


MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver 
Executive Director
DATE: May 26, 2010
SUBJECT: Amendment 80 Program

ESTIMATED TIME 4 HOURS ALL C-6 ITEMS
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ACTION REQUIRED

- (a) Report on GRS program
- (b) Final Action Amendment 80 Lost Vessel Replacement

BACKGROUND

(a) Report on GRS program

At its April 2010 meeting, the Council requested NMFS report to the Council at its June 2010 meeting on the status of monitoring, enforcing, and prosecuting the Groundfish Retention Program (GRS) program. The Council requested that NMFS review the enforcement and prosecution concerns raised during the development of the GRS program, Amendments 80 and 93 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP), any new concerns about monitoring and enforcing the GRS program that have been identified by the agency or industry participants, and potential concepts for refinement of the GRS Program to address these concerns.

The GRS program requires a minimum retention of all Federal groundfish in the BSAI for non-AFA trawl catcher/processors. The GRS requirement began at 65 percent in 2008, rising to 75 percent in 2009, 80 percent in 2010, and peaking at 85 percent in 2011 and all future years. GRS applies to all non-AFA trawl catcher/processors operating in the BSAI. Under GRS, each vessel participating in the limited access fishery must ensure that it meets the GRS requirements based on the amount of catch retained by that vessel. Vessels participating in a cooperative can aggregate the total catch by all vessels in the cooperative and the total retained catch by all vessels in the cooperative.

Attached as Item C-6(a)(1) is the preliminary assessment of the GRS program responsive to the Council's request. The report also reiterates to the Council the agency's concern about expanding the scope of the GRS Program to multiple cooperatives formed by the Amendment 80 sector as proposed by the Council under Amendment 93 to the FMP.

(b) Amendment 80 Lost Vessel Replacement

At the October 2008 meeting, the Council initiated an analysis for a proposed FMP amendment to address lost vessels in the Amendment 80 program. The analysis was initiated to address a May 19, 2008, ruling of the U.S. District Court of the Western District of Washington that invalidated the Amendment 80

provisions that limit the vessels used in the Amendment 80 program. In *Arctic Sole Seafoods, Inc. v. Gutierrez*, the district court found the statutory language of the Capacity Reduction Program ambiguous as to whether replacement of qualifying vessels with non-qualifying vessels was permissible, and found the agency's interpretation of the statute to be arbitrary and capricious.

At the February 2010 meeting, the Council conducted initial review and released the document for public review. At this meeting, the Council is scheduled to take final action. The public review draft was mailed on May 18, 2010. An executive summary of that analysis is attached as Item C-6(b)(1).

Status Report to the North Pacific Fishery Management Council on the Implementation of the
Groundfish Retention Standard Program

National Marine Fisheries Service
Alaska Region
May 2010

At its April 2010 meeting, the North Pacific Fishery Management Council (Council) requested NMFS report to the Council at its June 2010 meeting on the status of monitoring, enforcing, and prosecuting the Groundfish Retention Program (GRS) program. The Council requested that NMFS review the enforcement and prosecution concerns raised during the development of the GRS Program, Amendments 80 and 93 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP), any new concerns about monitoring and enforcing the GRS program that have been identified by the agency or industry participants, and potential concepts for refinement of the GRS Program to address these concerns. This report is intended to provide a preliminary assessment of the GRS program responsive to the Council's request. The report also reiterates to the Council the agency's concern about expanding the scope of the GRS Program to multiple cooperatives formed by the Amendment 80 sector as proposed by the Council under Amendment 93 to the FMP.

Overview of the GRS Program

Amendment 79. The GRS program originally was adopted by the Council as Amendment 79 to the FMP in June 2003, to improve retention of groundfish by non-American Fisheries Act (AFA) trawl catcher processors (C/Ps) that were equal to or greater than 125 ft length overall. In adopting this action, the Council focused on these C/Ps because as a group, they had "the lowest retained catch rates of any groundfish trawl fishery in the Bering Sea and Aleutian Islands Area (BSAI)." Between 1999 and 2002, the retention rate for this sector ranged between 65 and 73 percent and the sector accounted for the majority of total discards in the BSAI groundfish fisheries. The Council's stated policy objective for developing the GRS program was based on the Council's commitment to "reducing bycatch, minimizing waste, and improving utilization of fish resources to the extent practicable...[and acknowledged] the fact that any solution to the problem of reducing discards must take into account the ability of NOAA Fisheries to monitor discards and adequately enforce any regulations that are promulgated."

The final rule implementing the GRS program was effective January 20, 2008, and required non-AFA trawl C/Ps \geq 125 ft length overall (LOA) to retain and utilize an increasing percentage of groundfish caught during fishing operations, or groundfish retention standards. Non AFA trawl C/Ps $<$ 125 ft LOA were excluded from the GRS program in spite of their contribution to the overall bycatch and discard of groundfish by all non-AFA trawl C/Ps in recognition that GRS compliance costs under Amendment 79 associated with observers and scale monitoring requirements would be relatively higher for these vessels.

The GRS Program was phased in over time to allow the affected vessels to adjust to retention requirements. The schedule for increasing retention standards established by Amendment 79 is

in regulations at 50 CFR Part 679.27(j) and listed below in Table 1. Although compliance with the GRS is calculated on an annual basis, the GRS is obtained from data collected throughout the year and from each haul by a vessel.

TABLE 1. GROUND FISH RETENTION STRANDARD	
GRS Schedule	Annual GRS
2008	65%
2009	75%
2010	80%
2011 and each year after	85%

Regulations prohibit the owner or operator of a non AFA trawl C/P \geq 125 ft LOA from retaining an amount of groundfish during a fishing year that is less than the amounts listed above and establish the equation used for the annual GRS calculation. This equation uses as the numerator a vessel's total round weight equivalent of retained catch based on primary groundfish production and NMFS product recovery rates divided by total catch of groundfish as weighed on a certified flow scale and using observer data on catch composition of each haul. This methodology for determining individual vessels' specific annual retention differs from the computation of retention percentages used by the Council in its analysis for Amendment 79 and upon which the Council based its selected groundfish retention standards. The regulatory equation for determining annual groundfish retention standards was implemented to achieve a basis for monitoring and enforcing the GRS program that was verifiable and enforceable at the individual vessel basis.

Amendment 80. In June 2006, the Council adopted Amendment 80 to the FMP, which was implemented under a final rule in 2007 and was fully effective starting with the 2008 fishing year. Among other measures, Amendment 80 authorized the allocation of specified groundfish species to harvesting cooperatives and established a catch share program for the non-AFA trawl catcher/processors (Amendment 80 sector). Amendment 80 was intended to meet a number of policy objectives which included (1) improving retention and utilization of fishery resources by the Amendment 80 sector, and (2) reducing potential bycatch reduction costs, encouraging fishing practices with lower discard rates, and improving the opportunity for increasing the value of harvested species. To meet these goals, Amendment 80 extended the application of the GRS Program to non-AFA trawl catcher/processor vessels of all sizes by including catcher/processor vessels less than 125 ft (38.1 m) LOA. The Council included all Amendment 80 sector vessels under the GRS because some of the compliance costs associated with the GRS Program, particularly for non-AFA trawl C/Ps less than 125 ft LOA, could be reduced under the Amendment 80 catch share program.

The Council recognized that if harvesters could apply the GRS to a cooperative by aggregating the retention rate of all vessels assigned to a cooperative, owners of non-AFA C/Ps <125 ft LOA could choose to join a cooperative, assign their harvest privilege to the cooperative, and allow

other larger vessels to harvest the cooperative's exclusive allocation of fish without incurring the compliance costs associated with monitoring the GRS. Additionally, for those non-AFA trawl C/Ps that do fish under a cooperative's exclusive harvest privilege, the costs associated with retaining less valuable fish under the GRS may be offset by increased profitability from those vessels because they are no longer operating in a race for fish.

Differences in Calculating Retention Under the GRS Program

Since the GRS program was implemented, the retention rate of groundfish by the non-AFA trawl C/Ps has increased from 77 percent in 2008 to 81 percent in 2009 based on the regulatory methodology for calculating groundfish retention (Table 2). However, concern has been expressed by this sector that the data used by the Council to establish the GRS schedule (Table 1), differ from the data used by NMFS to calculate vessel or cooperative specific retention percentages and regulate compliance with the annual groundfish retention standards. The Best Use Cooperative (BUC) reported in its 2009 annual report to the Council¹ that the GRS calculation specified in regulations results in a lower retention percentage than the methodology used in the Amendment 79 analysis to establish the standards themselves. NMFS confirms that the regulatory calculation of groundfish retention standards result in a consistently lower percentage (Table 2). In 2008, this difference was 14 percent. The reason for this difference is not clear, but likely reflects a mixture of factors that include the GRS Program's use of scale weights in measurement of total catch, reliance on observer sampling to develop estimates of total groundfish catch, and use of standard product recovery rates that may differ from vessel specific recovery rates. NMFS also suggests that a difference exists between the apparent improvements in retention by vessels in the Amendment 80 sector versus meeting regulatory standards established for the GRS Program retention percentage. Nonetheless, as retention requirements are increased through 2011, BUC is concerned that the effect of this difference is to require a level of retention that will not be possible to achieve by many vessels, and perhaps not by the BUC as a whole. This issue is addressed below as a new and additional enforcement and prosecution complication for the GRS program.

Enforcement and Prosecution Considerations

When the GRS Program was approved by NMFS as Amendment 79, NOAA General Counsel raised concerns about the likely difficulty in prosecuting vessel specific violations of the Program. These concerns primarily focused on the Program's reliance on an annual groundfish retention percentage based in part on data collected by numerous observers deployed on a vessel over the course of a year and whether these observers would be available in future years to support the prosecution process. These concerns are aggravated under Amendments 80 and 93 because the number of observers necessary to support an enforcement case and associated prosecution increases significantly from a single vessel scenario to a multiple vessel cooperative under Amendment 80 and a multi cooperative GRS compliance standard under proposed Amendment 93.

¹ Best Use Cooperative Report to the North Pacific Fishery Management Council for the 2009 Fishery. Dated March 31, 2010. Presented to the North Pacific Fishery Management Council April 2010.

Table 2. Comparison of groundfish retention calculations derived under the approach used by the analysis supporting Amendment 79 and the regulatory calculations for GRS compliance (table originally presented in the 2009 annual BUC report to the Council).

Year	Regulatory GRS percentage	Total catch ¹ (A)	Retained catch ² (B)	Round weight equivalent of reported production ³ (C)	Amd 79 approach for deriving % retained catch (B)/(A)	Regulatory approach for determining compliance with GRS (C)/(A)	Differences
1999		155,667	101,856	88,633	65%	57%	8%
2000		178,563	120,474	98,705	67%	55%	12%
2001		158,781	116,455	102,434	73%	65%	9%
2002		190,247	132,061	116,800	69%	61%	8%
2003		188,257	129,620	114,116	69%	61%	8%
2004		217,658	145,767	130,801	67%	60%	7%
2005		201,586	153,673	136,311	76%	68%	9%
2006		196,360	151,422	133,929	77%	68%	9%
2007		211,325	163,437	147,119	77%	70%	8%
2008	65	260,296	235,580	200,161	91%	77%	14%
2009	75	251,602	226,886	203,673	90%	81%	9%

1. Prior to 2008 total catch based on combination of observer data and weekly production reports. After 2008, based on scale weights of total groundfish catch from observer data.
2. Prior to 2008, retained catch estimates are based on a combination of observer estimates of discard and data from weekly production reports. After 2008, retained catch is based on observer estimates of discard.
3. Retained catch for purposes of the GRS program is based on the round weight equivalent of reported production.

In early 2010, the NOAA Office of Law Enforcement (OLE) was referred an alleged violation of the GRS Program for the 2009 fishing year. This alleged violation involves one vessel not part of a cooperative, which fished for a reduced portion of the fishing year. This relatively simple case created an opportunity to evaluate the evidence collection processes necessary for prosecution of a GRS violation.

