B. Laxfoss
F/V LADY GUDNY
P. O. Box 1050
Unalaska, AK 99685-1050
(907) 581-5743 fax (907) 581-5744
E-mail: LadyGudny@aol.com

31 May 2004

FAX: (907) 271-2817

TO: Stephanie Matsen
North Pacific Fishery Council

FR: Kristjan B. Laxfoss

RE: Amendment 80

RECEIVED
JUN - 1 2004
N. BEARING

Dear Stephanie,

I am writing you this letter to ask for the council not to change anything regarding boats under 60 feet with respect to jig, pot or longline here in the Bering Sea. I own a 32 foot boat and my sons have been fishing it.

If the council must have qualifying years I would suggest 1995, 1996, 1997, 1998, 1999 and 2000 relating to Issue 4, Component 11. Component 12.7 for under 60 feet hook/line, pot and jib 5 MT. Component 7, Sub Option 7.1.1-C 4%.

Thanking you in advance for your time and consideration.

Best regards,

Kristjan B. Laxfoss

I am a Unalaska resident upset by the movement to limit access to the under 60 foot fixed gear p cod fishery that takes place in the eastern Aleutians. It is my understanding that this fishery was designed as an entry level fishery where up and coming fishermen could get their start, a quickly disappearing entity in the Alaskan fishing industry of today. The less than sixty-foot p. cod fishery is in its infancy and should be left to develop under its present management structure.

The circumstances surrounding the fishery do not justify rationalization. Ranse Morrison, the NMFS biologist who manages the fishery, says that the fishery is easy to manage. The under 60 foot p. cod fishery does not have a history of being dangerous. To my knowledge, no serious injuries or deaths or dcaths mar its past. Finally, the fishery is not overcapitalized. Its participants are not facing financial disaster at the hands of increased competition. In fact, many of this years participants quit fishing before the entire quota was caught.

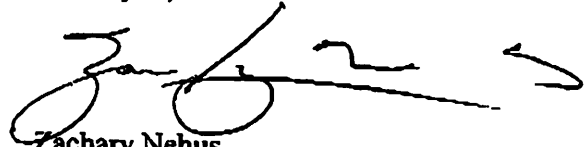
Only a handful of boats will benefit if the under sixty-foot p. cod quota is rationalized, or it access limited. These are people who were able to harvest the quota as soon as it was established because they already owned boats. I did not have the ability to participate because I did not have the resources necessary to get involved. I just purchased a vessel that I plan to fish p. cod with out of Unalaska and now I am being told this fall might be my last opportunity to do so.

Someone might wonder why I would invest money to participate in a fishery that is in the process of having its access restricted. The truth is that I did not know this process was underway. I had been told the rationalization of this fishery was off the table. Ranse Morrison himself did not know the fishery was on its way to having its access restricted. How can fishermen themselves be expected to know something about a fishery that its own management biologist does not even know? I do not have the money or the time to keep up on everything that is going on in the political world. Many of the people in the fishing industry are at a stage where they can hire skippers and devote themselves to politics fulltime, or they have the resources to hire representation. I do not have these luxuries.

Recently I have been spending up to ten months a year fishing in an effort to get myself established in the fishing industry. The under sixty-foot p. cod quota is a fishery

that I am hoping to make the foundation of my operation. Don't limit its access just because it's the "easy" thing to do. There is no justification for limiting access to the under sixty-foot p. cod fishery in the eastern Aleutians. Maintain the entry level status that the fishery presently has so that men like myself can establish our own commercial fishing operations without having to spend big money on permits or quota.

Thank you,

A handwritten signature in black ink, appearing to read 'Zachary Nehus', written over a horizontal line.

Zachary Nehus

(907)581-4486

May 31, 2004

Michael B. Laukitis
Magic Fish Co.
PO Box 33
False Pass, AK 99583

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West 4th Ave., Suite 306
Anchorage, AK 99601

Re: C6 IR/IU Amendment 80A

Dear Madame Chair:

I am writing to briefly comment on Amendment 80A of the IR/IU analysis. There may be some merit in non-pollock groundfish sector allocations, retention pools, and co-operative arrangements in the Bering Sea in order to reduce bycatch, but there are elements in the Council's motion that would possibly extinguish my federal groundfish LLP endorsement for the Bering Sea.

My small business owns three different LLP's with Bering Sea endorsements. Because of recent rule changes (e.g. 60/40 cod split in the GOA), I plan on shifting from the western gulf cod fishery into the Bering Sea for a portion of the spring and fall. Last year I purchased an LLP for both trawl and nontrawl gear from a friend who lost his vessel in a fire in order to have this needed flexibility.

I have followed the IR/IU analysis for several years, and to the best of my knowledge **fishermen or the public have never been scoped** on turning IR/IU into a limited entry program beyond the existing LLP program. There are numerous fishermen in the Aleutians East Borough who are similarly situated. Eligibility to participate in a sector should not be restricted by this amendment, because we have not been involved in the scoping.

To address this problem I ask that you please consider removing all landing requirements as either a set of years or a minimum tonnage in Components 11 and 12 of the Council's April 10, 2004 motion. A valid LLP for groundfish with the proper endorsement (BS or AI) should suffice for the program's stated goals.

Sincerely,



Michael B. Laukitis
President, Magic Fish Co.

Groundfish Forum

4241 21st Avenue West, Suite 200
Seattle, WA 98199
(206) 213-5270 Fax (206) 213-5272
www.groundfishforum.org

June 1, 2004

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

RECEIVED
JUN - 1 2004
N.P.F.M.C.

Re: Agenda Item C-6: IRIU

Dear Madam Chair,

Groundfish Forum is a trade organization representing 19 of the 23 active trawl head-and-gut catcher processors (a combined total of ~90% of the capacity of the trawl H&G fleet). As you know, this fleet is the only one which is impacted by Amendment 79 (a Groundfish Retention Standard) and needs to be able to form cooperatives to meet that standard. Amendment 80 (BSAI rationalization) is intended to provide our fleet with that ability.

We would like to take this opportunity to comment on the 'underutilized species threshold' process, on the technical committee recommendations, and on alternatives to full rationalization which have been presented to the Council.

