

MEMORANDUM

TO: AP and Council Members
FROM: Chris Oliver *DO*
Executive Director *to*
DATE: September 29, 2008
SUBJECT: Aleutian Islands processing sideboards

ESTIMATED TIME 3 HOURS

ACTION REQUIRED

- (a) Review discussion paper on sideboards for AI Pacific cod processing, action as necessary.
- (b) Review discussion paper on sideboards for AI POP/Atka mackerel processing, action as necessary.

BACKGROUND

At its June 2008 meeting, the Council requested that staff provide two separate discussion papers on potential options to establish processing sideboards for catcher vessel harvests in the Eastern and Central Aleutian Islands of: 1) Pacific cod, and 2) Atka mackerel and Pacific ocean perch. The June 2008 Council motions redirected staff from providing a formal analysis, as requested in April, to developing discussion papers. The purpose of each paper is to review the Council's draft problem statement and provide a preliminary assessment of the proposed options.

A sideboard is a collective limit for all vessels subject to the sideboard; it does not represent a guaranteed allocation. Essentially, the first action (D-1(a)) proposes to limit the amount of catcher vessel Pacific cod harvest in Areas 541 and 542 that can be processed by a processing vessel (catcher processor/floater/mothership) that is part of a specific rationalization program (American Fisheries Act, BSAI crab rationalization, and BSAI Amendment 80). Similarly, the second action (D-1(b)) proposes to limit the amount of catcher vessel Atka mackerel and Pacific ocean perch harvest in Areas 541 and 542 that can be processed by a processing vessel (catcher processor/floater/mothership) that is part of a specific rationalization program (BSAI Amendment 80).

The problem statements and options are provided in the discussion papers. Generally, however, the problem statements note that recent rationalization programs provide benefits to processing vessels participating in these programs and afford opportunities for consolidation, thus freeing some processing capacity to target the non-rationalized BSAI Pacific cod catcher vessel fisheries and the trawl limited access sector Pacific ocean perch and Atka mackerel fisheries. These fisheries are a few of the primary remaining fisheries in the BSAI that are not operating under a rationalization program. While there are limitations on the amount of these species *harvested* by the rationalized sectors, there are no limits on the amount harvested by catcher vessels that can be delivered to catcher processors or floating processors that operate under these rationalized programs. In the recent past, representatives from Adak have proposed Council action to provide such processing limits (sideboards) in the Eastern and Central AI Pacific cod fisheries, in order to protect shoreside processing opportunities for these species.

The suite of options for each proposed action provides various sets of qualifying years by which to establish a processing sideboard for the rationalized sector(s). In brief, the sideboard limits are proposed to be based on either the greatest amount of the species delivered within the range of qualifying years, or the average annual amount. There are several additional options included in the Pacific cod processing sideboard action, as this action includes three rationalized sectors and a broader set of qualifying years. In addition, the Pacific cod action also includes a sideboard date for consideration (i.e., prior to a specified date, these processing vessels could not take catcher vessel deliveries of Pacific cod harvested in the Eastern or Central Aleutians). Please refer to each paper for the specific suite of options proposed by the Council, as well as a preliminary analysis of the results of those options.

The Pacific cod paper was sent to you on September 12, and the Atka mackerel/Pacific ocean perch paper was sent to you on August 29. They are also attached as **Item D-1(a)** and **Item D-1(b)**, respectively. The Council is scheduled to review these papers at this October Council meeting. Upon review, the Council could initiate a formal analysis (EA/RIR/IRFA) for one or both of these proposed actions, or request additional information prior to taking this step. Note that each paper includes a section that outlines several questions or clarifications that are necessary from the Council, should the Council want to proceed with an analysis.

**Measures to support community protections for Eastern Aleutian Islands communities:
Pacific cod processing sideboards**

October 2008

At its June 2008 meeting, the Council requested that staff provide a discussion paper on potential options to establish processing sideboards for Pacific cod harvests in the Eastern and Central Aleutian Islands (Areas 541 and 542, respectively). The Council motion redirected staff from providing a formal analysis, as requested in April, to developing a discussion paper. The purpose of this paper is to review the Council's draft problem statement and provide a preliminary assessment of the proposed options. Note that at this same meeting, the Council requested a separate discussion paper on potential options to establish processing sideboards for Atka mackerel and Pacific ocean perch harvests in the Eastern and Central Aleutian Islands. This paper is also scheduled to be reviewed at the October 2008 Council meeting.

Problem Statement & Background

The problem statement and additional statements regarding the affected area and sectors from the June 2008 Council motion are as follows:

Draft problem statement:

The American Fisheries Act, BSAI crab rationalization program, and BSAI Amendment 80 program each provide benefits to processing vessels that were intended to protect investments in and dependence on the respective fishery resource. Each of these rationalization programs has afforded opportunities for consolidation, thus freeing some processing capacity to target the non-rationalized BSAI Pacific cod fishery at the expense of other industry and community investments.

Affected resource and areas:

Pacific cod harvested in Areas 541 and 542 from the Federally-managed and State parallel fisheries.

Affected vessels:

Vessels that received benefits under a rationalization program with a processing element, including: AFA vessels, processing vessels that contributed history to *C. opilio* BSAI crab processing quota share allocations, and catcher processors that qualified under Amendment 80.

The draft problem statement above notes three specific rationalization programs: American Fisheries Act (AFA), BSAI crab rationalization, and BSAI Amendment 80, which provide benefits to processing vessels and afford opportunities for consolidation, thus freeing some processing capacity to target the non-rationalized BSAI Pacific cod fishery. Pacific cod harvested by catcher vessels is one of the primary remaining fisheries in the BSAI that is not operating under a rationalization program. And while there are limitations on the amount of Pacific cod harvested by the rationalized sectors, there are no limits on the amount of Pacific cod harvested by catcher vessels that can be delivered to catcher processors or floating processors that operate under these rationalized programs. In the recent past, representatives from Adak have proposed Council action to provide such processing limits (sideboards) in the Eastern and Central AI Pacific cod fisheries, in order to protect shoreside processing opportunities for Pacific cod.

A sideboard is a collective limit for all vessels subject to the sideboard; it does not represent a guaranteed allocation. Vessels subject to a sideboard are allowed to fish up to the sideboard limit but cannot exceed it. While harvesting sideboards have been included as part of each rationalization program established in

the North Pacific, processing sideboards are not as common. Processing sideboards were included in the AFA, but not adopted in either the BSAI Crab Rationalization Program or the BSAI Amendment 80 program.

The AFA, effective in 1999, created exclusive allocations of Bering Sea pollock for catcher vessels, catcher processors (CPs), and motherships, and included harvest sideboards for both the AFA catcher vessel and catcher processor sectors in the BSAI and the GOA. Regulations implementing the AFA prohibit AFA CPs from fishing in the GOA, and limit their processing of pollock and other groundfish.¹ The AFA also included crab processing sideboards, the regulations for which were based on the structure defined in the Act under Section 211(c)(2)(A).² This section of the Act is specific to shorebased and mothership processors. (Recall that catcher/processors are precluded from processing any crab under the AFA.) The AFA crab processing sideboards were eventually subsumed by the processing quota share allocations established under BSAI crab rationalization. The Council also established pollock processing limits for the AFA fleet, set at 30 percent of the BSAI pollock TAC available to the AFA sector.³ Additional measures to protect non-AFA processors through groundfish processing sideboards have been considered by the Council, but further discussions and decisions have been tabled until negative impacts are realized (NPFMC, April 2002).⁴

BSAI Amendment 80 allocates several BSAI non-pollock⁵ groundfish fisheries among trawl fishing sectors, and facilitates the formation of harvesting cooperatives in the non-AFA trawl catcher processor sector. In effect, the program establishes a limited access privilege program⁶ for a subset of the non-AFA trawl catcher processor sector. Many of the elements of Amendment 80 were effective on October 15, 2007; the remaining portions of the final rule were effective January 2008.⁷

The BSAI Crab Rationalization Program, effective in 2005, allocates BSAI crab resources among harvesters, processors, and coastal communities. Share allocations to harvesters and processors, together with incentives to participate in fishery cooperatives, were intended to increase efficiencies, provide economic stability, and facilitate compensated reduction of excess capacities in the harvesting and processing sectors. Regional landing and processing requirements were included, as well as other community protection measures. Most king and Tanner crab fisheries in the BSAI are now rationalized

¹ 50 CFR 679.7(k)(1)(ii) It is unlawful for any person to use a listed AFA catcher/processor to harvest any species of fish in the GOA; and 50 CFR 679.7(k)(1)(iv) It is unlawful for any person to use a listed AFA catcher/processor to process any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

²Section 211(c)(2)(A): (2) *BERING SEA CRAB AND GROUND FISH*.—(A) *Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, 1997. For the purposes of this subparagraph, the term "facilities" means any processing plant, catcher/processor, mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.*

³50 CFR 679.7(k)(7) Excessive processing shares. It is unlawful for an AFA entity to process an amount of BS pollock that exceeds the 30-percent excessive share limit specified under § 679.20(a)(5)(i)(A)(Z). The owners and operators of the individual processors comprising the AFA entity that processes BS pollock will be held jointly and severally liable for exceeding the excessive processing share limit.