Investigation of a GRS violation relies upon a detailed examination of the underlying data and the data collection processes used to generate both the numerator and denominator of a GRS retention rate. The numerator of the GRS equation is principally based upon vessel-derived and reported data and is the total primary groundfish product produced by the vessel during a year extrapolated to round weight equivalent using standard product recovery rates. The denominator of the GRS equation is derived principally from observer data using the scale weight of total catch as modified by haul-specific observer data on catch composition to generate

total catch of groundfish. Under regulations implementing the GRS program and then Amendment 80, two observers are embarked aboard vessels subject to the GRS regulations. Over a fishing year, this results in numerous observers collecting data aboard a vessel subject to the GRS regulations.

Prior to considering an alleged GRS violation for prosecution, OLE investigators must perform a detailed analysis and verification of the sampling procedures and protocols employed by embarked observers, and find a high degree of reliability in the observer data. This task is both time and labor intensive. Experience to date with the current one-vessel investigation provides valuable insights into the essential tasks for any future investigation and prosecution of a cooperative-level GRS rate violation. For example, following a lengthy investigation, prosecution of a case may be unsuccessful if OLE is unable to locate or gain the cooperation of the involved observers for adjudication processes. For various reasons, some portions of observer-collected data may be unusable or excluded from a data set. Because the sufficiency of data sets for prosecution purposes must be evaluated for each alleged GRS violation, the difficulty increases exponentially with a violation involving a cooperative of multiple vessels because this process must be completed for each vessel in a cooperative. As indicated above, expansion of the groundfish retention standard to multiple cooperatives under proposed Amendment 93 would further aggravate this difficulty because the data and data collection protocol of potentially every observer on every vessel in the Amendment 80 sector would need to be evaluated and observers available to support the investigation.

The recent OIG investigation of OLE recommends greater emphasis on prioritizing enforcement work at the regional and national levels. Given the limited resources of OLE, the agency must correlate the priority of particular regulatory schemes with a cost-benefit analysis of enforcement efforts. Knowledge gained through the current one-vessel GRS case indicates future investigations will be labor and time intensive. This level of investment may not coincide with the agency's designated priorities.

At this time, NOAA General Counsel has not yet determined the extent to which the different methodologies used to establish the groundfish retention standards (Table 1) and to monitor compliance with those standards will frustrate or impede prosecution of violations of the GRS Program. Recent awareness of this situation poses concern, however, and likely provides rationale for an analysis of alternatives to modify the GRS program to establish closer consistency.

Additionally, OLE has noted that ongoing focused enforcement resources would be required to ensure retained product amounts are not misreported to misrepresent retention. OLE intends to use information from product offload audits to detect and prevent violations of this sort, as well as US Coast Guard information from onboard vessel audits. These compliance monitoring costs are substantial and together with potential costs associated with prosecution of GRS Program violations, may not be justified relative to other enforcement priorities, particularly if the Council's objective for improved groundfish retention largely has been met and alternative, non regulatory incentives to maintain this improvement can be pursued through Amendment 80 cooperative agreements.

Potential Concepts for Refinement of the GRS Program to Address Concerns

Given the estimated increase in groundfish retention since 2007, it appears that the Council's policy objectives to decrease bycatch and waste in the non AFA trawl C/P sector has been largely successful. The Amendment 80 sector has operated under a cooperative system for 2.5 years in a manner that seems to facilitate compliance with the GRS program to date. The fact that the Council has taken action under Amendments 80 and 93 to facilitate the participation of all Amendment 80 vessels in one or more cooperatives in the future would seem to further the ability of vessels to minimize discards in a cooperative environment.

NMFS now has limited experience suggesting that the costs to NOAA of developing a GRS compliance case are high and will be even higher if GRS compliance cases are pursued at the cooperative level. These costs may become prohibitive relative to other enforcement and prosecution priorities, especially given that management objectives for the GRS program seem to be met generally, especially if the methodology used by the Council to develop the groundfish retention standards under Amendment 79 is used to assess annual retention rates (Table 2, 6th column from the left). Changes to the GRS program, including changes to the groundfish retention standards themselves, may be necessary to respond to some of the issues raised by BUC, to better position the program for effective enforcement action, or to respond to changes to the fisheries that could influence practical expectations for retention rates. Such changes to support a cost effective program may be difficult to identify and justify, especially if potential benefits have eroded over time as groundfish retention percentages have increased since 2007, and future enforcement and prosecution costs increase.

NMFS recommends, therefore, that the Council consider policy implications of continuing to dedicate resources to keep or refine the GRS program. The Council also could consider a more flexible, non-regulatory approach for assessing whether or not the Amendment 80 sector is maintaining recent apparent improvements to retention rates by withdrawing the specific regulatory provisions for a GRS Program and instead relying on cooperative formation and annual reports to the Council on cooperative activity relative to catch and discard. If under this approach, the Amendment 80 sector is not able to meet Council policy expectations for minimizing bycatch to the extent practicable, the Council could consider alternative regulatory approaches that a catch share program, such as the Amendment 80 cooperatives, may offer for reducing bycatch. Alternative approaches are beyond the scope of this discussion paper, and would require assessment of why a cooperative approach failed and of alternatives to address the specific nature of the failure.

EXECUTIVE SUMMARY

This Regulatory Impact Review (RIR) was prepared to meet the requirements of Presidential Executive Order 12866 for an evaluation of the benefits and costs of a proposed Federal regulatory action. The proposed action is Amendment 97 to the Fishery Management Plan for Groundfish of the Bering Sea/Aleutian Island Management Area (BSAI FMP). Analysts have also drafted an environmental assessment (EA) and initial regulatory flexibility analysis (IRFA) to comply with the National Environmental Policy Act and the Regulatory Flexibility Act, respectively. The proposed action would amend the BSAI FMP and Federal regulations related to the Amendment 80 Program.

The Amendment 80 Program is a limited access privilege program (LAPP) that allocates a quota share (QS) permit to a person, based on the catch history of six Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, flathead sole, Pacific cod, rock sole, and yellowfin sole) in the Bering Sea/Aleutian Islands Management Area (BSAI), from 1998 through 2004, for each of 28 originally qualifying non-American Fisheries Act (AFA) trawl catcher processors. In order to receive an allocation of QS, a person must own the catch history of an original qualifying non-AFA trawl catcher/processor that met specific criteria, designated by Congress, under the Capacity Reduction Program (CRP). The non-AFA trawl/catcher processors identified in the CRP comprise the Amendment 80 vessels. Section 219(g)(1) of the CRP states that “[o]nly a member of a catcher processor subsector may participate in the catcher processor sector of the BSAI non-pollock groundfish fishery.” The “Catcher processor sector” is further broken down into four subsectors, one of which is the “non-AFA trawl catcher processor subsector” defined in section 219(a)(7):

(7) NON-AFA TRAWL CATCHER PROCESSOR SUBSECTOR – The term “non-AFA trawl catcher processor subsector” means the owner of each trawl catcher –

- (A) that is not an AFA trawl catcher processor;
- (B) to whom a valid LLP license that is endorsed for Bering Sea or Aleutian Islands trawl catcher processor fishing activity has been issued; and
- (C) that the Secretary determines has harvested with trawl gear and processed not less than a total of 150 metric tons on non-pollock groundfish during the period of January 1, 1997 through December 31, 2002.

Section 219(a)(8) defines non-pollock groundfish:

(8) NON-POLLOCK GROUND FISH FISHERY.—The term “non-pollock groundfish fishery” means target species of Atka mackerel, flathead sole, Pacific cod, Pacific Ocean perch, rock sole, turbot, or yellowfin sole harvested in the BSAI.

Each of the 28 originally qualifying vessels may be assigned a QS permit, if that vessel owner applies to receive QS. In cases where an original qualifying vessel has suffered an total or constructive loss, or is no longer eligible to receive a fishery endorsement (i.e., the vessel has been removed through a vessel buyback program, or has been reflagged as a foreign vessel) the

QS permit may be assigned to a replacement vessel, or to the License Limitation Program (LLP) license initially assigned to that original qualifying vessel. Persons not applying for QS based on the catch history of original qualifying vessels, may use those vessels to continue to participate in fishing the Gulf of Alaska (GOA), but are prohibited from using those vessels as trawl vessels in the BSAI.

Once issued, QS permits, and the Amendment 80 vessels or LLP licenses associated with those QS permits, may be assigned to either an Amendment 80 cooperative, or the Amendment 80 limited access fishery. A QS permit may not be subdivided and QS allocations of specific QS species may not be transferred or otherwise reassigned. In order to form a cooperative, a minimum of three unique QS holders, not affiliated through control or direct or indirect common ownership of greater than 10 percent, and a minimum of nine QS permits of the 28 QS permits that are eligible to be issued under the Amendment 80 Program, must be assigned to a cooperative.

NMFS assigns an exclusive harvest privilege for a specific portion of the total allowable catch (TAC) assigned to the Amendment 80 program for the six defined Amendment 80 species, as well as exclusive access to a portion of the BSAI halibut, Bristol Bay red king crab, snow crab, and Tanner crab prohibited species catch (PSC). PSC allowances are based on the aggregate QS held by all of the QS permits assigned to a cooperative. The annual exclusive harvest privilege assigned to a cooperative is called cooperative quota (CQ). Persons who do not participate in a cooperative are assigned to the limited access fishery and compete for the TAC and PSC remaining after deductions made for cooperatives. Cooperative members may receive the benefits of ending the "race for fish," thereby providing greater incentive to coordinate harvesting strategies, fish in conditions that are likely to be more economically profitable, less dangerous, and respond to changing conditions on the fishing grounds. The potential benefits that vessel owners and operators may derive from participating in a cooperative may not be realized by participants in the limited access fishery, who do not receive an exclusive harvest allocation. Participants in the limited access fishery may have little incentive to coordinate harvest strategies, if they perceive a benefit by competing with other participants in a race for fish.

A minimum groundfish retention standard (GRS) applies to all Amendment 80 vessels fishing in the BSAI. The GRS was recommended by the North Pacific Fishery Management Council (Council) as Amendment 79 to the BSAI FMP in June 2003, published as a final rule in April 2007, and became effective in 2008. As originally recommended by the Council in April 2003, the GRS applied only to non-AFA trawl catcher/processors equal to or greater than 125 feet length overall (LOA). All Amendment 80 vessels over 125 feet would have been required to comply with the GRS recommended by the Council under Amendment 79. Under the GRS, Amendment 80 vessels are required to retain a minimum amount of all groundfish harvested. The percentage of catch that must be retained was 65 percent in 2008, 75 percent in 2009, increasing to 80 percent in 2010, and fixed at 85 percent in 2011 and all future years.

Amendment 80 modified the GRS as recommended under Amendment 79 in two critical ways. First, the GRS was extended to apply to all non-AFA trawl catcher/processors operating in the BSAI, without an exemption for vessels under 125 feet LOA. Therefore, all Amendment 80 vessels, regardless of size, are required to comply with the GRS. Second, Amendment 80 modified the method of calculating the total retention of catch that applies to cooperatives. Under the GRS as modified by Amendment 80, each vessel participating in the limited access fishery must ensure that it meets the GRS requirements. Vessels participating in a cooperative

can aggregate the total catch and total retained catch by all vessels in the cooperative. Therefore, vessels with poorer retention rates may have an incentive to join a cooperative with other vessels that have a better retention rate and are able to offset the lower retention rate of those vessels. Vessels with better retention rates may choose to participate in a cooperative to ensure an exclusive harvest privilege, or to facilitate exchanges of quota with other members in the cooperative with poorer retention rates. Vessels participating in the limited access fishery may face increasing difficulty meeting the GRS if they cannot coordinate with other vessels. As the GRS increases, vessels with lower retention rates may have greater difficulty meeting the GRS, if they cannot coordinate with other vessels in a cooperative. A review of retention rates by Amendment 80 vessels indicates that smaller vessels, typically those under 144 feet in length overall, have lower retention rates than larger vessels, due to more limited freezer space and less sophisticated processing equipment that can improve product yields.

The Amendment 80 fleet is constrained by harvest limits in the GOA, commonly known as sideboards, that limit the catch of pollock, Pacific cod, northern rockfish, Pacific ocean perch, and pelagic shelf rockfish, as well as halibut PSC based on harvest patterns during 1998 through 2004. Only specific Amendment 80 vessels that met minimum participation thresholds in GOA flatfish fisheries during 1998 through 2004 are allowed to target those species. The vessels eligible to target GOA flatfish are listed in regulation. Specific GOA sideboard restrictions also apply to one vessel, the *Golden Fleece*. That vessel demonstrated more dependence on GOA fisheries during 1998 through 2004, than other Amendment 80 vessels.