Underutilized Species Threshold

In past years, when the pollock ABC was relatively low, the pollock TAC could be set at or near ABC while still leaving a large amount of tonnage available under the 2.0 million ton cap. The Council always allocated the full 2.0 million tons, so the excess fish had to be 'parked' in some other category. Pacific cod TAC was also typically set at or near ABC, so the only species with ABCs high enough to absorb this 'excess' tonnage were flatfish. TACs in these fisheries were set higher than the expected catch because that was how the Council achieved a 2.0 million ton total allocation. The flatfish catch was never expected to reach TAC, nor did it. In recent years, as the pollock ABC has grown, the pollock TAC has increased to the point that the previously excess tonnage has been absorbed by pollock. Flatfish TACs are now set at (or below) the expected catch, and these fisheries are TAC-constrained.

It is illogical to consider flatfish fisheries to be 'underutilized.' The TACs were not fully taken during years of low pollock abundance because they were artificially inflated to bring the total allocation up to 2.0 million tons. Flatfish fisheries were restricted by the amount of prohibited species allocated, not by the TAC. Flatfish were harvested at the maximum amount possible, given PSC limits. In other words, they were fully utilized on PSC rather than TAC, as would be the case regardless which sector harvested them, especially in an open-access scenario. As flatfish TACs

have decreased to accommodate the increase in pollock, flatfish fisheries have closed on TAC. They are not underutilized

There is no precedent for a rationalization program to reserve the option to re-distribute fish away from the primary dependent fleet to lesser-dependent fleets should TACs increase. The American Fisheries Act is a sterling example; even though the pollock TAC has increased by almost 50% since the AFA passed, pollock TAC has not been distributed to other sectors. We do not understand why flatfish fisheries are different from all other fisheries when it comes to rationalization.

IRIU Technical Committee

In April of 2004, the Council voted to re-form the IRIU technical committee, with new membership, and to task the committee with reviewing and refining an 'underutilized species threshold' component for the Sector Allocation portion of Amendment 80. The new committee consisted of six members, which included representatives from Groundfish Forum, non-Groundfish Forum H&G trawl CPs, shoreside processors, motherships, AFA vessels and the State of Alaska. The committee met for two days during May and considered various options to achieve the goal of the underutilized threshold.

After reviewing proposals, the committee agreed on the following position for the 'underutilized' component:

- A threshold should be established for yellowfin sole only.
Committee members representing non-H&G sectors stated that yellowfin sole is the only flatfish which is of interest to them. Other flatfish species do not have enough dollar volume to be an efficient use of PSC for non-traditional H&G vessels. The Council could choose to consider other flatfish species at a later date.
- The threshold level should be either
 - a) 125,000 mt
 - b) 150,000 mt, or
 - c) 175,000 metric tons.

These numbers were chosen to allow some increase in the catch by the existing fleet, taking into consideration CDQ and reserve set-asides.

- All excess TAC above the threshold should be distributed between trawl catcher vessels and trawl catcher processors, with no less than 25% and no more than 75% allocated to each group.
Sole can only be economically harvested by bottom trawls, so it makes sense to limit the re-distribution to the sectors using bottom trawls.
- PSC to be tradable between species within a sector via coops.
- A mechanism to be developed to trade PSC between sectors.
PSC will be a necessary component for any group which harvests yellowfin sole, so it should be tradable within and between sectors.
- A rollover provision to be developed to transfer unused fish between sectors.
This provision will help prevent stranding TAC in one sector which could be used in another.

While we do not understand nor agree with the need for a threshold component, the committee which you created has developed a workable program which will achieve the goal of providing alternative flatfish allocations as TACs fluctuate. We urge the Council to send this program forward for analysis.

Alternatives to Full Rationalization

Some members of the non-AFA trawl catcher-processor sector have presented alternatives to full rationalization (such as retention pools) at past Council meetings. We fully expect that there will be more proposals like these in the future. These ideas are generated by members of the sector who do not feel that they have adequate catch history, therefore want to delay rationalization until they accrue more history. We urge the Council to scrutinize these proposals closely to determine not only the purpose behind them, but whether they are in any way responsive to the issues you are addressing.

Groundfish Forum, which represents the vast majority of the non-AFA trawl CP sector, believes that the rationalization portion of Amendment 80 contains all of the necessary options to construct a fair and viable program for our fleet. We are extremely concerned that efforts to either delay, derail or replace this section will leave the fleet with no ability to meet the increasingly stringent groundfish retention requirement which is imposed on us by Amendment 79. Retention pools will not solve the problem, nor will PSC-only coops. The only way our vessels can realistically meet the retention goals set forth by the Council is to stop the race for fish through full rationalization of target and prohibited species.

Retention pools do not stop the race for fish, and therefore do not provide any tools for increasing utilization or retention.

The H&G trawl CP fleet is extremely diverse; vessels range in size from under 110 feet to over 200 feet in length, and fish throughout the Bering Sea, Aleutians and Gulf of Alaska. Vessels are suited to different fisheries, ranging from Atka mackerel to flatfish to Pacific cod to rockfish or combinations of these. Each of these fisheries has a different retention level. There is no 'average' vessel, just as there is no 'average' fisherman.

Why would a vessel with a relatively high retention rate (typically a larger vessel) choose to pool with a lower-retention vessel? Obviously the smaller vessel would have to pay for the ability to hide behind the higher retention rate. The cost would be just low enough to keep the lower-retention vessel in business, while giving any additional profit to the higher-retention vessel. Further, the lower-retention vessel will not have any additional ability to increase retention. They will be at the mercy of vessels whose size or target fisheries allow them to have higher retention rates. Retention pools (really retention coops) will only serve to benefit larger vessels or those in fisheries with higher retention rates. Further, going through the step of developing retention coops would involve almost all of the same issues as developing a truly rationalized fishery, but would delay reaching the point where retention could actually be increased.

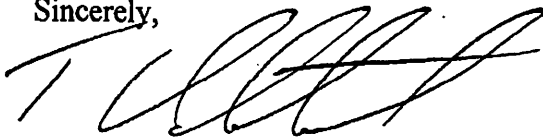
How will retention rates be enforced across these pools? Unless there is a formal contract which allows NMFS to penalize all of the pool participants after the fact, there is no enforceability. NMFS enforcement highlighted this concern during the discussions which led to the passage of Amendment 79. Logically then, retention pools would have to have binding legal contracts which are acceptable to NMFS and contain most, if not all, of the components of coop contracts. Why go through this process rather than continuing to develop full-fledged coops?