⁴*Report to the U.S. Congress and Secretary of Commerce: Impacts of the American Fisheries Act*, NPFMC, April 2002.

⁵The groundfish species in the BSAI directly affected by Amendment 80 include Atka mackerel, AI Pacific ocean perch, Flathead sole, Pacific cod, rock sole, and yellowfin sole.

⁶The Magnuson Stevens Act (as amended through Jan. 12, 2007) defines the term: "limited access privilege"—(A) means a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person; and (B) includes an individual fishing quota; but (C) does not include community development quotas as described in section 305(i)."

⁷The final rule is published at 72 FR 52668 (September 14, 2007).

crab fisheries. This includes the IFQ/IPQ fisheries; the CDQ crab fisheries (except in Norton Sound), and the allocation of golden king crab to Adak. A few BSAI king and Tanner crab fisheries remain under the License Limitation Program.⁸

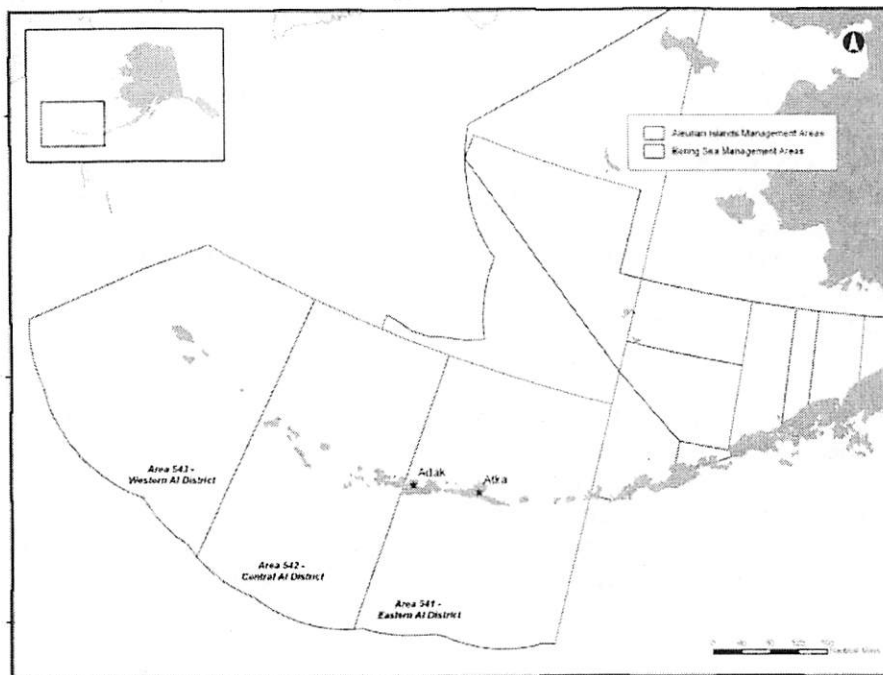
Each of these three programs is considered a limited access privilege program, or rationalization program, created to allow members to form cooperatives and thus improve both resource conservation and economic efficiency for harvesters who participate in those specific fisheries. Generally, these programs are intended to allow members of the specified sectors to more nearly optimize when and where they fish, which would potentially reduce bycatch, minimize waste, and improve utilization of fish resources. The intended results include increased operational efficiency for vessels in the program, by allowing them to alter their historic fishing patterns and operate under a cooperative structure. The flexibility introduced under these programs, and the ability to operate under a cooperative system, potentially provide these vessels a competitive advantage over participants in other fisheries that are not currently operating under a rationalized system.

All of these rationalization programs included other broad goals to limit the ability of these sectors to expand their harvesting capacity into other fisheries not managed under a limited access privilege program. The Council recognized this need by establishing harvesting sideboards in various other fisheries and areas. However, while the AFA, crab rationalization, and Amendment 80 allow for consolidation of rationalized harvesting *and processing* sectors, BSAI groundfish processing sideboards were not established for these sectors, with the exception of the 30% pollock processing (excessive share) limits for the AFA fleet.

The Council motion from June 2008 notes that the action under consideration to establish Pacific cod processing sideboards is intended to protect two Aleutian Islands communities. These are Atka and Adak, both of which are located in Area 541, the Eastern Aleutian Islands (see Figure 1).

⁸Source: <http://www.fakr.noaa.gov/sustainablefisheries/crab/rat/progfaq.htm#wicr>

Figure 1 Map of Federal Reporting Areas 541, 542, and 543 (Aleutian Districts)



Proponents of the proposed action from Adak contend that lack of sideboards on processing of Pacific cod harvested in the Eastern and Central Aleutian Islands preempts a significant opportunity for Pacific cod harvests to benefit vessels operating out of Adak and delivering their catch to its shorebased processor. The transient markets provided by mobile floating processors (motherships) undermine community stability by operating only during the most profitable part of the season. They contend that this makes it difficult for shorebased processors to remain in business and provide the year-round markets necessary for smaller vessels engaged in a suite of different fisheries.

This concern was prompted in 2008, due to perceived negative impacts on Adak from additional processing by motherships in the Eastern and Central AI during the 2008 BSAI Pacific cod A season; however, proponents of the action have related concerns that the cumulative effect of several management actions that restrict the expansion of fishing opportunities has contributed to the problem. Specifically, with the advent of several rationalization programs (e.g., AFA, BSAI crab rationalization, and Amendment 80), there is a concern that mobile, floating processors (i.e., vessels operating as motherships) could increase effort in any remaining open fishery.

Affected resource and areas

The Council motion clarifies that the action would affect Pacific cod harvested in Areas 541 and 542 from the Federally-managed and State parallel fisheries. The proposed action focuses on limiting catcher vessel deliveries of Pacific cod in Area 541 (Eastern Aleutian District) and Area 542 (Central Aleutian District) to the three rationalized sectors (see the following section for details on these sectors).

Staff assumes that the processing sideboard would apply to all non-CDQ Pacific cod harvested by catcher vessels in these two areas in the Federal fishery, which includes the Pacific cod fishery in Federal waters and the parallel fishery that occurs in State waters. The State parallel fishery is opened at the same time as

the Federal fishery in Federal waters. State parallel fishery harvests are considered part of the Federal total allowable catch (TAC) and Federally-permitted vessels move between State and Federal waters during the concurrent parallel and Federal fisheries. The State opens the parallel fisheries through emergency order by adopting the groundfish seasons, bycatch limits, and allowable gear types that apply in the adjacent Federal fisheries.⁹ The Council should clarify if it intends for CDQ harvests to be included. Currently, the vast majority of CDQ Pacific cod is harvested by hook-and-line CPs, thus, there may be no practical effect regardless. However, staff assumes that the CDQ BSAI Pacific cod fishery would not be included in the proposed action, nor are any catcher vessel harvests in the CDQ fisheries used to calculate the proposed options for cod processing sideboards in this paper.

Note that the proposed action would not affect the State-managed Pacific cod fishery that occurs in State waters in the AI. This fishery was established by the Alaska Board of Fisheries in 2006, and comprises 3% of the Federal BSAI Pacific cod ABC. This fishery is managed by the State and has different sector requirements and seasons than the Federal Pacific cod fishery. The State-managed AI Pacific cod fishery would not be affected by the proposed action, nor are the harvests in these fisheries used to calculate the proposed options for cod processing sideboards.

Affected processing sectors

The Council motion identifies three sectors that would potentially be subject to a processing sideboard limit on Pacific cod harvested in Areas 541 and 542. These are vessels that received benefits under a rationalization program that included a processing element. The motion identifies:

- AFA vessels
- Processing vessels that contributed history to *C. opilio* BSAI crab processing quota share allocations
- Catcher processors that qualified under BSAI Amendment 80

There are 21 AFA CPs and 3 motherships. It is currently assumed that these are the vessels that would be subject to the proposed processing sideboard, unless the Council specifies otherwise. A list of these vessels is provided as **Appendix 1**. These are also the vessels whose history (amount of Pacific cod delivered to these vessels by other catcher vessels) is used to calculate the proposed options for the cod processing sideboard. Note that the AFA CP sector currently has a Pacific cod harvest allocation of 2.3 percent of the BSAI Pacific cod ITAC, and thus is not subject to a harvest sideboard for Pacific cod. Note also that one eligible AFA CP is also eligible under Amendment 80.

