

MEMORANDUM

TO: Council, SSC and AP Members

FROM: ^{DS} Chris Oliver ^{for}
Executive Director

ESTIMATED TIME
6 HOURS

DATE: February 1, 2009

SUBJECT: Amendment 80 Cooperative

Glenn
ACTION REQUIRED

- (a) Initial review of Amendment 80 Lost Vessel Replacement
- (b) Final Action Amendment 80 Cooperative Formation

BACKGROUND

(a) Amendment 80 Lost Vessel Replacement

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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 limiting 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.

The alternatives recommended by the Council in the October 2008 meeting are provided below. In addition, four options have been developed by staff to address issues raised at the October 2008 Council meeting – 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 quota share permit assignments.

Alternative 1: Status quo. Vessels may not be replaced.

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 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 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 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.

(c) No length restriction on replacement vessels (the MLOA requirements on LLP licenses assigned to an Amendment 80 vessel would **not** apply).

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.

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*.

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.

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.

At this meeting, the proposed action is schedule for initial review. The analysis for this amendment was mailed out on January 26, 2010. An executive summary of that analysis is attached **(Item C-5(a)(1))**.

(b) Amendment 80 Cooperative Formation

In June 2008, the Council initiated an analysis that would modify the existing standards for cooperative formation under the Amendment 80 Program. At the December 2009 meeting, the Council conducted initial review and released the document for public review. The following is the Council approved problem statement and the proposed alternatives under consideration:

Purpose and Need

Most participants in the Amendment 80 sector have successfully established a cooperative in the first year of the program. However, some participants have expressed concern that over the long term, cooperative formation standards may disadvantage them, and they may be constrained from establishing cooperative relationships, receiving an exclusive annual harvest allocation, and ending the "race for fish." Smaller vessel owners with limited QS are likely to have weakened negotiating leverage as the groundfish retention standard (GRS) increases if they cannot be competitive in the limited access fishery and options in the Gulf of Alaska (GOA) are not viable. Participants of any size will find it difficult to receive the benefits of cooperative management if they cannot reach agreement on negotiated terms and the limited access fishery is an unattractive outside option, or a cooperative is able to derive some benefit from forcing an entity into the limited access fishery.

Relaxing cooperative formation standards either by reducing the number of quota share (QS) permits that must be assigned, or the number of owners required, or by requiring that any otherwise eligible member be accepted by a cooperative subject to the same terms and conditions as other members could: (1) provide additional opportunities to QS holders to form cooperatives, because more relationships are possible; (2) diminish the negotiating leverage of vessel owners who may be necessary to meet the threshold requirements under more stringent cooperative formation standards; (3) reduce the potential risk of any one company being unable to negotiate settlement and be able to fish only in the

limited access fishery; and (4) reduce the incentive for members of a cooperative to attempt to create conditions that are unfavorable for certain fishery participants to form a cooperative.

Alternatives and Options

- Alternative 1: Status quo. A minimum of three unique QS holders holding at least nine QS permits are required to form a cooperative.
- Alternative 2: Reduce the number of unique QS holders required to form a cooperative from three to two or one unique QS holder.
- Alternative 3: Reduce the number of QS permits required to form a cooperative from the existing 9 permits to some lower range (e.g., three permits to the existing 9 permits).
- Alternative 4: Reduce both the number of unique QS holders and the number of QS permits required to form a cooperative (combination of Alternatives 2 and 3 above).
- Alternative 5: Allow a cooperative to form with a minimum of three unique QS holders holding at least nine QS permits (status quo), or a single or collective group of entities that represent 20 percent, 25 percent or 30 percent of the sector QS.
- Alternative 6: Require that a cooperative accept all members of a cooperative who are otherwise eligible to join a cooperative subject to the same terms and conditions as all other members.
 - GRS Suboption (Applicable to all Alternatives): The GRS shall be applied in aggregate, to all cooperatives if this calculation meets or exceeds the GRS requirement.
 - QS Assignment Suboption (Applicable to all Alternatives): A QS holder must assign all QS permits either to a cooperative or the limited access fishery.

At this meeting, the Council is schedule to take final action. The analysis for this amendment was mailed on January 19, 2010. An executive summary of that analysis is attached (Item C-5(b)(1)). Also attached is an errata (Item C-5(b)(2)) that substitutes corrected tables for those tables in the executive summary.

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 use of a portion of the BSAI halibut, Bristol Bay red king crab, snow crab, and Tanner crab prohibited species catch (PSC). PSC allocations 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 allocation to 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 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. A specific list of vessels eligible to target GOA flatfish is 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 those 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.

Purpose and Need and Alternatives

Based on the guidance that the Council provided, and the discussion paper that the Council reviewed in October 2008, staffs have developed a draft purpose and need statement and alternatives that would establish criteria for Amendment 80 vessel replacement. **The Council should review this draft purpose and need statement, modify it as necessary, and approve it:**

Staff Suggested 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 to 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 are listed below. In addition, four options have been developed by staff to address issues raised in the October 2008 discussion paper – 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 permit assignments. In the October 2008 discussion paper, staff noted that general requirements applicable to original qualifying Amendment 80 vessels would apply to any replacement vessel. The Council would need to specify how each of the options would apply to each of the alternatives at final action. **The Council should review the alternatives and options, modify as necessary and approve them:**

Alternative 1: Status quo. Vessels may not be replaced.

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 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 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 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.

(c) No length restriction on replacement vessels (the MLOA requirements on LLP licenses assigned to an Amendment 80 vessel would **not** apply).

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.

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*.

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.

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 1, the FMP and regulations would continue to be inconsistent with the Court Order. NMFS would continue to operate under the guidance provided to

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 the same 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 requirements 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 the 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 remove MLOA requirements on LLP licenses used on Amendment 80 vessels.

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.

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*. 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.

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 the original qualifying vessels that are no longer active in the Amendment 80 fleet in italics due to a loss (i.e., *F/V Alaska Ranger*, *F/V Arctic Sole*,

and *F/V Prosperity*), or because those vessels 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 suggests that those vessels may have more difficulty achieving GRS requirements relative to larger vessels.

Table E-1: Active Amendment 80 vessels and LLP licenses		
Owner₁	Amendment 80 Vessel(s) with length overall (LOA) as reported on Federal Fisheries Permit₂	LLP license currently assigned to vessel and MLOA₂
Fishing Company of Alaska (FCA), Inc. (Management entity for owner)	Alaska Juris (238 ft)	LLG 2082 (238 ft)
	<i>Alaska Ranger</i> ₃ (203 ft)	LLG 2118 (203 ft)
	Alaska Spirit (221 ft)	LLG 3043 (221 ft)
	Alaska Victory (227 ft)	LLG 2080 (227 ft)
	Alaska Voyager (203 ft)	LLG 2084 (228 ft)
	Alaska Warrior (215 ft)	LLG 2083 (215 ft)
U.S. Seafoods, Inc. (Management entity for owners)	Ocean Alaska ₄ (107 ft)	LLG 4360 (124 ft)
	Alliance (107 ft)	LLG 2905 (124 ft)
	Legacy (132 ft)	LLG 3714 (132 ft)
	<i>Prosperity</i> (138 ft - QS assigned to LLP license derived from vessel LLG 1802)	N/A
	Seafreeze Alaska (295 ft)	LLG 4692 (296 ft)
Iquiqui U.S., LLC	Arica (186 ft)	LLG 2429 (186 ft)
	Cape Horn (158 ft)	LLG 2432 (158 ft)
	Rebecca Irene (140 ft)	LLG 3958 (140 ft)
	Tremont (124 ft)	LLG 2785 (131 ft)
	Unimak (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, 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 and 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 1c, 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 and 1b 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, 1b, and 1c 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.

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 halibut PSC bycatch management in the GOA to reduce bycatch rates. This arrangement is expected to continue under either Option 2a or 2b.

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 vessel operating would also be subject to much lower monitoring and enforcement costs than other similar 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 4 would not affect fishing operations because it affects only the assignment of a QS permit, not the characteristics of replacement vessels or fishing practices onboard those vessels.

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.

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. Under all of the alternatives, vessels can be replaced, but Alternatives 2 and 3 provide a clear regulatory framework to do so, and are more likely to result in vessel replacement. 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 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 1c would provide vessel owners with the greatest flexibility to realize these benefits. Alternative 3 would allow vessel owners to replace vessels before the loss of the vessel which would reduce the potential costs associated with foregone harvests if a vessel is lost before it is eligible for

replacement. 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 1c), 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 would be expected to increase, potentially reducing the risk of enforcement actions against a cooperative or vessel operator. Option 1c would provide the greatest flexibility to increase vessel size.

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 vessels to incorporate improved safety designs before a vessel is lost. The ability to seamlessly replace a vessel before it is lost could encourage more rapid vessel replacement that could incorporate improved safety designs. Generally, larger vessels are safer than smaller vessels in most sea conditions. Option 1c would provide vessel operators with the greatest flexibility to increase the length of replacement vessels to accommodate improved safety designs.

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 a vessels are harvesting a greater amount of fish and processing forms have increased value some of that additional value 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 the total amount and time vessels spend in port, the amount of provisions purchased, or other factors that may affect communities.