In summary, we ask the Council to resist attempts to delay rationalization of the non-AFA H&G sector and to pursue the analysis of the existing alternatives and the implementation of all of Amendment 80a as quickly as possible. Our fleet needs the ability to coop both target and prohibited species if we are to continue to increase the retention and value of our fisheries. Stop-gap measures do not help us.

We also question why this particular rationalization plan, unlike pollock, crab, halibut or sablefish, should include a provision to re-distribute target fisheries when TACs increase. If the Council chooses to consider including this, we believe the IRIU technical committee has developed a workable plan for analysis.

Thank you for the opportunity to comment. We continue to be committed to working with the Council and other sectors to meet the goals set before us.

Sincerely,



T. Edward Luttrell
Executive Director

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April 23, 2004

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 709 West Ninth Street
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SENT VIA FAX

JUN - 2004

N.P.F.M.C.

Re: **Non-Pollock Catch History of American Fisheries Act Section 209 Vessels**

Dear Ms. Lindeman:

The At-sea Processors Association requests that the National Marine Fisheries Service ("NMFS") reconsider its position with respect to the status of the non-pollock catch histories of the nine vessels that were retired pursuant to Section 209 of the American Fisheries Act (the "9 Vessels"). A resolution of this issue is necessary in order to determine whether the non-pollock catch history of the 9 Vessels can be counted for purposes of establishing allocations or harvesting limits for the remaining vessels in the catcher/processor sector under a future sectoral allocation for the BSAI groundfish fishery. Before undertaking an analysis of the relevant provisions of the American Fisheries Act (the "AFA"), it is important to recognize that the owners of the remaining vessels in the catcher/processor sector are not claiming that the catch history of the 9 Vessels necessarily gives rise to a non-pollock groundfish allocation or quota. Rather, the owners of these vessels merely seek confirmation that if the years 1995-1997 are treated as qualifying years for purposes of a future sectoral allocation, the catch history of the 9 Vessels should be counted as part of the AFA catcher/processor sectoral allocation.

Under the present limited access system for the non-pollock BSAI groundfish fishery, the 20 catcher/processor vessels listed in Section 208(e) of the AFA (the "20 Vessels") are currently permitted to harvest a percentage of non-pollock BSAI groundfish that is based on the catch history of the 20 Vessels plus the catch history of the 9 Vessels in these fisheries in 1995, 1996, and 1997. Section 211 of the AFA provides in relevant part:

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The catcher/processors eligible under paragraphs (1) through (20) of Section 208(e) are hereby prohibited from, in the aggregate . . . exceeding the percentage of 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 and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997.¹

Applying Section 211 to the present limited access system, the amount of non-pollock BSAI groundfish that the 20 Vessels are authorized to harvest specifically includes the non-pollock catch history of the 9 Vessels. Each of the 20 Vessels currently holds an AFA permit and a groundfish license limitation program license. These limited access system permits, which were issued after the passage of the AFA, permit the 20 Vessels to harvest a percentage of non-pollock BSAI groundfish based on the catch history of the 20 Vessels plus the catch history of the 9 Vessels. Thus, Section 211 of the AFA confirms that the non-pollock catch history of the 9 Vessels is relevant, and has not been extinguished, for purposes of determining harvest limits under the present limited access system.

In direct contrast, the agency appears to have taken the position that the non-pollock catch history of the 9 Vessels cannot be considered for purposes of any present or future limited access system.² In reaching this conclusion, the agency relies on Section 209 of the AFA, which provides in relevant part:

Effective December 31, 1998, the following vessels shall be permanently ineligible for fishery endorsements, and any claims (including related to catch history) associated with such vessels that could qualify any owners of such

¹ AFA Section 211(b)(2) (emphasis added).

² Email Message from Lisa Lindeman to Kent Lind (March 17, 2003).

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vessels for any present or future limited access system permit in any fishery within the exclusive economic zone of the United States (including a vessel moratorium permit or license limitation program permit in fisheries under the authority of the North Pacific Council) are hereby extinguished³

The agency broadly construes Section 209 to extinguish the non-pollock catch history of the 9 Vessels "for purposes of any present or future limited access system."⁴

The agency's broad interpretation of Section 209 is flawed in at least three important respects. First, the agency's interpretation contradicts the plain language of the statute. Contrary to the agency's position, Section 209 does not purport to extinguish the catch histories of the 9 Vessels "for purposes of any present or future limited access system."⁵ Rather, Section 209 extinguishes "claims (including relating to catch history) associated with such vessels that could qualify any owners of such vessels for any present or future limited access system permit."⁶ We cannot see how the establishment of a sectoral allocation for the owners of the remaining vessels in the catcher/processor sector in the non-pollock BSAI groundfish fishery constitutes a "claim" by the owners of the 9 Vessels for a limited access "permit." To the contrary, any fishing rights that would result from the establishment of such an allocation would accrue to the benefit of the owners of the 20 vessels listed in Section 208(e) of the AFA, and not to the owners of the 9 Vessels.⁷ Further, such rights would accrue in connection with the permits held by the 20 Vessels, not in connection with the revoked rights of the 9 Vessels. Therefore, the agency's unnecessarily broad interpretation of Section 209 is inconsistent with the plain language of the statute.

³ AFA Section 209 (emphasis added).

⁴ Email Message from Lisa Lindeman to Kent Lind (March 17, 2003).

⁵ Id.

⁶ AFA Section 209.

⁷ NOAA General Counsel has taken the position that under Section 209, "the twenty catcher/processors cannot claim the non-pollock catch history of the nine retired vessels." This position ignores the fact that Section 209 does not purport to limit claims by the owners of the 20 catcher/processors listed in Section 208(e). By its own terms, Section 209 only limits claims by the owners of the 9 vessels.

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The agency's interpretation of Section 209 is also flawed because it creates an unnecessary conflict between Section 209 and Section 211. Under well-settled principles of statutory construction, each section of a statute "should be construed in connection with every other part or section so as to produce a harmonious whole."⁸ "Statutes must be interpreted, if possible, to give each word some operative effect."⁹ A statutory provision should not be interpreted "in a manner that renders other provisions of the same statute inconsistent, meaningless, or superfluous."¹⁰ As noted above, Section 211(b)(2) directs that the non-pollock catch histories of the 9 Vessels should be considered for purposes of determining the amount of non-pollock BSAI groundfish that the remaining vessels in the catcher/processor sector are authorized to catch. The agency's interpretation of Section 209 directs a contrary result, as it would prohibit a consideration of the non-pollock catch histories of the 9 Vessels for purposes of calculating the amount of non-pollock BSAI groundfish that can be harvested by the 20 Vessel AFA catcher/processor sector.