Appendix 2 lists the 28 processing vessels that may be construed to have contributed history to *C. opilio* BSAI crab processing quota share (PQS) allocations under the crab rationalization program. Fifteen of those vessels are floating processors, and thirteen are catcher processors. Under the crab rationalization program, a company that processed crab in 1998 or 1999 (or had a substantial processing history in the Bering Sea *C. opilio* fishery and met an investment requirement) was eligible to receive an allocation of PQS. Any processing vessel owned by a company meeting the eligibility criteria that received deliveries during a fishery's qualifying period (1997 to 1999, inclusive, for Bering Sea *C. opilio*) contributed history toward the company's allocation of PQS in that fishery. In addition, vessels that met the processing eligibility criteria that processed their own catch as catcher processors also were eligible to receive catcher processor QS based on qualified catcher processor history (1996 to 2000, inclusive, for Bering Sea *C. opilio*).

⁹In some cases, the State may establish additional gear or vessel size restrictions in State waters that would apply even during the parallel fishery (i.e., if the State establishes a general prohibition on trawl gear in State waters, that continues to apply during the parallel fishery).

Since catcher processor QS is severable into catcher vessel QS and PQS, any vessel receiving catcher processor QS under the program might be considered to have effectively received PQS. In addition, catcher processor QS was based on crab that was caught and processed, indicating that the vessels operated as a processing platform historically, and could again in the future. This paper assumes that all 28 processing vessels, whether floaters or catcher processors, fall under the category identified in the Council motion. The Council should clarify if that is not the intent. The estimates in this paper include deliveries to all vessels that contributed history to a PQS allocation in the Bering Sea *C. opilio* fishery or received an allocation of catcher processor QS in the Bering Sea *C. opilio* fishery.

NOAA Fisheries recently completed its determination of the qualifying vessels under Amendment 80. The license tied to the Amendment 80 quota, as well as all other LLPs assigned to the qualifying vessel at the time of Amendment 80 program implementation, are restricted from being used by a non-Amendment 80 vessel. Congress determined that the qualification period for Amendment 80 vessels is based on harvests from 1997 through 2002; a total of 28 vessels are qualified for the Amendment 80 program.¹⁰ The specific amount of QS that each of these qualified vessels may generate was developed by the Council and is based primarily on catch during 1998 through 2004. The list of catcher processors that qualified under Amendment 80 is provided as **Appendix 3**. The 28 licenses originally assigned to the Amendment 80 vessels are listed in the final rule.¹¹ The Amendment 80 sector currently has a Pacific cod harvest allocation of 13.4 percent of the BSAI Pacific cod ITAC, and thus is not subject to a harvest sideboard for Pacific cod.

Background data on the BSAI Pacific cod fishery

The Pacific cod TAC allocations and apportionments for 2008 and 2009 are located in Table 5 of the groundfish specifications published February 26, 2008 (73 FR 10168) and attached to this paper as **Appendix 4** for reference. The 2008 BSAI Pacific cod TAC is 170,720 mt, with the CDQ allocation of 10.7 percent, or 18,267 mt. Thus, the 2008 BSAI Pacific cod ITAC is 152,453 mt.

The BSAI Pacific cod ITAC is currently fully distributed among nine competing harvest sectors, five of which are catcher vessel sectors: hook-and-line CV $\geq 60'$; pot CV $\geq 60'$; hook-and-line or pot CV $< 60'$; trawl CV; and jig vessels. The CP sectors are: hook-and-line CP; pot CP; AFA trawl CP; and Amendment 80 trawl CP. (The Amendment 80 CP sector is further divided between Am. 80 cooperatives and the Am. 80 limited access sector.) The BSAI Pacific cod TAC has been apportioned among different gear sectors since 1994, with the most recent amendment to the allocations effective in 2008 (BSAI Amendment 85). Currently, about 34 percent of the total non-CDQ allocation of BSAI Pacific cod is to catcher vessel sectors. The majority (22.1 percent) is allocated to the trawl CV sector.

Note that there continues to be one combined BSAI Pacific cod TAC, although the Council has previously considered different methodologies by which to maintain sector allocations should the BSAI Pacific cod TAC be apportioned between the BS and the AI during a future harvest specifications process. The issue of whether to split the combined TAC has been raised at Plan Team, SSC, and Council meetings during the last several years, with recognition that management implications complicate the

¹⁰The non-AFA trawl CP sector (universe of Amendment 80 vessels) was defined by the Consolidated Appropriations Act of 2005, Section 219(a)(7), which required a CP to have harvested with trawl gear and processed not less than a total of 150 mt of non-pollock groundfish during the period January 1, 1997, to December 31, 2002.

¹¹On May 19, 2008, in the case *Arctic Sole Seafoods v. Gutierrez*, the Western District of Washington ruled that a qualified owner of an Amendment 80 vessel may "replace a lost vessel with a single substitute vessel." This ruling would allow a person to replace an Amendment 80 vessel that has suffered an actual total loss, constructive total loss, or permanent ineligibility to receive a fishery endorsement under 46 U.S.C. 12108. For example, a person could replace a lost Amendment 80 vessel with another vessel that had historically been active processing AI Atka mackerel or POP. Thus, the Council should clarify whether an Amendment 80 replacement vessel would be subject to the proposed sideboard restriction, or if the restriction is intended to apply only to the list of Amendment 80 vessels originally identified to be used in the fishery as listed in Table 31 to part 679.

issue of adopting separate area TACs in the near future. The Council is scheduled to receive a report on the compilation of existing scientific information relevant to a Pacific cod ABC and TAC area split at its October 2008 meeting.

The first tables provide background information on the BSAI Pacific cod for reference. Table 1 shows retained harvest of Pacific cod in the BSAI by year and operating type (CP or CV), from 2000 through June 2008. Note that this table does not include CDQ harvest or harvests from the State water Pacific cod fishery in the AI, as those fisheries would not be affected by the proposed action. This table provides information on how much of the retained BSAI Pacific cod harvest is attributed to catcher vessels, which may deliver to vessels acting as motherships, stationary floating processors, or shoreside processors.

Table 1 Retained harvest of BSAI Pacific cod in the BSAI, 2000 – June 2008

Year	Harvest sector ¹	BSAI tons	BSAI vessel count
2000	CP	115,447	86
	CV	58,360	n/a
2001	CP	126,324	86
	CV	35,204	n/a
2002	CP	124,846	84
	CV	54,365	n/a
2003	CP	128,017	81
	CV	65,353	247
2004	CP	138,016	81
	CV	55,700	230
2005	CP	136,964	80
	CV	50,574	228
2006	CP	121,860	81
	CV	50,240	217
2007	CP	107,981	79
	CV	46,753	229
2008 (thru June)	CP	49,535	80
	CV	40,482	192

Source: NMFS blend/catch accounting database, 2000 – 2008. 2008 data are preliminary, and only include harvest through June. Retained catch only. Excludes CDQ harvests and State-managed AI P. cod fishery.

¹Harvest sector indicates whether a vessel was acting as a CV or CP during a given landing. A given vessel may operate as both a CV and CP.

n/a = not available. Unique CV counts in these data are not reliable prior to 2003.

Table 1 includes harvest from any gear type, although the vast majority is from vessels using hook-and-line gear or trawl gear. All gear types are included, as the proposed action does not differentiate between gear types. The majority of the harvest has been by CPs, most notably hook-and-line CPs. The harvest of BSAI Pacific cod has been relatively stable during this time period, with TACs around 200,000 mt until 2007. During this period, total retained harvest reached a low of about 155,000 mt (2007) and a high of about 194,000 mt (2004). The CV harvest has also been relatively steady, with a high of about 65,000-mt in 2003.

Table 2 Retained harvest of Pacific cod from the Eastern and Central AI, 2000 - June 2008

Year	Harvest sector ¹	Eastern and Central AI tons	Eastern and Central AI vessel count	Percent AI/BSAI
2000	CP	14,485	41	12.5%
	CV	13,761	n/a	23.6%
	Total	28,246		16.3%
2001	CP	13,896	33	11.0%
	CV	6,804	n/a	19.3%
	Total	20,700		12.8%
2002	CP	11,847	28	9.5%
	CV	15,184	n/a	27.9%
	Total	27,031		15.1%
2003	CP	11,751	25	9.2%
	CV	17,242	56	26.4%
	Total	28,993		15.0%
2004	CP	11,158	23	8.1%
	CV	13,498	38	24.2%
	Total	24,656		12.7%
2005	CP	9,215	20	6.7%
	CV	8,000	33	15.8%
	Total	17,215		9.2%
2006	CP	8,546	24	7.0%
	CV	6,201	40	12.3%
	Total	14,748		8.6%
2007	CP	10,636	24	9.8%
	CV	12,301	53	26.3%
	Total	22,937		14.8%
2008 (thru June)	CP	3,078	17	6.2%
	CV	11,106	47	27.4%
	Total	14,184		15.8%

Source: NMFS blend/catch accounting database, 2000 - 2008. 2008 data are preliminary, and include harvest through June. Retained catch only. Excludes CDQ harvest and State-managed AI P. cod fishery.
¹Harvest sector indicates whether a vessel was acting as a CV or CP during a given landing. A given vessel may operate as both a CV and CP. N/a = not available. Unique CV counts in these data are not reliable prior to 2003.

