


MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver 
Executive Director
DATE: November 30, 2009
SUBJECT: Amendment 80 Cooperative Formation

ESTIMATED TIME 4 HOURS

ACTION REQUIRED

Initial review of Amendment 80 cooperative formation

BACKGROUND

In October 2009, the Council added a new alternative to Amendment 93 that would require 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 following are the alternatives addressed in the analysis:

- **Alternative 1:** (Status quo) – A minimum of three unique quota share holders holding at least nine quota share permits are required to form a cooperative.
- **Alternative 2:** Reduce the number of unique quota share holders required to form a cooperative from three to two or one unique quota share holder.
- **Alternative 3:** Reduce the number of quota share 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 quota share holders and the number of quota share permits required to form a cooperative (combination of Alternatives 2 and 3).
- **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%, 25%, or 30% of the sector quota share.
- **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.

The analysis for this amendment was mailed out on November 20, 2009. An executive summary of that analysis is attached (Item C-5(a)).

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.

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. With the adoption of the additional alternative in October 2009, minor modification to the draft purpose and need statement are required to reflect this new alternative. Staff suggestions to incorporate this new alternative are shown in ~~strikeout~~ and **bold capitalized text** below. **The Council should review these suggested modifications and adopt them, or similar text, as appropriate:**

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. The new alternative recommended by the Council in October 2009 is highlighted in bold:

- 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.

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 6 QS permits), and the least restrictive (i.e., 1 QS holder and 3 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 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 the discussion of the Suboption in Section 2.4.6 of this document. The Council should review and modify that draft purpose and need statement, if applicable.

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, 6 QS permits	2	6	4	4
	Suboption 2: 2 QS owners, 3 QS permits	2	3	9	9
	Suboption 3: 1 QS holder, 6 QS permits	1	6	4	4
	Suboption 4: 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 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 Enterprises</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	<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	<i>Ocean Alaska</i>	
2009 Amendment 80 limited access fishery participants	Arctic Sole Seafoods, Inc.	<i>Ocean Cape</i>	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>	
	U.S. Seafoods	<i>Ocean Alaska</i>	
2010 Amendment 80 limited access fishery participants	Arctic Sole Seafoods, Inc.	<i>Ocean Cape</i>	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	<i>Ocean Alaska</i>	
	Trident Seafoods	<i>Bering Enterprise</i>	
2008 and 2009 Amendment 80 cooperative participants	U.S. Seafoods	<i>Alliance</i> <i>Legacy</i> <i>Prosperity</i> <i>Seafreeze Alaska</i>	63.5 % (2008) 63.3 % (2009)
	Iquiqui U.S., LLC	<i>Arica</i> <i>Cape Horn</i> <i>Rebecca Irene</i> <i>Tremont</i> <i>Unimak</i>	
	O'Hara Corporation	<i>Constellation</i> <i>Defender</i> <i>Enterprise</i>	
	Fishermen's Finest	<i>American No. 1</i> <i>U.S. Intrepid</i>	
	Cascade Fishing, Inc.	<i>Seafisher</i>	
	Ocean Peace	<i>Ocean Peace</i>	

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	

† 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 participant 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. 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.

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C+S AMENDMENT 80 COOPERATIVE

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
X1	Mike Szymanski	FCA
X2	Joe Sullivan	Best Use Cooperative
X3	Dave Wood pass	US Seafoods, LLC
X4	Susan Robinson	Fishermen's Finest
5	Todd Loomis	Cascade Fishing Inc
6	Lori Swanson	Groundfish Forum
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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.