In addition, the agency's interpretation of Section 209 would create an unnecessary conflict between Section 211(b)(2) and Section 209. Under the agency's interpretation of Section 209, the catch history of the 9 Vessels has been "extinguished . . . for purposes of any present or future limited access system."¹¹ Thus, under the agency's interpretation of Section 209, the 20 Vessels should not receive the benefit of the catch history of the 9 Vessels for purposes of calculating harvest limits under the present limited access system. However, Section 211(b)(2) explicitly states that the 20 Vessels *do* receive the benefit of the catch history of the 9 Vessels for purposes of calculating these harvest limits under the present limited access system.¹² The agency's

⁸ Singer, Norman J. Statutes and Statutory Construction, § 46:05 (6th ed. 2000).

⁹ Walters v. Metropolitan Educational Enterprises, Inc., 117 S.Ct. 660, 664, 519 U.S. 202, 209, 136 L. Ed. 2d 644 (1997).

¹⁰ Boise Cascade Corp. v. United States, 942 F.2d 1427, 1432 (9th Cir. 1991).

¹¹ Email Message from Lisa Lindeman to Kent Lind (March 17, 2003).

¹² By way of background, it was understood at the time that the AFA negotiations took place that the 20 Vessels would continue to be able to harvest non-pollock groundfish based on the non-pollock catch history of the 20 Vessels and the 9 Vessels. The AFA transferred 15% of the BSAI pollock total allowable catch from the offshore sector to the inshore sector. In order to decapitalize the offshore sector, vessels representing 10% of

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interpretation of Section 209 renders part of Section 211 meaningless because it would effectively write the words "and the catcher/ processors listed in section 209" out of the statute. In other words, if Section 209 is broadly construed to extinguish the non-pollock catch history of the 9 Vessels "for purposes of any present or future limited access system," a direct conflict with Section 211 arises because Section 211 explicitly requires the consideration of the non-pollock catch history of the 9 Vessels for purposes of the present limited access system. Accordingly, we urge the agency to avoid an interpretation of Section 209 that creates a direct conflict with the directive of Section 211.

Further, the agency's interpretation of Section 209 is inconsistent with the legislative history associated with the provision. In construing a statute, legislative history is generally recognized as "an instructive source, indicative of what the legislature intended."¹³ Courts "look to the legislative history for guidance when the enacted text was capable of two reasonable readings or where no one path of meaning was clearly indicated."¹⁴ The purpose of Section 209 was to transfer a portion of the offshore pollock sector's harvest allocation to the onshore pollock sector. The allocation transfer was accomplished through "the purchase of nine pollock catcher processor vessels and their pollock fishing history."¹⁵ In summarizing the effect of Section 209, Senator Murray explained that "in exchange for retiring [the 9] vessels and transferring the pollock catch history associated with them to the onshore sector, the owners of these vessels will be paid \$90 million."¹⁶ This legislative history indicates that the \$90 million buyout of the 9 Vessels involved a retirement of the 9 Vessels from the U.S. EEZ plus a

the pollock total allowable catch (the 9 Vessels) were bought out of the fishery via a one-time payment to the owners of these vessels. The owners of the remaining vessels in the offshore fleet (the 20 Vessels) received none of the buyout money and no compensation for the remainder of the pollock (5%) that was transferred to the inshore sector. The only concession made to the 20 Vessels in exchange for relinquishing that 5% of the pollock total allowable catch was the right to form a harvesting cooperative and the right to continuing harvesting non-pollock groundfish in the BSAI up to the catch history of the 20 Vessels plus the 9 Vessels as per Section 211(b) of the AFA.

¹³ Singer, Norman J., Statutes and Statutory Construction, § 48:04 (6th ed. 2000).

¹⁴ Id., § 48:01.

¹⁵ 144 Cong. Rec. S12802 (daily ed. Oct. 21, 1998) (statement by Sen. Gorton).

¹⁶ 144 Cong. Rec. S12708 (daily ed. Oct. 20, 1998) (statement by Sen. Murray).

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purchase of the *pollock* catch history of the 9 Vessels.¹⁷ The transaction did not include the purchase of the *non-pollock* catch history of the 9 Vessels, and the owners of the 9 Vessels were never compensated for the surrender of their *non-pollock* catch history. Notably, the fee established for the repayment of the \$75 million loan associated with the transfer of the catch history of the 9 Vessels is collected solely from *pollock* harvested by the inshore fleet. See AFA § 207(b).

On the other hand, there is a simple, straightforward interpretation of the language of Section 209 that is consistent with Section 211, i.e., Section 209 was crafted to prevent the owners of the 9 Vessels from bringing new vessels into the *non-pollock* fisheries by using the *non-pollock* catch histories of the 9 Vessels to claim a qualification for present or future limited access permits.

There is no indication in the language of the statute, or in its legislative history, that the *non-pollock* catch history of the 9 Vessels was to be extinguished for purposes of establishing future *non-pollock* allocations for the owners of the 20 Vessels. If Congress intended for Section 209 to completely extinguish the *non-pollock* catch history of the 9 Vessels for purposes of any present or future limited access system, and to prohibit claims by the owners of the 20 Vessels, this intent would have been reflected in the statutory language, and the catcher-processor sector would have been compensated accordingly.

In sum, the agency's overly broad interpretation of Section 209 violates accepted canons of statutory interpretation because it is inconsistent with the plain language and legislative history of the statute, and would effectively rewrite Section 211.

¹⁷ By way of background, the issue of the 9 Vessels' *non-pollock* catch history was specifically addressed by the various BSAI fishing sectors during the course of the AFA negotiations. At that time, the owners of the 9 Vessels offered to sell the *non-pollock* catch history of the 9 Vessels along with the *pollock* catch history of these vessels. The opportunity to purchase the *non-pollock* catch history of the 9 Vessels was rejected by the other sectors in the Bering Sea groundfish fisheries, all of whom were represented in the negotiations. Thus, the amount of fish that was transferred from the catcher-processor sector under Section 209 was specifically limited to *pollock*, as none of the other sectors were interested in compensating the owners of the 9 Vessels for their *non-pollock* catch history.