AMENDMENT 80 COOPERATIVE FORMATION

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 93 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-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) in December 2004. The non-AFA trawl/catcher processors identified in the CRP comprise the Amendment 80 vessels. 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 a total or constructive loss, or is no longer eligible to receive a fishery endorsement (i.e., 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 use of a portion of the BSAI halibut, Bristol Bay red king crab, snow crab, and Tanner crab prohibited species catch (PSC), 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 allocation to cooperatives. The potential benefits that vessel owners and operators may derive from participating in a cooperative (e.g., ending the "race for fish" thereby providing greater incentive to coordinate harvesting strategies and fish in conditions that are likely to be more economically profitable, less dangerous, and better able to respond to changing conditions on the fishing grounds), 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, increasing to 75 percent in 2009, 80 percent in 2010, and 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, based on the amount of catch retained by that vessel. 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 participating in the limited access fishery may face increasing difficulty meeting the GRS if they cannot coordinate with other vessels. As the GRS increases, individual vessels with lower retention rates may have greater difficulty meeting the GRS, if they cannot coordinate with other vessels in a cooperative.

The proposed action would modify the requirements that Amendment 80 QS holders would need to meet in order to form a harvesting cooperative and receive an exclusive allocation of Amendment 80 species and associated PSC that are incidentally taken during the prosecution of BSAI groundfish fisheries. This action would not modify the specific species that are allocated, the amount of the TAC allocated to the Amendment 80 Program, the specific percentage of catch that must be retained under the GRS, or how the GRS is calculated. Since the implementation of the Amendment 80 Program in 2008, some Amendment 80 sector participants have expressed concern that the current requirements to form a cooperative could impede formation of a cooperative, so as to receive an exclusive allocation of Amendment 80 species. This could disadvantage participants, and require them to continue to "race for fish", instead of receiving the benefits of cooperative relationships.

In February 2008, the Council requested a discussion and review of the criteria for establishing cooperatives under Amendment 80. NMFS and Council staff prepared a discussion paper that was presented to the Advisory Panel (AP) and Council in June 2008, to provide a qualitative review of the goals of the existing cooperative formation standards, current conditions in the fishery, and the implications of modifying cooperative formation criteria. The discussion paper reviewed criteria for the number of unique entities, the number of QS permits, and amount of assigned QS required for cooperative formation. The paper also examined the consequences of modifying one or more of the criteria, including interactive effects of those changes. The discussion paper noted that most participants in the Amendment 80 sector have successfully established a cooperative in the first year of the program.

In February 2009, the Council conducted an initial review of an action to modify Amendment 80 cooperative formation and released the amendment package for public review, which included the first five proposed alternatives and the GRS suboption described below. The Council asked staff to include the following information in the analysis before releasing for public review: expand the discussion of the purpose and need statement from Amendment 79 and Amendment 80; include 2008 catch data from the Amendment 80 cooperative separate from Amendment 80 limit access fishery; expand the discussion of GRS implementation and performance including GRS retention by vessel size; and expand discussion of cooperative requirements under other LAPPs. NMFS staff modified the analysis and the Council scheduled final action on Amendment 93 for April 2009. While the AP considered Amendment 93, the Council did not take final action in April 2009, due to time constraints.

In October 2009, NMFS requested that the Council recommend an additional alternative to the Amendment 93 analysis after reviewing the Council's purpose and need statement and the suite of alternatives being considered. NMFS proposed that the Council include an alternative (Alternative 6) that requires a cooperative to accept any person otherwise eligible to participate in a cooperative subject to the same terms and conditions that apply to all other members of the cooperative. The Council concurred with NMFS' recommendation and included an additional alternative into the Amendment 93 analysis in October 2009. The Council also recommended that the Amendment 93 analysis be revised and be made available for a subsequent initial review prior to final action to allow additional review of the potential impact of this new alternative.

In December 2010, the Council recommended an additional suboption to allow a cooperative to form with two unique persons and QS permits, and a suboption applicable under all alternatives that would require that a person assign QS permits either to a cooperative or the limited access fishery, but not both during a calendar year. Final action was scheduled for February 2010.

Purpose and Need and Alternatives

In June 2008, the Council adopted a draft purpose and need statement and recommended alternatives that would modify the existing cooperative formation standards for the Amendment 80 sector. That purpose and need statement as amended in October 2009 and December 2010 is shown in the table.

Purpose and Need

Most participants in the Amendment 80 sector have successfully established a cooperative in the first year of the program. However, some participants have expressed concern that over the long term, cooperative formation standards may disadvantage them, and they may be constrained from establishing cooperative relationships, receiving an exclusive annual harvest allocation, and ending the "race for fish." Smaller vessel owners with limited QS are likely to have weakened negotiating leverage as the groundfish retention standard (GRS) increases if they cannot be competitive in the limited access fishery and options in the Gulf of Alaska (GOA) are not viable. Participants of any size will find it difficult to receive the benefits of cooperative management if they cannot reach agreement on negotiated terms and the limited access fishery is an unattractive outside option, or a cooperative is able to derive some benefit from forcing an entity into the limited access fishery.

Relaxing cooperative formation standards either by reducing the number of quota share (QS) permits that must be assigned, or the number of owners required, or by requiring that any otherwise eligible member be accepted by a cooperative subject to the same terms and conditions as other members could: (1) provide additional opportunities to QS holders to form cooperatives, because more relationships are possible; (2) diminish the negotiating leverage of vessel owners who may be necessary to meet the threshold requirements under more stringent cooperative formation standards; (3) reduce the potential risk of any one company being unable to negotiate settlement and be able to fish only in the limited access fishery; and (4) reduce the incentive for members of a cooperative to attempt to create conditions that are unfavorable for certain fishery participants to form a cooperative.

The alternatives recommended by the Council and addressed in this analysis are listed below:

- Alternative 1: Status quo. A minimum of three unique QS holders holding at least nine QS permits are required to form a cooperative.
- Alternative 2: Reduce the number of unique QS holders required to form a cooperative from three to two or one unique QS holder.
- Alternative 3: Reduce the number of QS permits required to form a cooperative from the existing 9 permits to some lower range (e.g., three permits to the existing 9 permits).

- **Alternative 4:** Reduce both the number of unique QS holders and the number of QS permits required to form a cooperative (combination of Alternatives 2 and 3 above).
- **Alternative 5:** Allow a cooperative to form with a minimum of three unique QS holders holding at least nine QS permits (status quo), or a single or collective group of entities that represent 20 percent, 25 percent or 30 percent of the sector QS.
- **Alternative 6:** Require that a cooperative accept all members of a cooperative who are otherwise eligible to join a cooperative subject to the same terms and conditions as all other members.
 - **GRS Suboption** (Applicable to all Alternatives): The GRS shall be applied in aggregate, to all cooperatives if this calculation meets or exceeds the GRS requirement.
 - **QS Assignment Suboption** (Applicable to all Alternatives): A QS holder must assign all QS permits either to a cooperative or the limited access fishery.

Under Alternative 3, the analysis has suboptions for 3, 6, 7, and 8 QS permits.

Under Alternative 4, the suboptions include a range of combinations from the most restrictive cooperative formation standard, other than the status quo alternative, (i.e., two QS holders and seven QS permits), and the least restrictive (i.e., one QS holder and three QS permits).

Under Alternative 5, it is possible to form a cooperative either by meeting the existing requirements (i.e., three unique QS holders and nine QS permits) or by a single person, or group of people, meeting a minimum level of QS. If a cooperative is formed by a person or persons meeting the minimum QS holding requirement, other participants could choose to form a cooperative under the existing cooperative formation standards. Under the suboption where 30 percent of the QS must be assigned to a cooperative in order for it to form, no more than one person could qualify to form a cooperative as a single company under that suboption. The existing limitations that no person may hold more than 30 percent of the Amendment 80 QS pool unless that person held the catch history of qualifying vessels prior to final action by the Council in June 2006 (50 CFR 679.92(a)), and the prohibition on the severability of QS from the permit to which it is assigned (50 CFR 679.90(a)), effectively limits all but one company from being able to hold 30 percent or more of the QS pool. However, it would still be possible for more than one company to combine their QS holdings in order to meet the minimum QS holding standards of 30 percent, 25 percent, or 20 percent of the Amendment 80 QS pool.

Under Alternative 6, an otherwise eligible person could join any cooperative that has formed under the existing cooperative formation standards (i.e., three unique QS holders and nine QS permits) subject to the same terms and conditions that are applicable to all other cooperative members. This alternative would not directly modify the cooperative formation standards but would allow persons to establish cooperative relationships if the limited access fishery option was not acceptable to that person and they are willing to meet the terms and conditions applicable to all other members of the cooperative.

The GRS suboption could be applied to any of the alternatives. It would not specifically modify the criteria to form a cooperative, but would modify the way in which the GRS is applied to cooperatives, once they have formed. Presumably, allowing the GRS to be aggregated across cooperatives could reduce some of the potentially adverse consequences for vessel operators that may be disadvantaged if the cooperative standards are modified. During an initial review in February 2009, the Council recommended incorporating an aggregated GRS as a suboption. The Council noted that aggregating the GRS among cooperatives as a stand alone alternative did not appear to conform to the purpose and need statement adopted by the Council. The Council's purpose and need statement specifically addressed cooperative formation standards, not the method used to compute the GRS. Because this suboption does not directly address cooperative formation standards, it is not analyzed directly with the other alternatives or suboptions in this analysis. The analysis does contain a general discussion of the effects and management and enforcement of this suboption in Section 2 of this analysis.