NMFS published a proposed rule to implement Amendment 80 on May 30, 2007. The proposed regulations limited participation in the Amendment 80 sector to non-AFA trawl catcher processors that qualified under the definition of the non-AFA trawl catcher processor subsector from Congress' CRP. The proposed regulations listed the 28 non-AFA trawl catcher processor vessels that met the criteria laid out in section 219(a)(7). Only listed vessels were permitted to fish in the Amendment 80 sector. Arctic Sole Fisheries, the owner of the *Arctic Rose* (an original qualifying Amendment 80 vessel that was lost) submitted comments on the proposed rule specifically addressing the restriction of participation in the Amendment 80 sector to the listed vessels and the lack of a replacement vessel provision in the regulation. NMFS published a final rule that implemented Amendment 80 on September 14, 2007. NMFS maintained that Congress had established the eligibility requirements for participation in the Amendment 80 sector through the CRP and the non-AFA trawl catcher processor subsector, and that section 219(a)(7) limited participation to the vessels that met the qualifying criteria. NMFS further explained that it could not provide replacement language in the regulations because Congress did not authorize such action. After publication of the final rule, Arctic Sole Seafoods challenged the Council's and NMFS's statutory interpretation of section 219(a)(7) and contended that the lack of replacement vessel language was arbitrary and capricious.

On May 19, 2008, the U.S. District Court for the Western District of Washington (Court) issued a decision invalidating those regulatory provisions that limit the vessels used in the Amendment 80 Program. In *Arctic Sole Seafoods, Inc. v. Gutierrez*, the district court found the statutory language of the CRP ambiguous as to whether replacement of qualifying vessels with non-qualifying vessels was permissible, and found the agency's interpretation of the statute to be arbitrary and capricious. The court concluded that the inability to replace qualifying vessels with non-qualifying vessels would ultimately result in the elimination of the sector through vessel attrition, and that Congress had not intended such an outcome in the CRP. The Court ordered that "[t]o the extent that [regulations] restrict[] access to the BSAI non-pollock groundfish

fishery to qualifying vessels without allowing a qualified owner to replace a lost qualifying vessel with a single substitute vessel, the regulations must be set aside....” (Court Order).

The proposed action would modify the FMP to clarify the conditions under which an Amendment 80 vessel may be replaced consistent with the Court Order. Since the implementation of the Amendment 80 Program in 2008, some Amendment 80 sector participants have expressed concern that the lack of Amendment 80 vessel replacement provisions could impede the ability of relatively smaller Amendment 80 vessels from complying with the GRS. Additionally, Amendment 80 vessel owners may wish to replace smaller vessels with larger vessels to improve safety, to meet international class and load line requirements that would allow a broader range of onboard processing options, or to otherwise improve the economic efficiency of their vessels.

In October 2008, NMFS staff provided the Council with an overview of the Court Order, the necessary amendments to the FMP to implement the Court Order, alternatives to allow vessel replacement, and other aspects of the Amendment 80 Program that may be affected by Amendment 80 vessel replacement (e.g., application of GOA sideboards, assignment of QS permits to replacement vessels). After receiving this overview, the Council recommended that staff initiate an analysis that would amend the FMP consistent with the Court Order. The Council recommended two alternatives for consideration and requested staff to examine whether the AFA contains provisions that would limit the length, tonnage, or horsepower of Amendment 80 replacement vessels. Amendment 80 vessel owners requested this review to ensure that provisions applicable to AFA vessels would not apply to the Amendment 80 sector.

Purpose and Need and Alternatives

Based on the guidance that the Council provided, and the discussion paper that the Council reviewed in October 2008, a draft purpose and need statement and alternatives that would establish criteria for Amendment 80 vessel replacement was developed. The Council adopted this purpose and need statement in February 2010:

Purpose and Need

Allowing Amendment 80 vessel owners to replace their vessels, due to actual total loss, constructive total loss, permanently ineligibility to be used in a U.S. fishery, or for other reasons, would allow vessel owners to improve vessel safety, meet international class and load line requirements that would allow a broader range of onboard processing options, or otherwise improve the economic efficiency of their vessels. Allowing smaller vessels to be replaced with larger vessels could improve the ability of vessel owners to comply with the groundfish retention standard (GRS) applicable to all Amendment 80 vessels.

The alternatives recommended by the Council in October 2008, and as modified in February 2010, and April 2010, are listed below. These alternatives include limitations on the length of replacement vessels, management of specific GOA flatfish sideboards, management of sideboards applicable to the *Golden Fleece*, and the implications of vessel replacement on QS assignments. In the February 2010, initial review analysis, staff noted that general requirements applicable to original qualifying Amendment 80 vessels would apply to any replacement vessel.

Based on the comments provided by the SSC during initial review, staff have proposed clarifying the difference between a no action alternative (Alternative 1a) under which the NMFS would not implement the Court Order, and a status quo option (Alternative 1b) under which NMFS would implement the Court Order, but the Council and NMFS would not modify the FMP or regulations to be consistent with the Court Order. These two alternatives would address concerns that the status quo alternative does not provide an accurate description of the effects of no action. In addition, staff have noted a clerical correction in Alternatives 2 and 3, and Option 3c. The correction to Alternatives 2 and 3 adds a missing word and clarifies the intent regarding the replacement of a vessel. Option 3c refers to the "LOA" of an LLP license. Length limits are established on licenses with a MLOA, not an LOA. These staff suggested changes are noted in ~~strikeout~~ and **bold**.

At the time of final action, the Council will need to specify how each of the options would apply to each of the alternatives.

- **Alternative 1a: No Action. Vessels may not be replaced.**
- **Alternative 1b: Status quo. Vessels may be replaced consistent with the Court Order without accompanying changes in the FMP or regulations**
- **Alternative 2**: The owner of an Amendment 80 vessel may replace that vessel with another vessel only in cases of actual total loss, constructive total loss, or if that vessel **becomes** permanently ineligible to be used in a U.S. fishery under 46 U.S.C. 14108. Only one replacement vessel may be used at ~~the same~~ **any given time (one-for-one replacement)**.
- **Alternative 3**: The owner of an Amendment 80 vessel may replace that vessel with another vessel for any purpose. Only one replacement vessel may be used at ~~the same~~ **any given time (one-for-one replacement)**.
 - **Option 1** (Applicable to Alternatives 2 and 3): Vessel size restrictions.
 - (a) A replacement vessel may not have a length overall greater than the original qualifying Amendment 80 vessel it replaces.
 - (b) The maximum length overall (MLOA) requirements on LLP licenses assigned to an Amendment 80 vessel would still apply.
 - (b) A replacement vessel may have a length overall 10% or 20% greater than the original qualifying Amendment 80 vessel it replaces.
 - (d) A replacement vessel could not have an LOA 50, 100, or 150 feet greater than the original qualifying length of the vessel.
 - (e) No length restriction on replacement vessels (the MLOA requirements on LLP licenses assigned to an Amendment 80 vessel would not apply).

Suboption 1: (Applicable to all options); Different vessel size restrictions may be applied to large (>145 feet LOA or 200 feet LOA) and small (<145 feet LOA or 200 feet LOA) vessels.

Suboption 2: (Applicable to options b, c, d, or e); 180 foot minimum size restriction.

Suboption 3: (Applicable to option e): The replacement vessel cannot be fished in the Amendment 80 limited access sector.

- Option 2 (Applicable to Alternatives 2 and 3): GOA flatfish sideboard restrictions. A replacement vessel that replaces an original qualifying Amendment 80 vessel that is allowed to directed flatfish in the GOA:
 - (a) would not be allowed to directed fish for flatfish.
 - (b) would be allowed to directed fish for flatfish.Suboption: Replaced vessels would be subject to a flatfish sideboard limit.

- Option 3 (Applicable to Alternatives 2 and 3): *Golden Fleece* sideboard restrictions. A replacement vessel that replaces the *Golden Fleece*:
 - (a) would not receive the same exemptions that apply to the *Golden Fleece*.
 - (b) would receive the same exemptions that apply to the *Golden Fleece*.
 - (c) if the replacement vessel for the *Golden Fleece* is greater than the MLOA of the license that was originally assigned to the *Golden Fleece*, then that replacement vessel will be subject to all sideboards that apply to other Amendment 80 vessels, with the catch and PSC use of the *Golden Fleece* added to the existing GOA sideboards. If the *Golden Fleece* replacement vessel is less than or equal to the MLOA of the license that was originally assigned to the *Golden Fleece*, then the *Golden Fleece* sideboards would apply.

- Option 4 (Applicable to Alternatives 2 and 3): Assigning QS to Lost Vessels. Allow the owner of an Amendment 80 Vessel to choose to assign a QS permit from an original qualifying Amendment 80 vessel to the replacement vessel or to the LLP license derived from the originally qualifying vessel.
 - (a) A replacement vessel cannot enter an Amendment 80 fishery without QS being assigned to that vessel.
 - (b) Persons holding a QS permit associated with a vessel that is permanently ineligible to re-enter U.S. fisheries is eligible to replace the vessel associated with its QS permit.

- Option 5 (Applicable to Alternatives 2 and 3): Any vessel replaced under this program would be ineligible to be designated on an FFP or an LLP.
 Suboption: Replaced vessels may be used to replace other Amendment 80 vessels.

- Requirement under all alternatives: Monitoring and enforcement, permitting, recordkeeping and reporting, prohibitions, and general GOA sideboard measures that apply to original Amendment 80 vessels would continue to apply to all replacement vessels.

Under Alternative 1a, NMFS would take no action to implement the Court Order. Under this alternative, vessels could not be replaced. This alternative would violate the specific ruling of the Court and would be inconsistent with NMFS' previous guidance to industry representatives stating that vessel replacement is permissible. This alternative is not viable, and is provided only to provide contrast for purposes of the analysis.

Under Alternative 1b, the FMP and regulations would continue to be inconsistent with the Court Order. Vessels could be replaced under the guidance NMFS provided the industry in

October 2008. Specifically, NMFS would implement the Court Order by allowing vessels to be replaced, if they suffered an actual total loss, constructive total loss, or if that vessel became permanently ineligible to be used in a U.S. fishery under 46 U.S.C. 14108. Consistent with the Court Order, NMFS would allow an Amendment 80 vessel to be replaced by only one other vessel at a time. NMFS would not limit vessel length, allow replacement vessels to target GOA flatfish unless otherwise qualified, or apply specific sideboards applicable to the *Golden Fleece* to its replacement. Existing MLOA requirements under the LLP would continue to apply.

Alternative 2 would amend the FMP and accompanying regulations to meet the minimum requirements established under the Court Order. Vessels could be replaced only due to loss or permanent ineligibility.

Alternative 3 would amend the FMP and accompanying regulations to meet the requirements established under the Court Order, but allow vessels to be replaced for any reason (i.e., to improve safety or to improve operational efficiency, as well as to replace a lost or permanently ineligible vessel).

Option 1 would provide the Council with several choices on whether to restrict vessel length under Alternatives 2 and 3. In the past, the Council has used vessel length restrictions as a means to control fishery effort. The most restrictive option (Option 1a) would limit all future replacement vessels to the recorded length of the original qualifying Amendment 80 vessel it is replacing. Option 1b would not constrain the size of replacement vessels specifically, but the existing MLOA requirements on LLP licenses would continue to apply. Option 1c would allow vessels to be replaced with vessels 10 to 20 percent greater than the LOA of the original qualifying vessel. Option 1d would limit vessels to a fixed increments above the LOA of the original qualifying vessel. Option 1e would remove MLOA requirements on LLP licenses used on Amendment 80 vessels, effectively allowing vessels to be replaced without limit on length. The Council could also choose two suboptions that would apply difference restrictions on smaller vessels (either at 145' or 200' LOA), or allow vessels to rebuild up to a minimum size of 180' LOA.