Table 2 shows the retained harvest of Pacific cod in Areas 541 and 542 (Eastern and Central AI, respectively) by year and operating type (CP or CV), from 2000 through June 2008. The last column of Table 2 provides the percentage of the BSAI Pacific cod harvest attributed to the Eastern and Central AI, from a low of 8.6% in 2006 to a high of 16.3% in 2000. While 2008 data are preliminary and only provided through June 2008, the data to-date show 15.8% of the total BSAI Pacific cod catch was harvested in the Eastern and Central AI. (Inseason management staff note that this percentage is likely to be reduced by the end of the year, based on catch patterns in previous years). Note that a higher percentage of the total annual CV harvest (12% - 28%) was from the Eastern and Central AI during this time period, compared to the CP sectors (7% - 13%). Like the previous table, Table 2 does not include CDQ harvest or harvest from the AI State water Pacific cod fishery.

The BSAI Pacific cod allocations are seasonally allocated for each sector, with the exception of the allocation to the hook-and-line/pot <60' sector. Refer to Appendix 4 for the current seasonal apportionments for each sector. Note that unharvested seasonal allocations roll to the sector's next season within the same year. The temporal dispersion measures in the BSAI Pacific cod fishery, primarily a result of the 2001 Biological Opinion on Steller sea lions, were established to meet a seasonal target of 70% harvest in the first half of the year (January 1 – June 10) and 30% in the second half (June 10 – December 31). The objective is to limit the amount of total cod harvest that could be taken in the first half of the year, in order to disperse the harvest of cod throughout the year, in consideration of foraging sea lions.

Most gear sectors prefer to take the majority of their harvest in the first (A) season, as a result of higher catch per unit effort due to increased aggregation of cod, as well as market and weather conditions. As with most sectors, the trawl CV cod A season has been shorter in recent years, due to various factors. These include: additional cod effort in the BSAI; allocation of 3% of the BSAI Pacific cod ABC to a State waters AI cod fishery starting in 2006; and an increase in the CDQ allocation from 7.5 percent to 10.7 percent in 2008. In addition, Amendment 85 reduced the trawl CV cod allocation from 23.5 percent of the BSAI Pacific cod ITAC (in 2007) to 22.1 percent (starting in 2008). Recently, the A season for BSAI trawl CV cod has been open less than 2 months, closing around mid-March (see Table 3 below).

Table 3 Length of BSAI Trawl CV A season, 2000 - 2008

Year	Length of A season for BSAI trawl CV Pacific cod allocation (days)
2008	46
2007	51
2006	47
2005	52
2004	63
2003	72
2002	72
2001	72
2000	73

Source: NOAA Fisheries, RAM Division.

Background data on Adak and Atka

Adak and Atka are the two communities located in the eastern AI with shoreside processing plants that the processing sideboards are intended to protect, by limiting the amount of Pacific cod deliveries that each of the rationalized sectors (AFA, crab processing vessels, Amendment 80 CPs) can receive from catcher vessels harvesting cod in the Eastern and Central AI. Note that a separate action has been proposed to establish processing sideboards on the amount of Atka mackerel and Pacific ocean perch that Amendment 80 CPs can receive from these same areas.

Limited profiles of Atka and Adak are provided here for reference from two sources.¹² Atka is located on Atka Island towards the end of the Aleutian Island archipelago. It is one of the western most fishing communities in the Aleutian chain, and has a 2000 U.S. Census population of 92. Residents of Atka are primarily Alaska Native (Aleut), and the economy is predominantly based on subsistence living as well as commercial fishing. Atka is a CDQ community, represented by APICDA, and has a small onshore processor (Atka Pride Seafoods) which serves the local fleet and employs local residents. The primary

¹²Community information on Atka is from the "Community Profiles for North Pacific Fisheries – Alaska", U.S. Dept. of Commerce, NOAA Fisheries, NMFS, AFSC. December 2005, pp. 297 – 300. Community information on Adak is from the "Comprehensive Baseline Commercial Fishing Community Profiles: Sand Point, Adak, St. Paul, and St. George, Alaska", prepared for the NPRB and NPFMC by EDAW, June 2008.

species processed are halibut and sablefish, and the commercial fleet delivering to Atka is involved mainly in those fisheries. According to the CFEC, 4 permits were held by 3 permit holders in Atka in 2006, and 2 permits were held by 2 permit holders in 2007.

Note that the Council received a letter from city leaders in Atka at its April 2008 meeting, related to a proposal from Adak Fisheries for NMFS to develop an emergency rule to require that all trawl Pacific cod harvested in the region be delivered onshore in the 2009 A season.¹³ While that proposal is not being developed, Atka noted that such processing restrictions would reduce their revenue opportunities. They currently depend upon a floating processor (Independence, Trident Seafoods) to purchase and process Pacific cod. Trident pays a local sales tax to Atka, as well as raw fish taxes. The letter notes that Atka is planning to transition to a shoreplant for processing crab and Pacific cod in the future.

Both APICDA and Atxam Corporation, the village corporation in Atka, recently purchased processing quota share for Western AI golden king crab, with APICDA purchasing the maximum amount of shares under the cap. APICDA also holds Eastern AI golden king crab PQS, and Atxam holds Western AI red king crab PQS. Atka plans to use Trident's floater to process that crab this season, with plans to reconstruct its onshore processor and add a crab processing line in time for the 2009/2010 crab season.¹⁴ The intent is to reconstruct the plant and add Pacific cod capacity as well, but representatives of Atka have emphasized that the ability to use a stationary floating processor in Atka is necessary in both the short and long-term for the viability of that community. Anecdotal evidence suggests that a high volume of cod is necessary to make cod operations economically viable, whether the operation is a shorebased plant or floating processor. Atka recognizes it would need to substantially increase its shoreplant capacity in order to make cod processing economically feasible.

Adak is located on Kuluk Bay on Adak Island in the Aleutian chain. It is the southernmost community in Alaska, with a 2000 U.S. Census population of 316, although estimates of year-round residents vary. According to City of Adak staff estimates, in 2007, the population was about 120 year-round residents. Unlike Atka, Adak is not a CDQ community. Most are aware of Adak's significant role during World War II as a U.S. military operations base, and the Aleut Corporation's current efforts to develop Adak as a commercial center and civilian community with a private sector economy focused heavily on commercial fishing. Through Congressional action, Adak currently receives an exclusive allocation of Western AI golden king crab¹⁵ (allocated to a non-profit entity representing Adak) and an allocation of the AI pollock fishery (allocated to the Aleut Corporation). Adak is pursuing a broader range of fisheries for a resident fleet to be able to deliver to Adak Fisheries, the shoreside processor located on Adak.

As a relatively new civilian community, the local fleet in Adak is fairly small, composed primarily of vessels 32' or less in length overall. According to the CFEC, 10 permits were held by 6 permit holders in Adak in 2006, and 6 permits were held by 3 permit holders in 2007. Of the six permit holders in Adak in 2006, five had a permit for groundfish, with one also having a halibut/sablefish permit. One permit holder had a salmon permit, which was combined with a crab/other permit. The community profiles document (EDAW, June 2008) reports that at the time of fieldwork in 2007, five small vessels were considered 'local' by residents and actively engaged in, or attempting to be engaged in, local fisheries. Additionally, there are a number of other vessels that spend time in Adak and may have the community name painted on their vessel, but are not considered part of the local fleet by Adak residents, as they have stronger homeporting and fishing effort ties elsewhere.

¹³Letter from L. Prokopeuff, M. Snigaroff, and L. Lokanin, to E. Olson, Council Chair, April 2, 2008.

¹⁴Larry Cotter, APICDA, personal communication, August 15, 2008.

¹⁵In addition, fifty percent of the class A IFQ (i.e., IFQ that must be delivered to a processor with matching IPQ) for the Western Aleutian Islands golden king crab fishery must be delivered to a shorebased or stationary floating crab processor west of 174 degrees west. Only two communities, Adak and Atka, are located within this geographic area.

The following tables show various species or categories of species delivered to the shoreside plant in Adak (Adak Fisheries) during 2003 - 2007. A waiver of confidentiality was offered by and obtained from a representative of Adak Fisheries in order to provide the ADF&G fishticket data for this processor.¹⁶ Harvest from the Aleutian Islands is differentiated from the Bering Sea, and Pacific cod data are provided when possible. Harvest amounts from fewer than three vessels cannot be reported due to confidentiality rules. Note that some crab landings that were custom processed at the Adak facility under another processor name were not included, as the confidentiality waiver only applies to Adak Fisheries. Similar information is not provided for the shoreside processor in Atka, due also to confidentiality limitations. However, the two primary species processed in Atka are halibut and sablefish.