The QS assignment option would prohibit QS holders from assigning their QS permits to one or more cooperatives and the limited access fishery during the same calendar year. This option would not

modify cooperative formation standards but would reduce the incentive of QS holders to exclude QS holders from joining a cooperative and using one or more of their vessels to fish in the limited access fishery. Because QS permits and LLP licensees are required to be assigned to specific vessels, this suboption would effectively require that a QS holder also assign all Amendment 80 vessels and licenses to one or more cooperative or the limited access fishery. The analysis does contain a general discussion of the effects and management and enforcement of this suboption in Section 2 of this analysis.

The Council noted that if the GRS option under Alternative 1 (status quo) was selected, some modification to the purpose and need statement would be required. Should the Council choose Alternative 1 with the GRS suboption, a draft purpose and need statement is contained in Section 2.4.7 of this document. Similarly, should the Council choose Alternative 1 with the QS assignment suboption, a draft purpose and need statement is contained in Section 2.4.8 of this document.

The Amendment 80 fleet is comprised of a maximum of 28 eligible QS permits and vessels. Therefore, NMFS can determine the maximum number of cooperatives that could form under Alternatives 1 through 5 as described in Table E-1. If an alternative only modifies one specific cooperative formation standard (e.g., Alternative 2 modifies the number of unique owners required, but not the number of QS permits), the status quo requirement is applied to all other cooperative formation standards.

Table E-1: Alternatives, Suboptions, and Implications for Cooperative Formation

Alternative	Suboption	Minimum number of unique QS holders required	Minimum number of QS permits required	Maximum number of cooperatives that could form if all QS holders apply	Maximum number of cooperatives that could form with current QS holders
Alternative 1: Status quo	N/A	3	9	3	3
Alternative 2: Fewer unique QS holders	Suboption 1: 2 unique QS holders	2	9	3	3
	Suboption 2: 1 unique owner	1	9	3	3
Alternative 3: Fewer QS permits	Suboption 1: 8 QS permits	3	8	3	3
	Suboption 2: 7 QS permits	3	7	4	4
	Suboption 1: 6 QS permits	3	6	4	4
	Suboption 2: 3 QS permits	3	3	9	9
Alternative 4: Fewer unique QS holders and Fewer QS permits	Suboption 1: 2 QS holders, 7 QS permits	2	7	4	3
	Suboption 2: 2 QS holders, 6 QS permits	2	6	4	4
	Suboption 3: 2 QS owners, 3 QS permits	2	3	9	9
	Suboption 4: 1 QS holder, 6 QS permits	1	6	4	4
	Suboption 5: 1 QS holder, 3 QS permits	1	3	9	9
Alternative 5: Status quo or Minimum QS	Suboption 1: 30 % of QS pool	3 or 1	N/A	3	3 or 3

holding to form cooperative	Suboption 2: 25 % of QS pool	3 or 1	N/A	4	3 or 4
	Suboption 3: 20 % of QS pool	3 or 1	N/A	5	3 or 5
Alternative 6: Accept all members	N/A	3	9	3	3

Table E-2 describes the current ownership structure within the Amendment 80 sector, as well as the amount of QS that each unique QS holder is assigned. As part of this analysis, vessel owners have provided detailed information concerning the ownership status of the various vessels and QS permits. Table E-2 describes the specific QS holders that could form a cooperative under one or more of the alternatives and suboptions described in Table E-1 independent of any other QS holder. As noted in Table E-2, 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 *F/V Golden Fleece*. Additional discussion of possible reasons why this QS holder may have chosen not to participate in the Amendment 80 Program, is provided in Section 2 of the analysis. Collectively, 99.9 percent of the total available Amendment 80 QS pool has been allocated to eligible participants.

Table E-2 also denotes the original qualifying vessels that are no longer active in the Amendment 80 fleet in italics due to a loss (i.e., *F/V Alaska Ranger*, *F/V Arctic Sole*, and *F/V Prosperity*), or because those vessels have been reflagged under foreign ownership and are no longer eligible to reenter U.S. fisheries (i.e., *F/V Bering Enterprise*).

Table E-2 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 suggests that those vessels may have more difficulty achieving GRS requirements relative to larger vessels. Based on the Amendment 80 analysis, vessels less than 144 feet LOA retained 63 percent of their total catch during 1995 through 2003. This is slightly less than the GRS rate in 2008 of 65 percent. While the retention rates by vessels under 144 feet LOA during this time frame may not reflect current retention rates, particularly for vessels targeting specific species with higher retention rates, or under cooperative management which reduces the incentive to race for fish. The 144 foot LOA limit provides some indication of the relative size of vessels that may need to make substantial adjustments to accommodate increasing retention requirements, and provides a useful focal point for this analysis.

Table E-3 shows the assignment of vessels and QS permits associated with LLP licenses of various QS holders and their vessels in the 2008-2010 Amendment 80 fisheries.

Table E-2: Amendment 80 Vessels, Owners, QS Holdings, and their Ability to Independently form Cooperatives under the Proposed Alternatives and Suboptions			
Owner₁	Amendment 80 Vessel(s)/LLPs with length overall (LOA)₂	Percentage of aggregate QS pool held	Alternatives and Suboptions under which a cooperative could be formed independent of other QS holders
Fishing Company of Alaska (FCA), Inc. (Management entity for owner)	Alaska Juris (238 ft) <i>Alaska Ranger</i> ₃ (203 ft -QS assigned to LLP license derived from vessel) Alaska Spirit (221 ft) Alaska Victory (227 ft) Alaska Voyager (228 ft) Alaska Warrior (215 ft)	35.9	Alternative 4: Suboptions 3 & 4 Alternative 5: All Suboptions
U.S. Seafoods, Inc. (Management entity for owners)	Ocean Alaska ₄ (124 ft) Alliance (124 ft) Legacy (132 ft) Prosperity (138 ft - QS assigned to LLP license derived from vessel) Seafreeze Alaska (296 ft)	9.6	Alternative 4: Suboption 4
Iquiqui U.S., LLC	Arica (186 ft) Cape Horn (158 ft) Rebecca Irene (140 ft) Tremont (131 ft) Unimak (185 ft)	16.9	Alternative 4: Suboption 4
O'Hara Corporation	<i>Bering Enterprise</i> ₅ (183 ft - QS assigned to LLP derived from vessel) Constellation (150 ft) Defender (124 ft) Enterprise (132 ft) Harvester Enterprise (188 ft)	13.1	Alternative 4: Suboption 4
Fishermen's Finest (Management Entity for owners)	American No. 1 (160 ft) U.S. Intrepid (185 ft)	8.1	None
Cascade Fishing, Inc. (Management Entity for owners)	Seafisher (230 ft)	8.1	None
Ocean Peace	Ocean Peace (219 ft)	6.0	None
Jubilee Fisheries	Vaerdal (124 ft)	1.9	None
Arctic Sole Seafoods	Ocean Cape (122 ft - QS assigned to LLP derived from originally qualifying vessel <i>Arctic Rose</i>)	0.3	None
Golden Fleece	Golden Fleece (124 ft)	0.1	N/A -- QS permit has not been issued.

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 derived from RAM LLP license database (see URL above). These data indicate the maximum LOA of the vessel that may use the LLP originally issued for that vessel. Vessel lengths listed in the LLP 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.

Table E-3: Participation in 2008, 2009, and 2010 Amendment 80 fisheries

Year and Fishery	Vessel Owner	Vessels/QS permits	Percent of Amendment 80 QS Pool
2008 Amendment 80 limited access fishery participants	FCA	Alaska Juris <i>Alaska Ranger</i> ₁ Alaska Spirit Alaska Victory Alaska Voyager Alaska Warrior	36.5 %
	U.S. Seafoods	Ocean Alaska	
2009 Amendment 80 limited access fishery participants	Arctic Sole Seafoods, Inc.	Ocean Cape	36.7 %
	FCA	Alaska Juris <i>Alaska Ranger</i> Alaska Spirit Alaska Victory Alaska Voyager Alaska Warrior	
	U.S. Seafoods	Ocean Alaska	
2010 Amendment 80 limited access fishery participants	Arctic Sole Seafoods, Inc.	Ocean Cape	37.0 %
	FCA	Alaska Juris <i>Alaska Ranger</i> Alaska Spirit Alaska Victory Alaska Voyager Alaska Warrior	
	U.S. Seafoods	Ocean Alaska	
	Trident Seafoods	<i>Bering Enterprise</i>	
2008 and 2009 Amendment 80 cooperative participants	U.S. Seafoods	Alliance Legacy <i>Prosperity</i> Seafreeze Alaska	63.5 % (2008)
	Iquiqui U.S., LLC	Arica Cape Horn Rebecca Irene Tremont Unimak	
	O'Hara Corporation	Constellation Defender Enterprise	63.3 % (2009)
	Fishermen's Finest	American No. 1 U.S. Intrepid	
	Cascade Fishing, Inc.	Seafisher	
	Ocean Peace	Ocean Peace	
2010 Amendment 80 cooperative participants	U.S. Seafoods	Alliance Legacy <i>Prosperity</i> Seafreeze Alaska	
	Iquiqui U.S., LLC	Arica	

		Cape Horn Rebecca Irene Tremont Unimak	63.0 % (2010)
	O'Hara Corporation	Constellation Defender Enterprise Harvester Enterprise	
	Fishermen's Finest	American No. 1 U.S. Intrepid	
	Cascade Fishing, Inc.	Seafisher	
	Ocean Peace	Ocean Peace	

Vessels that have been lost or that are permanently ineligible to reenter the fishery are noted in italics.

