AGENDA C-3
OCTOBER 2005

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver
Executive Director

ESTIMATED TIME
6 HOURS

DATE: September 27, 2005

SUBJECT: IR/IU

ACTION REQUIRED

a) Initial Review of Amendment 80 RIR/EA/IRFA
b) Select Preliminary Preferred Alternative and take action as necessary

BACKGROUND

In October 2004, the Council made major modifications to Amendment 80 components and options. Primary among these modifications was the removal of the sector allocations of groundfish, other than yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific ocean perch, Alaska plaice, and arrowtooth flounder to the Non-AFA Trawl Catcher Processor sector. At its December and February 2005 meeting, the Council modified the suite of components and options by further defining the species allocated to the Non-AFA Trawl Catcher Processor sector, modifying the PSC options, adjusting the sideboard options, and adding a yellowfin sole threshold program to the suite of components. In June 2005, the Council conducted a preliminary review of the RIR/EA/IRFA and made further modifications to the suite of components. A copy of the current components, options, and alternatives for Amendment 80 is attached as Item C-3(a).

Staff has prepared a draft RIR/EA/IRFA for this meeting, which was included in a Council mailing the week of September 19. The executive summary is attached as Item C-3(b). At this meeting, the Council may select a preliminary preferred alternative and release the document for public review.

Alternatives Considered for Amendment 80

To address the problem statement, the Council has adopted a suite of components and options that would allocate five primary target species in BSAI to the Non-AFA Trawl CP sector and would allow for cooperative formation by sector participants. Although there are a myriad of different ways to combine the many components and options in the proposed action to form an alternative, the Council has selected three strawman alternatives that represent a range of reasonable alternatives to assess the impacts of the proposed action. Each of the strawman alternatives in the analysis address the problem statement by providing an allocation of the traditional primary species to the sector and allow for the sector to form cooperative(s), which are expected to facilitate a reduction in bycatch by the sector as well as mitigate the costs associated with bycatch reduction. The first alternative is status quo (no action). Although the strawman alternatives differ in several respects the primary difference is in the cooperative structures. The second alternative would allow multiple cooperatives to be formed within the sector. The third alternative would authorize the formation of a single cooperative in the sector. The specific differences of these alternatives are described in the sections that follow and are compared in Table 1.

Table 1 Comparison of the Alternatives

	Alternative 1 (Status Quo)	Alternative 2	Alternative 3
Primary Target Species to be Allocated	none	yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch	yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch
Allocation to Sector	none	*Allocation:* Sector's retained catch over all retained catch, 1998-2002 *Management:* Hard cap *Yellowfin sole:* all yellowfin sole in excess of 125,000 mt threshold to be divided 30% to sector and 70% to other trawl; 2-way rollover; no AFA sideboards for yellowfin sole threshold fishery	*Allocation:* Sector's retained catch over all total catch, 1995-2003 *Management:* Soft cap; rollover to sector *Yellowfin sole:* all yellowfin sole in excess of 100,000 mt threshold to be divided 70% to sector and 30% to other trawl; 2-way rollover; no AFA sideboards for yellowfin sole threshold fishery
Allocation of Prohibited Species	PSC allocated by target fishery and shared among all trawl vessels	Sector allowance based on average historic PSC usage in directed fishery for allocated primary species plus Pacific cod,1998-2002	Sector allowance based on: a) average PSC usage, by fishery, of all trawl in each PSC fishery group for allocated primary species plus Pacific cod, 1995-2003 b) apply sector proportion as determined above c) reduce by 5%
Sector Eligibility	determined by Congress	determined by Congress	determined by Congress

	Alternative 1 (Status Quo)	Alternative 2	Alternative 3
Cooperative endorsement	none	Qualified license holder harvested 150 mt of groundfish with trawl gear on a sector qualified vessel and processed that fish between 1997 and 2002	Qualified license holder harvested 150 mt of groundfish with trawl gear on a sector qualified vessel and processed that fish between 1997 and 2004
Cooperative formation	none	*Threshold:* 15% minimum of eligible participants and must be comprised of at least two separate entities *Allocation:* based on retained catch history, 1998-2002	*Threshold:* 67% minimum of eligible participants and must be comprised of at least two separate entities *Allocation:* based on total catch history, 1995-2003
Excessive share limits	none	No limit on consolidation	No single person can hold no more than 50% of the catch history of an allocated species
Sideboards	none	*For sector:* established based on participation in other fisheries, 1998-2002; for GOA halibut PSC based on usage by quarter and area, 1998-2002; only vessels that have GOA wide weekly participation in the flatfish fisheries over the threshold during the qualifying period would be eligible to participate in the GOA *Within sector:* established between cooperative and non-cooperative participants for unallocated species	*For sector:* established based on participation in other fisheries, 1995-2003; for GOA halibut PSC based on the percent of groundfish target catch by quarter and area, 1995-2003 *Within sector:* established between cooperative and non-cooperative participants for unallocated species
CDQ	7.5% of groundfish and prohibited species (except herring) allocated to CDQ multispecies fishery	10% of allocated species, plus secondary species caught incidentally in directed fisheries, to CDQ multispecies fishery; PSQ proportional to the CDQ allocation	15% of allocated species, plus secondary species caught incidentally in directed fisheries, to CDQ multispecies fishery; PSQ proportional to the CDQ allocation

Alternative 1: No Action

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

Although Amendment 79 to the BSAI Groundfish FMP, the groundfish retention standard (GRS), has not yet been implemented, a final rule should be published before final action on Amendment 80, which is scheduled for December 2005. Currently, there are three potential outcomes. One is the SOC could implement GRS in 2006 at 75 percent. Another is that the SOC approves

Amendment 79 at 65 percent starting in 2007. Finally, the SOC could disapprove Amendment 79. Due to the timing of Amendment 80 and Amendment 79, the no action alternative could change after initial review of Amendment 80 in October 2005 but before final review in December 2005. For purposes of the initial review of Amendment 80, the no action alternative will include a GRS phased in a over a four year period for Non-AFA Trawl CP vessels greater than 125 ft length overall starting in 2007 at 65 percent and culminating in 2010 at 85 percent. The decision to use this scenario is based on the Council's recommendation to the SOC at the June 2005 meeting to implemented Amendment 79 in 2007 at 65 percent to allow ample time for Non-AFA Trawl CP sector to complete any retrofits necessary to meet the enforcement and monitoring requirements included in Amendment 79. In addition, the Council felt it was important to allow the sector time to develop a vessel buyback program authorized under the Consolidated Appropriations Act of 2005. Finally, the Council also clarified at the June 2005 meeting that the specific years tied to GRS in the original action are of less importance than starting at the intended 65 percent.

Alternative 2: Multiple Cooperatives

This alternative would allocate the following species to the Non-AFA Trawl CP sector: yellowfin sole, rock sole, flathead sole, Atka mackerel, and Aleutian Islands subarea Pacific Ocean perch—referred to as primary target species. Allocation of these species to the sector would be in proportion to the retained catch of the Non-AFA Trawl CP sector relative to the retained catch of all vessels, for the years 1998 to 2002.[1] Non-AFA Trawl CP sector allocations of the primary target species would be managed as a hard cap: when the sector harvests all of its allocation of a primary target species, all directed fisheries for that species, as well as those fisheries that catch species incidentally, would close for the sector.

The unallocated portion of the primary target species quota would be reserved for the Non-H&G trawl fishery, which is composed of AFA Trawl CP sector, AFA Trawl CV sector and Non-AFA Trawl CV sector. Non-AFA trawl catcher vessels wishing to participate in the Non-H&G trawl fishery (the general limited access trawl fishery) must have groundfish catch history of a least 1 landing between 1995 and 2004 and possess the appropriate LLP endorsements. Primary species quota cannot be rolled over between trawl sectors under this alternative.

This alternative includes a quota threshold of 125,000 mt for the yellowfin sole quota. If, in a given year, the quota exceeds this threshold, the excess would be allocated in the following manner: 30 percent to the Non-AFA Trawl CP sector and 70 percent to the limited access trawl fishery. Specifically for this excess allocation, a two-way rollover option is allowed. A portion of the yellowfin sole reserve allocated to either the Non-AFA Trawl CP sector or the limited access trawl fishery would be rolled over to the other sector, if, after a specified date (August 1 or September 1), there is any quota that is projected to remain unused. AFA sideboards do not apply to the yellowfin sole threshold fishery.

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

The eligibility criteria for the Non-AFA Trawl CP sector have been determined by Congress in the provisions of the BSAI CP Capacity Reduction Program, which was passed in November 2004. In order to qualify for the sector, a license holder must have trawl and catcher processor

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

endorsements on its License Limitation Program permit (LLP), and must own a Non-AFA vessel that caught and processed 150 mt of groundfish with trawl gear between 1997-2002.

Those qualified to be in the Non-AFA Trawl CP sector and participate in a cooperative must also have qualified license. To qualify for a cooperative endorsement, qualified license holders must have caught 150 mt of groundfish with trawl gear on a vessel qualified as a Non-AFA Trawl CP and processed that fish between 1997 to 2002.

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

Allocation of the primary target species among cooperatives and the sector's limited access fishery would be in proportion to the retained catch of the primary target species of the eligible license holders in each pool, for the years 1998-2002. The PSC allowance would be also be allocated to cooperatives and the sector's limited access fishery based on qualified catch of groundfish of participants.

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

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

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

Alternative 3: Single Cooperative

This alternative would allocate the following species to the Non-AFA Trawl CP sector: yellowfin sole, rock sole, flathead sole, Atka mackerel, and Aleutian Island Pacific Ocean perch--referred to as the primary target species. Allocation of these species to the sector would be in proportion to the retained catch of the Non-AFA Trawl CP sector relative to the total catch by all vessels, for the years 1995 to 2003. The unallocated portion of the primary target species quota would be reserved for the Non-H&G trawl fishery, which is made up of the AFA Trawl CP sector, AFA

Trawl CV sector, and the Non-AFA Trawl CV sector. In order for Non-AFA trawl catcher vessels to participate in the Non-H&G trawl fishery, they must qualify by harvesting 1,000 mt of groundfish catch history between 1995 and 2004, and the posses the appropriate LLP endorsements (the general limited access fishery). Non-AFA Trawl CP sector allocations of the primary target species would be managed as a soft cap: when the sector harvests all of its allocation of a primary target species, the species would be placed on prohibited species status, and would need to be discarded.

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

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

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

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

Those qualified to be in the Non-AFA Trawl CP sector and participate in a cooperative must also have qualified license. To qualify for a cooperative endorsement, qualified license holders must have caught 150 mt of groundfish with trawl gear on a vessel qualified as a Non-AFA Trawl CP sector and processed that fish between 1997 to 2004.

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

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

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

Sideboards for the Non-AFA Trawl CP sector would be established in regulation based on the sector's participation in other fisheries during the same years used to calculate the sector's allocation, (1995 to 2003). Sideboards for those species that close on TAC in the GOA and the

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

The CDQ program would receive an allocation of 15 percent of each primary target species, and the associated species taken incidentally in the prosecution of these directed fisheries. The prohibited species allowance allocated to the CDQ program as prohibited species quota reserves would be issued at the same percentage as the CDQ groundfish allocation.

Components and Options for Amendment 80

Provided below are the issues and components for sector allocation, including their possible options and suboptions. These components and their respective options and suboptions are divided into four issues comprising 15 components in total. The four issues are sector allocations of BSAI non-pollock groundfish, PSC allowance, cooperative formation, and yellowfin sole threshold fishery. Note that Alternatives 2 and 3 represent specific combinations of components and options for analysis. The final configuration chosen by the Council could include other combinations. The Council's preferred alternative would be analyzed in the final document.

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

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

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

Option 2.1 7.5%

Option 2.2 10%

Option 2.3 15%

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

Suboption 2.1 7.5%

Suboption 2.2 10%

Suboption 2.3 15%

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

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

Component 3 Identifies the sector allocation calculation (after deductions for CDQs).

For purpose of allocation to the Non-AFA Trawl CP sector, each primary species allocation would be based upon the years and percentage of average catch history selected in Component 5 using one of the following:

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

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

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

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

Suboption 1 Allocations would be managed as a hard cap. When the allocation is reached, further fishing would be prohibited.

Suboption 2 Allocations would be managed as a soft cap. When the allocation is reached, species would be prohibited status.

The remaining portion of primary species included in this program would be allocated to the BSAI limited access trawl fishery. LLP permits associated with trawl catcher vessels with (retained) catch history of at least (a) 1 landing (b) 150 mt or (c) 1,000 mt from 1995-2004 and with appropriate LLP endorsements may fish in the BSAI limited access trawl fishery. LLP permits associated with trawl catcher vessels who do not meet this threshold cannot participate in a directed fishery for the five allocated species.

Suboption Target Species Rollover: Any unharvested portion of the Amendment 80 target species in the limited access fishery that is projected to remain unused, shall be rolled over to the Amendment 80 sector.

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

Option 4.1 1995-2003

Option 4.2 1997-2002

Option 4.3 1998-2002

Option 4.4 1998-2004

Option 4.5 1999-2003

Option 4.6 2000-2004

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

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

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

Component 6 PSC allowance for the Non-AFA Trawl CP Sector.

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

Suboption 6.1.1 Allocation based on historical usage of PSC by the Non-AFA Trawl Catcher Processor sector.

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

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

Option 6.2 Select a Non-AFA Trawl CP sector PSC reduction option from the following that would apply to any PSC apportionment suboption selected in 6.1. PSC reduction options can vary species by species.

Suboption 6.2.1 Reduce apportionments to 60% of calculated level.

Suboption 6.2.2 Reduce apportionments to 75% of calculated level.

Suboption 6.2.3 Reduce apportionments to 90% of calculated level.

Suboption 6.2.4 Reduce apportionments to 95% of calculated level.

Suboption 6.2.5 Do not reduce apportionments from calculated level.

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

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

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

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

Basis for the distribution to the LLP license holder is the catch history of the vessel on which the LLP license is based and shall be on a fishery-by-fishery basis. The underlying principle of this program is one history per license. In cases where the fishing privileges (i.e., moratorium qualification or LLP license) of an LLP qualifying vessel have been transferred, the distribution of catch history to the LLP shall be based on the aggregate catch histories of (1) the vessel on which LLP license was based up to the date of transfer, and (2) the vessel owned or controlled by the LLP license holder and identified by the license holder as having been operated under the fishing privileges of the LLP qualifying vessel after the date of transfer. (Only one catch history per LLP license.)

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

a.) that is not an AFA Trawl CP

b.) to whom a valid LLP license that is endorsed for BSAI Trawl CP fishing activity has been issued; and

c.) that the Secretary determines who has harvested with trawl gear and processed not less than a total of 150 mt of non-pollock groundfish during the period January 1, 1997 –through December 31, 2002.

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

Component 8 Establishes the licenses that would be authorized for participation in a cooperative and would receive a cooperative endorsement. Component 8 also establishes the number of licenses required 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 receive a cooperative endorsement:

Option 8a.1 Qualified license holders must have caught 150 mt of groundfish with trawl gear on a vessel qualified as a non-AFA trawl CP, and processed that fish between 1997 – 2002.

Option 8a.2 Qualified license holders must have caught 150 mt of groundfish with trawl gear on a vessel qualified as a non-AFA trawl CP, and processed that fish between 1997 – 2003.