Table 4 shows that the majority of the deliveries to Adak Fisheries during this time period have been Pacific cod, ranging from a low in 2005 of 6,438 mt to a high of 12,435 mt in 2007. Note that the State water Pacific cod fishery in the AI was established by the Alaska Board of Fisheries in 2006, and this harvest is broken out for 2006 and 2007. The allocation to the State water Pacific cod fishery is 3% of the BSAI Pacific cod ABC. The State water AI Pacific cod fishery, CDQ Pacific cod, and Federal Pacific cod are all included, in order to provide the total amount of cod processed in recent years.

Typically, as stated previously, the majority of the BSAI trawl CV Pacific cod harvest occurs in the A season, with additional landings in the B and C seasons. As with most sectors, the A season has been shorter in recent years, the shortest of which has been 2008. Adak Fisheries has testified to the Council at numerous meetings that substantial investments in plant capacity have occurred in recent years in response to the shortened cod seasons.

While 2008 data are not included in Table 4, the preliminary NMFS catch accounting data show that through June 2008, Adak Fisheries received a little over 4,000 mt of Federal Pacific cod from 31 unique catcher vessels. Adak Fisheries previously provided the Council with a summary of the 2002 through 2008 A season for trawl CV Pacific cod in Adak. Adak Fisheries stated that early in 2008, the level of harvest was greater than normal, until mothership vessels arrived near Adak about mid-February. Adak asserts that this resulted in a diversion of landings that would have otherwise been processed at the shoreside plant in Adak, and that this reduction in landings continued for the remainder of the A season (about a month) and into the State water AI season. Adak Fisheries representatives have stated that the plant realized a 60 percent reduction in landings compared to 2007.

¹⁶Received by ADF&G, signed by William Tisher, July 30, 2008.

Table 4 Number of vessels delivering and amount (mt) to Adak Fisheries, by species or species group, 2003 - 2007

Year	FMP Area	Species	Vessel count	Metric tons
2003	AI	Pacific cod	23	8,706
	AI	crab, golden (brown) king	6	861
	AI	crab, red king	10	65
	AI	halibut	29	610
	AI	other AI groundfish	na	294
	BS	Pacific cod	1	conf.
	BS	other BS groundfish	na	2
2004	AI	Pacific cod	19	9,430
	AI	crab, golden (brown) king	7	679
	AI	halibut	25	393
		halibut	1	conf.
	AI	Atka mackerel	4	0
	AI	POP	4	3
	AI	other AI groundfish	na	159
	BS	halibut	3	21
	BS	BS groundfish	na	2
2005	AI	Pacific cod	16	6,438
	AI	crab, golden (brown) king	2	conf.
	AI	halibut	21	326
	AI	other AI groundfish	na	292
	BS	BS groundfish	na	1
2006	AI	State Waters PCod	12	873
	AI	Pacific cod	17	5,576
	AI	halibut	11	117
	AI	POP	1	conf.
	AI	other AI groundfish	na	971
	WG	halibut	1	conf.
2007	AI	State Waters PCod	31	2,832
	AI	Pacific cod	29	9,603
	AI	crab, golden (brown) king	2	conf.
	AI	POP	2	conf.
	AI	other AI groundfish	na	1,377

Source: ADF&G Fishtickets, 2003 – 2007.

Includes deliveries of any species to Adak Fisheries, including CDQ and AI State water Pacific cod fisheries. Retained catch only.

Note: Small amounts of custom processed crab species that were physically processed in Adak under another plant name are not included.

Note: Harvest (mt) is rounded to the nearest metric ton. If the number is zero, it means the harvest was <0.5 mt.

It may be beneficial to understand more about the existing fleet that delivers to Adak and Atka. Table 5 shows the number of unique vessels that delivered to Adak and Atka during 2003 – 2007, in order to provide an idea of the size of the recent fleet delivering to these two communities. Metric tons (retained catch) landed are provided for Adak, as Adak Fisheries waived confidentiality of these data. However, landings data for Atka are masked. Note that while Table 5 shows deliveries from all FMP areas delivered to these communities, the vast majority is from Areas 541 (EAI) and 542 (CAI).

Table 5 shows that 27 to 70 vessels annually have delivered species harvested in the Aleutian Islands to Adak during 2003 – 2007, with those annual harvests ranging from about 7,000 mt (2005) to 14,000 mt (2007). A few vessels also delivered species harvested in the Bering Sea. Table 5 also shows that 3 to 7 vessels annually delivered species harvested in the AI to Atka. The amount of catch delivered to Atka cannot be reported due to confidentiality rules. There are a few catch records for each community without statistical area information.

Table 5 Number of unique vessels delivering any species to Adak and Atka during 2003 - 2007, and tons landed

Year	FMP Area	City	Vessels	Metric tons
2003	AI	Adak	70	10,536
	BS	Adak	3	2
	--	Atka	2	**
	AI	Atka	7	**
2004	AI	Adak	48	10,665
	BS	Adak	5	23
	--	Adak	1	**
	--	Atka	3	**
	AI	Atka	6	**
2005	AI	Adak	34	7,222
	BS	Adak	2	**
	--	Atka	1	**
	AI	Atka	5	**
2006	AI	Adak	27	7,567
	AI	Atka	7	**
2007	AI	Adak	48	14,138
	AI	Atka	3	**

Source: ADF&G Fish tickets, 2003 – 2007.

Includes retained catch from all stat areas. Note that some catch records are missing stat area information.

**Confidential data.

The 'city' column refers to landings processed under the Adak or Atka plant names.

A small amount of crab landings that were custom processed in Adak under another plant name are excluded.

The CFEC data (not provided) also show that there are two Adak vessels delivering to Adak and two Atka vessels delivering to Atka during 2003 – 2007. This means that Adak and Atka are reported as the vessel owner's residence, based on CFEC vessel ownership records. However, 'homeport' information, or vessel owner residence information, may not provide a complete picture of the fleet of vessels delivering to these communities. As mentioned previously, additional vessels can be considered 'local' by residents and actively engaged in local fisheries.

Table 6 and Table 7 attempt to provide some information on the fleet of vessels that deliver various levels of landings to each of these communities, even though they may not be 'homeported' in these communities.

Table 6 provides a summary of participation patterns during 2003 – 2007. This table shows that of the 116 unique vessels that have made landings in Adak during 2003 – 2007, 5 of those have delivered all five years; 9 have delivered in four of the five years; 17 have delivered in three of the five years; 31 have delivered in two of the five years; and about half (54) have delivered in only one of the five years. These are unique numbers, thus, there are 31 vessels that have delivered in *at least three* of the five years during 2003 – 2007.

Table 6 Participation pattern of vessels that delivered to Adak and Atka, 2003 - 2007

Community	Number of vessels that delivered 1, 2, 3, 4, or 5 years during 2003 – 2007					Total # of unique vessels with landings in 2003 - 07
	1 year	2 years	3 years	4 years	All 5 years	
Adak	54	31	17	9	5	116
Atka	2	3	1	3	1	10

Source: ADF&G Fishtickets & CFEC records (retained catch only), 2003 – 2007. Includes catch from all areas. The 'city' column refers to landings processed under the Adak or Atka plant names.

In Atka, there are significantly fewer vessels delivering shoreside. **Error! Reference source not found.** shows that of the 10 unique vessels that have reported deliveries to Adak during 2003 – 2007, 1 of those has made landings in Atka all five years; 3 have delivered in four of the five years; 1 has delivered in three of the five years; 3 have delivered in two of the five years; and two have delivered in only one of the five years. Thus, half of the vessels (5) have made landings in Atka in *at least three* of the five years during 2003 – 2007.

Finally, Table 7 shows that of the total number of unique vessels (116) that made landings in Adak during 2003 – 2007, a range of 4 to 10 vessels annually made 10 landings or more; and 9 to 23 vessels annually made 5 or more landings. Vessels with 10 or more annual landings made up 40 percent to 58 percent of the total landings to Adak. Vessels that made at least 5 landings in a given year comprised the majority of the annual catch – from 62 percent in 2007 to a high of 90 percent in 2003. In any one year, a low of 27 vessels and a high of 70 vessels made landings in Adak during 2003 – 2007.

In Atka, there were significantly fewer vessels delivering overall; ten unique vessels delivered shoreside during 2003 – 2007. Two to 6 vessels made at least 10 annual landings in 2003 – 2005, and 1 to 7 vessels made at least 5 landings annually. Vessels that made at least 5 landings in a given year comprised the vast majority of the annual catch – more than 95 percent in most years. In any one year, a low of 3 vessels and a high of 7 vessels delivered shoreside to Atka during 2003 – 2007.