Potential Effects of the Alternatives

1. Effects on Cooperative Negotiating Leverage within the Amendment 80 sector

This analysis notes that under any of the alternatives under consideration, other than Alternative 6, holders of a limited amount of QS, or owners of smaller vessels relative to other vessels in the Amendment 80 fleet, are likely to have weakened negotiating leverage when seeking favorable terms to join a cooperative as the GRS increases, if they cannot be competitive in the limited access fishery and fishing operations in the GOA are not viable. Smaller vessels tend to have less sophisticated processing operations and may not be able to retain as many different species, or retain products as effectively or economically as larger vessels with more expansive processing operations, and greater hold capacity. Larger vessels may face less of an economic imperative to retain only high value species and products and discard lower value species. Participants using vessels of any size will be disadvantaged in any cooperative negotiation if the other members of a prospective cooperative are able to derive some benefit from forcing a participant into the limited access fishery. Excluding a member from cooperative membership could advantage a cooperative, and its members, if cooperative members can participate in both the limited access fishery and a cooperative, and harvest more fish in the limited access fishery than would be derived from their QS if it were assigned to a cooperative.

General benefits to relaxing cooperative formation standards, or requiring a cooperative to accept all members, include: (1) providing additional opportunities to QS holders to form cooperatives because more combinations of unique QS holder and QS permits are possible; (2) reducing the potential risk of any one company being unable to negotiate terms and be forced to fish in the limited access fishery; and (3) reducing the incentive for members of a cooperative to attempt to create conditions that are unfavorable for certain fishery participants to form a cooperative if those fishery participants can form a cooperative independent of other QS holders. Generally, easing cooperative formation standards, or requiring a cooperative to accept all members, could reduce the risk that a QS holder may not be able to reach agreement with other members and would be forced into the limited access fishery.

Some industry participants have suggested that there is a risk to any change to the existing cooperative formation standards, because such a change would diminish the negotiating leverage of QS holders who may be necessary to meet the threshold requirements under more stringent cooperative formation standards. These participants assert that this potentially adverse affect may be more likely for participants owning vessels that are more likely to be constrained by the GRS as the retention rate increases. As an example, under the existing cooperative formation standard, a maximum of three cooperatives can form, and until that threshold is reached any prospective person may have greater negotiating leverage than would exist under alternatives where there are a greater number of potential persons who are available to allow a cooperative to form. Because the cooperative formation standard is relatively high, and a more limited number of QS permits or QS holders are available to meet the third QS holder or ninth QS permit requirements, those participants may be better able to negotiate favorable terms, even if those participants have limited QS holdings or lower retention rates relative to other cooperative members. Under the most extreme example, as indicated in Table E-2 under Alternative 4,

suboption 4, several QS holders could form cooperatives independent of other QS holders and the negotiating leverage of QS holders who are unable to form cooperatives independently may be diminished relative to those QS holders able to independently form a cooperative.

However, when compared to the status quo, it is not clear that changing the cooperative standards would necessarily disadvantage participants who are more constrained by the GRS. Table E-2 shows that under the status quo several multiple vessel companies could form a cooperative and exclude all other smaller QS holders, or single vessel owners. The single cooperative that formed in 2008 through 2010 (see Table E-3) contains several more members than are necessary to meet the cooperative formation standards. The extent to which specific alternatives would advantage or disadvantage the negotiating leverage of specific fishery participants is not possible to predict quantitatively. The factors that affect the decision to establish a cooperative include numerous subjective and variable factors. Generally, one would expect that less strict cooperative formation standards might provide greater opportunities for cooperatives to form, in general, and greater opportunities for any specific participant to find arrangements that allow them to participate in a cooperative. It is not clear that relaxing the cooperative formation standards reduces the negotiating leverage a participant may have under the status quo alternative as a necessary unique QS holder or QS permit holder under the status quo alternative. Overall, one would expect that relaxing the cooperative formation standard would provide a greater likelihood that a greater proportion of the TAC assigned to the Amendment 80 sector is harvested under cooperative management.

Requiring that a cooperative accept any otherwise eligible member (Alternative 6) would be expected to reduce incentives for members to attempt to purposefully exclude other members, and could provide an additional opportunity for members who have limited QS holdings to participate in a cooperative if they can otherwise meet the terms and condition of the cooperative contract. The initial contract establishing a cooperative would be likely to require greater clarity and could include additional enforcement and monitoring provisions to ensure that all potentially eligible members could potentially operate within a cooperative and not adversely affect other cooperative members.

Whether cooperatives actually form under any alternative would likely depend on a wide range of factors. These include pre-existing business relationships, the ability to establish mutually agreeable contracts on data sharing, and civil enforcement of cooperative contract provisions, whether the fishing operations of the companies created unproductive intra-cooperative competition, the viability of the limited access fishery or forgoing fishing in the BSAI for opportunities in the GOA as an outside option for any potential cooperative participant, and the potential risk or advantage of the participation of a specific vessel operation in ensuring that the cooperative overall would be able to meet the GRS.

2. Effects of the Alternatives on Fishing Patterns in the Amendment 80 sector.

This analysis assumes that vessels fishing under a cooperative will realize benefits of LAPP management including a strong incentive to reduce the race for fish which is the objective of the Council's action. Based on a preliminary review of the 2008 and 2009 seasons, and past experience with similar cooperative based management (e.g., AFA cooperatives, Central GOA Rockfish Program, and BSAI Crab Rationalization Cooperatives) participation in a cooperative is likely to allow optimization of harvest rates for product recovery and quality, reduce incentives to operate in adverse weather conditions, and streamline operations to maximum profits. It is possible that participants in the limited access fishery could choose to coordinate their fishing operations and voluntarily form a private contractually-based arrangement to assign a portion of the TAC. However, that voluntary arrangement did not occur during 2008 and 2009 among limited access fishery participants to any great extent, and does not appear to have been established for 2010. There is little to suggest such an arrangement would occur in the future.

Alternatives 2 through 5 would be expected to increase the potential that a greater proportion of the catch is harvested under cooperative management. The analysis assumes that alternatives other than the status quo, with more restrictive cooperative formation standards, would have a lower potential to encourage cooperative management (i.e., Alternative 2, suboption 1) versus those alternatives with less restrictive criteria (i.e., Alternative 4, suboption 4). This analysis does not attempt to predict which specific alternative would maximize the potential for cooperative fishing, given the lack of any

quantitative data. Alternative 6 does not modify the cooperative formation standards, but could require parties to more carefully craft the specific terms and conditions of the cooperative contract because any otherwise eligible party could become a potential participant. Experience with other LAPPs where cooperatives must accept all potentially eligible members suggests that cooperative contracts can be constructed with the necessary specificity for all potential participants.

Because vessels operating in a cooperative receive exclusive, and binding, allocations of PSC, this analysis assumes vessels fishing under a cooperative would have a greater incentive than vessels fishing in the limited access fishery to engage in fishing patterns that may reduce PSC use, such as attempting to use halibut excluder devices. In addition, because Alternatives 2 through 5 would be expected to increase the potential for cooperative formation, fewer vessels, and possibly no vessels, would be expected to participate in the limited access fishery. The QS assignment suboption would reduce the incentive for owners of multiple vessels to exclude a member from a cooperative and use one or more vessels to fish off of the TAC assigned to the limited access fishery by a QS holders excluded from a cooperative. It is possible, that if cooperative formation standards are relaxed so that cooperatives held by one company are allowed to form, the incentive to reduce bycatch may be somewhat diminished to the extent that a multi-company cooperative is likely to have stringent contractual requirements on its members to minimize their bycatch. However, any cooperative, regardless of the number of its members, is constrained by its allocations of PSC and the potential that a single company cooperative would be less attentive to PSC would be likely to be limited to any marginal difference between the potential constraints imposed by a multi-party contract and the allocation that a cooperative receives.

Generally, fewer vessels participating in the limited access fishery would be expected to reduce the risk that NMFS managers would fail to close the limited access fishery in time, potentially exceeding the TAC. Again, there are no quantitative data available to assess the potential distinctions that may exist among alternatives.

3. 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, *ceteris paribus*. Generally, Alternatives 2 through 6 would be expected to encourage cooperative formation or membership, 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 increased participation in cooperatives allows harvesters additional time to focus on improving product forms, there may be some slight consumer benefits realized by the proposed action, if the proposed alternatives reduce the risk that a specific harvester, or group of harvesters, would otherwise be unable to participate in a cooperative. Any potential consumer benefit assumes that the resulting product enters a domestic market, or in some other way reduces the costs of seafood or improves the quality for U.S. consumers. Conceivably, the proposed alternatives may increase the economic efficiency of that harvester. An additional potential benefit may result if vessels now active in the limited access fishery formed a cooperative and were able to trade CQ with other cooperatives to maximize their harvest. Currently, the Amendment 80 Program does not allow unharvested TAC assigned to the limited access fishery to be reallocated to a cooperative. If multiple cooperatives form, rather than a cooperative and a limited access fishery, CQ could be shared among cooperatives, as necessary, to maximize their harvest.