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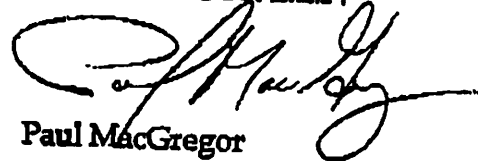
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of the AFA to eliminate the reference to the non-pollock catch history of the 9 Vessels. If Congress intended to extinguish the non-pollock catch history of the 9 Vessels for purposes of any present or future limited access system, it would not have specifically directed that these catch histories be considered for purposes of calculating harvest limits for the 20 Vessels under the present limited access system. For the reasons cited above, we respectfully request that the agency reconsider its interpretation of Section 209 of the AFA.

Thank you in advance for your consideration of this issue.

Very truly yours,

MUNDT MACGREGOR L.L.P.



Paul MacGregor

PM:emb

cc: Dr. James W. Balsiger

Robert Babson

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**Public Testimony Sign-Up Sheet
and
Other Handouts Received**

**PUBLIC TESTIMONY SIGN-UP SHEET FOR
AGENDA ITEM C-6 IR/IU**

| | NAME (PLEASE PRINT) | AFFILIATION | |
|------|--------------------------------------|--|---|
| 1 ✓ | Larry Cotter | APICDA | |
| 2 ✓ | Frank Kelly / Frank Kelly | City of Unalakleet / Unalakleet | |
| 3 ✓ | Robert Gunderson | F/v Ice Mist | 3 |
| 4 ✓ | GERRY MERRIBAW | PROWLER FISHERIES | 3 |
| 5 ✓ | Dave Fulton | UNFA | |
| 6 ✓ | Beta Stewart | AEB | |
| 7 ✓ | Joe Childs | WGOAF | |
| 8 ✓ | TERESSA Kandianis | Kodiak Fish Company | 3 |
| 9 ✓ | Dave Wood | US Seafoods | 3 |
| 10 ✓ | ED WITSELL / LONI SWANSON | GFP | |
| 11 ✓ | Susan Robinson / Mike Petersen | Fishermen's Finest | 3 |
| 12 ✓ | BRENT PAINK | UNITED CATCHER BOATS | 3 |
| 13 ✓ | Paul MacGyver | Off-Sea Processors | |
| 14 ✓ | Bill Orr | Iguigne U.S. | 3 |
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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.

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AGENDA C-6
JUNE 2004
Supplemental

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 Office of General Counsel
 P.O. Box 21109
 Juneau, Alaska 99802-1109

DATE: June 4, 2004

FOR: Chris Oliver
 Executive Director
 North Pacific Fishery Management Council

THROUGH: Lisa L. Lindeman *Lisa Lindeman*
 Alaska Regional Counsel
 NOAA General Counsel

FROM: Robert Babson *RB*
 Attorney
 NOAA General Counsel, Alaska Region

SUBJECT: Non-Pollock Catch History of the Nine Catcher Processors Listed in Section 209 of the American Fisheries Act.

This responds to your February 11, 2004, request for a legal opinion regarding whether the twenty catcher processors listed in section 208(e) of the American Fisheries Act (AFA) can claim the non-pollock fishing history of the nine catcher processors removed from the fishery pursuant to section 209 of the AFA. The issue has been raised relative to consideration by the North Pacific Fishery Management Council (Council) of Amendment 80 to the Bering Sea and Aleutian Islands (BSAI) groundfish fishery management plan under which the Council is considering sector allocations of BSAI groundfish and prohibited species catch limits based on each sector's catch history. In order to answer the question, the provisions of both sections 209 and 211(a) and (b) must be analyzed.

Discussion

Section 209 of the AFA provides, in pertinent part:

Effective December 31, 1998, the following vessels shall be permanently ineligible for fishery endorsements, and any claims (including relating to catch history) associated with such vessels that could qualify any owners of such vessels for any present or future limited access system



permit in any fishery within the exclusive economic zone of the United States (including a vessel moratorium permit or license limitation program permit in fisheries under the authority of the North Pacific Council) are hereby extinguished....(emphasis added.)

On October 21, 1998, the AFA's primary sponsor, Senator Stevens, inserted a section-by-section analysis of the AFA in the Congressional Record.¹ The analysis explains section 209 in the following manner.

Section 209 identifies nine catcher/processors that, effective December 31, 1998, are permanently ineligible for fishery endorsements. Section 209 also extinguishes all claims associated with vessels that could qualify the owners of the vessels for any limited access system permit. (Emphasis added.)

144 Cong. Rec. S12780 (daily ed. Oct. 21, 1998). By its own terms, and its legislative history, it is clear that section 209 extinguishes only future claims of the owners of the nine listed vessels.

Section 211 of the AFA (entitled "PROTECTIONS FOR OTHER FISHERIES; CONSERVATION MEASURES") deals with the non-pollock fishing history of both the nine vessels listed in section 209 and the twenty vessels listed in section 208(e) of the AFA and provides in pertinent part:

(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.---

* * * *

(2) Bering Sea Fishing.—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from, in the aggregate—

(A) 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 and the catcher/processors

¹This section-by-section analysis, along with the comments made by the AFA's sponsors, printed in the Congressional Record, constitute the legislative history of the AFA.

listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;

(B) exceeding the percentage of the prohibited species 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 of the prohibited species harvested by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount of prohibited species available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;....

In accordance with the title of section 211 of the AFA, the purpose of subsection (a) is explained in Senator Steven's section-by-section analysis as follows:

Subsection (a) of section 211 directs the North Pacific Council to submit measures for the consideration and approval of the Secretary of Commerce to protect other fisheries under its authority and the participants in those fisheries from adverse impacts caused by the subtitle II of the American Fisheries Act or by fishery cooperatives in the BSAI directed pollock fishery. **The Congress intends for the North Pacific Council to consider particularly any potential adverse effects on fishermen in other fisheries resulting from increased competition in those fisheries from vessels eligible to fish in the BSAI directed pollock fishery or in fisheries resulting from any decreased competition among processors. (Emphasis added.)**

144 Cong. Rec. S12781 (daily ed. Oct. 21, 1998). The section-by-section analysis goes on to explain the purpose of subsection (b)(2) of section 211 as follows:

Subsection (b) includes specific measures to restrict the participation in other fisheries of the catcher/processors eligible to participate in the BSAI directed pollock fishery (other than the vessel or vessels eligible under paragraph (21) of section 208(e)). While these types of limitations are appropriately for the North Pacific Council to develop, the catcher/processors eligible under section 208(e) may form a fishery cooperative for 1999 before the North Pacific Council can recommend (and the Secretary approve) necessary limitations. The restrictions in subsection (b) would therefore take effect on January 1, 1999, and remain in effect thereafter unless the North Pacific Council recommends and the Secretary approves measures that supersede (sic) the restrictions. **Subparagraphs (A) and (B) of paragraph (2) 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 that catcher/processors from the BSAI directed pollock fishery caught on average in 1995, 1996,**

and 1997.... The limitations in subparagraphs (A), (B), and (C) do not ensure that the BSAI pollock eligible catcher/processors will be able to harvest any amount of fish, they simply establish additional caps after which those catcher/processors, as a class, will be prohibited from further fishing. (Emphasis added.)