Option 2 would provide the Council a choice to allow, or disallow, GOA flatfish directed fishing on vessels replacing one of the 11 Amendment 80 vessels authorized to directed fish for GOA flatfish. The Council could choose a suboption that would subject these replacement vessels to a sideboard limit on the amount of flatfish that may be harvested.

Option 3 would provide the Council a choice to extend, or not extend, specific GOA sideboards and monitoring and enforcement provisions to the replacement vessel of the *Golden Fleece*. One option would apply GOA sideboards to the replacement vessel depending on its LOA. Currently, the *Golden Fleece* is: (1) prohibited from directed fishing for GOA pollock, Pacific cod, or rockfish; (2) not subject to GOA halibut PSC sideboard limits; and (3) not subject to increased observer coverage applicable to all other Amendment 80 vessels operating in the GOA (e.g., *Golden Fleece* is subject to 30% observer coverage, not 100%).

Option 4 would allow the Council to choose to allow a vessel owner to assign QS issued to an original qualifying Amendment 80 vessel to either the new replacement vessel or the LLP license originally derived from that vessel. Currently, vessel owners must assign QS to the LLP license, if a vessel is lost or becomes permanently ineligible. Option 4a would require that QS be assigned to a replacement vessel. Option 4b would allow the holder of QS originally assigned to a vessel that is permanently ineligible to reenter US fisheries to be eligible to replace that vessel.

Option 5 would prohibit a replaced vessel from being eligible to receive an FFP or LLP. This limitation would effectively limit vessels from fishing in either the BSAI or GOA fisheries. A suboption would allow a replaced Amendment 80 vessel to be used as a replacement vessel for other Amendment 80 vessels.

The Amendment 80 fleet is comprised of a maximum of 28 vessels. Table E-1 notes all original qualifying vessels in the Amendment 80 sector, and the one replacement vessel currently active (*Ocean Cape*). As part of this analysis, vessel owners have provided detailed information concerning the ownership status of the various vessels and associated QS permits. As noted in Table E-1, not all of the potentially eligible recipients of QS have chosen to apply for QS. One potentially eligible QS permit could be assigned based on the historic catch history of the *Golden Fleece*.

Table E-1 also denotes in italics the original qualifying vessels that are no longer active in the Amendment 80 fleet due to a loss (i.e., *F/V Alaska Ranger*, *F/V Arctic Sole*, and *F/V Prosperity*), or because they have been reflagged under foreign ownership and are no longer eligible to reenter U.S. fisheries (i.e., *F/V Bering Enterprise*).

Table E-1 also describes those vessels that are considered to be smaller vessels for purposes of this analysis. There is not a clear distinction between large and small vessels in the Amendment 80 fleet. The final Environmental Assessment/ Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for Amendment 80 (Amendment 80 Analysis) indicated that vessels of smaller sizes had a lower retention rate than larger vessels. For purposes of this analysis, smaller vessels refers to vessels less than 144 feet LOA, because the available data suggest that those vessels may have more difficulty achieving GRS requirements relative to larger vessels.

Table E-1: Active Amendment 80 vessels and LLP licenses

Owner ₁	Amendment 80 Vessel(s) with length overall (LOA) as reported on Federal Fisheries Permit ₂	LLP license currently assigned to vessel and MLOA ₂
Fishing Company of Alaska (FCA), Inc. (Management entity for owner)	<i>Alaska Juris</i> (238 ft)	LLG 2082 (238 ft)
	<i>Alaska Ranger</i> ₃ (203 ft)	LLG 2118 (203 ft)
	<i>Alaska Spirit</i> (221 ft)	LLG 3043 (221 ft)
	<i>Alaska Victory</i> (227 ft)	LLG 2080 (227 ft)
	<i>Alaska Voyager</i> (203 ft)	LLG 2084 (228 ft)
	<i>Alaska Warrior</i> (215 ft)	LLG 2083 (215 ft)
United States Seafoods, LLC (Management entity for owners)	<i>Ocean Alaska</i> ₄ (107 ft)	LLG 4360 (124 ft)
	<i>Alliance</i> (107 ft)	LLG 2905 (124 ft)
	<i>Legacy</i> (132 ft)	LLG 3714 (132 ft)
	<i>Prosperity</i> (138 ft - QS assigned to LLP license derived from vessel LLG 1802)	N/A
	<i>Seafreeze Alaska</i> (295 ft)	LLG 4692 (296 ft)
Iquiqui U.S., LLC	<i>Arica</i> (186 ft)	LLG 2429 (186 ft)
	<i>Cape Horn</i> (158 ft)	LLG 2432 (158 ft)
	<i>Rebecca Irene</i> (140 ft)	LLG 3958 (140 ft)
	<i>Tremont</i> (124 ft)	LLG 2785 (131 ft)
	<i>Unimak</i> (185 ft)	LLG 3957 (185 ft)
O'Hara Corporation	<i>Bering Enterprise</i> ₅ (183 ft - QS assigned to LLP derived from vessel LLG 3744)	N/A

	Constellation (150 ft)	LLG 1147 (150 ft)
	Defender (124 ft)	LLG 3217 (124 ft)
	Enterprise (120 ft)	LLG 4231 (132 ft)
	Harvester Enterprise (181 ft)	LLG 3744 (183 ft)
Fishermen's Finest (Management Entity for owners)	American No. 1 (160 ft)	LLG 2028 (160 ft)
	US Intrepid (185 ft)	LLG 3662 (185 ft)
Cascade Fishing, Inc. (Management Entity for owners)	Seafisher (230 ft)	LLG 2104 (230 ft)
Ocean Peace	Ocean Peace (219 ft)	LLG 2138 (219 ft)
Jubilee Fisheries	Vaerdal (124 ft)	LLG 1402 (124 ft)
Arctic Sole Seafoods	Ocean Cape (99 ft QS assigned to LLP derived from originally qualifying vessel <i>Arctic Rose</i>)	LLG 3895 (122 ft)
Golden Fleece	Golden Fleece (104 ft)	LLG 2524 (124 ft)

1 Ownership data are derived from multiple sources including information provided on Amendment 80 QS applications, Restricted Access Management (RAM) LLP database (<http://www.fakr.noaa.gov/ram/llp.htm#list>), Groundfish Forum (<http://www.groundfishforum.org>), and personal communications with Dave Benson (Trident), Bill Orr (Iquiqui U.S., LLC), Susan Robinson (Fishermen's Finest), Mike Szymanski (FCA), and Dave Wood (U.S. Seafood). Most owners designate subsidiary corporations to own the vessels. In turn, those subsidiary corporations are wholly owned by the owner.

2 LOA data for a vessel is derived from RAM FFP license database (). MLOA for the LLP licenses is derived from the RAM LLP database (see URL above). Vessel lengths listed in the RAM database may differ from vessel lengths listed in USCG Vessel Documentation files.

3 Vessels that are no longer active in the Amendment 80 sector due to an actual total loss, constructive total loss or permanent ineligibility to receive a U.S. Fishery Endorsement under 46 USC 12108 are noted in italics.

4 Vessels considered to be smaller vessels for purposes of this analysis are noted in bold text.

5 The *Bering Enterprise* LLP license is currently held by Trident Seafoods, Inc., but will be assigned to O'Hara Corporation in 2010 (Dave Benson, Pers. Comm.). Because this transaction is likely to occur, the QS assigned to the *Bering Enterprise* LLP license is considered to be assigned to the O'Hara Corporation for purposes of this analysis.

Potential Effects of the Alternatives

Effects of the alternatives on fishing patterns

Under all of the alternatives, except Alternative 1a, Amendment 80 vessels could be replaced. None of the alternatives would be anticipated to affect overall fishing patterns in the foreseeable future, given the anticipated slow pace of vessel replacement, the quota-based allocations in the BSAI, and GOA sideboards applicable to the Amendment 80 fleet. Given the high costs for vessel replacement, this analysis assumes that vessel operators would be replacing vessels to minimize costs and maximize return, based primarily on existing fishing allocations in the BSAI Amendment 80 sector, and not in an effort to expand harvest in other smaller non-Amendment 80 fisheries. Alternative 3 would provide the greatest flexibility to vessel owners and minimize the potential gap between removal of a vessel and operation of its replacement. Under Alternative 3, the replaced vessels could become active in other non-Amendment 80 fisheries, probably GOA fisheries or the BSAI trawl limited access fishery, unless specifically restricted.

It is likely that replacement vessels would be newly constructed vessels and have improved hold capacity, fuel efficiency, and harvest capacity, relative to existing similarly sized vessels in the Amendment 80 fleet. Under Option 1e, vessel operators would have the greatest

flexibility to replace vessels to incorporate additional processing equipment and hold capacity that could improve overall groundfish retention and increase the potential suite of product forms that can be produced. Options 1a through 1d would limit the potential length of replacement vessels and could constrain some vessel owners, particularly smaller single vessel owners, who may wish to expand the overall retention rates and product forms of their fishing operations. Options 1a through 1e would not be expected to result in an increased incentive for Amendment 80 vessel operators to race for fish. The analysis notes that the Amendment 80 fleet appears to be engaged in increased competition in the Western GOA rockfish fisheries. Vessel length restrictions would not be expected to have a substantial impact on the harvest rate in this fishery. Restrictive vessel length limits may reduce the potential use of fillet, surimi, or fish meal products. Longer vessels operating in the BSAI, specifically AFA catcher/processors, are correlated with a lower fatality rate. AFA catcher/processors are equipped with improved safety features relative to the Amendment 80 sector.

Option 2a would ultimately result in the inability of Amendment 80 vessels to directed fish for flatfish in the GOA. Unless other vessels increased efforts in fisheries historically harvested by these vessels, these flatfish fisheries would be harvested at a lower proportion than currently. Option 2b would allow replacement vessels to continue to directed fish for GOA flatfish, but would not be expected to result in substantially greater harvests because Amendment 80 vessels are constrained by GOA sideboards. Currently, the Amendment 80 fleet has coordinated management of halibut PSC in the GOA to reduce mortality rates. This arrangement is expected to continue under either Option 2a or 2b. The suboption to limit flatfish harvests could constrain harvests more strictly than the halibut PSC limits, although it would preclude the ability of Amendment 80 vessels to expand harvests of a number of flatfish species that are not fully utilized.

Option 3a would apply specific sideboard measure to the replacement vessel for the *Golden Fleece*. Most importantly, this replacement vessel would be exempt from halibut PSC sideboard limits in the GOA. Conceivably, this lack of constraint could adversely affect other non-Amendment 80 participants in other flatfish fisheries who would be competing with the *Golden Fleece* replacement vessel for the seasonal PSC apportionment. A substantially larger replacement vessel for the *Golden Fleece* that is subject to the same monitoring and enforcement measures now applied to the *Golden Fleece* would have lower monitoring and enforcement costs relative to other similarly situated vessels operating in the GOA. Option 3b would apply existing GOA sideboard limitations, including halibut PSC limits to the *Golden Fleece* replacement vessel. This option could reduce potential risks that a *Golden Fleece* replacement vessel would adversely affect other non-Amendment 80 fishery participants. Option 3c would apply existing sideboard provisions to the replacement vessel for the *Golden Fleece* if the LOA of the replacement vessel is under the MLOA of the LLP license originally assigned to the *Golden Fleece*. If the LOA of the replacement vessel exceeded the MLOA of the original LLP license, then the replacement vessel would be subject to sideboard measures applicable to the Amendment 80 sector. NMFS would adjust the Amendment 80 sector GOA sideboards to incorporate the catch history of the *Golden Fleece* into the GOA sideboards if the replacement vessel is greater than the MLOA of the LLP license originally assigned to the *Golden Fleece*.

Option 4 would not affect fishing operations because it affects only the assignment of a QS permit and the eligibility to replace a vessel, not the characteristics of replacement vessels or fishing practices onboard those vessels. Option 4a would not be expected to affect the ability of owners to replace vessels and would limit the potential entry of a vessel in the Amendment 80

limited access fishery that could exacerbate a race for fish. Option 4b would provide a limited mechanism for replacement of a vessel that is no longer able to enter US fisheries due to foreign ownership.

Overall, vessel replacement would be expected to result in the replacement of smaller vessels with larger vessels that can accommodate additional hold and processing capacity. Vessel owners may choose to replace multiple vessels with a single larger vessel that can more efficiently harvest the allocations assigned under cooperative management. This consolidation would not be expected to result in reduced harvests overall. This amendment would facilitate the ability of vessel owners to make decisions to consolidate harvesting capacity, but would not mandate it.