Generally, cooperative management reduces management costs to NMFS, because cooperatives undertake actions to ensure their allocation is not exceeded, whereas under a limited access fishery, NMFS assumes that management burden and its associated costs. Alternatives 2 through 6 are likely to reduce management costs overall relative to the status quo option to the extent that they result in less participation in the limited access fishery. Again, the lack of any quantitative data makes it difficult to assess the relative differences in net benefits among the alternatives.

4. Potential Effects on Management, Enforcement, and Safety.

As noted under the effects on net benefits, Alternatives 2 through 6 may reduce some management costs. Enforcement of Alternatives 2 through 6 would not be expected to differ from the status quo because NMFS would continue to require the same catch accounting and reporting protocols

regardless of how the cooperative formation standards are changed. The GRS suboption may require some changes in enforcement if this alternative were selected in conjunction with one of the other alternatives. Specifically, under this alternative NMFS would need to monitor the overall retention rates of all cooperatives and determine whether this aggregate retention rate should be applied to all cooperatives. This is not likely to be a substantially greater burden than current GRS monitoring and enforcement currently, assuming that this alternative is applied as described in Section 2 of this analysis.

Safety is not likely to be effected substantially under any of the alternatives under consideration. Specifically, under each of the alternatives, all vessels are required to comply with minimum safety standards under USCG regulations. Although vessels fishing in cooperatives are likely to have reduced incentives to engage in a potentially dangerous race for fish, and easing cooperative formation standards may encourage greater participation in cooperative management, NMFS does not have quantifiable data to conclude that Alternatives 2 through 6 would result in fishing practices that are substantially different than exist under the limited access fishery, or the status quo option for cooperative formation.

5. Potential Effects on Fishing Crew and Communities.

None of the alternatives would be expected to result in changes in effects to fishing communities or crew. The Amendment 80 sector did not appear to consolidate, or otherwise decrease the number of active vessels, or crew, through deliberative action during the first year of the program, and there is no evidence that such patterns have emerged in 2009. Vessel operations, including the number of crew, crew payments, vessel offloading patterns, time in port, supply and fuel purchases or other factors that may affect communities are not known for the period prior to and after implementation of the Amendment 80 Program. In addition, there is no information available to suggest that modifying cooperative formation standard would affect crew or communities in ways that differ from the status quo. NMFS has no information to suggest that payment to crew differ between cooperative or limited access fishery vessels, or that changing cooperative formation standards would result in any such changes.

ERRATA

- (1) Substitute corrected Table E-1 for Table E-1 (p. xii), Table 1 (p.7) and Table 18 (p. 80)
Incorrect numbering of suboptions, all suboptions under Alternative 3 not included
- (3) Substitute corrected Table E-2 for Table E-3 (p. xv)
Incorrect listing of suboptions in rightmost column
- (3) Substitute corrected Table E-3 for Table E-3 (p. xv)
Jubilee Fisheries not included in table

Table E-1: Alternatives, Suboptions, and Implications for Cooperative Formation					
Alternative	Suboption	Minimum number of unique QS holders required	Minimum number of QS permits required	Maximum number of cooperatives that could form if all QS holders apply	Maximum number of cooperatives that could form with current QS holders
Alternative 1: Status quo	N/A	3	9	3	3
Alternative 2: Fewer unique QS holders	Suboption 1: 2 unique QS holders	2	9	3	3
	Suboption 2: 1 unique QS owner	1	9	3	3
Alternative 3: Fewer QS permits	Suboption 1: 8 QS permits	3	8	3	3
	Suboption 2: 7 QS permits	3	7	4	4
	Suboption 3: 6 QS permits	3	6	4	4
	Suboption 4: 3 QS permits	3	3	9	9
Alternative 4: Fewer unique QS holders and Fewer QS permits	Suboption 1: 2 QS holders, 7 QS permits	2	7	4	3
	Suboption 2: 2 QS holders, 6 QS permits	2	6	4	4
	Suboption 3: 2 QS owners, 3 QS permits	2	3	9	9
	Suboption 4: 1 QS holder, 6 QS permits	1	6	4	4
	Suboption 5: 1 QS holder, 3 QS permits	1	3	9	9
Alternative 5: Status quo or Minimum QS holding to form cooperative	Suboption 1: 30 % of QS pool	3 or 1	N/A	3	3 or 3
	Suboption 2: 25 % of QS pool	3 or 1	N/A	4	3 or 4
	Suboption 3: 20 % of QS pool	3 or 1	N/A	5	3 or 5
Alternative 6: Accept all members	N/A	3	9	3	3

Table E-2: Amendment 80 Vessels, Owners, QS Holdings, and their Ability to Independently form Cooperatives under the Proposed Alternatives and Suboptions

Owner ₁	Amendment 80 Vessel(s)/LLPs with length overall (LOA) ₂	Percentage of aggregate QS pool held	Alternatives and Suboptions under which a cooperative could be formed independent of other QS holders
Fishing Company of Alaska (FCA), Inc. (Management entity for owner)	Alaska Juris (238 ft) <i>Alaska Ranger</i> ₃ (203 ft -QS assigned to LLP license derived from vessel) Alaska Spirit (221 ft) Alaska Victory (227 ft) Alaska Voyager (228 ft) Alaska Warrior (215 ft)	35.9	Alternative 4: Suboptions 4 & 5 Alternative 5: All Suboptions
United States Seafoods, LLC. (Management entity for owners)	Ocean Alaska ₄ (124 ft) Alliance (124 ft) Legacy (132 ft) Prosperity (138 ft - QS assigned to LLP license derived from vessel) Seafreeze Alaska (296 ft)	9.6	Alternative 4: Suboption 5
Iquiqui U.S., LLC	Arica (186 ft) Cape Horn (158 ft) Rebecca Irene (140 ft) Tremont (131 ft) Unimak (185 ft)	16.9	Alternative 4: Suboption 5
O'Hara Corporation	Bering Enterprise ₅ (183 ft - QS assigned to LLP derived from vessel) Constellation (150 ft) Defender (124 ft) Enterprise (132 ft) Harvester Enterprise (188 ft)	13.1	Alternative 4: Suboption 5
Fishermen's Finest (Management Entity for owners)	American No. 1 (160 ft) U.S. Intrepid (185 ft)	8.1	None
Cascade Fishing, Inc. (Management Entity for owners)	Seafisher (230 ft)	8.1	None
Ocean Peace	Ocean Peace (219 ft)	6.0	None
Jubilee Fisheries	Vaerdal (124 ft)	1.9	None
Arctic Sole Seafoods	Ocean Cape (122 ft - QS assigned to LLP derived from originally qualifying vessel <i>Arctic Rose</i>)	0.3	None
Golden Fleece	Golden Fleece (124 ft)	0.1	N/A -- QS permit has not been issued.

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 derived from RAM LLP license database (see URL above). These data indicate the maximum LOA of the vessel that may use the LLP originally issued for that vessel. Vessel lengths listed in the LLP 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.

Table E-3: Participation in 2008, 2009, and 2010 Amendment 80 fisheries

Year and Fishery	Vessel Owner	Vessels/QS permits	Percent of Amendment 80 QS Pool
2008 Amendment 80 limited access fishery participants	FCA	<i>Alaska Juris</i> <i>Alaska Ranger</i> ₁ <i>Alaska Spirit</i> <i>Alaska Victory</i> <i>Alaska Voyager</i> <i>Alaska Warrior</i>	36.5 %
	U.S. Seafoods	Ocean Alaska	
2009 Amendment 80 limited access fishery participants	Arctic Sole Seafoods, Inc.	Ocean Cape	36.7 %
	FCA	<i>Alaska Juris</i> <i>Alaska Ranger</i> <i>Alaska Spirit</i> <i>Alaska Victory</i> <i>Alaska Voyager</i> <i>Alaska Warrior</i>	
2010 Amendment 80 limited access fishery participants	Arctic Sole Seafoods, Inc.	Ocean Cape	37.0 %
	FCA	<i>Alaska Juris</i> <i>Alaska Ranger</i> <i>Alaska Spirit</i> <i>Alaska Victory</i> <i>Alaska Voyager</i> <i>Alaska Warrior</i>	
	U.S. Seafoods	Ocean Alaska	

	Trident Seafoods (transferred QS permit to O'Hara Corporation)	<i>Bering Enterprise</i>	
2008 and 2009 Amendment 80 cooperative participants	U.S. Seafoods	Alliance Legacy <i>Prosperity</i> Seafreeze Alaska	63.5 % (2008)
	Iquiqui U.S., LLC	Arica Cape Horn Rebecca Irene Tremont Unimak	
	O'Hara Corporation	Constellation Defender Enterprise	63.3 % (2009)
	Fishermen's Finest	American No. 1 U.S. Intrepid	
	Cascade Fishing, Inc.	Seafisher	
	Ocean Peace	Ocean Peace	
	Jubilee Fisheries	Vaerdal	
2010 Amendment 80 cooperative participants	U.S. Seafoods	Alliance Legacy <i>Prosperity</i> Seafreeze Alaska	63.0 % (2010)
	Iquiqui U.S., LLC	Arica Cape Horn Rebecca Irene Tremont Unimak	
	O'Hara Corporation	Constellation Defender Enterprise Harvester Enterprise	
	Fishermen's Finest	American No. 1 U.S. Intrepid	
	Cascade Fishing, Inc.	Seafisher	
	Ocean Peace	Ocean Peace	
	Jubilee Fisheries	Vaerdal	

1 Vessels that have been lost or that are permanently ineligible to reenter the fishery are noted in italics.

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-5(a) Am 80 Lost Vessel Replacement Act

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1	Jim Hamilton	Ocean Peace
2	Todd Loomis	Cascade Fishing Inc
3	Bob Hrueger	Alaska Whitefish Trawlers
4	LORI Swanson	GROUND FISH FORUM
5	Dave Wood	US- Seafoods
6	Bill Orr	Tiquique
7	Julie Benny	AFNB
8	Susan Robinson	Fishermen's Finest
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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.