Option 8a.3 Qualified license holders must have caught 150 mt of groundfish with trawl gear on a vessel qualified as a non-AFA trawl CP, and processed that fish between 1997 – 2004.

In order to operate as a cooperative, membership must be comprised of at least two separate entities and must be:

Option 8b.1 At least 15 % of the eligible licenses

Option 8b.2 At least 30% of the eligible licenses

Option 8b.3 At least 67% of the eligible licenses

Option 8b.4 At least 100% of the eligible licenses

Option 8b.5 All less one distinct and separate license holder using the 10% threshold rule

Option 8b.6 All less one eligible license

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

Option 9.1 Catch history is based on total catch

Option 9.2 Catch history is based on total retained catch

Component 10 Determines which years of catch history are used for establishing cooperative allocations. The allocation of groundfish between the cooperative and those eligible participants who elect not to join a cooperative is proportional to the catch history of groundfish of the eligible license holders included in each pool. Applicable PSC limits are allocated between the cooperative and non-cooperative pool in same proportions as those species that have associated PSC limits. The catch history as determined by the option selected under this component would

be indicated on the Sector Eligibility Endorsement, which indicates the license holder's membership in the Non-AFA Trawl CP sector. The aggregate histories would then be applied to the cooperative and the non-cooperative pool.

Option 10.1 1995-2003, but each license holder drops its 3 lowest annual catches by species during this period

Option 10.2 1997-2003, but each license holder drops its two lowest annual catches by species during this period

Option 10.3 1998-2002, but each license holder drops its lowest annual catch by species during this period

Suboption 10.3.1 Each license holder does not drop its lowest annual catch by species during this period

Option 10.4 1998-2003, but each license holder drops its lowest annual catch by species during this period

Suboption 10.4.1 Each license holder drops two years during this period

Option 10.5 1999-2003, but each license holder drops its lowest annual catch by species during this period

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

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

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

Suboption 11.2 Persons (individuals or entities) that exceed the cap in the initial allocation would be grandfathered.

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

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

Suboption 12.1.1 Sideboards would be allocated between cooperative and non-cooperative LLP holders.

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

Suboption 12.2.1 Sideboards would be allocated between cooperative and non-cooperative LLP holders.

Sideboard caps for Amendment 80 qualified Non-AFA Trawl CP sector with valid transferable GOA LLP with appropriate area endorsements shall be established for halibut PSC usage in the GOA. Discussion of options shall include but not be limited to:

Option 12.3 Halibut PSC - For each target species in the Deep and Shallow water complexes:

Suboption 12.3.1 Actual halibut PSC usage by the Non-AFA Trawl Catcher Processor sector by quarter, by area, by the years defined in Component 4.

Suboption 12.3.2 GOA halibut PSC by fishery based on the percent of groundfish target catch by the Non-AFA Trawl Catcher Processor sector by quarter, by area, by the years defined in Component 4.

Option 12.4 Only vessels associated with LLPs that have Gulf wide weekly participation in the flatfish fisheries over the threshold during the qualifying period (number of weeks) would be eligible to participate in the GOA.

Option 12.5 Fisheries that close on TAC (POP, PSR, NR and Pacific cod): retained harvests by Gulf area for each of the qualifying years expressed as a percentage of both retained and total catch.

Issue 4: Development of a Yellowfin Sole Threshold Fishery

Component 13 A threshold level may be established for yellowfin sole. ITAC below the threshold level would be allocated to the Non-AFA Trawl Catch Processor sector based on the formula determined in Components 3 and 4. ITAC in excess of the threshold level would be available to other sectors as well as to the Non-AFA Trawl CP sector. Threshold levels for other species may be developed at a later date. AFA sideboards do not apply to the YFS threshold fishery.

Threshold Rollover Suboption

Suboption 1: No rollover provision

Suboption 2: Any unharvested portion of the threshold reserve allocated to the limited access fishery that is projected to remain unused by a specific date (August 1 or Sept 1) shall be reallocated to the Non-AFA Trawl CP sector. Any unharvested portion of the threshold reserve allocated to the Non-AFA Trawl CP sector that is projected to remain unused by a specific date (August1 or September 1) shall be reallocated to the limited access fishery.

Suboption 3: Allow rollovers of any portion of the yellowfin sole TAC that is projected by the NOAA Regional Administrator to go unused. The NOAA Regional Administrator would be responsible for determining both the amount and the timing of the rollover.

For yellowfin sole, the threshold would be:

Option 13.1 80,000 mt

Option 13.2 100,000 mt

Option 13.3 125,000 mt

Option 13.4 150,000 mt

Option 13.5 175,000 mt

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

Suboption 1 30% Non-AFA Trawl CP sector and 70% limited access fishery

Suboption 2 50% Non-AFA Trawl CP sector and 50% limited access fishery

Suboption 3 70% Non-AFA Trawl CP sector and 30% limited access fishery

Other Elements of Amendment 80

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

- The cooperative program developed in Amendment 80b would not supersede pollock and Pacific cod IR/IU programs.
- The Groundfish Retention Standards (GRS) (Amendment 79) would be applied to the cooperative as an aggregate on an annual basis and on those vessels who did not join a cooperative as individuals. All vessels in the sector, consistent with NMFS catch monitoring plan, would be required to have on board NOAA Fisheries approved scales to determine total catch and either 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.
- Non-AFA Trawl CP sector participants that did not elect to join a cooperative would be subject to all current regulations including all restrictions of the LLP and the GRS if approved.
- All qualified license holders participating in the fisheries of the Non-AFA Trawl CP sector would need to have trawl and catcher processor endorsements with general licenses for BSAI and the additional sector eligibility endorsement. Length limits within the license would also be enforced such that any new vessel entering the fishery would not exceed the Maximum Length Overall (MLOA) specified on the license.
- 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 would need to be reported to NOAA Fisheries in order to track who owns the Sector Eligibility Endorsements. The purchaser would be eligible to own a fishing vessel under MarAd regulations or must be a person who is currently eligible to own a vessel.
- Annual allocations to the cooperative would be transferable among cooperative members. Such transfers would not need to be approved by NOAA Fisheries. Any member of the cooperative would be eligible to use the catch history of any other member regardless of vessel length limitations of the LLP that carries the catch history.
- Annual allocations to the cooperative would be transferable among cooperatives. Inter-cooperative transfers must be approved by NOAA Fisheries.
- Any non-trawl or non-BSAI catches by qualified license holders that are considered part of the Non-AFA Trawl CP sector would not be included in the defined cooperative

program. In addition, these non-trawl or non-BSAI catches allocated to the Non-AFA Trawl CP sector would not necessarily be excluded from other rationalization programs.

- Catch history used for allocation and eligibility purposes would be legal and documented catch.
- Disposition of groundfish species not allocated to the Non-AFA Trawl CP sector would not change as a result of the cooperative program developed in Amendment 80.
- The cooperative 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 cooperative program. The cooperative program would not supersede existing regulations regarding these other marine resources.
- PSC limits for the following species would be created and allocated between the Non-AFA Trawl CP cooperative(s) and those sector participants that did not elect to join a cooperative.
    - BSAI Non-AFA Trawl CP multi-species halibut cap consisting of an apportionment of species identified in Component 1.
    - BSAI Non-AFA Trawl CP 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 CP 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 CP 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 CP 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.
- Bycatch limits for non-specified species or marine resources specifically for this program would not be established. However, if the Council deems that bycatch is unreasonable, specific regulations to minimize impacts would be considered.
- The cooperative(s) would need to show evidence of binding private contracts and remedies for violations of contractual agreements would need to be provided to NOAA Fisheries. The cooperative would need to demonstrate adequate mechanism for monitoring and reporting prohibited species and groundfish catch. Participants in the cooperative would need to agree to abide by all cooperative rules and requirements.
- Specific requirements for reporting, monitoring and enforcement, and observer protocols would be developed in regulations for participants in the cooperative program and would not be the purview of the cooperative. The Council and the Non-AFA Trawl CP sector would need to specify their goals and objectives for in-season monitoring and program evaluation. Recordkeeping and reporting portions of the program would need to be developed to ensure that goals and objectives of the program are met in a cost effective manner.

- A detailed annual report would be required from each cooperative(s). Fishery managers would review the annual report to determine if the program is functioning as intended under the proposed action. It is recommended that in-depth assessments of program be undertaken under the auspices of the Council/NOAA Fisheries periodically (for example, every five years). The in-depth studies would identify the accomplishments of the program and indicate whether any changes would be necessary.
- Task staff with evaluating which socioeconomic data can be developed and implemented under the Non-AFA Trawl Catcher Processor Cooperative Program given the current Magnuson-Stevens Act restrictions. The evaluation would consider collecting cost, revenue, ownership, and employment data on a periodic basis to provide the information necessary to study the impacts of the program. It is anticipated that the data collected under this program would be similar to the data collected under the BSAI crab rationalization program. Details of the collection would be developed in the analysis of the alternatives.

EXECUTIVE SUMMARY

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

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

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

	Alternative 1 (Status Quo)	**Alternative 2**	**Alternative 3**
Primary Target Species to be Allocated	none	yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch	yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch
Allocation to Sector	none	*Allocation:* Sector's retained catch over all retained catch, 1998-2002 *Management:* Hard cap *Yellowfin sole:* all yellowfin sole in excess of 125,000 mt threshold to be divided 30% to sector and 70% to other trawl; 2-way rollover; no AFA sideboards for yellowfin sole threshold fishery	*Allocation:* Sector's retained catch over all total catch, 1995-2003 *Management:* Soft cap; rollover to sector *Yellowfin sole:* all yellowfin sole in excess of 100,000 mt threshold to be divided 70% to sector and 30% to other trawl; 2-way rollover; no AFA sideboards for yellowfin sole threshold fishery
Eligibility for trawl CV sector for general limited access fishery	none	Harvest 1,000 mt from 1995-2004 and with appropriate LLP endorsements	1 landing from 1995-2004 and with appropriate LLP endorsements

	Alternative 1 (Status Quo)	Alternative 2	Alternative 3
Allocation of Prohibited Species	PSC allocated by target fishery and shared among all trawl vessels	Sector allowance based on average historic PSC usage in directed fishery for allocated primary species plus Pacific cod,1998-2002	Sector allowance based on: a) average PSC usage, by fishery, of all trawl in each PSC fishery group for allocated primary species plus Pacific cod, 1995-2003 b) apply sector proportion as determined above c) reduce by 5%
Eligibility for Non-AFA Trawl CP sector	determined by Congress	determined by Congress	determined by Congress
Cooperative endorsement	none	Qualified license holder harvested 150 mt of groundfish with trawl gear on a sector qualified vessel and processed that fish between 1997 and 2002	Qualified license holder harvested 150 mt of groundfish with trawl gear on a sector qualified vessel and processed that fish between 1997 and 2004
Cooperative formation	none	*Threshold:* 15% minimum of eligible licenses and must be comprised of at least two separate entities *Allocation:* based on retained catch history, 1998-2002	*Threshold:* 67% minimum of eligible licenses and must be comprised of at least two separate entities *Allocation:* based on total catch history, 1995-2003
Excessive share limits	none	No limit on consolidation	No single person can hold no more than 50% of the catch history of an allocated species
Sideboards	none	*For sector:* established based on participation in other fisheries, 1998-2002; for GOA halibut PSC based on usage by quarter and area, 1998-2002; only vessels that have GOA wide weekly participation in the flatfish fisheries over the threshold during the qualifying period would be eligible to participate in the GOA *Within sector:* established between cooperative and non-cooperative participants for unallocated species	*For sector:* established based on participation in other fisheries, 1995-2003; for GOA halibut PSC based on the percent of groundfish target catch by quarter and area, 1995-2003 *Within sector:* established between cooperative and non-cooperative participants for unallocated species
CDQ	7.5% of groundfish and prohibited species (except herring) allocated to CDQ multispecies fishery	10% of allocated species, plus secondary species caught incidentally in directed fisheries, to CDQ multispecies fishery; PSQ proportional to the CDQ allocation	15% of allocated species, plus secondary species caught incidentally in directed fisheries, to CDQ multispecies fishery; PSQ proportional to the CDQ allocation

Effects on Harvest Participant and Fishing Practices

Alternative 1: Status Quo/No Action

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

Alternative 2

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

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

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

Based on the eligibility requirements under this alternative, there appear to be 27 vessels that qualify for the Non-AFA Trawl CP sector. Four vessels with trawl CP licenses failed to harvest the required 150 mt of BSAI groundfish with trawl gear and process that catch between 1997 and 2002. Under this alternative, 27 LLP licenses are also estimated to qualify for a cooperative endorsement.

Under Alternative 2, 15 percent of the endorsed LLP licenses would be needed to form a cooperative. In addition, at least two unique entities are required for cooperative formation. Since under Alternative 2 there are likely to be 27 endorsed LLP licenses, at least four of these licenses would be needed to form a cooperative. If each of the cooperatives had the minimum required four endorsed LLP licenses, six cooperatives would be formed in the Non-AFA Trawl CP sector. This provision should help to ensure that each vessel is given the opportunity to join a cooperative. Alternatively, the "odd-person-out" may have less of a voice in deciding the terms of the cooperative agreement. It seems less likely that the "odd-person-out" would be worse off under this alternative than Alternative 3 cooperative structure, which allows only a single cooperative to form. Under this action, each participant would have the option to join any of six potential cooperatives, so it is more likely to find a cooperative that would help them meet their objectives. Participants who elect not to join a cooperative would participate outside a cooperative but within the sector's limited access fishery.

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

Alternative 2 would implement harvest caps on the Non-AFA Trawl CP sector for the species that are not allocated. Sideboard caps would be set using the sector's retained catch of BSAI groundfish species from 1998-2002 in all fisheries relative to the retained catch of all vessels. Sideboards would also be set for GOA halibut PSC based on actual usage relative to the other sectors from 1998-2002. GOA groundfish harvests by the Non-AFA Trawl CP sector would be limited by requiring vessels to have fished a given number of weeks during the qualifying period to participate. Alternatives defining the actual number of weeks required have not been developed, so the impacts cannot be determined.

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

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

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

Alternative 3

Under Alternative 3, the allocation of groundfish species and PSC species would be insufficient to maintain the Non-AFA Trawl CP sector's historic harvest levels (except maybe yellowfin sole). In addition, large portions of the remaining Amendment 80 species would be directed to the general limited access fishery where it would likely remain unharvested without substantial increases in harvest by participants in the fishery. For example, the combined AFA Trawl CP and CV sideboards for rock sole is 7.11 percent. If the Council selected this allocation option for rock sole, the allocation to the general limited access fishery would 70.6 percent of the TAC. Assuming the AFA CP and CV sectors harvested rock sole up to their sideboards, the remaining allocation available for the Non-AFA Trawl CV sector would be 63.49 percent. The Non-AFA Trawl CV sector has traditionally not harvested rock sole to anywhere close to that degree. The alternative does includes a provision to rollover any portion of the general limited access fishery allocation that is projected to go unused by a given date. However, the timing of some of the fisheries and lack of PSC that would be necessary to harvest the rollover decrease the benefits relative to a direct allocation as in Alternative 2.