Table 7 Number of vessels with at least one, five, or ten landings in Adak and Atka annually and percent of harvest, 2003 - 2007

ADAK	Number of vessels with at least one landing per year	% of harvest	Number of vessels with at least 5 landings per year	% of harvest	Number of vessels with at least 10 landings per year	% of harvest
	2003	70	100%	23	90%	10
2004	54	100%	19	80%	4	36%
2005	35	100%	9	74%	4	47%
2006	27	100%	12	75%	6	54%
2007	48	100%	16	62%	9	40%
ATKA	Number of vessels with at least one landing per year	% of harvest	Number of vessels with at least 5 landings per year	% of harvest	Number of vessels with at least 10 landings per year	% of harvest
	2003	7	100%	7	100%	6
2004	6	100%	6	100%	5	59%
2005	5	100%	4	99%	2	39%
2006	7	100%	5	95%	0	0%
2007	3	100%	1	1%	0	0%

Source: ADF&G Fish tickets, 2003 - 2007 (retained catch only) and CFEC records. Includes catch from all areas.

Review and clarification of the proposed options

There are several overlapping options proposed to establish processing sideboard limits on Pacific cod harvested in Areas 541 and 542. These were approved in the June 2008 Council motion:

Component 1. Options for establishing processing sideboards:

Option 1. Sideboard limit

Limit the amount of Pacific cod harvested in Areas 541 or 542 that may be delivered to the affected federally permitted processing vessels by other vessels to:

- Suboption 1. the greatest amount delivered within the range of qualifying years
- Suboption 2. the average annual amount delivered within the range of qualifying years

Option 2. Sideboard date

Limit the date that the affected Federally permitted processing vessels may begin taking deliveries of Pacific cod harvested in Areas 541 or 542 to:

- Suboption 1. the earliest date a delivery was taken in any qualifying year
- Suboption 2. the average earliest date a delivery was accepted in any year, across all qualifying years

Component 2. Options for qualifying years:

Option 1. Recent history

- Suboption 1. 2005 – 2007 (3-year period prior to 2008)
- Suboption 2. 2003 – 2007 (5-year period prior to 2008)

Option 2. Years prior to implementation of the respective rationalization program

- Suboption 1. 3-year period prior to program implementation
- Suboption 2. 5-year period prior to program implementation

Component 3. Options for calculating and applying sideboards:

Option 1. Single sideboard

All affected vessels that accept deliveries of Pacific cod harvested in Areas 541 or 542 would be combined under a single sideboard.

Option 2. Program-specific sideboards

A separate sideboard would be established and managed for each of the three groups of rationalized vessels (*i.e.*, AFA, BSAI crab, BSAI Amendment 80) that accept deliveries in of Pacific cod harvested in Areas 541 or 542.

There are several questions surrounding the options that need to be addressed, as well as some assumptions that may be well understood but not explicit in the language of the options. These are summarized in the following bullets. The first questions pertain to how the sideboards are structured:

- Staff assumes that CDQ harvests of Pacific cod would not count toward the Pacific cod processing sideboard.
- Staff interprets the above options as the amounts delivered (whether greatest or average) from catcher vessels to the AFA vessels, crab vessels, or Amendment 80 CPs acting as motherships. The Council should clarify whether total or retained catch should be used.

- Staff currently assumes that Component 1, Option 1, Suboption 1 means the greatest annual amount delivered within 2005 – 2007 (not the total amount aggregated across all three years).
- All sideboard limits to date have been expressed as percentages of an ITAC or allocation. A percentage approach results in a sideboard that fluctuates with the TAC. The options propose a processing sideboard ‘amount’. Staff assumes that this amount would be based on the amount of Area 541 and 542 cod delivered to the rationalized processing sectors during the qualifying years, and then converted to a percentage of the total CV catch of Pacific cod in the BSAI (excluding AI State waters and CDO). This is because the sideboard percentage ultimately would be multiplied by the combined BSAI Pacific cod CV allocations in order to determine the annual processing limit, as there is no AI-specific Pacific cod allocation. The Council should clarify if this assumption is incorrect.
- Staff currently assumes that the sideboard would be applied to the total combined Pacific cod allocations to CVs each year. (As opposed to being applied to each individual gear-specific BSAI Pacific cod CV allocation).¹⁷ The Council should clarify if this assumption is incorrect.
- The Council should confirm that the Pacific cod processing sideboards are to be established in the aggregate for Areas 541 and 542. In effect, under Component 3, Option 1, there would be one processing sideboard for all Pacific cod harvested in Areas 541 and 542 (combined) that would apply to all three rationalized sectors. Under Component 3, Option 2, there would be a total of three processing sideboards: one processing sideboard for all Pacific cod harvested in Areas 541 and 542 (combined) that would apply to each of the three rationalized sectors. This is the current staff assumption.

The following questions pertain to which sector(s) the sideboard is applied:

- Staff assumes that the processing sideboard would apply to all eligible Amendment 80 CPs, whether they are in a cooperative or the Amendment 80 limited access fishery.

The central idea of this action is that rationalization programs, including Amendment 80, created surplus processing capacity by allowing for consolidation of a rationalized processing sector. Since Amendment 80 CPs that do not join an Amendment 80 cooperative can participate in the Amendment 80 limited access fishery, those vessels will continue to compete with each other. The final rule notes that participants in the Amendment 80 limited access fishery will not realize the same potential benefits from consolidation and coordination and will not receive an exclusive harvest privilege that accrues to members of an Amendment 80 cooperative.¹⁸ NMFS manages the Amendment 80 limited access fishery similar to the way the fisheries were managed prior to implementation of the program. Thus, it spurs the question as to whether the Council intends to apply the Pacific cod processing sideboard to all eligible Amendment 80 CPs, or to limit its application to Amendment 80 CPs participating in cooperatives.

Eligible Amendment 80 quota share holders can form a cooperative with other Amendment 80 quota share holders on an annual basis, provided they meet specific criteria. In 2008, seven Amendment 80 vessels chose not to participate in a cooperative and instead participated in the Amendment 80 limited access fishery. Six of these vessels are owned by the same company. Even if Amendment 80 vessels choose not to participate in a cooperative, there is the potential for such a limited universe of vessels in

¹⁷The CV sector allocations are: hook-and-line CV $\geq 60'$; pot CV $\geq 60'$; hook-and-line or pot CV $< 60'$; trawl CV; and jig vessels. Note that the jig allocation includes both CV and CP vessels using jig gear, but very few jig CPs have operated.

¹⁸NMFS assigns the Amendment 80 limited access fishery the amount of the Amendment 80 sector's allocation of Amendment 80 species ITAC and crab and halibut PSC that remains after allocation to all of the Amendment 80 cooperatives.

the Amendment 80 limited access fishery that it is possible to gain some benefits similar to rationalization. The limited number of participants facilitates the ability to create harvest agreements with one another. In addition, one company may own all of the vessels participating in the Amendment 80 limited access fishery, or there may only be one or two vessels that focus on a particular species (e.g., Pacific cod), thus reducing competition that would otherwise be associated with an (unrationalized) limited access fishery.

For these reasons, absent further Council direction, staff assumes that the processing sideboard would apply to all eligible Amendment 80 CPs, as the current language of the motion does not discern between those in cooperatives and those in the Amendment 80 limited access fishery.

- Are the sideboards intended to apply to vessels only acting as motherships, or also to vessels acting as stationary floating processors?

It is necessary for the Council to clarify whether the sideboard would apply only to vessels acting as motherships, or also to vessels potentially acting as stationary floating processors. While it may be unlikely that some vessels would act as stationary floating processors, the potential remains, and the implementing regulations would need to clearly articulate the vessels to which the sideboard applies.

Federal regulations currently define a mothership as “a vessel that receives and processes groundfish from other vessels” (50 CFR 679.2).¹⁹ The same regulations define a stationary floating processor as “a vessel of the United States operating as a processor in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI.” Thus, one interpretation is that stationary floaters are a subset of motherships that operate in State waters in a single geographic location, and thus are included in the definition of mothership, even if the common understanding of a ‘true’ mothership is that it is a mobile floating processor.

If it is not the Council’s intent to include vessels acting as stationary floating processors, it should clarify the sector to which the sideboard should apply. As currently stated, staff assumes that the proposed cod processing sideboard would apply to all of the affected rationalized vessels (AFA, crab processing vessels that contributed to C. opilio PQS, and Amendment 80 CPs) receiving and processing groundfish from other vessels harvesting Pacific cod in Areas 541 and 542, regardless of whether they were acting as a ‘true’ mothership or a stationary floating processor.

Finally, the last question pertains to the scope of the sideboards:

- Does the proposed Pacific cod processing sideboard apply to Pacific cod harvested in the Eastern and Central AI from all gear types?

The language of the motion does not specify whether the sideboard limits are gear specific. At this point, staff assumes that the motion proposes to limit CV deliveries of any gear type (hook-and-line, pot, jig, and trawl) to the rationalized processing sectors at issue. As stated in a previous bullet, staff calculated the sideboard amount based on the amount of Area 541 and 542 cod delivered by catcher vessels to the rationalized processing sectors during the qualifying years, converted to a percentage of the total retained CV catch of Pacific cod in the BSAI.

¹⁹A second part of the definition states: “With respect to subpart E of this part, a processor vessel that receives and processes groundfish from other vessels and is not used for, or equipped to be used for, catching groundfish.” Subpart E refers to the regulations implementing the Groundfish Observer Program.