Potential effects on net benefits to the Nation

Overall, this action is likely to have a limited effect on net benefits realized by the Nation. Alternative 1a would result in the extinguishment of all Amendment 80 vessels. This would reduce net benefits to the Nation unless the TAC allotted to the Amendment 80 sector could be harvested by non-Amendment 80 vessels. Under Alternatives 1b, 2, and 3, vessels can be replaced. Alternatives 2 and 3 provide a clear regulatory framework to replace vessels, and are more likely to result in vessel replacement than Alternative 1b. Generally, Alternatives 2 and 3 would be expected to encourage vessel replacement, and therefore may encourage fishing practices that are more likely to result in fully harvesting the TAC assigned to the Amendment 80 sector. To the extent that vessel replacement allows harvesters additional time to focus on improving product quality, recovery, and forms, there may be some consumer benefits realized by the proposed action. Conceivably, the proposed alternatives may increase the economic efficiency of a harvester by allowing the use of more efficient vessels or the consolidation of fishing operations on multiple vessels on a single vessel. Option 1e would provide vessel owners with the greatest flexibility to realize these benefits. Alternative 3 would allow vessel owners to replace vessels before a loss occurs. This alternative would reduce the potential costs associated with foregone harvests and allow financial preparation for the investment, more considered review of alternative design and construction options, and optimization of delivery schedules. The lack of any quantitative data makes it difficult to assess the relative differences in net benefits among the alternatives.

Potential effects on management, enforcement, and safety

Overall, none of the alternatives or options would be expected to increase management costs. If vessel operators have greater flexibility to replace vessels as needed with the desired size (e.g., Alternative 3, Option 1e), the total number of active vessels may decrease. This could result in reduced management costs associated with monitoring a larger number of vessels, debriefing additional observers, and inspecting scales and observer sampling stations required on vessels. If smaller vessels are replaced with larger vessels, GRS retention might be expected to increase, potentially reducing the risk of enforcement actions against a cooperative or vessel operator. Option 1e would provide the greatest flexibility to increase vessel size. Other options to limit vessel length could provide adequate opportunity for a vessel owner to improve the range of products and incorporate improved safety design features. The size of vessels that can incorporate these features will vary depending on specifics of vessel construction, but data from marine architects and operations in the AFA catcher/processor fleet suggest that vessels ranging

from 220' to 270' LOA would be likely to meet these design requirements. Longer vessels (e.g., 270' LOA vessels) would probably more easily accommodate these safety features.

USCG personnel have noted that newly constructed vessels are generally safer than older vessels. Alternative 3 would provide vessel owners with the greatest flexibility to replace a vessel. The ability to seamlessly replace a vessel before it is lost could encourage more rapid vessel replacement. Generally, larger vessels are safer than smaller vessels in most sea conditions. Option 1e would provide vessel operators with the greatest flexibility to increase the length of replacement vessels. Limitations on the potential use of replaced vessels under Option 5 could reduce the potential adverse affects of new capacity entering other fisheries not currently managed under a LAPP, or catch share program.

NMFS does not have specific data that can quantify the potential changes in the number of vessels that may be replaced, the vessels that would leave the fishery, the timing of vessel replacement, the overall impact on monitoring and enforcement costs, or the potential improvements in fishery casualties that may result from vessel replacement.

Potential effects on fishing crew and communities

Vessel owners may choose to replace vessels, to consolidate fishing operations from multiple vessels on a single, more efficient platform. If vessel operators consolidate fishing operations from multiple vessels on a single vessel, total crew employment would be expected to decrease. This decreased employment could be offset by the increased fishing time of the replacement vessel or the incorporation of new processing and fishing practices of the remaining vessels that could require additional crew. NMFS has no information to suggest that payment to crew would differ on replacement vessels relative to existing vessel operations. Potentially, if vessels are harvesting more fish and processed product forms increase gross revenue, some of that additional revenue could be received by crew if a vessel is operating under a revenue sharing arrangement. NMFS has no quantitative information to suggest that the alternatives differ with respect to effects on fishing communities. It is not clear that the alternatives would result in changes in the total amount and time vessels spend in port, the amount of provisions purchased, or other factors that may affect communities.

**Owners and Managers of Factory Trawlers & Fishing Vessels****Producers & Distributors of
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June 1, 2010
Eric Olson, Chairman
North Pacific Fishery Management Council
605 West 4th, Suite 306
Anchorage, Alaska 99501-2252

VIA FACSIMILE: (907) 271-2817

RE: Agenda Item C-6 Amendment 80 Vessels

Dear Mr. Olson:

I am writing on behalf of the O'Hara Corporation, a family owned company with a long history in US fisheries that owns 4 vessels that qualify for quota shares under Amendment 80 to the Bering Sea/Aleutian Islands Fishery Management Plan (FMP). As members of the Groundfish Forum and the Best Use Cooperative, we are proponents of collaborative industry practices that allow involvement in sustainable fisheries that benefit the nation.

We appreciate the willingness of the North Pacific Fishery Management Council ("Council") to address Amendment 80 issues that will allow us to continue to successfully participate in these fisheries and recommend that the Council approve Alternative 3, Option 1(e) that would allow vessels to be replaced at an appropriate size for the fishery, Option 2(b) that allows replacement vessels to continue to fish in the Gulf of Alaska and Option 5 with the sub-option allowing replaced Amendment 80 vessels to be used as replacement vessels within the sector.

The management of the Bering Sea groundfish fishery has significantly improved with the approval of Amendment 80 that ended the race for fish for our vessels. We are fully supportive of the cooperative system implemented by the plan and have found it extremely successful for our vessels that operate in this fishery. The recent announcement of Marine Stewardship Council (MSC) certification of our flatfish fisheries is further proof of a well designed sustainable fishery. However, for the O'Hara Corporation to continue to benefit from this program we are challenged by the implementation of the groundfish retention standard (GRS) and limitations on our ability to replace or rebuild our vessels.

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Agenda Item: C-6 Amendment 80 Program

(a) Report on GRS program

The O'Hara Corporation vessels that qualify under Amendment 80 are: F/T Defender (125'), F/T Enterprise (125'), F/T Constellation (165'), and F/T Harvester Enterprise (183'). While we fully support the conservation value of increased retention, our vessels are economically challenged to continue to operate under the current regulations that flow from the GRS as we are required to increasingly retain fish that have much lower market value. Our small boats are most impacted as the value of product onboard is greatly reduced, resulting in decreased income and crew wages.

We can freeze and retain a higher rate of lower value fish. For the crew, this means working harder, longer days with significantly reduced crew shares (when compared to previously earned wages under lower retention rates). There is not a lot we can do with some of this product that we are forced to retain to comply with the GRS. We have shipped some fish overseas and some to the US east coast for bait. However, the costs of freight consume any profit and there is little to no income to the boat. We are struggling to maintain good paying jobs and experienced crew onboard our vessels. We know of 3 vessels that are 125 ft or less in length that have ceased fishing since the implementation of the GRS. If there is no change to the methodology used to implement the GRS, our smaller vessels that are struggling at the 80% retention rate will not be profitable or economically viable at 85% retention.

F/T Harvester Enterprise

In 2010, the O'Hara Corporation purchased the F/T Harvester Enterprise ("Harvester"). The primary reason for the acquisition of this 33 year old vessel is our inability to be economically viable under the increasing GRS with our smaller vessels. Under ideal circumstances we would be building a new vessel. However, with the significant uncertainty about whether we can replace a vessel in this fleet, we simply could not wait any longer as the GRS continues to increase on an annual basis. We have now stripped the Harvester and invested in plans to completely rebuild this boat. While, we were able to find a vessel to rebuild that qualified to fish under Amendment 80, this is not an option for replacing other vessels moving forward. We plan for the Harvester to operate as a member of the Best Use Cooperative - along with any of our vessels that remain economically viable under Amendment 80 and the GRS.

(b) Final Action on Amendment for Lost Vessel Replacement

It is clear that there is a need to replace aging steel in the Amendment 80 fleet. The original hulls of all 4 O'Hara vessels are 25+ years old. While we have done significant retro-fits to maintain safe, efficient operating platforms, we need to have a business plan to replace these vessels to continue our participation in this fishery.

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New or rebuilt vessels will greatly enhance our ability to continue to maintain safe vessels, improve retention, increase value added products, provide better living accommodations for our crews and utilize new technologies. We support Alternative 3; Option 1(e) because it will provide us the flexibility needed to replace vessels that can optimize utilization of the allocations to the fishery and increase retention rates. We also support Option 5, Sub-Option that would allow a replaced vessel be used to replace other Amendment 80 vessels. This could provide an easier method of replacing some vessels with larger, safer vessels. Our design plans for the Harvester have been pre-approved to be classed and load lined by DNV. The vessel will meet the more stringent, preferred safety requirements.

Vessel Safety

Newer, larger vessels are inherently safer vessels. The active O'Hara vessels are participants in the Alternative Compliance and Safety Agreement (ACSA) that has improved vessel safety for the Amendment 80 Sector. Replacement vessels however, will be required to be (ABS or DNV) classed and load lined under much higher standards than those our aging vessels can currently comply with. The increased safety aspects are significant as classification verifies the structural and mechanical fitness of the vessel. The review process is extensive from design plans, laying the keel, construction, delivery and sea trials. Our company will benefit, as meeting these requirements assists us in ensuring protection of our capital investment and allows us to process value added products.

Improve Retention and Increase Value Added

O'Hara currently operates 2 smaller vessels that are 125 ft. These vessels are less equipped and limited by space for holding/processing and transporting fish that are of relatively low value. Designing larger replacement vessels will allow us to add hold capacity and process value added products; including meal plants that would allow higher retention rates with economic return. Currently, our products are primarily shipped overseas for re-processing and then shipped back into the US or other markets. Increased processing on our vessels will result in increased employment. The O'Hara Corporation desires to develop a business plan that would keep processing jobs in the US and provide fish directly to US consumers.

Better Living Accommodations

The 3 active O'Hara vessels have very close-quarter living accommodations. For example, the current vessels have bunks for 30 to 39 crew with a maximum of 8-12 per bunkroom and 2 or 3 available bathrooms. This is an issue that we have been unable to resolve for a number of reasons: restrictions on replacement, space necessary for holding/processing and requirements for observer work stations and accommodations. The vessels lack adequate facilities for exercise, relaxation and seating in the galleys. The Bering Sea is a challenging marine environment and we wish to provide our crews with improved standards of living onboard our vessels. Increased comfort will improve job

¹ American Bureau of Shipping and Det Norske Veritas

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satisfaction which in turn allows us to maintain a more professional crew with higher employee retention.

Our work in designing the Harvester has highlighted the benefits of a larger vessel and the possibilities of providing immensely improved living conditions for our crew and federal observers. The vessel will have bunks for 52 crew with a maximum of 4 per bunkroom. Plans also include 12 bathrooms, 2 lounges, a hospital ward and a workout room. The crew will have increased storage for personal items, room to maintain dry work clothes and have access to computers with internet that will allow them to stay in touch with friends and family at home. Galley and breakroom area designs exceed the amenities offered on the largest vessel we now operate. The vessel will have industrial grade laundry facilities and improved air quality systems.

New Technology

Increased retention requires that we keep smaller fish, which means increased handling that is more labor intense. In the design of a larger vessel we are able to address these concerns. We are working on a new factory plan for the Harvester that maximizes workplace ergonomics to minimize repetitive tasks. To minimize handling time we will utilize automated loading and unloading equipment and conveyors in the fish hold.

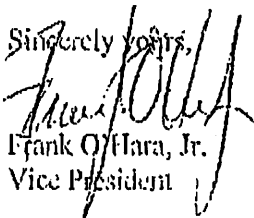
With a larger vessel we can also upgrade the factory to incorporate new headers designed to improve cuts that will increase recovery of the retained weight of processed fish and new automated graders produce more accurate weights.

Summary

Our experience in planning for the Harvester has clearly shown us the benefits of designing a larger vessel to fish our allocation under Amendment 80. The vessel design is specific to meet the needs of this fishery; it will increase efficiencies of all systems (electrical and mechanical), improve the comfort and safety for our crew and assists us in complying with the GRS.