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

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

Like Alternative 2, 27 vessels appear to qualify for the Non-AFA Trawl CP sector. Four vessels with trawl CP licenses failed to harvest the required 150 mt of BSAI groundfish with trawl gear and process that catch between 1997 and 2002. However, under this alternative, 29 or 30 LLP licenses are estimated to qualify for a cooperative endorsement.

To form a cooperative under this alternative, 67 percent of the endorsed LLP licenses held by Non-AFA Trawl CP sector participants would be required. If the calculation is based on licenses, and 30 licenses are in the sector, then 21 licenses would be required to meet the 67 percent threshold. Basing the cooperative formation vote on licenses and not vessels would tend to benefit those owners that have stacked multiple licenses on their vessels. Those qualified participants who elect not to join a cooperative would participate outside the cooperative but within the sector (sector limited access fishery).

Consolidation would be limited under Alternative 3. Although numbers of persons over the cap cannot be reported for the Atka mackerel and AI POP fisheries to protect confidential data, no companies are over the cap for yellowfin sole, rock sole, and flathead sole. In general, the

changes in the economic impacts of a 50 percent cap versus no cap are small. In either case, the number of vessels in the fishery could be reduced to the minimum number need to harvest the entire allocation.

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

Sideboard caps will be set for both GOA groundfish and halibut fisheries. Groundfish sideboard caps will have the greatest impact on species that close due o the TAC being harvested. These species are typically Pacific Ocean Perch, Pelagic shelf rockfish, northern rockfish, and Pacific cod. Other species are typically closed as a result of halibut PSC constraints. Given that this alternative would increase the Non-AFA Trawl CP sector's halibut PSC cap by about 36 mt, they are expected to be better off under this alternative. Other participants in the GOA fisheries would fair better under Alternative 2.

Effects on Catcher Processor Efficiency

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

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

Effects on the CDQ Program

Alternatives 2 and 3 would increase CDQ percentage allocations for both primary target and incidental catch species. Under Alternative 2, CDQ percentage allocations for each of the primary target species identified in Component 1 and associated secondary species taken incidental in the primary trawl target fisheries would increase to 10 percent. Under Alternative 3, the percentage allocations for target and incidental catch species would increase to 15 percent. The PSQ percentage allocations would increase proportionately under each alternative, as well. Under Alternative 2, the PSQ percentage allocation would increase to 10 percent, and under Alternative 3 it would increase to 15 percent. Currently, the CDQ Program receives 7.5 percent of each groundfish TAC and PSC limit as CDQ and PSQ reserves. These reserves are further allocated among six CDQ managing organizations (CDQ groups). CDQ groups plan and conduct fishing operations for their CDQ allocations, and then receive royalties from the harvest of their CDQ. This revenue is used to provide a means for starting and supporting commercial fisheries business activities in CDQ communities in western Alaska.

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

Effects on Consumers

Consumers are likely to be supplied with products from the Amendment 80 fisheries that resemble those currently produced under status quo management. Non-AFA Trawl CP participants are likely to continue to produce high quality frozen head and gut and whole fish, most of which is sold into Asian markets. Some of that product is reprocessed in Asia and sold in the U.S.

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

Some quality improvement could occur because of cooperatives, but these vessels already produce high quality products because their catch is processed onboard soon after it is harvested. It is unlikely that this amendment will have substantial impacts on U.S. consumers.

Effects on environmental/non-use benefits

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

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

Effects on Management, Monitoring, and Enforcement Costs

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

1. All vessels would be required to weigh all catch on NMFS-approved scales and provide an observer work station.
2. All hauls would available to be observed by NMFS-certified observers.
3. Vessels would be prohibited from having more than a single belt, chute, or other conveyance device for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples.
4. Crew would be prohibited from entering any tank located prior to where the observer collects unsorted catch, unless:
    - The flow of fish has been stopped between the tank and the location where the observer collects unsorted catch, and;
    - All catch has been cleared from all locations between the tank and the location where the observer collects unsorted catch, and;
    - The observer has been given notice that vessel crew must enter the tank, and;
    - The observer is given the opportunity to observe activities of the person(s) in the tank.
5. Unsorted catch would be prohibited from remaining on deck outside of the codend without an observer present.
6. A vessel operator would be required to document the flow of fish within the vessel's factory.
7. Each vessel would be required to provide the opportunity for a pre-cruise meeting.

While all vessels would be subject to these requirements, vessels in this fleet vary widely in size, facilities, layout, and fishing practices. Because of this wide variability, a performance based catch monitoring system may be appropriate for some vessels in the Non-AFA Trawl CP fleet. NMFS is exploring the use of vessel-specific monitoring plans (VMP) to provide vessels flexibility in developing a catch monitoring system that works best for their factory layout and fishing practices. Under this alternative monitoring approach, vessel operators or managers may propose a VMP that would meet, exceed or partially substitute for certain regulations. As envisioned, vessels complying with an approved VMP may not be subject to the all requirements described in this section. However, vessel operators who propose VMPs that do not address performance standards would be subject to the regulations (as proposed and if approved by the Secretary). Additionally, vessel operators who do not comply with an approved VMP would be subject to enforcement action and the default regulations. This approach is conceptual at this time, subject to change, and contains some issues that are not fully resolved.

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

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

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

Effects on Fishing Crew

The existing patterns of crew participation and compensation are likely to remain about the same, at least until Amendment 79 is implemented. The affects of Amendment 79 are not known with certainty. If Amendment 79 increases to costs for some vessels to the point they cannot cover their fixed and variable costs in the long run they will leave the fishery. Employment in the sector would be reduced. Data were not available for the analysts of Amendment 79 to make any projections regarding which vessels may leave the fishery. Therefore, we recognize the fact that Amendment 79 will impose more costs on the vessels in the sector, but we cannot project which vessels, if any, will leave the fishery.

Alternatives 2 and 3 are likely to have some effect on the total number of crew/processing jobs that are available in the sector. An indication of the impacts Amendment 80 cooperative program could have on the Non-AFA Trawl CP sector can be seen from the impacts the AFA had on the pollock catcher/processor sector. Information from the *Report to Congress and the Secretary of Commerce on the Impacts of the American Fisheries Act* completed April 1, 2002, stated that the number of jobs that were lost in the catcher/processor sector was approximately 1,500, given that nine catcher/processors were retired as part of the Act and six of the 20 eligible catcher/processors or 30 percent were not used to fish pollock by their owners because the remaining vessels were able to efficiently harvest the pollock. Given that average crew size of a pollock catcher/processor was approximately 100, that means that approximately 900 of the 1,500 jobs lost were because of the AFA retiring vessels. The remaining 600 jobs lost were due to vessels idled because of they were excess capacity.

Although the Non-AFA Trawl CP vessels and fisheries are very different from the pollock catcher/processor vessels and fishery, the experience learned from the AFA is that some of the Non-AFA Trawl CP vessels could potentially be idled because of the efficiency increases associated with the Amendment 80 cooperative program. In addition, fishing can be expected to slow down as a result of cooperatives. Crew on vessels that remain in the Amendment 80 fisheries could realize an increase in income from increased harvests and revenues in the fishery. Catch increases are more likely under Alternative 2 than Alternative 3. Crew on vessels that remain in the Non-AFA Trawl CP sector would benefit from consolidation of harvests on fewer vessels under Alternative 2. Crew members paid on a share basis would benefit from increased revenues by their vessel. Employees that are paid on a wage basis would benefit from longer fishing seasons on the vessels and the corresponding number of hours worked.

Effects on Communities

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

Effects on Net Benefits to the Nation

Under status quo, producer surplus is expected to remain at current levels until Amendment 79 is implemented. After Amendment 79 is implemented, producer surplus will decline. The amount of the decline is equal to the increased processing and monitoring costs of the vessel. Revenues are assumed to remain constant. However, the potential exists that more inferior products could be produced because of retaining fish that are of a size that are in less demand or of the wrong sex (e.g., rock sole during the roe season). Prices paid by consumers are not expected to increase or decrease because of this action.

Alternative 2

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

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

Consumer surplus is not expected to change. The Non-AFA Trawl CP sector will continue to produce mostly frozen round and headed and gutted products primarily. Any improvements in consumer benefits arising from improved quality are likely to be realized by Asian consumers, as most of the production from this sector is sold into that market.

Alternative 3

Net benefits to the Nation would likely be smaller under Alternative 3 relative to Alternative 2. It is difficult to compare the changes in Net benefits between Alternatives 1 and 3. The amount of fish the Non-AFA Trawl CP sector can legally harvest under Alternative 3 relative to the status quo, is reduced. However, the benefits of cooperatives are expected to increase the overall efficiency of the fleet. The benefit of a cooperative under this alternative will depend on whether a sufficient number of members of the sector are able to reach agreement and whether persons not

in the initial cooperative are able to come to terms with the cooperative. If no cooperative forms, sector efficiency would be similar to that of status quo.

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

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

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

This alternative is not expected to change consumer surplus. The Non-AFA Trawl CP sector will continue to produce frozen round and headed and gutted products primarily. Improvements in product quality that will increase the amount U.S. consumers are willing to pay versus the market price for products produced from these fish are expected to be small.

Environmental Assessment

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

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

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

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

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

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

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

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

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

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

The conclusions reached in the direct and indirect effects analysis of the cooperative alternatives indicate that the compliance costs incurred under a GRS may be mitigated by the benefits of participating in a cooperative. The costs of the GRS associated with retaining unwanted fish may

be reduced or avoided altogether under a cooperative structure, as vessels can be more selective in what they catch without losing any competitive advantage. In addition, a cooperative structure may allow the sector to manage its PSC allocation in a manner that prevents PSC limits from being exceeded and thereby avoids the lower harvests and revenues associated with fishery closures when PSC limits are reached.

Initial Regulatory Flexibility Analysis

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

A total of 36 processors in the BSAI and GOA have less than 500 employees. These processors, on average, generated about $0.9 million in revenue from groundfish and had total revenues from all seafood processing of about $5.2 million. The processors with over 500 employees averaged $43.5 million in groundfish revenues and $79.1 from all fish products (NMFS, 2002). The small processors will be protected by imposing sideboard limits. The protections should have a limited impact though, because many of the species are primarily processed at-sea.

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

MANDATORY DATA COLLECTION

Task staff with evaluating which socioeconomic data can be developed and implemented under the Non-AFA Trawl CP Cooperative Program given the current Magnuson-Stevens Act restrictions. The evaluation should consider collecting cost, revenue, ownership, and employment data on a periodic basis to provide the information necessary to study the impacts of the program. It is anticipated that the data collected under this program will be similar to the data collected under the BSAI crab rationalization program. Details of the collection will be developed in the analysis of the alternatives.

The final single-alternative component in Amendment 80 addresses the concept of implementing a mandatory economic and socioeconomic data collection program. Implementing such a program for the Non-AFA Trawl CP sector raises several issues. One primary issue is whether the Council and NOAA Fisheries have the authority to implement the data collection program described in this alternative, given the current restrictions imposed by the Magnuson-Stevens Act (MSA).

The MSA contains data collection restrictions in sections 303(b)(7) and 402(a) that appear to prohibit the Council and the Secretary from implementing a mandatory data collection program similar to the one contained in the Crab Rationalization program. See Appendix X.1. However, in order to meet the MSA and other Federal requirements for economic and social analyses, NOAA Fisheries has implemented economic data reporting requirements for most if not all FMPs (See Appendix 1). The extent of those requirements varies by FMP but there currently are reporting requirements for the types of economic data described in this alternative. Examples of programs that have been implemented around the U.S. to collect similar types of data are discussed in Appendix 2.

Recent versions of the Administration's and Senator Stevens' MSA reauthorization bills would eliminate the restrictions and require that information similar to the types of economic data describe in this alternative be provided (see Appendix 3). While these amendments to the MSA have not been approved they indicate intent to clearly expand the Councils and NOAA Fisheries' authority to collect economic data.

It appears that, with one possible exception, the economic data collection programs that have been implemented for harvesting and processing operations may establish precedence that could support the implementation of the data program described in this alternative. The exception may be for collecting economic data for a period prior to the implementation of the reporting requirements. Such a retroactive reporting requirement was included in the BSAI crab rationalization program. It will need to be determined if that was only possible due to the special legislation that was required to allow the full implementation of that program.

Potential Council Action: The Council may consider developing a data collection program that best fits its vision for this amendment. NOAA GC will research the data collection program developed by the Council and provide the Council with information on the current statutory authority for such a program for the December meeting.

Summary of Data that may be Collected: It is obvious that ownership information will need to be collected to enforce ownership caps that are proposed in this amendment. Without additional ownership data it would not be possible to monitor and enforce any caps that are implemented. Ownership data has been collected under other cooperative and IFQ programs implemented by the Council. These data would also help determine the amount of consolidation that occurs after the program is implemented.

Revenue and employment data are being collected from the Non-AFA Trawl CP fleet through COAR and NMFS electronic reports. It is assumed that those types of data may be collected given our current reporting requirements. Data collected under the Crab Rationalization program on employees will be more detailed than is currently being collected.

Cost data are not currently being collected from the Non-AFA Trawl CP sector, although these types of data are being collected from fleets in other U.S. fisheries without an exemption to the MSA language. These data include costs that vary by trip and costs that do not vary by trip (i.e., fuel, lubrication and hydraulic fluids,

food, taxes (resource landings taxes, fisheries business taxes, SMA taxes, and other borough and city tax, where applicable), observer coverage, packing materials and supplies, wages, repair and maintenance, gear, insurance (hull, P&I, and pollution), broker fees and promotions for sales, freight and storage, product storage and handling, waste and disposal, etc.)

APPENDIX 1. Relevant Language in the MSA

1. Data Collection Restrictions

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS

(b) **DISCRETIONARY PROVISIONS.**--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may--

(7) require **fish processors** who first receive fish that are subject to the plan to submit data **(other than economic data)** which are necessary for the conservation and management of the fishery;

SEC. 402. INFORMATION COLLECTION

(a) **COUNCIL REQUESTS.**--If a Council determines that additional information **(other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations)** would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information **(other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations)** specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made.

The former restriction (Sec 303) applies to the Councils and the Secretary; however, the latter restriction (Sec 402) applies only to information collection programs initiated by a Council. The latter restriction is much broader in two ways: (1) it applies to both processing and harvesting operations, and (2) it applies to more than economic data. For example, it appears to apply to all proprietary information such as the quantity, value and location of catch and the specific use of fish by processors and the resulting revenue.

2. Required Provisions

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS

16 U.S.C. 1853 95-354, 99-659, 101-627, 104-297

(a) **REQUIRED PROVISIONS.**--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall--

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are--

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States

participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify--

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on--

(A) participants in the fisheries and fishing communities affected by the plan or amendment; and

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority--

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

APPENDIX 2. Existing Data Reporting Requirements

Data collection programs are currently in place to collect economic data from harvesters and processors. The following discussion does not include the economic data reporting requirements that are part of the BSAI crab rationalization program, because there was special legislation required to allow the full implementation of that program. The programs and data reporting requirements discussed below did not require special authorization by Congress to be implemented, and the data that are being collected are similar to those proposed in this alternative.