Preliminary analysis of options

Generally, the options to establish sideboards focus on the amount of Pacific cod harvested in Areas 541 and 542 that have been delivered by catcher vessels to the AFA, crab processing vessels, and Amendment 80 sectors in recent years or the years prior to the implementation of their respective rationalization programs. Table 8 shows the unique number of processors receiving deliveries of Pacific cod harvested in Areas 541 and 542 in 1994 – June 2008. With the exception of 2008, these are the qualifying years covered under the options in Component 2. The processing sectors shown are: AFA (CPs and motherships), crab (CPs and floaters), Amendment 80 (CPs acting as motherships/floaters), 'other' mothership/floaters, and shoreside plants.

Table 8 Number of processing vessels or shoreside plants receiving Pacific cod harvested in the Central and Eastern AI, 1994 – June 2008

Year	Sector	Tons	Vessel count	Processor count
1994	Other Mothership	conf.		1
	Shoreside	conf.	16	3
Total		78		
1995	AFA	conf.		2
	Other Mothership	conf.		3
	Shoreside	47	33	7
Total		317		
1996	AFA	1,691		5
	Crab	conf.		2
	Other Mothership	conf.		2
	Shoreside	539	22	6
Total		4,354		
1997	AFA	2,518		5
	Other Mothership	3,228		5
	Shoreside	212	17	7
Total		5,958		
1998	AFA	1,213		6
	Other Mothership	4,518		7
	Shoreside	44	7	4
Total		5,775		
1999	AFA	5,455		5
	Am80	conf.		2
	Crab	conf.		1
	Other Mothership	289		4
	Shoreside	3,402	44	6
Total		9,587		
2000	AFA	conf.		1
	Crab	4,662		3
	Other Mothership	conf.		2
	Shoreside	8,104	77	11
Total		14,387		
2001	AFA	conf.	2	1
	Crab	conf.	9	1
	Other Mothership	conf.	2	1
	Shoreside	3,831	46	8
Total		7,520		

Table 8 continued.

Year	Sector	Tons	Vessel count	Processor count
2002	AFA	conf.	2	1
	Crab	conf.	7	2
	Shoreside	10,126	33	6
Total		15,140		
2003	AFA	conf.	3	1
	Crab	conf.	15	2
	Shoreside	9,019	32	6
Total		17,031		
2004	AFA	conf.	2	1
	Am80	conf.	1	1
	Crab	conf.	9	2
	Shoreside	9,497	22	3
Total		13,657		
2005	AFA	conf.	2	1
	Crab	conf.	7	2
	Shoreside	6,481	19	5
Total		7,939		
2006	AFA	conf.	2	1
	Crab	conf.	4	2
	Other Mothership	5783*	2	1
	Shoreside		27	6
Total		6,818		
2007	AFA	conf.	3	1
	Am80	conf.	3	1
	Crab	conf.	8	2
	Other Mothership	9900*	1	1
	Shoreside		35	5
Total		11,429		
2008 (through June)	AFA	conf.	3	1
	Am80	conf.	5	2
	Crab	conf.	15	2
	Other Mothership	conf.	1	1
	Shoreside	4,607	37	4
Total		11,106		

Source: ADFG Fish Tickets for shoreside deliveries 1994-2007 and mothership deliveries 2001-2007, & NMFS Blend data for mothership deliveries 1994-2000. Retained catch only. 2008 data are preliminary, from NMFS catch accounting data through June 2008. All data exclude CDQ harvest and State AI cod fishery harvest.

Note: Vessel and processor counts show number of unique vessels delivering and processors receiving Pacific cod harvested from Areas 541 or 542, respectively. One processing vessel in 2008 is part of both the AFA and Am. 80 sectors. It is counted in this table under the Am. 80 sector.

Note: Vessel counts are not available for mothership deliveries in the Blend data (1994 - 2000). Conf. = confidential data.

*2006 and 2007 data are combined for the 'other mothership' and shoreside sectors due to confidentiality issues when combined with Table 9.

Note that the harvest data Table 8 are confidential if there are not more than 3 processors or 3 vessels in any one category, thus, in many years the harvest data cannot be shown separately for each sector. Note that CDQ and AI State water Pacific cod harvest are not included, as these fisheries are not affected by

the proposed action. Note also that the data represent retained catch, and 2008 data (through June) are considered preliminary.

During 1995 – 1999, the AFA sector had 2 to 5 processing vessels receiving cod deliveries each year during this time period. These deliveries were made to 12 unique vessels (10 AFA CPs and 2 AFA motherships). Since 2000, only one AFA CP has been taking cod deliveries every year from Areas 541 and 542.

The crab sector had 1 to 3 processing vessels receiving cod deliveries during 1995 – 2001 (five unique vessels), and then two vessels each year since 2001 (three unique vessels total, and all are floaters). The Amendment 80 sector had two CPs receive some cod in 1999, one CP received a negligible amount of cod in 2004, and that same vessel received cod deliveries in 2007 and 2008. One other Amendment 80 CP received deliveries in 2008, for a total of 2. There were several (a maximum of 7 in one year) ‘other’ motherships that received cod deliveries in the earlier years (1994 – 2001) that were not part of any of the rationalized sectors at issue, but no deliveries to ‘other’ motherships in 2002 through 2005. Since 2006, one ‘other’ mothership has received cod harvested from Areas 541 and/or 542.

There are many unique shoreside processor companies that received deliveries of Pacific cod in Areas 541 or 542 during 1994 – 2007, but most frequently deliveries were made to about nine processors located in Dutch Harbor, Akutan, Adak, King Cove, Chignik and Sand Point. The data show that some of these processors received relatively low amounts (<1 mt), which may represent incidental catch when delivering another target species in some cases. In any one year, the minimum number of shoreside processors was 3 (1994 and 2004), and the maximum was 11 (2000). In 2008 (through June), four shoreside processors received cod deliveries from the Central and/or Eastern AI. However, the majority of cod harvested from these areas in 2008 thus far has been delivered to motherships or floaters (59%).

Table 9 shows the total retained catcher vessel harvest of Pacific cod harvested in Areas 541 and 542, by the processing sector to which the fish were delivered, during the most recent complete five years (2003 through 2007). These are based on the same data in Table 8, only the mothership/floater processing category combines all motherships and floating processors (including CPs acting as motherships) in the three rationalization programs, due to confidentiality limitations. Harvest attributed to ‘shoreside landings’ includes cod delivered shoreside as well as cod delivered to the one ‘other’ mothership that participated in 2006 and 2007 that is not part of a rationalization program, in order to preserve confidentiality and separate deliveries to the AFA/crab processors/Am. 80 sectors. Note that deliveries to this mothership made up a small percentage of the total. CDQ and AI State water Pacific cod harvest are not included, as these fisheries are not affected by the proposed action.

Table 9 Amount of Pacific cod harvested in the Central and Eastern AI, by processing sector, 2003 - 2007

YEAR	AFA/Crab/Am. 80 mothership/floater landings in Areas 541 and 542			Shoreside landings in Area 541 and 542 ¹			CV cod landings in Areas 541 and 542	Total CV cod catch in BSAI
	mt	% of AI	% of BSAI	mt	% of AI	% of BSAI		
2003	8,013	47.0%	12.2%	9,019	53.0%	13.7%	17,031	65,936
2004	4,160	30.5%	7.4%	9,497	69.5%	16.9%	13,657	56,055
2005	1,458	18.4%	2.9%	6,481	81.6%	12.7%	7,939	50,921
2006	1,035	15.2%	2.0%	5,783	84.8%	11.4%	6,818	50,600
2007	1,529	13.4%	3.2%	9,900	86.6%	21.0%	11,429	47,220
Average 2003 - 07	3,239	28.5%	6.0%	8,136	71.5%	15.0%	11,375	54,146

Source: ADF&G fishtickets, 2003 – 2007, retained catch only, except for the last column. Data for total CV cod catch in BSAI is total catch (retained & discarded) from the NMFS catch accounting database. Excludes CDQ harvest and State AI cod fishery harvest. ¹Harvest attributed to ‘shoreside landings’ includes deliveries to one ‘other’ mothership in 2006 and 2007 that is not part of a rationalization program, in order to preserve confidentiality and separate deliveries to the AFA/Crab processors/Am. 80 sectors.

While Table 9 cannot provide data on an individual sector level, it does provide a summary of how much of the Pacific cod harvest from Areas 541 and 542 is being delivered shoreside versus to CPs/motherships/floaters. Table 9 shows that the shoreside sector has received an increasing share of the Eastern and Central AI Pacific cod deliveries during this time period, from 53% in 2003 to almost 87% in 2007, with an average share of about 72%. The rationalized mothership/floater sector received a high of 47% in 2003 and a low of 13% in 2007, with an average share of about 29%.