The O'Hara Corporation has participated in US fisheries since 1907. We are a family owned company that supports numerous additional families through the operation of our vessels, and with the support of this Council we can expect to continue in this fishery for many years to come. Thank you for an opportunity to comment on these agenda items. Please feel free to contact me if you have any questions or concerns.

Sincerely yours,


Frank O'Hara, Jr.
Vice President



Fishermen's
Finest

Fishermen's Finest, Inc.

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June 1, 2010

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 W 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Re: Agenda Item C-6; Amendment 80 vessel replacement

Dear Chairman Olson,

Fishermen's Finest, Inc. operates 2 Amendment 80 vessels which have a long solid history in the BSAI and in the Gulf of Alaska. Our vessels are 2 of the 11 A80 CPs which are eligible to fish flatfish in the Gulf under the A80 sideboards. We are concerned that the Gulf measures in the suite of options constitute an allocative measure that exceeds the scope of the action. We cannot support this action if we lose any Gulf history or access.

Vessel Replacement

We support the Groundfish Forum position on replacing vessels at any length. Major improvements cannot be made with the existing fleet, which was designed for the sole purpose of freezing whole and H&G fish. Fishing has become much more complex for this fleet. We are now scrutinized for sustainable harvesting practices, low impact gear technologies, maximized utilization and retention rates, minimized bycatch and process discharges, and reduced carbon footprints. We must do this all while maintaining cost efficiencies. Vessel length may be predicated on the concerns or technology of the day, and we cannot be artificially restricted from meeting those challenges in the future.

Gulf Options and Scope of the Action

We firmly believe that any reductions in the Gulf or BSAI, due to vessel replacement of any length, are not supported by the Purpose and Need statement or by Judge Pechman's order. Reducing access to the Gulf fisheries would alter a vessel owner's fishing privileges, which is not contemplated by the order. Reduced access to the Gulf is an allocative measure and does not belong in this action.

GOA Dependency

The Council motion includes the option to restrict Gulf participation in excess of current Amendment 80 flatfish sideboards. This is of great concern to our company's dependency on the Gulf.

Of the 11 vessels allowed to fish flatfish under the A80 sideboards, our vessels were among the top participants. We fished approximately 30% of our weeks in Gulf flatfish relative to total weeks fished, during the sideboard period. Between our GOA rockfish history (one of the higher QS holders) and our flatfish history, we may be the most dependent A80 company in the Gulf. Our GOA history is consistent, looking at both historic and recent participation, and we have not changed our Gulf fishing patterns as a result of our BSAI quota shares.

Fishermen's Finest, Inc. June 1, 2010
A80 Vessel Replacement

Gulf Halibut Cap and Flatfish Effort

Under Amendment 80, vessels which received quota shares were given sideboards in the Gulf, equivalent to the sector's history from 98-04. The halibut sideboards are managed as hard caps in each of the 5 seasonal apportionments. Halibut caps limit the amount of flatfish that vessels can take. The only way to increase take of flatfish would be to have superior halibut avoidance through increased gear modifications (assuming all fishing areas have equal bycatch rates). The A80 fleet has been working with halibut excluder devices since the early 1990's. They have continued to refine their gear and fishing strategies each season in order to avoid halibut. Without the incentive to increase catch of flatfish, the incentive to reduce halibut is lost. Under a cooperative system, where there are hard caps, the avoidance of halibut becomes an important competitive driving factor among Captains.

If vessels are replaced at lengths larger than their current LLP, the vessels are still under the same hard caps. Any increase in flatfish harvest is a result of Captain's expertise, not size of the vessel. This will happen under the status quo, without any increase in vessel size.

Halibut caps are caps that the A80 fleet cannot exceed. They are not allocations. Catcher vessels can still access the A80 fleet's halibut cap in any season through increased effort and/or halibut rates in flatfish. This will not change as a result of vessel replacement, whether at existing LLP lengths or increased lengths.

Cod and Rockfish Effort

The A80 fleet will not increase its effort in either cod or rockfish as a result of increased length. The cod allocation will be prosecuted as a function of the halibut cap and the sea lion regulations. Most importantly, NMFS will still manage the cod to determine whether there is enough for a directed fishery, looking at the seasonal allocation and looking at the A80 shallow water halibut cap during the directed fishing periods. Final Action for the CGOA rockfish program will be taken at this meeting, and the fleet will continue to be sideboarded in WGOA and WYAK rockfish.

A80/RPP Limits

If either the A80 program or the CGOA rockfish program were to be extinguished, the Council has the ability to maintain the sideboard caps from those programs, or to institute new ones. Further, the Council can institute CP trawl recency action at any time. These protections are not in jeopardy of going away.

Summary

Continued access to the Gulf, at no less than current levels, is critical to our company. We have lost actual catch history through previous sector allocations (AFA pollock, A85 cod in the BSAI). Other limits (A80, Rockfish Pilot Program, GOA sideboards) have also been put in place. The cumulative effects of these programs, coupled with reduced access to Gulf flatfish, would be devastating to our company and crew. We urge you to please not make sorely needed vessel replacement into an allocative issue.

Our bottom line position is that we cannot support the vessel replacement agenda item if there is any reduced access to the Gulf.

Thank you for the opportunity to comment.

Susan Robinson

Susan Robinson

Groundfish Forum

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Seattle, WA 98199
206-213-5270 Fax 206-213-5272
www.groundfishforum.org

June 1, 2010

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 W 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Re: Agenda Item C-6(b), Amendment 97 (Amendment 80 vessel replacement)

Dcar Chairman Olson,

Groundfish Forum represents 15 Amendment-80-qualified quota share holders. Our vessels fish flatfish, Atka mackerel, rockfish and Pacific cod in the Bering Sea, Aleutian Islands and Gulf of Alaska (GOA). We are writing you to comment on your pending action to authorize replacement of Amendment 80 vessels. We recommend that the Council approve Alternative 3, Option 1(e), which would allow vessels to be replaced at whatever size is appropriate; Option 2(b) which allows replacement vessels to continue to target flatfish in the Gulf of Alaska, and; Option 5 with the suboption allowing replaced Amendment 80 vessels to be used as replacement vessels within the sector.

First, however, we would like to announce that our flatfish fisheries have just been certified as 'sustainable' by the Marine Stewardship Council (MSC). This certification reflects the sound management of resources in the North Pacific and indicates to the world that our products are responsibly harvested. As such, it is a victory not just for our sector but for the Council process, and we thank you for providing the responsible leadership that supports strong and sustainable fisheries.

This letter will address the history of the Amendment 80 sector, the implications of vessel replacement on processing capability and the ability to meet the Groundfish Retention Standard (GRS), the benefits that may be achieved by larger vessels, the importance of Gulf of Alaska fisheries, and the use of replaced vessels within the Amendment 80 sector.

History of the Amendment 80 (H&G) sector

The Amendment 80 sector is comprised of 27 vessels which met the requirements of the Capacity Reduction Program (CRP) approved by Congress in 2004 to fish in non-pollock trawl fisheries in the North Pacific.¹ Most of these vessels are over 25 years old, and were built (or converted) for use in fisheries that are no longer available to this sector (pollock, sablefish, etc). With the exception of the *Arctic Trawler* (now the *Seafreeze*

¹ Public Law 108-447. A total of 28 vessels qualify under this act, but one has not applied to join the Amendment 80 sector.

Alaska) none of the vessels carried meal plants. As access to higher value fisheries was restricted, vessels concentrated more on lower-value higher-volume species like flatfish. These are multi-species fisheries, and some of the catch has little or no value in the current market. While companies are always searching for better markets for all products, some simply do not have enough value to pay for sorting and freezing. In this case, vessels with meal plants would put the unmarketable fish into meal; however Amendment 80 vessels, having no meal plants, instead discard the unmarketable fish back into the sea.

Discarding fish is a public policy concern, and in 2006 Amendment 79 to the BSAI Fisheries Management Plan (FMP) was finalized to require increasingly higher retention within this sector (the 'Groundfish Retention Standard,' or GRS). In the existing fleet, the ability to meet the GRS is clearly correlated to vessel size². Larger vessels with more crew and hold space (and targeting more remote fisheries with higher natural retention) have higher retention than smaller vessels. Amendment 79 recognized this disparity and exempted vessels less than 125 feet from the GRS.

In 2006 the Council approved Amendment 80, which allocated the primary non-pollock groundfish species and allowed vessels within the sector to form coops. The allocations attached to the vessels (the steel itself) except in the case of lost vessels where the history attached to the license. NMFS believed that vessels themselves could not be replaced and still qualify under the CRP. In addition, Amendment 80 extended the GRS to all vessels in the sector (including those less than 125 feet) and allowed it to be measured at the coop level.

The owner of the *Arctic Rose*, an Amendment 80-qualified vessel which sank in 2001, successfully sued NMFS to allow a replacement (the *Ocean Cape*) into the sector. The judge in the case stated that NMFS must allow a 'lost' vessel to be replaced.³ NMFS then asked the Council to address vessel replacement to bring the existing regulations into compliance with the court order. NMFS further suggested that the Council could expand on the court decision to allow vessel replacement in cases other than loss of the vessel.⁴ That suggestion led to the suite of options before you for final action.

Significance of vessel length

In 1998 the 'License Limitation Program,' or LLP, was enacted. Lacking other rationalization tools, the Council took this broad-brush approach to limit vessel capacity, by requiring licenses which include designated areas of operation (e.g., Bering Sea, Aleutian Islands, Western Gulf of Alaska, etc.), gear type, and 'maximum length overall' or MLOA. The Final Rule noted that "...the LLP will act as an interim step toward a

² EA/RIR/IRFA for Amendment 79, May 20, 2003. Table 17, page 35.

³ "To the extent Amendment 80 restricts access to the BSAI non-pollock groundfish fishery to qualifying vessels without allowing a qualified owner to replace a vessel *that has sunk* the regulations are invalid and are hereby vacated." *Arctic Sole Seafoods, Inc. v. Gutierrez*, Case No. 07-1676MJP (W.D. Wash. May 19, 2008). *Emphasis added*.

⁴ Discussion Paper on Amendment 80 Vessel Replacement Provisions, October 2008 (NPFMC Agenda item D-2(e)).

more comprehensive solution...the absence of a sunset date does not preclude the Council from recommending a substitute to the LLP at any time in the future.”⁵

All Amendment 80 vessels carry at least one LLP which dictates the maximum length of the vessel. The original length designations were based on the length of the vessel that gave rise to the LLP. Any LLP used on an Amendment 80 vessel becomes an Amendment 80 LLP and cannot be used outside the sector. LLPs may be transferred between vessels and more than one LLP may be used on one vessel.

If replacement vessels are limited to the MLOA on the LLP, most will not be able to increase at all. However, there are a few catcher-processor LLPs which have not yet been assigned to Amendment 80 vessels (see table 23 of the analysis, page 80). For example, one Amendment 80 company (United States Seafoods, LLC) owns an LLP with a 240' length designation. If replacement is restricted by the LLP length, this company could bring that permit into the sector, place it on a vessel of any size (e.g. the 107' *Ocean Alaska*) and rebuild or replace that vessel at 240 feet.

There are two points to be made here. First, the LLP length limitation itself was a crude tool to limit vessel capacity when rationalization was not an option. It was anticipated to be an interim step. The allocations and sideboards that exist under Amendment 80 provide a much finer level of control and make the length limit itself obsolete. Second, if the Council were to decide that replacement vessels are limited to the LLP length, one Amendment 80 company would still be able to dramatically increase the size of a vessel while all other vessels are limited to their existing size.

Replacement vessel size and processing capability

The Amendment 80 sector has several unique characteristics that complicate vessel replacement. The existing vessels were not purpose-built for the fisheries they are operating in, so replacement vessels would be configured differently. More importantly, because of their age, the existing vessels can only do limited processing; most of the vessels are not classed or load-lined, and cannot be because of their age. These vessels cannot legally produce fillets, fish meal, or other products. The frozen fish are instead shipped overseas for secondary processing.