Currently, more complete economic data are being collected for harvesting operations than for processing operations. It can be argued that the Non-AFA Trawl CP sector vessels are harvesting operations that add value to their catch by processing it at sea. Other types of harvesting operations add value to their catch by landing, for example, dressed, bled, or headed and gutted fish.

Two examples of fisheries with fishing vessel reporting requirements for economic data similar to that proposed in this alternative are the Summaries of the Snapper-Grouper and Mackerel Fishery in the Southeastern U.S. and Atlantic Highly Migratory Species Fishery. The logbook program implemented for vessels with snapper-grouper and mackerel permits operating in Southeastern U.S. waters contains an economic add-on that collects information on trip expenses and payments. Information is collected on the variable costs associated with that trip. Specific information collected includes the type and amount of gear used, time spent fishing, ex-vessel price of fish sold, fuel usage and cost, ice usage and costs, wages, and other expenses. Information is collected each time a logbook is completed to collect these variable costs.

A year-end survey is also sent out at the end of the year to collect annual vessel costs from persons holding a snapper-grouper or mackerel permit. This information is designed to collect cost information that is not obtained through the log book submissions. The types of data collected from this report includes costs of repair and maintenance, gear, insurance, utilities, boat dockage/rent, and other annual costs that cannot be attributed to a single trip. The forms used to collect this trip and annual data are at the end of this appendix.

Economic data are also collected from vessels that participate in the Atlantic Highly Migratory Species fishery. The types of data collected from participants in that fishery are similar to the data collected from snapper, grouper, and mackerel fishermen. Detailed variable cost and effort data is collected for each trip. The data collected includes effort information based on gear sets and variable cost information on fuel, bait, light sticks, ice, food, shared costs (costs subtracted from gross revenues to calculate crew payments), other trip costs, crew shares, and expenses associated with selling the catch. The forms used to collect theses are at the end of this appendix.

The Alaska Commercial Operators Annual Report (COAR), developed by the State for shore based processors and extended several years ago to include at-sea processors, is an example of existing federal reporting requirements for processing operations. The extension of the COAR to at-sea processors was recommended by the Council and approved by NOAA Fisheries and NOAA GC. The information collected in that report includes information on processor's first wholesale revenue by species and product form and ex-vessel prices paid to fishermen.

There are other reporting requirements that collect data that are used for economic analysis for federally-managed fisheries off Alaska. The Electronic Reporting System provides detailed information on the times fished, areas fished, and the type of gear used. Limited amounts of employment data are currently being collected from the fleet on the Electronic Reporting System's Weekly Production Reports. Each weekly report requires that the number of crew members on the vessels be reported to NOAA Fisheries.

2003 LOGBOOK TRIP REPORT FORM

Use Black Ink only !

OMB 0648-0016 Exp 12/31/2003
Version Date 09/02

Signature: _____

Vessel No.: | | | | | | | | |

Vessel Name: _____

State Trip Ticket No.: _____ (If Known)

Phone No. ( ) -

Start Date: MM DD YY

Unload Date:

Days at Sea: | |

No of Crew: | |

Schedule No. NMFS Use Only

County or Parish: _____

State: | | Dealer Number: _____ (If known)

Dealer Name: _____

GEAR SECTION: **See Instructions on page 2.** Check gear box and fill in all the boxes below.

Date Received: NMFS use only

☐ Traps (T)		☐ Longline (L)		☐ Gill Net (GN)		☐ Rod & Reel / Handline (H)		☐ Electric Reel / Bandit (E)		☐ Trolling (TR)		☐ Divers (S) (P)		
# Traps Used		# Sets		Length (yrds)		# Lines		# Lines		# Lines		# Divers		
# Hauls		# Hooks per Line		Depth (yrds)		# Hooks per Line		# Hooks per Line		# Hooks per Line		Hours		
Total Soak Time (hrs)		Length (Miles)		Mesh		Total Hrs Fished		Total Hrs Fished		Total Hrs Fished				
Mesh: X / X		Total Soak Time (hrs)		Total Soak Time (hrs)		☐ Other Gear : (O) _____				Total Hrs Fished				

CATCH SECTION: **See Instructions on page 3**

* **Weight** record pounds sold (Do not include fractions of pounds) GUTTED **OR** WHOLE
***Gear** Record code as T, L, GN, H, E, TR, S, P or O. ***Area** codes can be found on maps in logbook (Page 5)
***Price** record price per pound for fish sold

	Species Name	NMFS CODE	Gutted	Whole	Gear Code	Area	Price $.
JACKS	AJ. - Greater	1812					
	AJ. - Lesser	1815					
	Almaco	1810					
	Banded Rudderfish	1817					
	Crevalle	0870					
Cobia		0570					
Dolphin		1050					
GROUPER	Black	1422					
	Gag	1423					
	Misty	1420					
	Red	1416					
	Scamp	1424					
	Snowy - Large	1414					
	Snowy - Med.	1414					
	Snowy - Small	1414					
	Yellowedge	1415					
	Yellowfin	1426					
	Red Hind	1413					
	Rock Hind	1412					
	Speckled Hind	1411					
GRUNTS	Bluestriped	1444					
	French	1445					
	White	1441					
	Margate	1442					
	Black Margate	1443					
	Grunts Unc.	1440					
King Mackerel		1940					
Spanish Mackerel		3840					
Hogfish		1790					
Wahoo		4710					
Bluefish		0230					
Blue runner		0270					
Barracuda		0180					
White Sea Trout		3455					
Puffer / Blowfish		2760					
Hake		1550					

	Species Name	NMFS CODE	Gutted	Whole	Gear Code	Area	Price $.
BASS	Black - Jumbo	3360					
	Black - Large	3360					
	Black - Med.	3360					
	Black - Smal.	3360					
	Jolthead	3312					
	Knobbed	3308					
	Red	3302					
	Whitebone	3306					
SHARK	Blacknose	3485					
	Blacktip	3495					
	Bonnethead	3483					
	Bull	3497					
	Dusky	3514					
	Finetooth	3481					
	Lemon	3517					
	Sandbar	3513					
	Shamnose	3518					
SNAPPER	Blackfin	3757					
	Lane	3761					
	Mangrove	3762					
	Mutton	3763					
	Queen	3770					
	Red	3764					
	Silk / Yelloweye	3758					
	Vermilion > 2#	3765					
	Vermilion 1 - 2 #	3765					
	Yellowtail	3767					
Gray Triggerfish		4561					
Ocean Triggerfish		4562					
QueenTriggerfish		4563					
Blueline Tilefish		4474					
Golden Tilefish Lg.		4470					
Golden Tilefish Md.		4470					
Golden Tilefish Sm.		4470					

TRIP EXPENSE & PAYMENT SECTION: **See Instructions on the bottom of page 3.** ***Record all the information below**

Fuel: Gal. of Fuel Used This Trip | | | | | Price per Gallon $ 0 . | | Trip Fuel Cost (Approximate) $ | | | | | | . 0 0

Pounds Of Frozen or Dead Bait | | | | | | Number Of Live Bait | | | | | | Trip Bait Cost (Approximate) $ | | | | | | . 0 0

Ice: Pounds Used | | | | | | Total Ice Cost (Approximate) $ | | | | | | . 0 0 | Other Trip Expense (Approximate) $ | | | | | | . 0 0

Owner on Board : **Yes** ☐ **No** ☐ | Wages Paid To Captain & Crew $ | | | | | | . 0 0 | Do Payments Include Captain's Share? **Yes** ☐ **No** ☐

RETAIN THIS COPY FOR YOUR RECORDS

2004 ANNUAL EXPENDITURES FOR SOUTH ATLANTIC SNAPPER-GROUPER AND MACKEREL PERMIT HOLDERS

Boat Registration or Vessel Documentation Number: Vessel ID: <<VessID>>

Please Provide Contact Number to Verify Data, If Necessary: ☐☐☐ - ☐☐☐ - ☐☐☐☐

Please report annual expenses paid in 2004 for this boat (see instructions for explanations)

1. Types of fishing in 2004: Bottom Fishing ☐ Trolling ☐ Chartering ☐ Other ☐

2. Tackle and Fishing Supplies $ ☐☐☐☐☐☐.00
(including hooks, line, clips, weights, and other fishing supplies)

3. Repair and Maintenance Expenses $ ☐☐☐☐☐☐.00
(include hull, engine, gear, electronics, safety equipment, etc.)

4. Does this include haulouts? YES ☐ NO ☐

5. Purchases of Gear & Capital $ ☐☐☐☐☐☐.00
(include gear, engine, electronics, safety equipment, anchors, etc.)

6. Boat Dockage/Rent and Utility Expenses $ ☐☐☐☐☐☐.00

7. Insurance: Hull and P&I $ ☐☐☐☐☐☐.00

8. Does this include hull insurance? YES ☐ NO ☐

9. Does this include P&I insurance? YES ☐ NO ☐

10. Commercial Fishing Licenses & Permits $ ☐☐☐☐☐☐.00

11. Boat Loan & Business Loan Payments $ ☐☐☐☐☐☐.00
(or share of business loan payments associated with this vessel)

1.SHARE OF OTHER BUSINESS EXPENSES PAID BY VESSEL

12. Business taxes paid by vessel (include property and income taxes) $ ☐☐☐☐☐☐.00

13. Office Expenses (rent, accounting, legal, utilities, etc.) $ ☐☐☐☐☐☐.00

14. Car and Truck Expenses $ ☐☐☐☐☐☐.00
(Vehicle repair, maintenance, loan payments, lease expenses)

15. Other annual or one-time-only expenditures paid by vessel $ ☐☐☐☐☐☐.00
(include business travel expenses, health insurance, relocation expenses, etc.)

2.END OF YEAR ACTIVITY REPORT

16. Number of days this vessel was used for commercial fishing and chartering: ☐☐☐ **DAYS**

17. Vessel's annual gross revenues from commercial and charter fishing $ ☐☐☐☐☐☐.00

HIGHLY MIGRATORY SPECIES TRIP SUMMARY FORM

2003 ATLANTIC HIGHLY MIGRATORY SPECIES TRIP SUMMARY FORM

NMFS USE Only Received Date Schedule #

Month Day Year

Vessel Name: _____

Vessel Number: _____

Contact Phone 3. Number: (_____) _____-_____

Contact Name (Please Print): _____

I certify the information contained on this form is accurate and complete to the best of my knowledge:

Captain Signature: _____

Captain Name (Please Print): _____

Port and State of Departure: _____ [ ][ ]

State Trip Ticket #: _____

Dealer Names:

_____ _____

_____ _____

Date of Departure [ ][ ]/[ ][ ]/2003

Date of First Set [ ][ ]/[ ][ ]/2003

Date of Last Set [ ][ ]/[ ][ ]/2003

Date of Landing [ ][ ]/[ ][ ]/2003

First Day Offload [ ][ ]/[ ][ ]/2003

Number of Sets [ ][ ]

Number of Crew Members (excluding captain) [ ][ ]

Port and State of Landing: _____ [ ][ ]

TRIP EXPENSE & PAYMENT SUMMARY (Mandatory, if selected; otherwise voluntary)

		4. Unit Cost		5. Quantities Used
Fuel	Price per gallon	$ ☐☐.☐☐	Gallons used	☐☐☐☐☐
Bait	Trip cost	$ ☐☐☐.☐☐	Pounds ☐☐☐☐☐ and/or Count	☐☐☐☐☐
Light Sticks	Price per stick	$ ☐☐.☐☐	Light Sticks used	☐☐☐☐☐
Ice	6. Price 7. per unit $	☐☐.☐☐	Quantity of Ice	☐☐☐☐☐

Unit of Ice: Tons? ☐ Blocks? ☐ Pounds? ☐

Grocery Expenses $ ☐☐☐☐.☐☐

Total Shared Costs (includes only those costs subtracted from gross revenues to calculate crew payments. See instructions.) $ ☐☐☐☐.☐☐

Other Trip Costs (Other costs incurred on this trip excluding items listed elsewhere on this trip summary form. See instructions.) $ ☐☐☐☐.☐☐

9. Crew Shares	8. Percent Share
10. Owner	☐☐☐%
Captain	☐☐☐%
Crew Average	☐☐☐%

Broker/Selling Expense $ ☐☐☐☐ OR Broker Percentage ☐☐%

By Revenue? ☐ or By Weight? ☐

Captain License Number _____ State ☐☐

APPENDIX 3. Summary Comparison of Economic Data Collection Provisions in Recent Versions of the Administration's and Senator Stevens' MSA Reauthorization Bills

ISSUE	STEVENS MSA BILL TITLE AND SECTION	STEVENS MSA BILL	ADMINISTRATION MSA BILL
DATA REQUIREMENTS	Section 105 – Fishery management plan requirements	Stevens MSA bill would require the following information to be provided to the Secretary: - harvest and processing revenues (by species); - production costs; - capital expenditures; and - other fishing and processing expenditures.	Administration MSA bill has similar requirement.

Dorothy Lowman
C-2
H+G fleet

Amendment 80 Non-H&G Trawl CP Sector agreement as of October 3, 2005

Component 2 (CDQ)
Option 2.2 10%
Suboption 2.2 10%

Component 3 (Sector Allocation Calculation)
Option 3.2 Retained over retained
Suboption 1 Allocations would be managed as a hard cap.
Suboption: Target species and PSC rollover

Component 4 (Catch history years)
Option 4.4 1998-2004
Option 4.6 2000-2004

Component 6 (PSC Allocation to Sector)
Option 6.1.1 Based on historical usage of PSC
Option 6.2.4 Reduced to 95% of calculated level in the third year of the program

Component 7 (Eligible vessels)
As described in the analysis

Component 8 and Component 9 still under discussion

Component 10 (Years for allocation within the sector)
1997 – 2003 drop 2
1997 – 2004 drop 2
1997 – 2004 drop 3
1998 – 2004 drop 2

Component 11 (Excessive share limits)
Option 11.2 Cap at 50% across all species in aggregate
Suboption 11.2 Grandfather existing entities

Component 12 (Sideboards)
Pacific cod: maintain existing sector apportionments with rollovers pending new sector allocations
Suboption 12.1.1 **Sideboards will be allocated between cooperative and non-cooperative LLP holders, based on the same formula as Component 10.**
Other non-allocated species: Manage as status quo
GOA sideboards: Continue the analysis of the options to clarify the effect. For purposes of the analysis, make the following changes. No agreement here yet.
Option 12.3, both suboptions, strike 'by area'
Option 12.4, add "flatfish fisheries" to clarify that vessels not meeting the threshold can still participate in non-flatfish fisheries

Component 13 (Yellowfin Sole Threshold)

Suboption 3 allow rollover of unharvested TAC

Threshold amount:

Option 13.5 175,000 mt

Allocation of threshold reserve:

Suboption 2 (50% - 50%)

Bullet point changes:

2nd: Allow use of multiple flow scales and multiple processing lines.

4th: Specify this applies to Amendment 80 species. Delete last sentence (referring to new vessels entering the fishery) or replace 'new' with 'replacement'.

7th: Inter-cooperative transfers must be approved by NOAA fisheries in the absence of an intercoop agreement.

11th: Non-allocated species continue to be managed as status quo.

12th: Specify that "Groundfish species not included in this program may be managed within the defined coop program."

13th: Harmonize all PSC allocation language to include allocation of all PSC between coop and non-coop participants. PSC needs to be based on all species caught including the listed non-target species and PSC should be able to be brought into the coop or open access – use the provision in the 3rd sub bullet for opilio.