Jim Hamilton

February 10, 2010

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

Re: Agenda Item C-5(b), Amendment 80 vessel replacement

Dear Chairman Olson,

Ocean Peace applauds the Council's effort to address the issue of vessel replacement for Amendment 80 vessels. The Company supports, in particular, Alternative 3, Option 1(c) which would provide vessel owners the greatest flexibility to replace existing vessels with appropriately sized vessels to improve vessel safety and operational efficiencies, as well as to replace a lost or permanently ineligible vessel.

The OCEAN PEACE is unique among the Amendment 80 Vessels in that it is the only one that is also eligible to fish in the directed Pollock fishery in the Bering Sea under section 208(e)(21) of the American Fisheries Act ("AFA"). For that reason, the Company requests that the Advisory Panel and the Council be mindful of that unique status as they consider the proposed vessel replacement alternatives and not adopt any amendment that would disadvantage the OCEAN PEACE with respect to other vessels in its ability to be replaced with a vessel that can continue to operate in the fisheries in which the Vessel has historically operated.

Under current law, we are constrained from replacing our vessel with a new one that exceeds 165 feet, 750 gross tons as measured under regulatory tonnage (or 1900 gross tons under international tonnage), or has more than 3000 horsepower, unless the Council has recommended, and the Secretary of Commerce has approved, conservation and management measures in accordance with the AFA that would allow a replacement vessel exceeding those size limitations to be used in a fishery under the Council's authority. It is our understanding that a favorable Council recommendation of Alternative 3, Option 1(c) and approval by the Secretary, would therefore lift the size limitations with respect to any replacement vessel for one of the Amendment 80 Vessels.

The AFA imposes certain other limitations with respect to the replacement of vessels eligible to participate in the directed Bering Sea Pollock fishery. These limitations permit replacement of these vessels only in the event of the actual total loss or constructive total loss of the vessel, and not because the owner may choose to

replace the vessel for safety or operational considerations. Thus, even if the Council were to adopt, and the Secretary were to approve Alternative 3, Option (c), under current law a replacement vessel for the OCEAN PEACE could not operate in the Pollock fishery unless the reason for the replacement was a total loss of the original vessel. However, legislation has passed the United States House of Representatives and is pending in the Senate that would amend this provision of the AFA to permit replacement of vessels in the Pollock fishery with vessels exceeding the size limitations, at the owner's discretion and without the need for the original vessel to have been a total loss.

It is unknown at this time when, or if, the legislation will pass the Senate, and if it does whether there will be changes to the version that passed the House. Assuming, however, that legislation is ultimately enacted, the Company requests the Advisory Panel and the Council to amend whatever alternatives may still be under consideration, or to amend any adopted provisions, as may be necessary to address the unique status of the OCEAN PEACE and ensure that any replacement vessel is able to continue to operate in all fisheries under the Council's jurisdiction in which the OCEAN PEACE has historically operated.

We appreciate the opportunity to submit these comments.

Sincerely,



Jim Hamilton
Government Affairs

February 10, 2009

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

Re: Agenda Item C-5(b), Amendment 80 vessel replacement

Dear Chairman Olson,

Groundfish Forum is comprised of six quota share (QS) holders representing 15 QS permits in the Amendment 80 (non-AFA trawl catcher-processor) sector. We are writing to comment on the Council's proposed action to address replacement of Amendment 80-qualified vessels. Timely action on this issue is critical to the continued operation of our sector. Vessels are required to meet regulations (like the Groundfish Retention Standard, or GRS) which may not be possible to do on their existing vessels for a variety of reasons. At the same time, there is no provision to replace a vessel before it is lost. The Amendment 80 allocations and sideboards have effectively eliminated the race for fish and any possibility of encroaching on other sectors, so it is time to allow vessels to be rebuilt or replaced.

Legal concerns

We are very concerned that the Council and the Secretary of Commerce do not in themselves have the authority to allow rebuilding or replacement of Amendment 80 vessels. The Congressional act which defines the sector (Consolidated Appropriations Act (CRP) of 2005, Section 219) specifies that vessels must have landed and processed a specific amount of groundfish during the qualification period. Twenty-eight vessels meet (or met) the requirement. New vessels clearly would not meet it. There is no assurance that a Council decision to allow new vessels to operate in the sector would be legal under the existing language.

In fact, NMFS itself did not believe the Council could authorize replacement vessels when Amendment 80 was approved. This interpretation is what led ultimately to the case *Arctic Sole Seafoods, Inc. v. Gutierrez*, in which the owner of an Amendment 80-qualified vessel which had sunk argued successfully that he should be allowed to replace

it. The Court decision was very specific to replacement of a sunk (lost) vessel.¹ It is unclear how this decision can be interpreted to cover replacement for reasons other than sinking or loss. NMFS' opinion that the decision can be broadened is not sufficient to protect potential investors in new construction, since a legal opinion can be overturned if there is a legal challenge. We believe that it will be difficult – if not impossible – for vessel owners to obtain financing for new construction without clear, binding language that transfers the Amendment 80 qualification to the new vessel. We therefore urge the Council to communicate its preferred alternative(s) to members of Congress and request legislative action to codify the action in law.

Proposed alternatives:

Alternatives 1 and 2 appear to be both 'status quo,' except that Alternative 2 would change the written regulations to reflect how NMFS intends to meet the mandate of *Arctic Sole v. Gutierrez*, to allow the replacement of lost vessels

Alternative 3 addresses the necessary details for realistic vessel replacement prior to loss of a vessel.

Option one (vessel size restrictions) is perhaps the most important decision point. Each vessel carries one (or more) 'license limitation program' (LLP) licenses which specify the 'maximum length overall' (MLOA) that the vessel can be. The staff offers three options: replace at existing vessel size, replace at MLOA, or replace without size restrictions. Realizing that at this stage in the review it may be necessary to look at all of these, we believe that the third alternative is the only one that makes sense for the continued health of the sector.

Every analysis has shown that smaller vessels will not be able to meet the GRS requirements in this sector because of limited processing and hold space (the analysis notes that vessels less than 220' could likely not carry the necessary equipment to meet the GRS). The existing larger vessels will also need more space to make better use of the catch and minimize fuel consumption. We believe that there is no valid argument for restricting replacement vessels to the MLOA on the license now that Amendment 80 is in place.

Option 2 proposes a decision as to whether the replacement vessel will qualify to fish for flatfish in the Gulf of Alaska, if the original vessel qualified. *We recommend removing this option altogether.* A replacement vessel should assume both the allocations and restrictions associated with the original vessel.

As you know, Amendment 80 restricted participation in GOA flatfish fisheries to only 11 vessels, based on their history. This was an integral part of the action. Those vessels

¹ "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.*

operate under very strict sideboards and cannot encroach on other sectors in the Gulf. Further, they target species (such as deep water flatfish) that are not taken by other sectors.

Option 3 addresses the specific case of the *Golden Fleece*, which is exempted from Amendment 80 sideboards in the Gulf of Alaska but cannot target pollock or cod. If the Council selects to remove the sideboard exemptions from a replacement for the *Golden Fleece*, the Amendment 80 sideboards should be adjusted by the amount of history it represented during the qualifying period (the same formula used for all other vessels). We recommend Option 3(a) read: “would not receive the same exemptions that apply to the *Golden Fleece*. Amendment 80 sideboards in the Gulf of Alaska would be adjusted to account for the history of the *Golden Fleece* in the same manner as other Amendment 80 vessels.”

Option 4 addresses the issue of where the quota share ‘attaches’ on replacement vessels (i.e. to the license or to the vessel itself). We are unclear what the ramifications of this decision may be and will have further comments at a later date.

Finally, we note that the Amendment 80 sector is unique in that our vessels are required to meet an extremely stringent retention standard (the GRS), and the ability to meet the standard is closely correlated to vessel size. The current formula for calculating retention in our sector is different than the formula used during the development of the GRS (Amendment 79). The new formula results in a much lower retention calculation than was assumed when the standard was approved. It may be impossible for most vessels in our sector to meet the highest required level, which is effective in 2011. At the same time, if the original formula is used, the sector has already met and exceeded that standard.

The additional pressure of an unrealistic retention requirement makes vessel replacement critical. We cannot wait for a prolonged approval process. Some small vessels have already been tied up or restricted to operating in the Gulf because they cannot meet the existing standard. One vessel has failed to meet the second step in the four-step increase. More will fail this coming year.