Replacement vessels would be classed and load-lined, which opens up the possibility of doing much more processing on board. This, in turn, requires expanding the factory space, living quarters, hold space, etc.; hence the need for replacement vessels to be larger than the existing vessels. This is really the crux of the entire issue; *the size of the replacement vessel will determine how the fish can be processed*. The size will not affect *how much* fish is harvested; that is determined by Amendment 80.

Section 106(c) of the Magnuson-Stevens Act emphasizes the importance of developing processing capability for United States fisheries:

⁵ 63FR 52642, October 1, 1998

“The Secretary of Commerce shall...encourage United States investment in seafood processing facilities in the United States for fisheries that lack capacity needed to process fish harvested by United States vessels...”⁶

And further defines United States fish processors as:

“...facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.”⁷

Allowing larger replacement vessels directly addresses this goal. Larger vessels can accommodate the machinery and crew required to maximize the value of the fish. Rather than shipping headed and gutted fish tens of thousands of miles for reprocessing overseas, it can be processed into fillets or other products on board the vessel. Jobs now being done in China can be done by American workers, producing a high value finished product. Vessels with sufficient space to accommodate a meal plant can produce ancillary products such as fish oil while virtually eliminating discards.

It's hard to overstate the value of these changes. Fuel savings alone will be enormous because product doesn't have to cross the ocean for processing and then ship back to US markets.

Effect of the Groundfish Retention Standard

The Groundfish Retention Standard also factors in to the debate about vessel replacement. As explained above, larger vessels are able to retain more of their catch while remaining economically viable, while smaller vessels have extreme difficulty meeting the higher retention standard. As the standard increases, so does the likelihood that these smaller vessels will have to sell or lease their allocations rather than fish them. Companies with larger vessels could acquire these allocations at bargain-basement prices.

This differential may explain why the lone voice in our sector opposing unrestricted replacement comes from the company which owns both the largest vessel (the *Seafreeze Alaska*, 295') and the largest permit (240', not currently assigned to an Amendment 80 vessel).⁸ This company may perceive a competitive advantage if other vessels in the sector cannot be replaced at adequate size to meet the retention requirement. The history of those vessels could be leased or purchased, or raw fish purchased at sea for processing on their larger vessels.

The need for unrestricted replacement

It is clear that replacement vessels will need more space for new processing options to better utilize the fish that they catch. Further, new space will help vessels to meet the

⁶ P.L. 109-479, sec 106(c), 2007.

⁷ Magnuson-Stevens Act, May 2007, Section 3(46).

⁸ See Amendment 97 EA/RIR/IRFA, May 2010, Table 1 page 23 (showing vessel ownership and size) and Table 23 page 80 (showing LLP ownership).

retention requirements imposed by the Council under Amendment 79. The question then becomes 'how much bigger should they be?'

The fact is that no one knows what the 'right' size is to optimize processing and efficiency. We do know that marine architects are the only ones qualified to design a vessel, and that no vessel owner or financial institution will bring in a vessel that is too big for expected operations. We also know that smaller vessel size is correlated with increased safety concerns.

Concerns about excessive consolidation and loss of jobs are valid, but the existing ownership and use caps already limit the ability of the sector to consolidate. Additionally, larger replacement vessels will provide more jobs by allowing higher level processing to be done on board the vessel, by crewmembers, rather than in overseas factories. Further, artificially low size limits will force consolidation as smaller vessels have to exit the fishery and processing is concentrated on the larger vessels that exist now (or on replacement vessels utilizing one of the few permits available with relatively high length endorsements).

We question what purpose (other than providing an advantage to one member of the sector, as explained above) is served by restricting replacement vessels to less than the optimum size for the fisheries they are involved in. These are not entry-level fisheries. Our products compete on the global whitefish market with products from Europe, Russia, South America and other parts of the world. This is the opportunity to create a world-class fleet of safe, efficient vessels providing high quality products, more and better jobs, and more value to the Nation with a lower overall carbon footprint through newer power plants, fewer trips to offload product (larger hold space, more fuel storage) and reduced transport of the final product.

We encourage the Council to select Alternative 3, Option 1(e) to allow Amendment 80 vessels to be replaced in a way that maximizes the value of the fishery, the safety of the participants and the responsible use of the resource.

Gulf of Alaska fisheries

Amendment 80 vessels have a long and consistent history in Gulf of Alaska fisheries, and were among the first to prosecute (and develop markets for) fisheries that have since become important to shoreside operations. Individual vessels may have very high dependence on the Gulf of Alaska, which resulted in lower Amendment 80 allocations in the Bering Sea and Aleutian Islands. Amendment 80 sideboards, including restrictions on GOA flatfish participation⁹, along with other restrictions such as the rockfish pilot program and the trawl LLP recency review conducted by the Council in 2008 have distilled the participants in Gulf of Alaska fisheries down to those with significant history and dependence.

⁹ Participation in GOA flatfish fisheries is limited to 11 Amendment 80 vessels which had at least 10 weeks in GOA flatfish targets during the Amendment 80 qualifying years.

Amendment 80 vessels may not target pollock in the Gulf, and Pacific cod harvests are strictly limited by both sideboards and the Pacific cod sector splits approved by the Council in December of 2009. Only vessels which qualified under the rockfish pilot program may target rockfish in the Central Gulf. Rockfish in the Western Gulf and West Yakutat are subject to sideboards, and there are strict sideboard limits on halibut PSC use by season and complex.

Flatfish fisheries are limited by the amount of halibut PSC available; the flatfish stocks themselves are underutilized. Some people have suggested that Amendment 80 sideboards should be reduced because replacement vessels may be better able to control halibut bycatch, which could increase flatfish catch and impact other sectors. This same logic would indicate that when American Fisheries Act (AFA) vessels are granted vessel replacement through Congress, the Council should re-visit crab sideboards for that sector (since newer vessels might be better able to avoid crab bycatch and harvest more yellowfin sole, which would impact the Amendment 80 sector). Is this the direction the Council wants to go?

The Council has already indicated its intention to review halibut PSC caps through initiation of a discussion paper (Agenda item D-2(a)). This is the proper venue for addressing halibut bycatch. This is also a means to address overall bycatch, not just shift the numbers from one trawl sector to another. The action should not in any way be tied to vessel replacement.

The same principle holds true for all Amendment 80 sideboards in the GOA. If the Council perceives that a problem exists, it can revisit sideboard levels at any time, as was recently demonstrated when the Council reviewed GOA sideboards for non-exempt AFA catcher vessels. It is irresponsible to tie this to vessel replacement. *No vessel owner should be forced to weigh the cost of lost opportunity in the GOA against the improvements – including safety improvements – that can be realized through vessel replacement.*

The analysis notes that removing flatfish qualification from replacement vessels ‘...would appear to run contrary to the specific goals the Council established under Amendment 80, to recognize past participation in specific GOA fisheries by the Amendment 80 fleet’ (page 86). The Amendment 80 proposed rule stated that ‘...The Program (Amendment 80) would reduce fishing pressure in the GOA by Amendment 80 vessels on non-Amendment 80 sector harvesters with substantial flatfish participation by authorizing only those Amendment 80 vessels...[w]ith more than 10 weeks conducting directed fishing for GOA flatfish fisheries during 1998 through 2004.’¹⁰

Some flatfish species and areas are only harvested by the offshore sector because of markets and accessibility of processing; by processing at sea, Amendment 80 vessels are able to access more remote areas and produce a high-quality product. If replacement vessels are not able to continue to fish flatfish, these areas and species will not be harvested. Tables 7 and 8 of the analysis (pages 43-45) show the relative amount of

¹⁰ 72FR 30092, September 14, 2007.

flatfish harvested by Amendment 80 vessels. As an example, in 2009 only 15% of the Western Gulf arrowtooth flounder TAC was harvested (it is underutilized) but of that amount 80% was harvested by Amendment 80 vessels. What purpose is served by removing Amendment 80 vessels from this fishery?

All Amendment 80 vessels have 100% coverage in the Gulf of Alaska (200% coverage in the BSAI) which is significantly higher than other GOA fishery participants.

If the Council chooses to restrict or prohibit flatfish fishing by replacement vessels, it will reduce the ability to meet Maximum Sustainable Yield (contrary to National Standard 1). It will also be ignoring the proven history and dependence that Amendment 80 vessels have in the Gulf of Alaska.

Further, restricting the activities of replacement vessels creates a 'perverse incentive'¹¹ for owners to continue operating with existing vessels rather than achieving the efficiency and safety benefits of replacement. Vessels with significant GOA history will simply not be replaced because they cannot afford to lose access to their traditional Gulf activities.

None of these outcomes are consistent with the Magnuson-Stevens Act or with sound management policy. We urge the Council to select Option 2(b), without the suboption, to allow vessels with proven history and dependence in the Gulf of Alaska to be replaced without sacrificing their Gulf participation.

Use of replaced vessels

Option 5 addresses restrictions on the use of replaced Amendment 80 vessels. We encourage the Council to select the suboption which would allow replaced vessels to be used to replace other Amendment 80 vessels. Some existing Amendment 80 vessels are well-suited to particular fisheries and may be desirable for other members of the sector. Safety concerns with replaced vessels are addressed by the Coast Guard through annual Alternative Compliance review, and the Coast Guard retains the ability to deny certification to any vessel it deems to be unfit to participate in the fishery.

In a practical sense, restrictions on the use of replacement vessels would be hard to enforce anyway, since ownership of the vessels could change prior to replacement regardless.

¹¹ A **perverse incentive** is an incentive that produces an adverse consequence due to the actions undertaken to receive the incentive (Businessdictionary.com). For example, in Hanoi, under French colonial rule, a program paying people a bounty for each rat pelt handed in was intended to exterminate rats. Instead, it led to the farming of rats (French Colonial History Society, May, 2003).

Summary

The Council needs to act to clarify that Amendment 80 vessels can be replaced and still qualify for the sector. Existing vessels are old and have limited processing capability. Replacement vessels will be legally able to do much more extensive processing, and will require additional space to accommodate increased crew, machinery, and storage. These vessels will provide more American jobs while better utilizing their catch and reducing the carbon footprint of the fisheries. All Amendment 80 vessels are subject to allocations and sideboards that restrict expansion into other fisheries.

We ask the Council to approve **Alternative 3, Option 1(e) and Option 2(b)** to allow vessels to be replaced at the optimum size determined by the vessel owner and marine architect to meet the opportunities and requirements of Amendment 80, without penalizing the vessels which operate in the Gulf of Alaska. We further ask the Council to approve **Option 5 with the suboption** to allow replaced Amendment 80 vessels to be used to replace other Amendment 80 vessels.

Thank you for the opportunity to comment.

Sincerely,



Lori Swanson
Executive Director

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-6(a) GRS program

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1	Jason Anderson/Bill Orr/Dave Wood	Best Use Cooperative
2	Mary Beth Tooley	O'Hara Corp
3	Todd Loomis	Cascade Fishing Inc
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

BUC Retention Monitoring Proposal

In response to the concerns raised in the May 2010 NMFS discussion paper titled, "Status Report to the North Pacific Fishery Management Council on the Implementation of the Groundfish Retention Standard Program," the Best Use Cooperative (BUC) proposes to implement an internal retention monitoring program based on the current Groundfish Retention Standard (GRS) retention enforcement methodology.

1. Retention compliance standard (RCS) calculation methodology

The annual Best Use Cooperative RCS would be calculated using the following equation. This is the same calculation methodology currently used by NMFS to calculate the GRS.

$$RCS = \frac{\text{Retained Groundfish Catch (Production RWE)}}{\text{Observed Total Groundfish Catch (CAS)}}$$

2. RCS standards

The annual RCS below is calculated based on the analysis provided in Appendix 1.

GRS Schedule	Annual GRS	Annual RCS
2010	80%	71%
2011 and each year thereafter	85%	76%

3. Compliance

BUC would annually meet the RCS according to the RCS percentages described in the table above. To ensure that BUC meets these standards, BUC would modify its cooperative agreement to reflect this new approach.

4. Disbursement of non-compliance fees

In the event that BUC did not meet the RSC standards described above, BUC would pay a fee to:

SeaShare
600 Erickson Avenue NE, Suite 310
Bainbridge Island, WA 98100

5. Annual reporting

BUC would report its annual RCS as part of its annual April report to the Council. The Council could choose to address retention performance through further action if it did not meet Council expectations.