Donna Parker
Arctic Storm
10/8/05

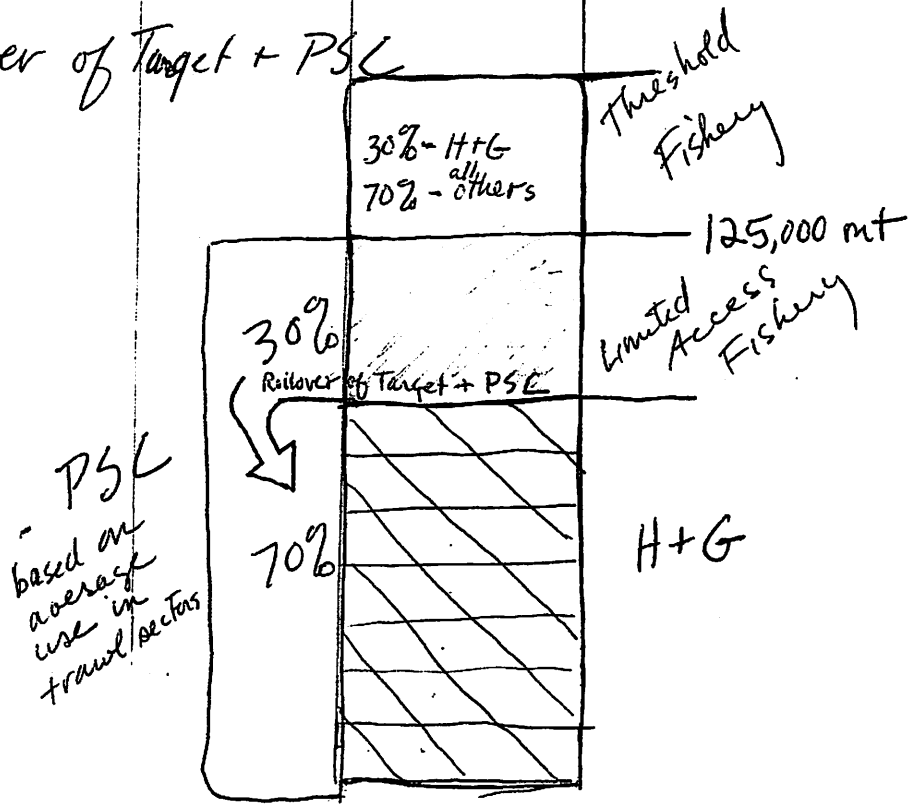
C-3

IRIU

Yellow Fin Sole Allocation

Alternative	Comp. 3	Comp. 4	H+G	AFA + others Limited Acc. Fishery
AP Motion	R/R	98-04(3)	89.6%	10.4%
	R/R	95-03	78.1%	21.9%
	T/T	98-03	77.6%	22.4%
	T/T	95-03	67.6	32.4%
AFA Sideboard	R/T	95-97	70.53%	29.47%
H+G	R/T	95-03	52%	48.%

Includes Rollover of Target + PSC



Alaska Crab Coalition
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September 28, 2005

Chris Oliver, Executive Director
North Pacific Fishery Management Council
605 West 4th St. Ste. 306
Anchorage, Alaska 99501-2252

RE: C-3, INITIAL REVIEW OF AMENDMENT 80 EA/RIR/IRFU (H&G COOPERATIVES)

Comments and Recommendations on Component 6 and 10, PSC (Prohibited Species Catch) Allowance of King and Tanner Crabs for the Non-AFA Trawl CP Sector and Vessel Bycatch Accountability (VBA)

Background:
The ACC has a long history of involvement with the development of bycatch reduction measures in the BSAI multi-species groundfish fisheries. ACC was involved in the initial development of Prohibited Species Catch (PSCs) and trawl closure areas for king and tanner crab and halibut in the Eastern Bering Sea dating back to 1985 and subsequent bycatch reduction measures during the 1990s.

The ACC is well aware, that with the onset of rationalization of the multi-species non-pollock groundfish fisheries that the industry in the past has often made statements as part of the NPFMC administrative record on Vessel Bycatch Accountability from 1997 and 1998 (NPFMC, action memo, Bycatch mortality reductions in groundfish fisheries, September 30, 1998, minutes from the Vessel Bycatch Accounts (VBAs) Committee), that it is capable of reducing its bycatch of PSCs by up to 50 percent of existing levels with authorization of allocations of PSC species to individual vessels.

Identification of Issues Associated with Component 6 Alternatives:
The current draft analysis for the BSAI Groundfish Amendment 80, dated September 19, 2005 sets the tone in terms of the need for the proposed Coundil action at the beginning of the Executive Summary:

> *The North Pacific Fishery Management Council has long recognized the Need to reduce bycatch, minimize waste, and improve utilization of fish Resources to the extent practicable in order to provide the maximum Benefit to present generations of fishermen, associated fishing industry Sectors, communities, and the nation as a whole.*

ACC has been providing written comments on crab bycatch reduction for the administrative record of the NPFMC on the development of Amendment 80 since the spring of 2003.

Specifically the ACC has recommended that the Council develop one or more options for allocating PSCs of king and tanner crab based on target fishery actual usage, expressed in numbers of animals---in relation to the PSC allowances (ACC comment to NPFMC, October 9, 2003 and December 2003). This is the methodology that has been in use by the NMFS for over ten years, in publishing observed PSC catches in the target groundfish fisheries of the GOA and BSAI. When published in this format, utilization of the PSC allowances in numbers and as a percent of the sector and the total allowance is clearly illustrated.

The existing alternatives and analysis in Component 6 of the analysis employ a percentage-based concept of PSC "usage", meaning that PSCs are being expressed for the trawl sectors as a percentage of each sector's use of the total catch of PSCs-----not in relation to the total PSC allowances, which in the case of king, tanner and opilio crabs, are dramatically underutilized. The extent of the problem is explained in the discussion of Component 6 on pages 95-97 and the shortcomings of this approach are explained at the bottom of page 96 and they continue at the top of page 97.

> *In fisheries and years in which the trawl PSC allowance is fully utilized, estimated percentages are very similar. However, in fisheries and years when the total trawl PSC allowance was not fully utilized, the choice of denominator results can significant differences (should read "can result in significant differences", personal communication McCracken) in the PSC allocated to the Non-AFA Trawl CP sector. For example, if the red king crab PSC allowance for trawlers was 197,000 animals and the usage was only 50,000 animals, of which the Non-AFA trawl sector used 45,000 animals, the denominator used would have dramatically different results. Using trawl usage as the denominator would result in a PSC allowance of 90 percent, whereas using trawl allowance in the denominator would result in PSC allowance of 23 percent. <u>The analysis that follows provides both the Trawl PSC allowances and usage, but estimates PSC allocations to the non-AFA trawl sector based only on the percent of total usage by the sector.</u>*

Recommendations:

1. Develop a new sub option for crab PSC allocations under Option 6.1.1 to read:

> **Allocation based on historical usage (number of animals) of PSC—in relation to PSC allowance.**

New tables, based on the NMFS PSC annual summaries should be incorporated into the narrative section of the analysis illustrating the actual catches as a percent of the total PSC allowances of crab species. (See the attached NMFS PSC Bycatch summaries 1995 – 2003.) Some of the information contained in the reports, minus the column that shows

PSC amounts as a percent of the PSC allowance, was included in the previous analysis in Appendix 1, PSC Allowance Tables, pages 236 – 250, but it has been omitted from the current version.

Ultimately, if crab PSCs are to be allocated to cooperatives and individual vessels, this should be done on standardized PSC averages per ton of groundfish, on a vessel by vessel basis, for the total PSC allowances for the qualifying period of the target species---in conjunction with a scheduled five year phase-in reduction plan.

Even if significant reduction options are chosen, under 6.2, i.e. 6.2.1 or 6.2.2, reductions of 25 or 40 percent, and applied after the percentage-based usage methodology is selected under 6.1, the effect for crab species could be to still increase the allocations of PSCs to cooperatives under the Amendment 80, due to underutilized PSC allowances. Because the halibut PSC allowance is fully utilized, it may be appropriate to employ trawl PSC usage methodology in allocation of halibut PSCs.

Allocating PSCs for crab based on the total allocation of crab PSCs is exceedingly important to provide some modicum of protection for these species, and to prevent overallocating PSCs of crab to individual cooperatives as transferable quotas, as noted in Components 9 and 10. Additional problems associated with the concern that not all H & G companies will join into cooperatives and collaborate on bycatch reduction and the "drop years" issue in the allocation of PSCs, provide the ACC with little reassurance that there will be any reduction of PSCs in the non-pollock groundfish rationalization program. (Page 120)

2. The ACC requests that the NPFMC incorporate the Council action memo of September 30, 1998, Bycatch mortality reductions in groundfish fisheries, along with the attached reports including the Draft Summary of Proceedings and the minutes from the VBA Committee meetings. These proceedings summarize most of the issues surrounding the development of an individual vessel bycatch accountability program (VBA) and they are a starting point for developing a framework for implementation of a VBA program. The ACC recommends the H & G fleet, with support of the NPFMC, as part of the Amendment 80 package, develop a VBA program for monitoring of the PSCs associated with the target species of groundfish.

3. The ACC also requests that the Council include in the appendix of the Amendment 80 analysis two NOAA GC legal memorandums pertaining to bycatch that address M-S Act issues, the first one developed for the VBA Committee (Lisa L. Lindeman, April 1, 1997) and the second memorandum (Garland Walker, August 27, 2002), developed for the Council's IR/IU Committee. The second memorandum addresses issues that arose during committee discussions of halibut bycatch cooperatives and discussions of bycatch reduction programs under section 313(g) of the Magnuson Stevens Act.

Together, the memorandums provide guidance for the development of a framework for vessel bycatch accountability cooperatives. It appears that section 313 (g) provides the

NPMC with exclusive direction to develop individual bycatch quotas in a fishery. The Walker memorandum discusses the provisions of section 313(g), cited below:

(2) (A) Notwithstanding section 303(d), and in addition to the authority provided in section 303(b)(10), the North Pacific Council may submit, and the Secretary may approve conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery, Provided That–

(i) such allocations may not be transferred for monetary consideration And are made only on an annual basis; and

(ii) any such conservation and management measures will meet the Requirements of subsection (h) and will result in an actual reduction In regulatory discards in the fishery.

(B) The North Pacific Council may submit restrictions in addition to the restriction imposed by clause (i) of subparagraph (A) on the transferability of any such allocations, and the Secretary may approve such recommendation.

4. The ACC also suggests that the Council review the CDQ program PSC (PSQ) management framework to assess bycatch monitoring with PSQs and to gain insights on the expansion of this program to the H & G non-pollock fisheries. Each of the CDQ groups has its respective allocations of target species and PSCs and they are operating as de-facto cooperatives and thus provide operating models for the H & G fleet cooperatives.

Examples of the Use of Sector PSCs as a Percent of the Total PSC Allowance Using PSC Average Catches, 1995 – 2002:

- **The average PSC catch of Bristol Bay red king crab in the trawl fisheries during this period has been 70 percent of the total PSC allowance.** The PSC allowance has ranged from 200,000 animals to 89,000 animals per year, while the observed bycatch has ranged from 18,000 to 89,000 animals per year. (The average for 2003 – 2004 has decreased to 60 percent.)

- **The average Zone 1 PSC catch of Tanner crab in the trawl fisheries during this period has been 70 percent of the total PSC allowance.** The PSC allowance has ranged from 675,000 animals to 1 million animals per year, while the observed bycatch has ranged from 318,000 animals to 840,000 animals per year. The only year the allowance has been attained is in 1997. (The average for 2003 – 2004 has decreased to 28 percent.)

- **The average Zone 2 catch of Tanner crab in the trawl fisheries during this period has been 36 percent of the total PSC allowance.** The PSC allowance has ranged from 1.7 million to 3 million animals per year, while the observed bycatch has ranged from 500,000 animals to 1.28 million animals per year. (The average for 2003 – 2004 has decreased to 18 percent.)

- **The average Opilio (snow) crab catch in the trawl fisheries during the period 1998 – 2002 has been 37 percent of the total COBLZ allowance.** The allowance has hovered around 4 million animals per year, while the observed bycatch has ranged from 659,000 animals to 2.6 million animals per year. (The average for 2003 – 2004 has decreased to 28.5 percent.)

Conclusion:
In conclusion, from the information presented in these comments, it is obvious that the current crab PSCs are non-constraining and they are not resulting in foregone catches for the BSAI H & G fleet, nor are they likely to prevent harvests under a cooperative rationalization program.

The BSAI H & G fleet, 22 vessels operating in 2002, had an average gross revenue of $3.0 to $8.5 million per vessel and they shared a gross revenue of $145 million. (Economic Status of The Groundfish Fisheries Off Alaska, NMFS, 2002, Hiatt, Felthoven, Seung, and Joe Terry).

The Amendment 80 analysis at page 40 provides an important insight in terms of characterizing the post rationalization fleet, and the potential benefits to be derived from the rationalization program. **"There are relatively few vessels participating in the sector (22 in 2002 and 22 in 2003) and even fewer companies—a total of 12 companies owning or operating the 26 qualified vessels, 16 of which are concentrated in 4 companies."**

A rationalization program for the H & G fleet will doubtless provide improved economic benefits through expanded harvest opportunities, reduced operating costs through tranferrability and consolidation of fishing and bycatch quotas. It will also facilitate improved control of fleet behavior relative to the catch of target and non-target groundfish and PSCs, implicit in the revealing ownership statistics above. Given the potential for increased economic benefits for the fleet of 22 active catcher processors, development of a bonafide VBA program that will produce a reduction of the bycatch of king and tanner crab PSCs is certainly warranted.

Arni Thomson
Executive Director
Alaska Crab Coalition

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

September 22, 2003

Arni Thomson
Alaska Crab Coalition
3901 Leary Way, N.W.
Suite #6
Seattle, WA 98107

Dear Arni:

At the August 25-27, 2003, IR/IU committee meeting in Seattle, you asked if there were any additional legal memoranda on vessel bycatch allowances (VBAs) under section 313(g) of the Magnuson-Stevens Act. I checked my VBA file and did find the attached legal memorandum from Lisa Lindeman to the Council, dated April 1, 1997. I did not find any other legal memoranda in my file related to VBAs other than the copy of the memorandum I provided you in August 2003 from Garland Walker. Most of the NOAA GC advice on this issue was presented orally at the VBA committee meetings in 1997 and 1998 and is captured in the committee meeting minutes.

Please give me a call at 907-586-7414 ext. 233 if you have any questions or wish to discuss this further.

Sincerely,

Lauren M. Smoker

Lauren M. Smoker

Office of General Counsel
P.O. Box - 21109
Juneau, Alaska 99802-1109

April 1, 1997

TO: Clarence G. Pautzke
Executive Director
North Pacific Fishery Management Council

FROM: Lisa L. Lindeman
Alaska Regional Counsel

SUBJECT: Vessel Bycatch Accounts

This memorandum responds to initial questions raised by the Council regarding sections 313(f), (g) and (h) of the Magnuson-Stevens Fishery Conservation and Management Act (M-S Act), as amended by section 117 of the Sustainable Fisheries Act. We also raise additional issues that should be addressed during the development of a Bycatch Reduction Program (BRP) or a Vessel Bycatch Account (VBA) Program. Our responses might provide a starting point for industry and Council development of these programs.