We strongly encourage you to move forward quickly with this action, and to request Congressional implementation of your recommendations to allow this fleet to become a modern, efficient and safe participant in the harvest of a strong and sustainable resource.

Sincerely,



Lori Swanson
Executive Director

C-5(a) Amendment 80 Lost Vessel Replacement

Move that the Council approve the Purpose and Need Statement as written and forward the analysis for public review with the following modifications to the alternatives and options (starting with the AP's motion, deletions shown with ~~strikethrough~~ and additions are underlined):

Staff-Suggested 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 to 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.

Alternative 1: Status quo. Vessels may not be replaced.

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 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 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 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) A replacement vessel may have a length overall 10% or 20% greater than the original qualifying Amendment 80 vessel it replaces.
- ~~(b)~~(c) The maximum length overall (MLOA) requirements on LLP licenses assigned to an Amendment 80 vessel would still apply.
- ~~(e)~~(d) No length restriction on replacement vessels (the MLOA requirements on LLP licenses assigned to an Amendment 80 vessel would not apply).

Suboption (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.

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

- 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*. Amendment 80 sideboards in the Gulf of Alaska would be adjusted to account for the history of the *Golden Fleece* in the same manner as other Amendment 80 vessels.
 - (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 LOA 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 LOA 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 US fisheries is eligible to replace the vessel associated with its QS permit.

- Option 5 Any vessel replaced under this program would be ineligible to be designated on an FFP and 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.

~~The AP recognizes the need to address the unique situation of the *Ocean Peace* which could lose its ability to fish its AFA allocation if the vessel is replaced.~~

~~The AP notes that there are continuing legal concerns with the authority of the Council to allow Amendment 80 vessel replacement under the proposed alternatives, given the definition of the non-AFA trawl CP sector in legislation and the limited scope of the decision in *Arctic Sole v. Gutierrez*. The AP recommends that the Council request further clarification of this issue by NOAA GC.~~

~~The AP recommends the Council requests that the analysis contain a table that indicates the age of each of the Amendment 80 vessels.~~

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-5(b) Am80 Coop. Formation - final Action

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1	Joe Sullivan	Best Use Cooperative
2	Lori Swanson	Groundfish Forum
3	Susan Robinson	Fishermen's Finest
4	Todd Loomis	Pasade Fishing, Inc.
5	Bill Orr / Mike Jzymanski	
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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.

Groundfish Forum

4241 21st Avenue West, Suite 302
Seattle, WA 98199
206-213-5270 Fax 206-213-5272
www.groundfishforum.org

February 10, 2010

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

Re: Agenda Item C-5(a), Amendment 80 Cooperative Formation

Dear Chairman Olson,

Groundfish Forum is comprised of six quota share (QS) holders representing 15 QS permits in the Amendment 80 (non-AFA trawl catcher-processor) sector. We are writing to comment on the Council's proposed action to amend the cooperative formation standards included in Amendment 80.

As you know, Amendment 80 requires a minimum of 9 QS permits from 3 different QS holders to participate before a cooperative can form, which in theory would allow a total of three cooperatives. Vessels which choose not to form or join a cooperative may fish in the 'limited access' portion of the Amendment 80 sector, where they compete for the aggregate allocations which are not in a cooperative. In practice, one cooperative (the Best Use Cooperative) has formed and 8 QS permits have fished the limited access sector.

The dynamics of cooperative formation in our sector are different than under any other catch share program. Under Amendment 79, our vessels are required to increase their retention rates over four years (culminating at 85% retention in 2011). Amendment 80 allows the 'groundfish retention standard,' or GRS, to be measured across an entire cooperative rather than on an individual vessel level. A vessel which cannot meet the GRS by itself – as would be required if it chose to fish in the limited access sector – may be able to operate within a cooperative if the aggregate retention of all the members meets the standard. The ability to meet the GRS is affected by numerous factors including vessel size and primary target species. As the GRS increases, the differential ability to meet the standard becomes a greater dynamic in cooperative formation and vessel replacement discussions.

Amendment 80 attempted to strike a balance to allow enough flexibility for multiple cooperatives to form, making negotiations easier for smaller vessels which might have a hard time meeting the GRS. Because of this, we've been concerned that modifying the cooperative formation standard might disadvantage smaller vessels, or single-vessel

companies; more cooperatives could form, but there is no assurance that all of the possible combinations could meet the GRS. Small vessels risk being relegated to limited access or to a cooperative which cannot meet the standard.

However, as the GRS increases, even large vessels are going to have a very hard time meeting the retention requirement. As it becomes more difficult for a coop to reach the retention standard, it may be forced to shed those members that have lower retention. In this case, the best situation is to allow those vessels to form a separate coop and (through the GRS suboption) measure retention across all coops. The initial calculation is the same as if all vessels were in one coop, which will allow the higher retention of larger vessels to benefit smaller vessels, at least to some extent, and will require no more enforcement effort than for one large coop. Modifying the requirements will likely result in more vessels choosing to coop (particularly the high-retention vessels currently fishing in limited access), so the retention across coops will be as high as it can be. This is no guarantee that small vessels can survive high GRS levels, but it may be the best option available.

While we can debate the reasons that vessels in the limited access sector have not formed or joined a cooperative, modifying the formation standard will likely result in most if not all vessels choosing to coop. This will address a number of concerns. The management cost to NMFS should be less as the coops manage their own allocations and little if any fish is in limited access. Also, because the coops can lease fish to each other, the possibility of 'stranded' quota is greatly reduced. Finally, with little fish in limited access, vessels with little history will see no advantage in fishing outside the coop.

Therefore, Groundfish Forum requests that the Council select the following alternatives to modify cooperative regulations:

Alternative 4, suboption 2: Reduce both the number of unique QS holders and the number of QS permits required to form a cooperative, allowing a cooperative to form with two QS holders and six QS permits. This would make it possible for the QS holders currently operating exclusively in the limited access sector to form a cooperative. It also results in the possibility of a total of four coops forming rather than the existing maximum of three and reduces the possibility of QS permits being 'stranded' outside a coop.

GRS suboption: The GRS shall be applied in aggregate to all cooperatives if this calculation meets or exceeds the GRS requirement. As discussed above, measuring the GRS across all cooperatives will protect smaller vessels from being isolated, to some extent. It does not guarantee that small vessels can survive the GRS, but it appears to be the best option available.

We do not support the new Alternative 6, added at NMFS' request, to require a cooperative to accept all members who are otherwise eligible to join. Ironically, our reasons for objecting are best articulated by NMFS itself in the 'response to comments' portion of the Amendment 80 final rule:

'NMFS agrees that this requirement is not required under the Program and has removed it...This requirement was inserted into the proposed rule based on the regulations for the Central GOA Rockfish Program...Inserting this provision in the Program based on the requirements of another LAPP with different characteristics is an oversight, is not necessary, and would adversely affect the ability of Amendment 80 sector participants to form cooperatives as intended by the Program...there is no need to require a person be accepted by a cooperative.'¹

The analysis argues that NMFS removed this provision from the final rule because the Council had not recommended including it. However, the response to comments above clearly shows that it was included by mistake and is not appropriate for this program.

The Rockfish Program included the requirement because cooperatives had to be associated with particular processors, and vessels might only be able to operate in one particular cooperative. Even in that program, the Council's most recent analysis states that '...a provision that requires a cooperative to accept membership of any LLP license holder eligible for the cooperative...seems unnecessary given the level of flexibility in cooperative formation.'²

Further, because cooperatives have 'joint and several liability' for infractions, this option would require cooperatives to develop severe contractual protections to ensure that members who are considered more likely to incur legal violations do not harm other members. These requirements could be so expensive or onerous that some existing members, particularly smaller operations, could not afford to remain in the coop. If the alternative to require multi-vessel companies to have all vessels in a coop or in limited access is also selected, a company which cannot afford to include one vessel may be unable to have any of its vessels in a coop.

Finally, it's hard to understand how such a provision would work in a practical sense. The Agency can't force a vessel owner to stay in a cooperative; if the cooperative is forced to accept a new member that an existing member finds incompatible, that existing member may choose to exit the coop. Conceivably all of the existing coop members could exit and form a second coop (which would then be required to accept the new member, and the cycle would continue). The provision is simply not workable, or necessary, in a program where multiple cooperatives can form.

The suboption to require a QS holder to assign all QS permits either to a cooperative or the limited access fishery is moot if the coop formation threshold is modified. The only reason to adopt this suboption is if a significant amount of QS is in the limited access sector and presents an attractive target for vessels wanting to fish more than their own allocations. If a coop can form with 2 QS holders and 6 QS permits, the vessels which account for all but a very small fraction of the existing limited access

1 Amendment 80 final rule (72FR 52688, September 14, 2007), response to comment 37.

2 Gulf of Alaska Rockfish Program EA/RIR/IRFA, September 21, 2009, page 15.

sector will coop and protect their allocations from encroachment. This alternative could also wind up forcing vessels into limited access, if one vessel from a multi-vessel company is expelled from the coop for an infraction of the coop agreement; all of that company's vessels would then be required to leave the coop. We recommend that the Council not choose this alternative because it is unnecessary and potentially harmful.