Id.

The overall purpose of section 211, including the subsections discussed above, also was discussed by Senator Murray in her comments to the Senate.

In addition, the bill attempts to ensure adequate protections for other fisheries in the North Pacific and Pacific from any potential adverse impacts resulting from the formation of fishery cooperatives in the pollock fishery. The formation of fishery cooperatives will undoubtedly free up harvesting and processing capacity that can be used in **new or expanded ways in other fisheries**. Although many of these vessels and processors have legitimate, historic participation in these other fisheries, they should not be empowered by this legislation to gain a competitive advantage in these other fisheries to the detriment of participants who have not benefitted from the resolution of the pollock fishery problems.

While we have attempted to include at least a minimum level of protections for these other fisheries, it is clear to many of us that unintended consequences are likely. It is therefore imperative that the fishery management councils not perceive the protections provided in this bill as a statement by Congress that these are the only protections needed. In fact, the opposite is true. Although the protections provided for the head and gut groundfish offshore sector from the pollock offshore sector are more highly developed and articulated in the bill, the protections for other fisheries are largely left for the Councils to recommend. Those of us involved intimately in the development of this legislation **strongly urge the Councils to monitor the formation of fishery cooperatives closely and ensure that other fisheries are held harmless to the maximum extent possible. (Emphasis added.)**

144 Cong. Rec. S12708 (daily ed. Oct. 20, 1998) (statement by Sen. Murray).

Conclusion

Senator Stevens' section-by-section analysis states that the Council may consider the combined non-pollock 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 the overall percentage of harvest and prohibited species available for the twenty catcher processors in the non-pollock fishery. This combined non-

pollock fishing history is in the nature of a cap, not an allocation to which the twenty catcher processors listed in section 208(e) have a statutory right.²

Accordingly, in making sector allocations under Amendment 80, the Council may consider the combined non-pollock fishing history of the twenty vessels listed in section 208(e) and the nine vessels listed in section 209, except that allocations based upon the non-pollock fishing history of the section 209 vessels may not be made to the owners of those vessels and any allocation must comply with the overall caps set forth in section 211(b). Section 211(a) of the AFA, however, also requires the Council to recommend conservation and management measures to protect the participants in non-pollock fisheries. Such recommended conservation and management measures must protect other fisheries under the jurisdiction of the Council (and the participants in those fisheries, including processors) from adverse impacts caused by the AFA or fishery cooperatives in the directed pollock fishery. As indicated by the legislative history, these recommendations should include conservation and management measures to protect other fishermen from adverse impacts resulting from increased competition.

cc: Jane Chalmers
Sam Rauch
Jim Balsiger

²This is also made clear in the language of section 208 itself. Subsection (I) provides in pertinent part:

(i) Eligibility Not a Right - Eligibility under this section shall not be construed -

*

(2) to create any right, title, or interest in or to any fish in any fishery;. . .

North Pacific Fishery Management Council

Stephanie Madsen, Chair
Chris Oliver, Executive Director



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February 11, 2004

Lisa Lindeman
NOAA General Council
P.O. Box 21109
Juneau, AK 99802-1109

RECEIVED FEB 18 2004

Dear Ms. Lindeman:

In April 2003, the Council expanded Amendment 80 to include sector allocations of BSAI groundfish and PSC. Sector allocations will be primarily based on each sector's catch history. The Council is considering catch history ranging from 1995 to 2003. The question has been raised whether the owners of the 20 catcher processors listed in section 208 (e) of the American Fisheries Act (AFA) can claim the non-pollock catch history of the nine catcher processors (AFA 9) that were retired on Dec 31, 1998, under section 209 of the AFA, for the purpose of sector allocations in Amendment 80a.

The confusion surrounding the fishing history of the AFA 9 stems from different interpretations of section 209 and section 211 (b)(2)(A) and (B) of the AFA by the industry. Paraphrasing section 209 of the AFA, it states that all catch history associated with the AFA 9 that could be used to qualify for any present or future limited access permit system in any fishery within the EEZ is extinguished. However, section 211(b)(2)(A) and (B) states that catch history of the AFA 9 is used to determine the catcher processor sideboards and PSC limits for the remaining 20 AFA vessels identified in section 208 (e).

To help clarify the confusion surrounding the AFA 9 catch history prior to final action on Amendment 80, the Council, at the December 2003 meeting, asked NOAA GC to provide a formal legal opinion concerning the status of the catch history associated with the AFA 9 and the implications of section 209 and section 211(b) for any sector allocations of non-pollock groundfish that may be granted to the 20 catcher processor vessels identified in Section 208 (e). The Council has asked that the NOAA GC legal opinion be available prior to Amendment 80 final action which is scheduled for October 2004. However, if at all possible, the Council would benefit from a NOAA GC opinion prior to initial review of Amendment 80 which is scheduled in June 2004.

Sincerely,

Chris Oliver
Executive Director

cc: Jim Balsiger
Sue Salvesson

Handout 6/12 130p
 Dave Fraser
 C-6 Pub. Test.

Agenda Item C-6 IRIU TAC Split Discussion Paper

The IRIU Discussion paper provided by staff captures the problem of the interaction between Amendment 80 and future sub-divisions of TAC and the reason this issue needs to be carried forward within the context of Amendment 80 for a variety of species.

However, the problem related to cod is more immediate. The SSC stated in December: **The SSC believes that the ABC should be split among BS and AI areas, but we are not in a position to address the concerns expressed by the authors. Therefore, for the 2005 specification process, the SSC requests the authors to evaluate the methods used to split the ABC and their potential management implications, so that specific recommendations can be made to the Council on this issue in the future.**

As the discussion paper notes, the default option is Option 2, which will be highly disruptive of the current effort patterns. The SSC has given us time to "get our act together." A TAC split can be done in the 'spec' process, but changing the default option for allocation requires a regulatory amendment.