Background:

Section 117 of the Sustainable Fisheries Act amended section 313 of the M-S Act and applies only to the North Pacific Council. It amended section 313 to redesignate the section as "North Pacific Fisheries Conservation" instead of "North Pacific Fisheries Research Plan." It also added several new subsections to section 313 relating to bycatch reduction, total catch measurement, and increased retention and utilization.

New subsection 313(f) requires that the Council submit to the Secretary conservation and management measures to lower for at least four years the total amount of economic discards[1] occurring

[1]Economic discards are defined as "fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons."

in the fisheries under its jurisdiction.

New subsection 313(g)(1) says, notwithstanding section 304(d) of the Act[2], that the North Pacific Council may submit a system of "fines,"[3] up to $25,000 per vessel per season, to provide incentives to reduce bycatch.[4] Any "fines" collected under this section will be deposited in the North Pacific Fishery Observer Fund. The funds may be (1) used to offset costs related to the reduction of bycatch in the fishery from which the penalties were derived, and (2) transferred to the State of Alaska to offset

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[2]Section 304(d)(1) requires the Secretary to establish the level of fees that are authorized to be charged for obtaining fishing permits. Section 304(d)(2) requires the Secretary to collect a fee of up to 3% of the ex-vessel value of fish harvested from any IFQ program or CDQ program that allocates a percentage of the TAC to the CDQ program for recovering the actual costs directly related to the management and enforcement of such programs. The IFQ and CDQ fees are in addition to any other fees authorized under the M-S Act and must be deposited in a Limited Access System Administration Fund (LASAF), except for any amount reserved by the Secretary under 303(d)(4)(A) for the IFQ loan program (the Secretary may reserve 25% of the IFQ/CDQ fees collected under 304(d) for an IFQ loan program for fishermen who fish from small vessels and first-time purchases of IFQ by entry-level fishermen), which is deposited in the Treasury and subject to annual appropriations. Also, if a State applies, the Secretary must transfer 33% of any CDQ fees collected and deposited in the LASAF to reimburse the State for actual costs directly incurred in managing and enforcing the CDQ program.

[3]"Fines" are imposed through the criminal process (see M-S section 309) and are covered by the Federal sentencing guidelines. Since the drafters later refer twice in the section to "such penalties," and knowing the genesis of the term "fines," NOAA-GC will interpret "fines" to mean "civil penalties."

[4]"Bycatch" is defined as "fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. (Bycatch) does not include fish released alive under a recreational catch and release fishery management program."

costs incurred by the State in the fishery from which the penalties were derived or in fisheries in which the State is directly involved in managing or enforcing and which are directly affected by the fishery from which such penalties were derived.

New section 313(g)(2)(A) says, notwithstanding the IFQ moratorium and in addition to the authority in new section 303(b)(10),[5] that the North Pacific Council may submit conservation and management measures that allocate regulatory discards[6] to individual vessels as an incentive to reduce individual vessel bycatch and bycatch rates in a fishery, provided that the allocations are not transferable for money and are made only on an annual basis and that any measures providing for such allocations ensure accurate catch measurement (as required under 313(h)) and will result in actual reductions in regulatory discards.

New section 313(h) requires that by June 1, 1997, the Council submit to the Secretary conservation and management measures to ensure total catch measurement in each fishery under the jurisdiction of the Council. The measures must ensure accurate enumeration of at least target species, economic discards, and regulatory discards. It also requires, to the extent the measures do not require U.S. fish processors and fish processing vessels (as defined in chapter 21 of title 46, U.S.C.)[7] to weigh

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[5]Section 303(b)(10) allows the Council and Secretary to include in an FMP conservation and management measures that provide harvest incentives for reducing bycatch.

[6]"Regulatory discards" are defined as fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.

[7]46 U.S.C. 2101(11a) defines "fishing vessel" as a vessel that commercially engages in the catching, taking, or harvesting of fish or in an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish. "Fish processing vessel" means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

fish, that the Council and the Secretary must submit a plan to the Congress by January 1, 1998, to allow for weighing, including recommendations to assist such processors and processing vessels in acquiring the necessary equipment, unless the Council determines that such weighing is not necessary to ensure total catch measurement.

Issues Raised by the Council:

1. Can allocations of bycatch be made to pools of vessels or can they be made only to individual vessels?

Answer: Section 313(g) authorizes the Council to submit and the Secretary to approve conservation and management measures that provide allocations of regulatory discards to individual fishing vessels under certain conditions. The M-S Act does not authorize allocations of regulatory discards to pools; however, we believe the Secretary could approve a scheme under which individual vessel accounts could be pooled if such pooling were not more burdensome to enforce and monitor than, and would accomplish the same goals as, individual vessel accounts.

The response to this question depends in large part upon the details of the monitoring and enforcement processes that still need to be worked out. For example, would the pool monitor the collective VBA? Would NMFS deal with the pool or with individual vessels or both? What would be the division of responsibility and liability between the pool and the individual fisherman if a VBA were exceeded? What fish would count against a VBA? What individual vessel and pool accounting systems would be used to allow the pool manager and NMFS to know what each vessel was catching and to allow NMFS to verify the numbers? If a pool reached its collective VBA and an individual member of the pool continued to fish, would NMFS enforce against the pool or the fisherman or both?

2. What is the meaning of "transferred for monetary consideration" relative to the internal workings of a voluntary vessel group or bycatch management partnership?

Answer: This question is difficult to answer without a context. Section 313(g)(2)(A) requires that individual vessel bycatch allocations cannot be "transferred for monetary consideration."

At this point, we interpret this to mean that fishermen could not sell or otherwise transfer their VRAs in exchange for money. We believe Congress' intent was that VRAs should not become "property rights" that acquire a value independent of the fishery.

3. Does the $25,000 limit on fines (penalties) to encourage reductions in bycatch apply to one specific incentive program or does it apply collectively to all incentive programs such as the current VIP, the IR/IU program recommended by the Council, and the BRP (bycatch reduction program) program?

Answer: As originally proposed, new section 313(g) authorized the Council to recommend a system of fees in a fishery to provide incentives to reduce bycatch and bycatch rates. It limited the fees to no more than 1 percent of the estimated ex-vessel value of the target species in the fishery. At some point, "fees" was changed to "fines."

The new provision for "fines" doesn't repeal the current vessel incentive program (VIP), under which civil penalties in excess of $25,000 per vessel per year have been assessed. NOAA-GC will continue to process these cases as long as the VIP is in effect. Furthermore, the $25,000 penalty limit per vessel per season applies only if the Council chooses to recommend to the Secretary a system of penalties to act as incentives to reduce bycatch. Section 313(g) says the Council "may" submit and the Secretary "may" approve such a system of penalties. The statute does not require the Council to submit a system of penalties. Therefore, unless the Council amends the IR/IU program to include a system of penalties and unless the Council chooses to include such a system in any future BRP or other program, the $25,000 limit would not apply. The level of penalties for violations would be determined by the penalty schedule developed by the agency. Any penalties collected under a system submitted by the Council under section 313(g) would be deposited in the Observer Fund established under 313(d). If the Council does not submit a system of penalties, however, any penalties collected for violations of a BRP would be deposited in the Enforcement Fund under section 311(e).

4. Does the requirement for an accurate measurement of total catch which at a minimum includes the three parts of total catch

listed in the Act (target species, economic discards, and regulatory discards) require an accurate measurement of each of these three parts of total catch or just of the total catch?

Answer: The Senate report says the Council could not submit and the Secretary could not approve any vessel bycatch allocation measures unless they would result in an actual reduction in regulatory discards, and unless an accurate enumeration of the target species, economic discards, and regulatory discards is available in the fishery. Congress intended that the Secretary ensure the accurate enumeration (accurate weight measurement) of each of the three parts of total catch.

5. Would a VBA/ERP program be subject to the IFQ/CDQ cost recovery fees? If so, would the fees be based upon the ex-vessel value of the groundfish, the regulatory discards covered by the program, or both?

Answer: VBAs are a form of IFQs. As a form of IFQs, VBAs might be subject to the provisions of section 304(d)(2) if the Council could figure out how to calculate and assess a fee on the ex-vessel value of fish that are not retained.

6. Does the requirement of an allocation on an annual basis limit the formula that can be used to make the annual allocation? For example, if a 3-year moving average of catch is used, the catch and, therefore, future allocations are principally determined by past allocations. Would this violate the annual basis only rule?

Answer: According to section 313(g)(2)(A)(i), the allocations of regulatory discards to individual fishing vessels must be made on an annual basis. The M-S Act does not address the basis for calculating the allocation.

Additional Issues for Consideration:

Much of our legal analysis and determinations will depend upon the specific elements of any VBA program developed by the Council. All the usual provisions of the M-S Act and other law, however, still apply; proposals made under section 313 must be supported by an administrative record.

A VBA program would be a limited entry program. Therefore, the administrative record would need to show, among other matters, that the Council and the Secretary considered the factors in section 303(b)(6) in the development of the program. Section 303(b)(6) requires that if the Council and the Secretary establish a limited entry system for a fishery in order to achieve optimum yield, they must take into account:

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

Other issues (primarily policy issues) that should be addressed by the industry committe, NMFS and the Council include consideration of how a VBA program would fit in with the halibut and sablefish IFQ program, the groundfish and crab moratorium program, and the proposed increased retention/utilization program and the license limitation program.

Considering the potential additional enforcement and monitoring burdens, why would pooling be a more desirable option than individual transferable bycatch quotas for reducing bycatch?

Further, what species would be covered by a VBA program? PSC species are herring, salmon, crab and halibut. Under the current regulations, once a groundfish TAC has been reached, that groundfish species is treated in the same manner as a prohibited species. Would that groundfish be included in a VBA program?

With respect to assessing fees on the exvessel value of fish "harvested" -- if a VBA program included only halibut and crab -- how is the ex-vessel value determined of a halibut that is caught in a trawl fishery and is going to be thrown back?

What would be the basis for the annual allocations to individual vessels? Size of the boat? The last 3-4-5 years of catch?

August 14, 2003

Arni Thomson
Alaska Crab Coalition
3901 Leary Way, N.W.
Suite #6
Seattle, WA 98107

Dear Arni:

Attached is a copy of the legal memorandum I referenced at the June Council meeting when we talked briefly about IR/IU and section 313(g)(2) of the Magnuson-Stevens Act. Aside from legal opinions that may be in the minutes of previous IR/IU and VBA committee meetings, this is the only legal opinion on the issue.

Please call me if you have any questions or would like to talk about the issue. My work number is 907-586-7414 extension 233.

Sincerely,

Lauren

Lauren M. Smoker
GCAK

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

August 27, 2002

MEMORANDUM FOR: Sue Salveson
ARA for Sustainable Fisheries

THROUGH: Lisa Lindeman
Alaska Regional Counsel

FROM: Garland Walker
Attorney-Advisor

SUBJECT: Legal Issues Relating to the Formation of Halibut Bycatch Cooperatives under Section 313(g) of the Magnuson-Stevens Fishery Conservation and Management Act

This responds to NMFS' request for GCAK's review of several legal issues that arose during discussions of halibut bycatch cooperatives in preparation for the Improved Retention/Improved Utilization (IR/IU) Committee meeting this week. Hopefully, the following will assist NMFS and the IR/IU Committee during their discussions of bycatch reduction programs under section 313(g) of the Magnuson-Stevens Act.

The proposed halibut bycatch cooperatives, which would otherwise be considered a type of individual fishing quota (IFQ), are authorized by paragraph 313(g)(2) of the Magnuson-Stevens Act which states:

> *(2) (A) Notwithstanding section 303(d), and in addition to the authority provided in section 303(b)(10), the North Pacific Council may submit, and the Secretary may approve, conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery, Provided, That--*
>
> *(i) such allocations may not be transferred for monetary consideration and are made only on an annual basis; and*
>
> *(ii) any such conservation and management measures will meet the requirements of subsection (h) and will result in an actual reduction in regulatory discards in the fishery.*
>
> *(B) The North Pacific Council may submit restrictions in addition to the restriction imposed by clause (i) of subparagraph (A) on the transferability of any such allocations, and the Secretary may approve such recommendation.*

This authorizing language appears to contain three restrictions that are relevant to the design of halibut bycatch cooperatives: (1) allocations may not be transferred for monetary consideration; (2) allocations may be made only on an annual basis, and (3) the program must result in an actual reduction in regulatory discards. These restrictions are discussed below.

(1) Allocations may not be transferred for monetary consideration. Section 313(g)(2)(A)(i)authorizes allocations of regulatory discards to individual vessels, but subparagraph (i) prohibits the transfer of such allocations for "monetary consideration." The phrase "monetary consideration" is not defined; however, Congress did not use the phrase "sale, barter or trade" in section 313(g)(2)(i) as it did in the statutory definition of "commercial fishing." We presume that Congress was aware of this distinction and, therefore, intended to prohibit only monetary exchanges under 313(g)(2)(A)(i). Accordingly, trade or barter of VBAs would be permissible under section 313(g)(2)(i) but monetary (cash, currency or coinage) exchanges would not be permissible.

Section 313(g)(2)(B) allows the Council to impose additional regulatory restrictions on the transferability of VBA's. Additional regulatory restrictions could include complete prohibitions on transfer or some limited trade. Finally, we note that while NOAA can interpret the term "monetary consideration" in the context of fishery management plans, IRS has its own rules for tax purposes concerning trade, barter and exchanges for money.

(2) Allocations may be made only on an annual basis. Section 313(g)(2)(A)(i)specifies that allocations of regulatory discards to individual vessels shall be made only on an annual basis. This restriction prevents the establishment of multi-year or permanent cooperative PSC allocations. The standard dictionary definition of the term "annual" equates the term to "yearly." The current regulations at 50 CFR 679.23(a) provide generally that fishing for groundfish is authorized on a calendar year basis. It is possible that a twelve month period other than a calendar year/current fishing year basis could be considered to be an "annual basis," similar in practice to the fiscal year (e.g., September-October) of some organizations. However, should the Council desire to issue any bycatch allocations on other than a calendar year basis, more legal research should be done. The Council and NMFS would need to provide a rationale for its definition/interpretation of "annual."

On its face, section 313(g) does not appear to prohibit a vessel's annual allocation from being distributed to the vessel in several distributions throughout the year. Also, should the Council develop a separate VBA program for a species in addition to halibut, it does not appear that allocations under a separate VBA program need to be made at the same time during the year.

(3) The program must result in an actual reduction in regulatory discards. Section 313(g)(2)(ii) specifies that any conservation and management must "result in an actual reduction in regulatory discards in the fishery." We interpret this language to mean that the result of any program must be an actual reduction in regulatory discards by numbers and pounds of bycatch in the fishery subject to the 313(g)(2) program. If a bycatch reduction program is designed to focus on specific species, then reductions in bycatch of those specific species should result.