We cannot state strongly enough that the ultimate solution to many of the concerns with coop formation is to ensure that existing vessels can be replaced with vessels that are able to meet the Groundfish Retention Standard. As long as some vessels are not able to meet this requirement, they will continue to be disadvantaged in coop negotiations and operations. The only way these vessels can survive is to be replaced with vessels that are large enough to house the factory space, crew accommodations and hold space that are necessary to meet the standard, even if these vessels are larger than the existing vessels and larger than the length specified on their LLPs. Please see our comments on agenda item C-5(b) (Amendment 80 vessel replacement) for a further explanation.

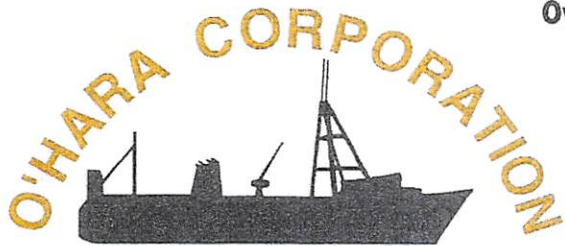
It is also important to note that retention for purposes of the GRS is measured by a different formula than was used when Amendment 79 (which instituted the retention standard) was approved by the Council. The new calculation results in a significantly lower calculated retention than was assumed when the standard was set. In fact, if the original formula was used now the existing cooperative would be at about *90% retention*. Instead, the official calculation is around *77%*. This discrepancy makes it much harder for smaller vessels to meet even the intermediate steps of the GRS and may make it impossible for most vessels to achieve the highest level. Modifying the coop formation threshold may be an incremental benefit in that it should bring all vessels under cooperative management and (if the alternative is selected) may include the higher-retention vessels currently in limited access in the initial (multi-coop) level determination. However, it will not guarantee that smaller vessels are protected; there is no alternative presently available that will allow those vessels to continue fishing.

Thank you for the opportunity to comment on this issue. Amendment 80 is a very successful program overall and we support the modifications outlined above to encourage more vessels to operate within a cooperative structure.

Sincerely,



Lori Swanson
Executive Director



Owners and Managers of Factory Trawlers & Fishing Vessels

**Producers & Distributors of
Frozen at Sea Products**

**120 Tillson Avenue, Rockland, ME 04841
Telephone 207-594-4444 Fax 207-594-0407**

Stefanie Moreland
Alaska Department of Fish and Game
Division of Commercial Fisheries
1255 W. 8th Street
P.O. Box 115526
Juneau, AK 99811-5526

Dear Stefanie,

The O'Hara Corporation is a family owned and operated business that operates three Amendment 80, catcher processor vessels that are members of the Best Use Cooperative. These vessels vary in length from 124' LOA to 165' which are considered to be small and medium size H & G vessels, respectively. We have participated in the H & G fishery since 1990 and have worked through major obstacles, some market driven, some as a result of natural stock fluctuations, and some due to governmental regulations. We are pleased to say that we have survived so far and look forward to the future sustainability of both our company and the resource we utilize.

Amendment 80 regulations require a threshold of three QS holders/companies and at least nine QC permits/vessels to form a co-op. In the early stages of co-op formation, industry members working with NMFS and the North Pacific Fishery Management Council, felt it was necessary to protect single boat owners and small vessels from being squeezed out of the fishery. Over the last two years, O'Hara Corporation has come to believe that some of the existing regulations are not helpful, and are more restrictive on the small boat fleet. There is a need for increased flexibility to allow groups to work through the changes in the fishery, whether they are changes in regulations, changes in market conditions, or a need to separate one group from another with respect to the species they fish for.

Ultimately, each co-op will perform better with common interests, and maybe one co-op will be all we will need. However, there is a definite distinction between small vessels working on low volume flatfish, and mid sized vessels with the ability to work farther out in the Aleutians Islands, producing higher volumes of retained species, while still reaching the GRS (groundfish retention standard). This creates some natural separation amongst the fleet. We feel the larger vessels, like FCA need to have their own sand box

to play in simply because their fishing practices, target species with associated bycatch, and concern for financial responsibilities are so different than ours.

We therefore support lowering the threshold down to a minimum of two QS holders or companies and six vessels/QS permits. We feel the six vessel/permit requirement gives the Amendment 80 fleet the option to have four possible co-ops, realizing that FCA would most likely choose to form their own coop with one other vessel owner. The rest of the fleet would then have the capability to work within the three other possible groups.

We feel the "all in" theory would not give the necessary flexibility to allow multiple vessel corporations the ability to place their individual vessels in the group or co-op that best serves the company, vessel, or the fishery. The limited access fishery will be obsolete if thresholds are modified, thus taking away the threat of vessels capitalizing on the race for fish in the limited access fishery. Therefore, we support having the ability to place our vessels in one or more co-ops or sectors.

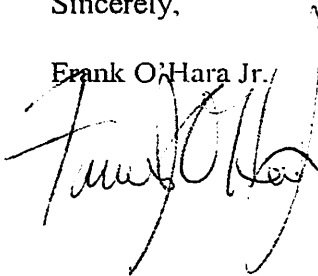
We do not support Alternative 6, which would require a cooperative to accept all members who are other wise eligible to join. In addition to our significant concerns about "joint and several liability," we feel forcing people to work together that are not like-minded or who may have very different business operations is a plan for failure.

GRS has become a very serious issue for the small boat fleet and for the entire fleet in general. To assist small boat operations, we support measuring retention under the GRS requirements across all co-ops. While the Amendment 80 Co-op was being created, the need to retain more fish was a high priority for everyone involved. Different groups had their ideas and a retention rate and formula to calculate that rate was designed to require the fleet to save a percentage of the fish caught, and increase it over a four year period until we obtained an arbitrary rate of 85%, 85% of what? I would like to defer my explanation of why I feel this is incorrect to Karl Halfinger of Sea State, to sum up what he has determined to be the correct retention standard under the new way that retention is now calculated. I ask you to use his numbers and his philosophy to help the Amendment 80 fleet overcome this unreachable expectation, and let us prove over a very short period of time how to prosecute this fishery without putting unreasonable strains on the companies involved.

If you feel like talking with me or the team at O'Hara Corporation please contact me at 207-594-4444 or e-mail me at ohara@midcoast.com so we can set up a conference call.

Sincerely,

Frank O'Hara Jr.

A handwritten signature in black ink, appearing to read "Frank O'Hara Jr.", written over a printed name. The signature is stylized and cursive.



February 10, 2010

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

Re: Agenda Item C-5(b), Amendment 80 vessel replacement

Dear Chairman Olson,

Ocean Peace applauds the Council's effort to address the issue of vessel replacement for Amendment 80 vessels. The Company supports, in particular, Alternative 3, Option 1(c) which would provide vessel owners the greatest flexibility to replace existing vessels with appropriately sized vessels to improve vessel safety and operational efficiencies, as well as to replace a lost or permanently ineligible vessel.

The OCEAN PEACE is unique among the Amendment 80 Vessels in that it is the only one that is also eligible to fish in the directed Pollock fishery in the Bering Sea under section 208(e)(21) of the American Fisheries Act ("AFA"). For that reason, the Company requests that the Advisory Panel and the Council be mindful of that unique status as they consider the proposed vessel replacement alternatives and not adopt any amendment that would disadvantage the OCEAN PEACE with respect to other vessels in its ability to be replaced with a vessel that can continue to operate in the fisheries in which the Vessel has historically operated.

Under current law, we are constrained from replacing our vessel with a new one that exceeds 165 feet, 750 gross tons as measured under regulatory tonnage (or 1900 gross tons under international tonnage), or has more than 3000 horsepower, unless the Council has recommended, and the Secretary of Commerce has approved, conservation and management measures in accordance with the AFA that would allow a replacement vessel exceeding those size limitations to be used in a fishery under the Council's authority. It is our understanding that a favorable Council recommendation of Alternative 3, Option 1(c) and approval by the Secretary, would therefore lift the size limitations with respect to any replacement vessel for one of the Amendment 80 Vessels.

The AFA imposes certain other limitations with respect to the replacement of vessels eligible to participate in the directed Bering Sea Pollock fishery. These limitations permit replacement of these vessels only in the event of the actual total loss or constructive total loss of the vessel, and not because the owner may choose to

replace the vessel for safety or operational considerations. Thus, even if the Council were to adopt, and the Secretary were to approve Alternative 3, Option (c), under current law a replacement vessel for the OCEAN PEACE could not operate in the Pollock fishery unless the reason for the replacement was a total loss of the original vessel. However, legislation has passed the United States House of Representatives and is pending in the Senate that would amend this provision of the AFA to permit replacement of vessels in the Pollock fishery with vessels exceeding the size limitations, at the owner's discretion and without the need for the original vessel to have been a total loss.

It is unknown at this time when, or if, the legislation will pass the Senate, and if it does whether there will be changes to the version that passed the House. Assuming, however, that legislation is ultimately enacted, the Company requests the Advisory Panel and the Council to amend whatever alternatives may still be under consideration, or to amend any adopted provisions, as may be necessary to address the unique status of the OCEAN PEACE and ensure that any replacement vessel is able to continue to operate in all fisheries under the Council's jurisdiction in which the OCEAN PEACE has historically operated.

We appreciate the opportunity to submit these comments.

Sincerely,



Jim Hamilton
Government Affairs