The following table was constructed from the data in the discussion paper to illustrate the degree of relocation of effort by sector that would be required under option 2 which is the default.

| Sector | BSAI 2004 TAC | Option 2 – The Default | | 2002 AI Harvest |
|-------------------|------------------|---------------------------|----------------------------|--------------------|
| | | Annual AI TAC If Split | A Season Limit If Split | |
| trawl cv | 46,844 | 6,722 | 4,705 | 15,393 |
| trawl cp | 46,844 | 6,722 | 3,361 | 12,529 |
| jig | 3,987 | 572 | 343 | 0 |
| h&l cp | 81,330 | 11,671 | 7,003 | 2759 |
| pot cv | 15,249 | 2,188 | 1,313 | 0 |
| pot cp | 3,355 | 481 | 289 | 6 |
| h&l cv | 305 | 44 | 26 | 106 |
| <60 fixed gear | 1,423 | 204 | 123 | - |
| Non CDQ total | 199,337 | 28,605 | 17,163 | 30,793 |

Option 3 is a stop gap measure which would limit total catch in the AI based on the recommendations of the Plan Team and SSC relative to ABC without sub-allocating the sectors beyond the current BSAI wide accounting of sector splits.

The Council should initiate a regulatory amendment that would address this issue as requested by the AP. This needs to be done for cod independent of Amendment 80, but the issue is broader and needs to be integrated into Amendment 80.

Thanks,
 dave fraser

Frank Kelly #10
6/13/04 8:20a
C-6 Pub. Test.

ISSUE 4 Eligibility to Participate in a Sector

Component 11 Except as provided in component 13, a LLP license holder will be determined to be eligible for a given sector if they have proper area, gear, vessel type, and vessel length endorsements and meet minimum legal landing requirements (see the next component) in the years selected from the following.



- Option 11.1 1995-1997
- Option 11.2 1995-2002
- Option 11.3 1997-2002
- Option 11.4 1998-2002
- Option 11.5 1999-2002
- Option 11.6 2000-2002
- Option 11.7 For < 60' H&L/Pot CV sector
 - a. **1995-2004**
 - b. **1996-2004**
 - c. **1997-2004**
 - d. **1998-2004**
 - e. **1999-2004**
 - f. **2002-2004**

- Sub-option 11.7.1 **No qualifying years, exempt 60' < H&L/Pot/Jig vessels**
- Sub-option 11.7.2 **Exclude jig vessels**

Component 12 A holder of a license with the proper endorsements will be eligible for a given sector if, during the previously specified sets of years the minimum legal landings criteria selected from the following.

- Option 12.1 At least one landing
- Option 12.2 50 MT
- Option 12.3 100 MT
- Option 12.4 250 MT
- Option 12.5 500 MT
- Option 12.6 1,000 MT
- Option 12.7 For <60' H&L/Pot CV sector
 - a. **At least one landing**
 - b. 5 MT
 - c. 10 MT
 - d. 20 MT
 - e. 50 MT

Suboption 12.7.1 Exclude jig vessels and < 60' fixed gear catcher vessels from minimum landing requirements

Suboption 12.7.2 Exclude jig vessels

Note: Changes an preferred options in bold type.

- Suboption 10.2.2 Threshold percentage of average catch will be:
- a. 100%
 - b. 125%
 - c. 150%
- Suboption 10.2.3 Years for determining the average catch will be:
- a. 1995-1998
 - b. 1995-2002
 - c. 1998-2002
 - d. 2000-2003

Issue 4 Eligibility to Participate in a Sector

Component 11 Except as provided in component 13, a LLP license holder will be determined to be eligible for a given sector if they have proper area, gear, vessel type, and vessel length endorsements and meet minimum legal landings requirements (see the next component) in the years selected from the following:

- Option 11.1 1995-1997
- Option 11.2 1995-2002
- Option 11.3 1997-2002
- Option 11.4 1998-2002
- Option 11.5 1999-2002
- Option 11.6 2000-2002
- Option 11.7 For <60' H&L/Pot CV sector
 - a. 1996-2002
 - b. 1997-2002
 - c. 1998-2002
 - d. 1999-2002
 - e. 2000-2002

Component 12 A holder of a license with the proper endorsements will be determined to be eligible for a given sector if, during the previously specified sets of years the vessel meets the minimum legal landings criteria selected from the following:

- Option 12.1 At least one landing
- Option 12.2 50 MT
- Option 12.3 100 MT
- Option 12.4 250 MT
- Option 12.5 500 MT
- Option 12.6 1,000 MT
- Option 12.7 For <60' H&L/Pot CV sector
 - a. At least one landing
 - b. 5 MT
 - c. 10 MT
 - d. 20 MT
 - e. 50 MT

Suboption 12.7.1 Exclude jig vessels and <60' fixed gear catcher vessels from minimum landings requirements.

Suboption 12.7.2 Exclude jig vessels

**COPY FOR YOUR
INFORMATION**

CITY OF UNALASKA

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May 28, 2004

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

Subject: C-6 IR/IU Amendment 80

Dear Ms. Madsen:

On behalf of the City of Unalaska, I am writing to you today in support of the Unalaska resident small boat fixed-gear fleet. We are particularly concerned with the proposals listed under Issue 4 in Amendment 80 for the Pacific Cod 60' and under fixed-gear pot, hook-and-line, and jig vessels.

The local fleet does not support their sector shifting to qualifying years and landing requirements for eligibility to participate in this fishery. They prefer that this fishery remain at status quo with open-access and continue to be an entry-level fishery. They would like to see this be the case not just for the Unalaska small boat fleet, but also for 60' and under vessels from other communities in Southwest Alaska that fish for cod in this area. The majority of Unalaska's fishers feel that if the qualifying years that are listed in Amendment 80, with the cut-off years for qualifying ending with 2002, remain in place, local fishers would be disenfranchised from their own local fishery due to their lack of history and amount of tonnage delivered during the qualifying years. The qualifying years and landing requirements that are in place now would mean that the majority of the qualifying vessels would come from outside the community.