National standard 9 (section 301(a)(9))[1] requires that conservation and management measures, shall to the extent practicable, "minimize bycatch." Section 313(g) is a further more stringent requirement on the North Pacific Council. If a halibut bycatch program reduces halibut bycatch in certain groundfish fisheries, but the practices in other groundfish fisheries reduce or negate the efficiencies resulting from that program, then the Council and NMFS could face a challenge that the overall management of bycatch under the FMP is not consistent with national standard 9. The Committee and the Council therefore should consider the potential effects of a bycatch program under section 313(g) within the context of overall bycatch reduction measures under the FMP as required by national standard 9, including possibly monitoring bycatch species in other fisheries to assess whether the bycatch practices in those fisheries actually increase the overall bycatch of the focus species.

cc: Mariam McCall
Kent Lind

[1] Section 301(a)(9) reads "Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this subchapter shall be consistent with the following national standards for fishery conservation and management: ... (9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch."

Bering Sea Aleutian Islands Prohibited Species Report

Through: 31-DEC-03

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Chinook Salmon

Trawl Gear

Seasons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Pollock (Pelagic)	Count	44,706	30,525	-14,181	146%	0
Total:			**44,706**	**30,525**	**-14,181**	**146%**	**0**

Halibut Mortality

Non-Trawl Gear

Seasons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
X	Pacific Cod (Hook-and-Line)	MT	490	775	285	63%	0
	Non-Pacific Cod (Hook-and-Line)	MT	22	58	36	38%	0
Total:			**512**	**833**	**321**	**61%**	**0**

Trawl Gear

Seasons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Pacific Cod	MT	1,234	1,434	200	86%	0
	Rockfish	MT	66	69	3	96%	0
X	Rock Sole, Flathead Sole, Other Flatfish (Trawl)	MT	845	779	-66	109%	0
	Pollock, Atka Mackerel, Other Species	MT	159	232	73	68%	0
X	Yellowfin Sole (Trawl)	MT	920	886	-34	104%	0
	Turbot/Sablefish/Arrowtooth Flounder	MT	54	0	-54	0%	0
Total:			**3,278**	**3,400**	**122**	**96%**	**0**

Herring

Trawl Gear

Seasons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Pacific Cod	MT	14	20	6	69%	0
	Rockfish	MT	0	7	7	0%	0
	Rock Sole, Flathead Sole, Other Flatfish	MT	1	20	19	6%	0
	Pollock, Atka Mackerel, Other Species	MT	18	146	128	12%	0
	Pollock Pelagic	MT	1,028	1,184	156	87%	0
	Yellowfin Sole	MT	37	139	102	27%	0
	Greenland Turbot, Arrowtooth, Sablefish	MT	0	9	9	1%	0
Total:			**1,099**	**1,525**	**426**	**72%**	**0**

Opilio (Tanner) Crab - COBLZ

Trawl Gear

Report run on: April 12, 2004 4:18 PM

Bering Sea Aleutian Islands Prohibited Species Report

Through: 31-DEC-03

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting

Opilio (Tanner) Crab - COBLZ

Trawl Gear

Seasons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Pacific Cod	Count	59,101	124,736	65,635	47%	0
	Rockfish	Count	0	40,237	40,237	0%	0
	Rock Sole, Flathead Sole, Other Flatfish	Count	178,556	969,130	790,574	18%	0
	Pollock, Atka Mackerel, Other Species	Count	925	72,428	71,503	1%	0
	Yellowfin Sole	Count	374,735	2,776,981	2,402,246	13%	0
	Greenland Turbot, Arrowtooth, Sablefish	Count	1,695	40,238	38,543	4%	0
Total:			**615,012**	**4,023,750**	**3,408,738**	**15%**	**0**

Bairdi Crab, Zone 1

Trawl Gear

Seasons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Pacific Cod	Count	51,872	183,112	131,240	28%	0
	Rock Sole, Flathead Sole, Other Flatfish	Count	214,939	365,320	150,381	59%	0
	Pollock, Atka Mackerel, Other Species	Count	2,008	17,224	15,216	12%	0
	Yellowfin Sole	Count	30,012	340,844	310,832	9%	0
Total:			**298,831**	**906,500**	**607,669**	**33%**	**0**

Bairdi Crab, Zone 2

Trawl Gear

Seasons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Pacific Cod	Count	101,116	324,176	223,060	31%	0
	Rockfish	Count	0	10,988	10,988	0%	0
	Rock Sole, Flathead Sole, Other Flatfish	Count	219,986	596,154	376,168	37%	0
	Pollock, Atka Mackerel, Other Species	Count	1,987	27,473	25,486	7%	0
	Yellowfin Sole	Count	275,419	1,788,459	1,513,040	15%	0
Total:			**598,509**	**2,747,250**	**2,148,741**	**22%**	**0**

Red King Crab, Zone 1

Trawl Gear

Seasons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Pacific Cod	Count	1,137	13,079	11,942	9%	0
	Rock Sole, Flathead Sole, Other Flatfish	Count	50,148	59,782	9,634	84%	0
	Pollock, Atka Mackerel, Other Species	Count	34	200	166	17%	0

Report run on: April 12, 2004 4:18 PM

Bering Sea Aleutian Islands Prohibited Species Report Through: 31-DEC-03	National Marine Fisheries Service Alaska Region, Sustainable Fisheries Catch Accounting

Red King Crab, Zone 1

Trawl Gear

Seasons	Account	Units	Total Catch	Limit	Remaining	% Taken	Last Wk Catch
	Yellowfin Sole	Count	22,059	16,664	-5,395	132%	0
Total:			73,378	89,725	16,347	82%	0

This report does not include the CDQ allocated catch.

"Other flatfish" for PSC monitoring: all flatfish species, except for Pacific halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

COBLZ: C. Opilio Crab Bycatch Limitation Zone. 50 CFR 679.21(e) and Figure 13.

Zone 1: Federal Reporting Areas 508, 509, 512, 516.

Zone 2: Federal Reporting Areas 513, 517, 521.

Data is based on observer reports, extrapolated to total groundfish harvest. Estimates for all weeks may change due to incorporation of late or corrected data.

Subject: CRAB BYCATCH PSCs, ANNUAL SUMMARIES IN BSAI TRAWI FISHERIES

NMFS ANNUAL BSAI TRAWL PSC BYCATCH SUMMARIES FOR CRAB, 2002 - 1995.

SPECIES NUMBERS, ARE OBSERVER-BASED ESTIMATED NUMBERS OF CRAB CAUGHT IN TRAWL FISHERIES, CAPS ARE THE REGULATION CAPS PER FISHERY AND THE % REPRESENTS THE PERCENT OF CRABS CAUGHT RELATIVE TO THE CAP. IN THE CASE OF BAIRDI AND OPILIO CRABS IT ILLUSTRATES THE NON-CONSTRAINING NATURE OF THE CAPS, WHICH ARE DESIGNED IN THEORY TO RESTICT BYCATCH IN FISHERIES. ONLY THE BRISTOL BAY KING CRAB CAP IS CONSTRAINING. THE OTHER CRAB CAPS HAVE SUBSTANTIAL SURPLUS CUSHIONS. ALL THE CRAB CAPS ARE LINKED TO SURVEY BIOMASS ESTIMATES AND THEY ARE ADJUSTED AT THRESHOLD POINTS. THE BBRKC CAP WAS REVISED IN 1997 FROM 200,000 TO 100,000. THE OPILIO CAP WAS IMPLEMENTED IN 1998. THERE IS AN OPPORTUNITY TO REDUCE BYCATCH WITH RATIONALIZATION OF THE BSAI NON-POLLOCK GROUNDFISH FISHERIES WITH COOPERATIVES. IF THE CAPS ARE NOT REDUCED AT THE TIME COOPERATIVES ARE AUTHORIZED, THEN ANNUAL APPORTIONMENTS, AND IBQS SHOULD BE RESTRICTED TO AN AVERAGE OF THE USAGE LEVELS BY TARGET FISHERY, DURING THE QUALIFYING PERIOD. A. THOMSON 3/11/03

NMFS/AKR
01/23/03
14:51:01

2002 BERING SEA/ALEUTIAN ISLANDS FISHERIES
PROHIBITED SPECIES BYCATCH
Week Ending: 12/31/02

TRAWL BAIRDI TANNER CRAB

	ZONE 1			ZONE 2		
Fishery group	Crabs (#'s)	Cap (#'s)	%	Crabs (#'s)	Cap (#'s)	%
Rock sole/Other flatfish	286,732	365,320	78%	262,602	596,154	44%
Pacific cod	143,754	183,112	79%	88,502	324,176	27%
Yellowfin sole	26,014	340,844	8%	268,490	1,788,459	15%
Pollock/AMCK/Other species	1,464	17,224	8%	860	27,473	3%
Rockfish	0	0	0%	49	10,988	0%
GTRB/ARTH/SABL	0	0	0%	5,291	0	0%
Total	457,964	906,500	51%	625,793	2,747,250	23%

TRAWL C. OPILIO TANNER CRAB in the COBLZ AREA (C OPILIO BYCATCH LIMITATION ZONE)

Fishery group	Crabs (#'s)	Cap (#'s)	%
Rock sole/Other flatfish	106,763	969,130	11%
Pacific cod	93,923	124,736	75%
Yellowfin sole	680,476	2,776,981	25%
Pollock/AMCK/Other species	1,636	72,428	2%
Rockfish	0	40,237	0%
GTRB/ARTH/SABL	170	40,238	0%
Total:	882,967	4,023,750	22%

TRAWL RED KING CRAB — ZONE 1

Fishery group	Crabs (#'s)	Cap (#'s)	%
Rock sole/Other flatfish	62,073	59,782	104%
Pacific cod	12,735	11,664	109%
Yellowfin sole	15,146	16,664	91%
Pollock/AMCK/Other species	1	1,615	0%
Total:	89,955	89,725	100%

NMFS/AKR
04/03/02
09:21:00

2001 BERING SEA/ALEUTIAN ISLANDS FISHERIES
PROHIBITED SPECIES BYCATCH
Week Ending: 12/31/01

TRAWL BAIRDI TANNER CRAB

Fishery group	ZONE 1 Crabs (#'s)	ZONE 1 Cap (#'s)	ZONE 1 %	ZONE 2 Crabs (#'s)	ZONE 2 Cap (#'s)	ZONE 2 %
Rock sole/Other flatfish	146,255	272,126	54%	399,608	415,501	96%
Pacific cod	44,842	136,400	33%	25,417	225,941	11%
Yellowfin sole	122,383	253,894	48%	202,292	1,246,502	16%
Pollock/AMCK/Other species	4,705	12,830	37%	196	19,148	1%
Rockfish	0	0	0%	0	7,658	0%
GTRB/ARTH/SABL	0	0	0%	4,633	0	0%
Total:	318,185	675,250	47%	632,146	1,914,750	33%

TRAWL C. OPILIO TANNER CRAB in the COBLZ AREA

Fishery group	Crabs (#'s)	Cap (#'s)	%
Rock sole/Other flatfish	483,235	469,130	103%
Pacific cod	8,330	524,736	2%
Yellowfin sole	799,646	2,876,981	28%
Pollock/AMCK/Other species	1,932	72,428	3%
Rockfish	0	40,237	0%
GTRB/ARTH/SABL	0	40,238	0%
Total:	1,293,143	4,023,750	32%

TRAWL RED KING CRAB — ZONE 1

Fishery group	Crabs (#'s)	Cap (#'s)	%
Rock sole/Other flatfish	26,105	64,782	40%
Pacific cod	1,742	11,664	15%
Yellowfin sole	30,601	11,664	262%
Pollock/AMCK/Other species	104	1,615	6%
Total:	58,552	89,725	65%

NMFS/AKR
01/05/01
09:05:49

2000 BERING SEA/ALEUTIAN ISLANDS FISHERIES
PROHIBITED SPECIES BYCATCH
Week Ending: 12/31/00

TRAWL BAIRDI TANNER CRAB

Fishery group	ZONE 1 Crabs (#'s)	ZONE 1 Cap (#'s)	ZONE 1 %	ZONE 2 Crabs (#'s)	ZONE 2 Cap (#'s)	ZONE 2 %
Rock sole/Other flatfish	192,852	309,326	62%	200,639	504,894	40%
Pacific cod	55,379	154,856	36%	26,484	275,758	10%
Yellowfin sole	82,124	288,750	28%	422,348	1,514,683	28%
Pollock/AMCK/Other species	69	14,818	0%	1,464	25,641	6%
Rockfish	0	0	0%	28	10,024	0%
GTRB/ARTH/SABL	0	0	0%	7,633	0	0%
Total:	330,424	767,750	43%	658,597	2,331,000	28%

TRAWL C. OPILIO TANNER CRAB in the COBLZ AREA

Fishery group	Crabs (#'s)	Cap (#'s)	%
Rock sole/Other flatfish	224,124	869,934	26%
Pacific cod	50,245	123,529	41%
Yellowfin sole	1,927,702	2,876,579	67%
Pollock/AMCK/Other species	5,208	71,622	7%
Rockfish	0	41,043	0%
GTRB/ARTH/SABL	0	41,043	0%
Total:	2,207,279	4,023,750	55%

TRAWL RED KING CRAB

Fishery group	ZONE 1 Crabs (#'s)	ZONE 1 Cap (#'s)	ZONE 1 %
Rock sole/Other flatfish	53,389	64,755	82%
Pacific cod	4,379	11,656	38%
Yellowfin sole	13,020	11,655	112%
Pollock/AMCK/Other species	0	1,660	0%
Total:	70,787	89,726	79%

NMFS/AKR
04/19/00
12:13:48

1999 BERING SEA/ALEUTIAN ISLANDS FISHERIES
PROHIBITED SPECIES BYCATCH
Week Ending: 12/31/99

TRAWL BAIRDI TANNER CRAB

Fishery group	ZONE 1 Crabs (#'s)	ZONE 1 Cap (#'s)	ZONE 1 %	ZONE 2 Crabs (#'s)	ZONE 2 Cap (#'s)	ZONE 2 %
Rock sole/Other flatfish	132,217	279,528	47%	178,235	376,274	47%
Pacific cod	79,148	139,950	57%	34,789	205,528	17%
Yellowfin sole	148,515	260,894	57%	284,131	1,128,824	25%
Pollock/AMCK/Other species	665	13,378	5%	3,204	19,146	17%
Rockfish	0	0	0%	0	7,378	0%
GTRB/ARTH/SABL	0	0	0%	1,381	0	0%
Total:	360,546	693,750	52%	501,741	1,737,150	29%

TRAWL C. OPILIO TANNER CRAB in the COBLZ AREA

Fishery group	Crabs (#'s)	Cap (#'s)	%
Rock sole/Other flatfish	256,443	766,552	33%
Pacific cod	22,390	127,758	18%
Yellowfin sole	378,964	3,108,786	12%
Pollock/AMCK/Other species	1,370	74,234	2%
Rockfish	0	42,585	0%
GTRB/ARTH/SABL	0	42,585	0%
Total:	659,167	4,162,500	16%

TRAWL RED KING CRAB — ZONE 1

Fishery group	Crabs (#'s)	Cap (#'s)	%
Rock sole/Other flatfish	62,456	103,950	60%
Pacific cod	7,752	14,850	52%
Yellowfin sole	12,774	19,800	65%
Pollock/AMCK/Other species	91	1,850	5%
Total:	83,073	140,450	59%