6. Annual compliance audit

BUC would contract with a third party to conduct an annual audit of its internal monitoring program.

Appendix 1

Analysis of Proposed Retention Compliance Standards

Amendment 79 currently requires that the Amendment 80 sector meet a retention standard that increases from 65% in 2008 to 85% in 2011. The Amendment 79 analysis examined the changes in retention percentages by looking at historical data. Throughout the analysis, computations of historical retention percentages and increased retention tonnages were made using “blend” and/or catch accounting system (CAS) data. Total catch and retained catch were derived from these data sources, both of which use a mixture of production and observer data as the basis for calculations. Thus, retention percentage based on the blend (from here on “blend” refers to either the older blend formula or the post-2003 CAS estimate) would be determined as:

$$R_b = \frac{\text{Retained catch (blend)}}{\text{Total catch (blend)}}$$

where (*blend*) indicates a data source that is comprised of a mix of observer and production data. The Council ultimately chose to define a groundfish retention standard expressed as the ratio of the round weight equivalent of retained product to total catch, or:

$$GRS = \frac{\text{Retained catch (production RWE)}}{\text{Total catch (blend)}}$$

Throughout the Amendment 79 analysis, there exists an implied assumption that the retention percentage calculated by the new GRS method would be the same as the retention percentage calculated by R_b . However, this assumption was not examined in the analysis and no production round-weight equivalents were presented that would allow a reader to compute the GRS standard that was adopted. Data presented below indicate that the GRS formula returns a significantly lower number than the R_b retention percentage calculation used throughout the analysis. The effect of this difference is to require much greater retention of catch by the Amendment 80 fleet than was anticipated by the Council.

The Amendment 80 sector had, preparatory to coop formation, requested blend, CAS, and WPR information from NMFS. An analysis of those historic data shows a marked contrast to results and conclusions on the effects of the various Amendment 79 alternatives presented in the analysis. In the first year of operation under Amendment 79, vessel operators were able to increase both R_b and GRS dramatically. The GRS is consistently less than R_b , and BUC vessels were still only able to achieve 77% under the GRS calculation. Using the Amendment 79 analysis methodology (ie. with R_b as a proxy for GRS), R_b increases from 77% to 91% between 2007 and 2008. However, the fleet’s apparent retention is still only 77% because it’s now measured by GRS rather than R_b .

Harvest and retention by Blend/CAS and produce RWE for BUC vessels. Tremont (<125') excluded 2005-2007 because of incomplete data. Seastate data received from NMFS.

Year	Blend / CAS total catch	Blend / CAS retained catch	Production report retained catch	Blend / CAS retention (Rb) %	Groundfish retention standard retention (GRS) %	Difference: CAS-GRS
1999	155,667	101,856	88,633	65%	57%	8%
2000	178,563	120,474	98,705	67%	55%	12%
2001	158,781	116,455	102,434	73%	65%	9%
2002	190,247	132,061	116,800	69%	61%	8%
2003	188,257	129,620	114,116	69%	61%	8%
2004	217,658	145,767	130,801	67%	60%	7%
2005	201,586	153,673	136,311	76%	68%	9%
2006	196,360	151,422	133,929	77%	68%	9%
2007	211,325	163,437	147,119	77%	70%	8%
2008	260,296	235,580	200,161	91%	77%	14%
2009	251,602	226,886	203,673	90%	81%	9%
Average	200,940	152,476	133,880	75%	66%	9%

The average difference between the 1999-2009 blend and GRS calculations is 9%. Therefore, GRS percentages would need to be adjusted downward to meet Council intended retention goals as they understood them during deliberations of Amendment 79. These adjustments are reflected in the following table.

GRS Schedule	Annual GRS	Annual RCS
2010	80%	71%
2011 and each year thereafter	85%	76%

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C- 6(b) Amendment 80 ~~Lost Vessel~~ Replace.

NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1 JERRY DZUGAN	SO COMMERCIAL FISHING INDUSTRY VESSEL SAFETY ADVISORY COMMITTEE
2 Eric Blumhagen/MARIEGLEASON	Tusea Maritime Consultants
3 Denny Smith	Carnitech US, Inc.
4 Dave Wood	US Seafoods
5 PAUL Mac GREGOR	At-Sea Processors
6 Bob Krueger	Alaska Whitefish Trawlers Assn.
7 Clem Tillion	Alevt Corp
8 MARYBETH TOOLEY / FRANK O'HARA	O'HARA CORPORATION
9 Mike Szymanski	FCA
10 Bill Orr	Tyrique US
11 Susan Robinson	F/V American No. 1
12 Helena Park	Fishermen's First
13 MaryBeth Tooley	
14 Mary Beth Tooley	O'Hara Corp
15 Frank O'Hara	F/V Harvester Enterprise
16 Bob Hazel / Paul Tson	US Intrepid / Unimark
17 Lore Swanson	GFP
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OCEAN PEACE

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Jerry Duggan
C6 B

Fisheries Management Practices that Compromise Safety
DRAFT: JUNE, 2 2010

The following list was compiled by the Coast Guard's Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) and identifies some unsafe management practices that should be looked at before any management plan is considered. This acknowledges that saving of human life takes precedence over management of a fish species. This list is provided as an example of past management practices that have had or could have a negative effect on fishing vessel safety. However, consideration of this list should be tempered with the past and potential risks of a fishery and should always be examined closely for unintended consequences which will have the opposite effect by actually increasing the risk in a fishery. This list is not prioritized because some of the practices only affect certain regions and/or fisheries.

1. **Derby style fishing.** Fisheries that are heavily overcapitalized, open access, regulated to start date certain and usually of fairly high value and destined to be of short duration due to established harvest quotas are very safety problematic. An example on the East Coast is the Loligo Squid Fishery that is harvested on a specific quota per trimesters (4-month basis). Once a projected 85% of the trimester quota is harvested, the trips resort to a bycatch limit. When 60% of the quota is harvested, safety becomes compromised because fishermen will max out their effort, especially in the winter offshore fishery (80 to 150 miles from port before the fishery is relegated to a bycatch limit or shut down. Examples in the NW/Alaska in the past were halibut/black cod/Bering Sea crab. Alternative fishery management has been Individual Fishing Quotas (IFQ's). IFQ style management is very effective in improving safety, but the management style is complicated, more expensive to administer and controversial.
2. **Excessive Bar Crossings.** Bar crossings are dangerous by nature. Derby style fisheries coupled with bar crossings is double trouble because place excessive pressure on the skippers (West Coast Dungeness crab in many locations). Season openings can be delayed and bar ingress/egress closed in bad bar conditions, *but this is more of a Coast Guard issue than a fisheries management mandate.*
3. **Limiting crew size.** As a means of reducing fishing effort, this policy only increases the work load and adds to the fatigue factor.
4. **Limiting vessel size for fishing vessels working offshore or in distant waters.** As a means of controlling fishing effort, this practice can inadvertently force smaller vessels further offshore to more dangerous conditions for economic survival. In many cases, "rationalized fisheries", where vessel owners have their own quota to fish, limiting vessel size for offshore fisheries can be very counter productive for many reasons, including vessel safety.
5. **Daily catch limits that force vessels to fish in bad weather.** This practice represents another means of controlling fishing effort – a limit on fishing days per year or per season or a fixed schedule, such as fishing only odd or only even days.

Any of these types of fishery management regulations result in vessels having to fish in very bad weather or losing the opportunity without a chance to make up the lost time. Alternatives are more complicated, more expensive and controversial.

6. **Management plans that do not provide for vessel upgrades/replacement should absolutely be avoided.** There need to be mechanisms to retire/replace worn out vessels with new vessels. Vessel replacements need to occur as a normal course of business and this can be done in ways not to violate fishing restrictions. Vessels with Limited Access Permits such as the Northeast Multi-species Fishery state that vessel size and engine horsepower may only be increased once, either through upgrade or replacement. Only a 10% increase in length overall, gross registered tonnage, and net tonnage and a 20% increase in the engine horsepower are allowed. This results in discouraging vessel replacement due to lack of economic viability.
7. **Vessel transit area closures.** Area closures have been used as a means to protect marine mammal rookeries/haulouts, spawning grounds closures, wind farms, aquaculture, drilling rigs, marine sanctuaries, wave energy, etc. from disturbance. Such closures should not preclude safe passage in restricted areas.
8. **Management practices should not close certain ports to deliveries that would prevent vessels from seeking shelter in bad weather.** Universal safe harbor provisions need to be in place. Management practices should not close certain ports to deliveries that would prevent a vessel from seeking shelter during hazardous conditions. The international principle of hazardous *casus fortuitus* (the ability of a vessel to see safe harbor during hazardous events) should take precedence over any management regime.
9. **Management regimes that do not allow for timely and temporary closure of fisheries.** Management regulations need to allow for the timely and temporary closures of fisheries so that vessels are not forced into severe weather or seas. But, easier said than done, as what is severe weather for one vessel may not be for another, and those who have invested into improving their vessels should not be penalized.

C-6(b) Am 80 Lost Vessel Replacement

The Council selects the below alternative and options for final action. The preferred alternative is based on the AP recommendation with additions shown underlined and deletions in strikethrough.

Alternative 3: The owner of an Amendment 80 vessel may replace that vessel with another vessel for any purpose. Only one replacement vessel may be used at any given time (one-for-one replacement).

- ~~Option 1:~~ Vessel size restrictions
 - (e) ~~No length restriction on replacement vessels (the MLOA requirements on LLP licenses assigned to an Amendment 80 vessel would not apply).~~
A replacement vessel cannot exceed an LOA of 295 feet.
- ~~Option 2:~~ GOA flatfish sideboard restrictions. A replacement vessel that replaces an original qualifying Amendment 80 vessel that is allowed to directed flatfish in the GOA
 - (b) would be allowed to directed fish for flatfish.
- ~~Option 3:~~ *Golden Fleece* sideboard restrictions. A replacement vessel that replaces the *Golden Fleece*:
 - (e) If the replacement vessel for the *Golden Fleece* is greater than the MLOA of the license that was originally assigned to the *Golden Fleece*, then that replacement vessel will be subject to all sideboards that apply to other Amendment 80 vessels, with the catch and PSC use of the *Golden Fleece* added to the existing GOA sideboards. If the *Golden Fleece* replacement vessel is less than or equal to the MLOA of the license that was originally assigned to the *Golden Fleece*, then the *Golden Fleece* sideboards would apply.
- ~~Option 4:~~ Assigning QS from lost vessels. Allow the owner of an Amendment 80 vessel to assign a QS permit from an original qualifying Amendment 80 vessel to the replacement vessel or to the LLP license derived from the originally qualifying vessel.
 - (a) A replacement vessel cannot enter an Amendment 80 fishery without QS being assigned to that vessel or the associated permit.
 - (b) Persons holding a QS permit associated with a vessel that is permanently ineligible to re-enter US fisheries is eligible to replace the vessel associated with its QS permit.
- ~~Option 5:~~ Any vessel replaced under this program may be used to replace other Amendment 80 vessels. Vessels not assigned to the Amendment 80 fishery would have a sideboard limit of zero in BSAI and GOA groundfish fisheries. ~~would be prohibited from directed fishing in the non-rationalized fisheries in the Bering Sea/Aloutian Islands and the Gulf of Alaska. ineligible to be designated on an FFP or an LLP~~
 - ~~Suboption:~~ Vessels must be classed and loadlined or meet the requirements of ACSA to be used to replace other Amendment 80 vessels

The AP Council recommends any Amendment 80 replacement vessel that is greater than 165 feet in registered length, of more than 750 gross registered tons, or that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower be authorized for use in the EEZ under the jurisdiction of the North Pacific Fishery Management Council. This recommendation is intended to clarify that any Amendment 80 replacement vessel is eligible to receive a certificate of documentation consistent with 46 U.S.C. 12102(c) and MARAD regulations at 46 C.F.R. 356.47.

- Requirement under all alternatives: Monitoring and enforcement, permitting, recordkeeping and reporting, prohibitions, and general GOA sideboard measures that apply to original Amendment 80 vessels would continue to apply to all replacement vessels.