This issue is of further concern to the local fixed-gear fleet because of the changes made to the Pacific Cod rollover provisions in Amendment 77, which just went into effect this fishing season. These changes allow the jig quota, which is 2% percent of the TAC, to be rolled over first to the 60' and under pot and hook-and-line vessels. The rollover from the jig sector, plus the fixed-gear allocation of 1.4% of the TAC, has turned this fishery around by providing enough quota and allowing for a year-round fishery that is now attracting more markets better ex-vessel prices and will allow for new entrants. At meetings that we held with the local fishers, we were told that at least five local harvesters are coming on line with new vessels to participate in

this fishery. If the qualifying years that are listed now in Amendment 80 stay in place, these new entrants would not qualify. They would have to purchase someone's LLP license to fish, which would be very expensive and which would also make the jig roller provision be of little benefit to the local Unalaska fixed gear harvesters. With the jig rollover, we now have a fishery that could have 7 to 8 million pounds to harvest, making this fishery a fishery in which harvesters can now make a living participating in.

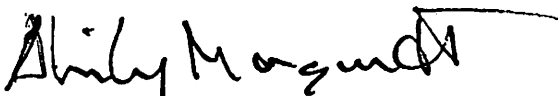
We would ask that the Council look at this fishery to see if there really is a need for it to have qualifying years and landing requirements. We certainly feel that this fishery doesn't warrant these types of restrictions at this time. This cod fishery is not over-capitalized. There are about 5 pot vessels, approximately 35 hook-and-line, and 15 jig vessels that would be qualified if 2002 were the cut-off year to get into this fishery. This fishery does not have any management problems. It does not have large catch rates, and it is open for long periods of time and is fairly easy to manage. It is a safe fishery, and it does not have many problems with injuries and vessel sinkings.

As a community, we feel that if this fishery stays in an open-access form, it will play an important part in the development of a small boat fleet for this community. We see this sector as an area that will see some growth. The City is planning a 20 million dollar boat harbor that should be under construction within two years, and that will provide moorage and services for several vessels in this sector. The harvesters in the small boat sector are an important part of this community. Many of them are land owners in the community and support our local businesses. We would expect, as this fishery expands, that vessel owners from other communities may set up operations in Unalaska and invest in the community. Clearly, we have good reasons to support maintaining this fishery as open-access or in status quo mode.

We have provided an attachment to this letter that addresses changes in Issue 4 on page 6 of the April council motion on this issue. The attachment outlines new options that we would like to see added for analysis; they include adding a status quo option; an increase in the qualifying years; and two new sub-options on no qualifying years and exemptions for jig vessels.

We hope the council will take into account our concerns and the options provided in the attachment. Thank you for taking the time to consider our request.

Sincerely



Shirley Marquardt
Mayor

Need to make keep moving forward on Amendment 80A and 80B for purposes of IRIU (H&G sector) and to continue to make progress on the path towards rationalization for the other sectors. In particular, the BSAI cod allocation (fixed gear/trawl/jig) in Amendment 46 (1996) was scheduled for review in 2001 and has yet to occur. The current allocation is 51% fixed gear, 47% trawl, 2% jig but the actual catch is 60% fixed gear, 40% trawl. The review of this allocation is long overdue and the sector split is crucial to further rationalization in order to end the race for fish and to address over-capitalization.

Suggest consideration of the following clarifications and changes in Amendment 80A:

Issue 1: Sector Allocations: Sector Definitions: Sectors identified in the box should have a clearer description. One clarification should be that the sector includes LLP and non-LLP participants (if any). The sector's catch history will be the sum of the sector's history (LLP and non-LLP - if any in that sector) since all harvest is deducted from the federal TAC for each sector. For the public reading the document, it might be clearer to explicitly state this. **Action: Direct staff to include a short text description of the sectors in the document (not in the alternatives). Add a note under the box stating that the sector history is the sum of LLP and non-LLP history in the sector (if any).**

Issue 4: Eligibility to Participate in a Sector

- 1.) **It should be stated explicitly under the heading that each sector can have different eligibility criteria specific for that sector.** While this may be implicit, the document can be misinterpreted to allowing only a "one-size-fits-all" selection for all sectors.
- 2.) Not every sector needs to have new eligibility criteria (example: AFA). Add a new option or a new component 11 (re-number existing 11, 12, and 13). New component 11 to read, **"No new additional eligibility requirements to participate in a sector. Those requirements in existing federal and state regulation still apply."** This means to fish federal waters you would need an LLP with the proper endorsements and non-LLP can fish state waters with the appropriate CFEC license etc.
- 3.) If the above is adopted, in the new Component 12.7 (existing component 11), **replace 04 with 03 in a) through g).**

Discussion Papers: While the discussion papers have merit, not all of the topics are essential to A. 80A. Actions on these items may unnecessarily slow or complicate implementation. Those actions, if necessary, should be a trailing amendment rather than integral to A.80.

- 1.) **Non-LLP Harvest:** While it is important for the Council to continue be aware and informed of the magnitude of catch and number of participants, it is not necessary to completely resolve the parallel fishery issue in order to do a sector split (80A). However, in the future, if a sector goes toward further rationalization where catch history is to be awarded within the sector, then the parallel fishery issue needs to be addressed. At this time in 80A, the Council should be aware of the issue and not unnecessarily disenfranchise the non-LLP participants.
- 2.) **New LLP Licenses:** Again, while the Council should be aware of this issue, it is not necessarily essential for implementation of A. 80.
- 3.) **BSAI TAC Split:** As above, while the Council should be aware of this issue, it is not essential for implementation of A. 80. However in the event of a TAC split, and given the default mechanism (Option 2 of the discussion paper), it may be wise to include consideration of Option 3 in Amendment 80A. Option 3 provides the most flexibility for industry and the simplest management scheme.

Option 1 involves awarding of catch history by sector over sets of qualifying years. This is a much more contentious and complicated approach than Option 3 and should only be in a new separate EA/RIR if the Council feels that EA/RIR is necessary. If Option 1 is to be considered in the future, then the qualifying years should also consider a much broader range than those recommended by the AP.

In the TAC split discussion paper it should be noted that the percentages used for Options 1 and 2 are those that are in current allocation for some sectors. It is not clear why the AFA-9 are included in this exercise. The Council can select entirely different percentages in Amendment 80A. It is also not clear on the disposition of rollovers between sectors in the BSAI TAC split in Options 1 & 2. That is, would the rollovers be subject to the same proportionate split. In this regard, Option 3 again provides the most flexibility and ease of management.