NMFS/AKR
08/14/00
14:05:23

1998 BERING SEA/ALEUTIAN ISLANDS FISHERIES
PROHIBITED SPECIES BYCATCH
Week Ending: 12/26/98

TRAWL BAIRDI TANNER CRAB

Fishery group	ZONE 1 Crabs (#'s)	ZONE 1 Cap (#'s)	ZONE 1 %	ZONE 2 Crabs (#'s)	ZONE 2 Cap (#'s)	ZONE 2 %
Rock sole/Other flatfish	247,263	273,848	90%	199,613	330,225	60%
Pacific cod	65,205	123,232	53%	38,633	180,375	21%
Yellowfin sole	233,743	255,592	91%	616,507	990,675	62%
Pollock/AMCK/Other species	17,816	41,077	43%	37,461	434,750	9%
Rockfish	0	0	0%	699	6,475	11%
GTRB/ARTH/SABL	0	0	0%	1,900	0	0%
Total:	564,028	693,749	81%	894,814	1,942,500	46%

TRAWL C. OPILIO TANNER CRAB in the COBLZ AREA

Fishery group	Crabs (#'s)	Cap (#'s)	%
Rock sole/Other flatfish	408,997		
Pacific cod	49,780		
Yellowfin sole	2,057,426		
Pollock/AMCK/Other species	81,986		
Rockfish	0		
GTRB/ARTH/SABL	324		
Total:	2,598,512	4,304,950	60%

TRAWL RED KING CRAB — ZONE 1

Fishery group	Crabs (#'s)	Cap (#'s)	%
Rock sole/Other flatfish	15,008	69,375	22%
Pacific cod	3,015	6,938	43%
Yellowfin sole	6,194	9,250	67%
Pollock/AMCK/Other species	13,950	6,938	201%
Total:	38,167	92,501	41%

NMFS/AKR
01/08/98
18:06:30

1997 BERING SEA/ALEUTIAN ISLANDS FISHERIES
PROHIBITED SPECIES BYCATCH
Week Ending: 12/31/97

TRAWL BAIRDI TANNER CRAB

Fishery group	ZONE 1 Crabs (#'s)	ZONE 1 Cap (#'s)	ZONE 1 %	ZONE 2 Crabs (#'s)	ZONE 2 Cap (#'s)	ZONE 2 %
Rock sole/Other flatfish	341,768	296,052	115%	131,779	357,000	37%
Pacific cod	189,577	133,224	142%	86,758	195,000	44%
Yellowfin sole	278,973	276,316	101%	830,980	1,071,000	78%
PLCK/AMCK/OTHER	10,854	44,408	24%	12,749	470,000	3%
Rockfish	0	0	0%	352	7,000	5%
GTRB/ARTH/SABL	0	0	0%	0	0	0%
Total:	821,173	750,000	109%	1,062,618	2,100,000	51%

TRAWL RED KING CRAB — ZONE 1

Fishery group	Crabs (#'s)	Cap (#'s)	%
Rock sole/Other flatfish	33,249	48,750	68%
Pacific cod	6,769	7,500	90%
Yellowfin sole	6,763	10,000	68%
PLCK/AMCK/OTHER	137	7,500	2%
Total:	46,918	73,750	64%

NMFS/AKR
05/14/97
14:12:24

1996 BERING SEA/ALEUTIAN ISLANDS FISHERIES
PROHIBITED SPECIES BYCATCH MORTALITY
Week Ending: 12/31/96

TRAWL BAIRDI TANNER CRAB

	ZONE 1			ZONE 2		
Fishery group	Crabs (#'s)	Cap (#'s)	%	Crabs (#'s)	Cap (#'s)	%
Rock sole/Other flatfish	341,178	345,000	99%	128,695	510,000	25%
Pacific cod	128,364	250,000	51%	38,435	260,000	15%
Yellowfin sole	292,023	330,000	88%	788,173	1,530,000	52%
PLCK/AMCK/OTHER	78,824	75,000	105%	11,901	690,000	2%
Rockfish	0	0	0%	0	10,000	0%
Rockfish	0	0	0%	430	10,000	4%
GTRB/ARTH/SABL	0	0	0%	0	0	0%
GTRB/ARTH/SABL	0	0	0%	1,470	0	0%
Total:	840,389	1,000,000	84%	969,103	3,010,000	32%

TRAWL RED KING CRAB

	ZONE 1		
Fishery group	Crabs (#'s)	Cap (#'s)	%
Rock sole/Other flatfish	8,971	110,000	8%
Pacific cod	2,918	10,000	29%
Yellowfin sole	689	50,000	1%
PLCK/AMCK/OTHER	5,872	30,000	20%
Total:	18,449	200,000	9%

Yellowfin Sole Fishery Seasons/Quotas:

Red King Crab		Bairdi Tanner Crab - Zone 1	
Jan 20 - Mar 31	= 5,000	Jan 20 - Mar 31	= 50,000
Apr 01 - May 10	= 15,000	Apr 01 - Dec 31	= 200,000
May 11 - Aug 14	= 10,000		
Aug 15 - Dec 31	= 20,000	Annual Total	250,000
Annual Total	50,000		

NMFS/AKR
05/21/96

1995 BERING SEA/ALEUTIAN ISLANDS FISHERIES
PROHIBITED SPECIES BYCATCH MORTALITY

TRAWL BAIRDI TANNER CRAB

	ZONE 1			ZONE 2		
Fishery group	Crabs (#'s)	Cap (#'s)	%	Crabs (#'s)	Cap (#'s)	%
Pacific cod	195,849	225,000	87%	44,485	260,000	17%
Rock sole/Other flatfish	338,347	475,000	71%	80,122	510,000	16%
Yellowfin sole	260,019	225,000	116%	1,116,051	1,525,000	73%
PLCK/AMCK/OTHER	105,821	75,000	141%	48,171	690,000	7%
Rockfish	0	0	0%	0	10,000	0%
GTRB/ARTH/SABL	0	0	0%	66	5,000	1%

TRAWL RED KING CRAB

	ZONE 1		
Fishery group	Crabs (#'s)	Cap (#'s)	%
Pacific cod	2,450	10,000	25%
Rock sole/Other flatfish	20,523	110,000	19%
Yellowfin sole	6,054	50,000	12%
PLCK/AMCK/OTHER	3,588	30,000	12%

AGENDA C-4
Supplemental
OCTOBER 2005

Groundfish Forum

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September 28, 2005

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

Re: Agenda Item C-3, Amendment 80 (H&G Cooperatives)

Dear Madam Chair,

We are writing this letter to comment on the Council's scheduled action regarding BSAI Amendment 80, which will rationalize the BSAI non-pollock trawl catcher-processor ('H&G') sector. Groundfish Forum members represent the majority of the H&G sector, and we have been involved in intense discussions with other sector members to develop a recommendation for the Preliminary Preferred Alternative which the Council is to select at this meeting. While those discussions are still underway we are unable to provide full comments on all issues. However, we are able to present views on allocation formulas for target species and PSC to the sector (Components 3 and 6), and on monitoring and enforcement issues.

Component 3: Formula to allocate target species to the H&G sector

Component 3 includes three options for allocating target species to our sector, all of which use catch history. The first option (3.1) allocates based on the total catch of the sector relative to the total catch of all sectors, the second (3.2) on the retained catch of the sector relative to the retained catch of all sectors, and the third (3.3) on the retained catch of the sector relative to the total catch of all sectors.

The analysis of these options brings up some very interesting points. First, all fisheries have some level of incidental catch of the species which will be allocated. This incidental catch may be sent to meal, if vessels have access to meal plants, or may be discarded over the side if they do not. Second, and perhaps more interesting, the retention rate of these species in the H&G sector is significantly higher than the retention rate in any other sector, in spite of the fact that none of the H&G vessels have meal plants.

The Council has consistently stated its preference to allocate catch history based on retained catch. On this basis, we ask that the Council select option 3.2, retained catch over retained catch. This will ensure that the non-H&G yellowfin directed fishery also receives credit for their retained catch.

Since all fisheries do have incidental catch, NMFS will have to create an 'Incidental Catch Allowance,' or ICA, to provide for that catch, as is done for the incidental pollock catch in the non-AFA fleets. Using this tool, the non-H&G sectors would not only have their incidental needs provided for, they would be allowed to retain up to the 'Maximum Retainable Allowance' (MRA) of each of these species – significantly more than they are currently retaining.

Thus, using retained/retained (option 3.2) maintains the Council's consistent record on allocation programs, rewards the sectors that are truly dependent on these fisheries, and provides for the incidental needs of the non-dependent sectors with the added ability to increase their retention if they choose to do so.

Component 6: PSC allocation to the H&G sector

Component 6 determines how much PSC will be available to the H&G sector to fund the harvest of allocated species. Option 6.1 (the initial allocation) has three sub-options: based on historic use by the sector (6.1.1), based only on historic use when harvesting the allocated species (6.1.2), and tied to the amount of each target species. Option 6.2 contains additional sub-options to further reduce the initial allocation.

We request the Council to select suboption 6.1.1 (historic use) in combination with suboption 6.2.4 (reduction to 95% of calculated level), phased in over a three-year period as coops are established and begin to function. Combined with Component 5 (PSQ allocation), this results in a re-allocation of some percentage of the PSC to the CDQ fisheries (up to 7.5%, depending on the alternative selected) along with a real reduction in the amount of PSC used (5% over three years). We believe this is the best option to create a genuine savings in PSC while maintaining the viability of the H&G fisheries.

Option 6.1: Initial PSC allocation.

A key point in this decision process is that NONE of the initial allocation suboptions (6.1.1, 6.1.2 and 6.1.3) result in a PSC savings. The first suboption allocates historical use minus the increase in the allocation to CDQ groups, while the other two re-allocate PSC away from the H&G sector to other sectors. None of that PSC stays in the water. Further, the way in which the PSC is re-allocated does nothing to promote better use of the resource.

Suboption 6.1.2 would re-allocate the PSC which was used by the H&G fleet when targeting species which are not part of this action (for example, rex sole and Alaska plaice) to the non-H&G sectors. These legal and viable fisheries are an important part of our sector's operations and are particularly important to smaller vessels. There is no reason to shift this PSC to another sector. The goal of reducing PSC use can be achieved through Option 6.2 instead.

Suboption 6.1.3 would tie the PSC allocation to the amount of target species the sector receives. While this may be perceived as a way to somehow bring the H&G sector into line with the PSC use by other sectors in these target fisheries, this is NOT what it does. There is no 'average' PSC use by other sectors in these fisheries because *no other sector has directed fisheries for them* (except, as noted above, for a small yellowfin sole fishery conducted by AFA vessels. Instead, suboption 6.1.3 would tie PSC to whatever catch was allocated, whether it was caught in a directed fishery or as incidental catch. To illustrate this, look at the example of rock sole:

Tables 3-5 (page 28) and 3-28 (page 75), with some high school algebra applied, show that for the years 2000 to 2003, the rock sole catch was divided as follows:

H&G average total catch: 28,463 metric tons
H&G average retained catch: 13,380 metric tons
Non-H&G average total catch: 10,320 metric tons
Non-H&G average retained catch: 425 metric tons (a 4% retention rate)

That is, the non-H&G sectors caught over 25% of the total rock sole, but retained almost none of it. This fish was caught incidentally to other target fisheries (primarily Pacific cod and pollock), and the PSC that was used came from the PSC allocations for those target fisheries.

If, under Suboption 6.1.3, the Council chooses to allocate PSC based on the allocation of the target species, it will be giving the non-H&G sectors up to 25% of the PSC assigned to rock sole because of their incidental catch of this fish, when not one pound of it was caught in a directed fishery that required a separate PSC allowance.

The counter-argument could be made for Pacific cod in the H&G sector: if PSC is assigned to the total amount of the catch regardless of whether it was in a directed fishery or incidental, the H&G sector would wind up with almost twice as much PSC for Pacific cod as it actually used – simply because almost half of the H&G Pcod catch is incidental to other target fisheries.

As with suboption 6.1.2, this results in a re-allocation of PSC for no rational reason, and does not result in any real PSC savings.

Option 6.2: PSC reduction

Option 6.2 contains a series of sub-options which would reduce the initial allocation of PSC to the H&G sector by a given amount. This is the only option the Council has to truly reduce the amount of PSC used, without simply re-allocating it to another sector.

We recognize that with rationalization our sector will have more tools to use in bycatch avoidance, and we believe that the Council should expect some real decrease in the PSC catch as a result of this. Recognizing that up to 7.5% of the historic PSC use will be re-allocated to CDQ groups, we believe that we can achieve an additional five percent decrease in actual PSC catch as the coops begin to function. This may be difficult in the first year or two as the coops are forming and learning how to manage their catch, but it should be possible by the third year of the program.

Monitoring and enforcement issues:

As proposed, Amendment 80 will include the increased monitoring and enforcement requirements from Amendment 79 (such as the use of flow scales and increased observer coverage) along with new requirements such as a prohibition on vessel personnel in the live tank while the factory is operating, and increased space for the observer sampling station. The analysis indicates that vessel operating in CDQ fisheries for the Amendment 80 species would also be subject to these new measures.

We continue to oppose those requirements which are not realistic and those whose goals we believe can be achieved in much more reasonable ways. As stated in our comments on Amendment 79, the prohibition of mixing tows is not only extremely costly but also potentially dangerous to our vessels and crews. The restriction on the number of conveyor belts bringing fish out of the live tanks (which would not allow vessels to operate two lines at once from the tank) presents enormous operational difficulties for vessels which are set up with live tanks designed to empty from both sides and which do not have room in the factory to bring these two lines together.

The additional restriction on personnel in the live tank is crippling. Unlike pollock, most of the fish caught by the H&G fleet will not flow easily from the tank to the conveyors and require some manual movement. Flooding the tanks would cause the fish to move more easily, but would so reduce the value of the product (particularly POP, which is valued for its color) that it would not be worth processing. More importantly, the concern which this restriction is designed to address (possible pre-sorting in the live tank) can be addressed much more effectively simply by installing video cameras in the tank. Video technology for use on fishing vessels has progressed dramatically in recent years, and high quality images are already being used for other applications. With monitors installed at the observer station, the observer would be able to view any activity in the tank at any time, without interrupting either the vessel operations or their own sampling operations to do it.

The same video technology could be applied on vessels where two lines of fish come from the live tank. Video cameras installed on the lines would allow the observer to view any activity at either line at any time, while also being able to monitor any activity in the live tank. This expanded coverage would be like having two or more extra sets of eyes, and would still allow the observer to do their work with minimum interruptions. We simply cannot understand why video technology is not considered as an option.

The Vessel Monitoring Plan may be the venue for individual vessels to address these types of monitoring and enforcement concerns, but we are not clear exactly how this would operate or how much flexibility the Agency would have in approving a plan. Our hope is that by working with the Observer Program we can develop a system which meets the monitoring and enforcement requirements in a realistic and cost-effective way.

Groundfish Forum will present additional comments during the upcoming Council meeting, reflecting the results of discussions with the entire sector as well as our own concerns. We appreciate this opportunity to comment, and remain committed to working with the Council and the Agency to achieve a rationalization system which maintains both the economic strength and conservative management practices which characterize North Pacific fisheries.

Sincerely,

William Orr (gwc)

Bill Orr
President