The “percent of BSAI” column shows the retained harvest by each sector in Areas 541 and 542 as a percentage of the total CV Pacific cod catch in the BSAI. The processing sideboards are calculated as a percentage of the total CV Pacific cod catch in the BSAI in this paper, since it is assumed they would be applied annually to the combined BSAI CV Pacific cod allocations (which account for all catch).²⁰ Thus, retained Area 541/542 catch divided by total BSAI catch appears to be the most appropriate approach. The Council should clarify if a different method is desired.

The vast majority of the shoreside deliveries shown in Table 9 have been to Adak Fisheries (see Table 10 below). Note that the preliminary 2008 harvest data provided in Table 10 are through June, from the NMFS catch accounting database. The remainder of the table (2003 – 2007) is retained harvest from ADF&G fishtickets. The ‘average’ only includes 2003 – 2007, as these data are provided from the same source. Note that State AI cod landings are excluded from this table. Pacific cod harvested in the Central and Eastern AI from the AI State managed Pacific cod fishery represents additional Pacific cod delivered to Adak Fisheries. The NMFS catch accounting database reports State water cod landings to Adak Fisheries from these areas as: 2006 – 927 mt; 2007 – 2,593 mt; and 2008 (through June) – 1,214 mt.

Table 10 Amount of Pacific cod harvested in the Central and Eastern AI and delivered to Adak Fisheries, 2003 – 2007

Year	Adak landings		Total CV cod landings
	mt	% of total	
2003	8,706	51.1%	17,031
2004	9,428	69.0%	13,657
2005	6,435	81.1%	7,939
2006	5,576	81.8%	6,818
2007	9,603	84.0%	11,429
2008*	4,133*	37.2%	11,106*
2003 - 07	7,950	69.9%	11,375
Average			

Source: ADF&G fishtickets, 2003 – 2007. Retained catch only.

*2008 data are preliminary through June, from NMFS catch accounting database.

Excludes CDQ harvest and State AI cod fishery harvest.

Note: A confidentiality waiver was procured from Adak Fisheries in order to provide these data.

In 2008, the BSAI Pacific cod trawl CV fishery opened on January 20. The directed fishery was closed on March 6 and the fishery was put on bycatch status. The B season opened on April 1 and was placed on bycatch status on April 4. The C season opened on June 10. **In 2008 through June, however, the shoreside processing share is reduced compared to previous years. As stated above, through June 2008, the majority of the cod harvested from the Federal TAC in Area 541 or 542 has been delivered to the mothership/floater sector (about 59%) compared to the shoreside sector (41%)(refer to Table 8). Note that including Pacific cod harvest in Areas 541 and 542 from the**

²⁰Note that some, but not all, of the Pacific cod CV sectors have a separate incidental catch allowance. Hook-and-line and pot gear (CP and CV sectors combined) have a 500 mt annual ICA. The Council would need to clarify whether the sideboard should be applied to the combined BSAI CV Pacific cod allocation plus the ICA or without the ICA. The retained catch data used in the tables includes all targets, so it includes incidental catch.

State managed AI fishery (through June 2008) does not change those overall percentages. About 3,200 mt of Pacific cod harvested in Areas 541 and 542 from the State AI fishery were reported through June 2008; motherships/floaters/CPs from each rationalized sector and the 'other mothership' sector received deliveries from this fishery. The majority of the shoreside deliveries from the State fishery were to Adak.

The amount of harvest delivered to each individual rationalized sector cannot be provided due to confidentiality issues, but note that Table 8 shows that one AFA CP, two Am. 80 CPs, two crab processing vessels, and one 'other mothership', received cod deliveries totaling about 6,500 mt thus far in 2008. The shoreside sector received about 4,607 mt, with the great majority of that harvest delivered to Adak.

The preliminary results of the options are based on the data in Table 8 and Table 9 (excluding 2008). ADF&G fish tickets were used for Pacific cod harvest data because processors are identified on nearly all fish ticket records. The NMFS Blend data identifies the catcher vessel processing sector (mothership or shoreside) of all processors, but is missing some data on the individual processing vessel or facility. Fish ticket data prior to 2001 was supplemented with Blend mothership data, because motherships were not required to fill out fish tickets until 2000. When Blend mothership data was used to supplement the fish ticket data, the individual processing vessel information was researched to ensure that landings were assigned to the correct sector for the purposes of this action.

Note that Component 3 includes two options for applying the cod processing sideboard: Suboption 1) a single sideboard that applies to all affected vessels that accept deliveries of Pacific cod harvested in Areas 541 or 542; or Suboption 2) program-specific sideboards that would be established and managed for each of the three groups of rationalized vessels (*i.e.*, AFA, BSAI crab, BSAI Amendment 80) that accept deliveries in of Pacific cod harvested in Areas 541 or 542. **Due to the data confidentiality issues shown above, the results of the program-specific sideboards under Suboption 2 cannot be provided. Thus, the remainder of this section addresses the results of the options for a combined program sideboard only.**

Component 1, Option 1: Sideboard limit

Under Component 1, Option 1, the sideboard limit is established as: Suboption 1) the greatest amount delivered within the range of qualifying years; or Suboption 2) the average annual amount delivered within the range of qualifying years. **Staff currently assumes that the sideboard amount is calculated based on the proposed qualifying years and then converted to a percentage of the total CV catch of Pacific cod in the BSAI (excluding AI State waters cod fishery and CDQ).** This is because, as there is not an AI area specific TAC for Pacific cod, the sideboard would be applied to the non-CDQ BSAI Pacific cod CV TAC on an annual basis. (The Council also needs to clarify how to apply that sideboard, specifically, whether the intent is that that percentage be applied as the sideboard on each of the five individual BSAI Pacific cod CV allocations, or whether it should be applied as one sideboard on the combined BSAI Pacific cod CV allocations. Recall that the five CV allocations for BSAI Pacific cod make up a combined 34.1% of the total non-CDQ BSAI Pacific cod TAC.)

The combination of Component 1 (sideboard limit) and Component 2 (qualifying years) results in several potential options. For example, Component 2 has four sets of qualifying years. Option 1 is based on recent history (2005 – 2007 or 2003 – 2007). Option 2 is based on the 3 or 5 years prior to each specific rationalization program, the intent being to base the sideboard on the level of cod processing that each sector was doing prior to the implementation of their rationalized program and the ability to consolidate processing. In effect, Option 2 results in the following qualifying years for the vessels participating in each program:

Suboption 1. 3-year period prior to program implementation

AFA: 1996 – 1998

Crab: 2002 – 2004

Am. 80: 2005 – 2007

Suboption 2. 5-year period prior to program implementation

AFA: 1994 – 1998

Crab: 2000 – 2004

Am. 80: 2003 – 2007

Due to the potential combinations of options under Components 1 and 2, the suite of suboptions proposed under Option 1 to establish the sideboard limits is as follows:

Option 1. Sideboard limit

Limit the amount of Pacific cod harvested in Areas 541 or 542 that may be delivered to the affected federally permitted processing vessels by other vessels to:

- Suboption 1. a. the greatest amount delivered within 2005 – 2007
- b. the greatest amount delivered within 2003 – 2007
- c. the greatest amount delivered within (AFA: 1996 – 1998; Crab: 2002 – 2004; and Am. 80: 2005 – 2007)
- d. the greatest amount delivered within (AFA: 1994 – 1998; Crab: 2000 – 2004; and Am. 80: 2003 – 2007)

- Suboption 2. a. the average annual amount delivered within 2005 – 2007
- b. the average annual amount delivered within 2003 – 2007
- c. the average annual amount delivered within (AFA: 1996 – 1998; Crab: 2002 – 2004; and Am. 80: 2005 – 2007)
- d. the average annual amount delivered within (AFA: 1994 – 1998; Crab: 2000 – 2004; and Am. 80: 2003 – 2007)

The processing sideboards resulting from the suboptions above are calculated below in Table 11. All of the steps to calculate the sideboard percentages cannot be shown due to confidential data. For all calculations, the numerator of the sideboard calculation is retained CV catch only in Areas 541 and 542, and the denominator is the corresponding total Pacific cod BSAI CV catch in those years. **Note that in combination with Component 3, there are actually sixteen proposed suboptions for sideboards.** This is because the eight suboptions above must be calculated for a single sideboard (Component 3, Option 1) and program-specific sideboards (Component 3, Option 2). As stated previously, the results of the program-specific sideboards are not provided due to confidentiality issues.

Suboption 1 is a ‘best year’ option. For Suboptions 1a and 1b, the analyst selected the best year within the suite of qualifying years shown for the combined three rationalized sectors, and the denominator is the corresponding total Pacific cod BSAI CV catch in those years. Thus, Suboption 1a and 1b are relatively straightforward (and shown previously in Table 9). Overall, Suboption b results in a higher sideboard than Suboption a; Suboption b includes the earlier years, in which the relative percentage of harvest delivered to motherships and floaters was greater.

For Suboption 1c and 1d, the suite of qualifying years is different for each rationalized sector. The analyst used the best year of the suite for each of the rationalized sectors, and summed those harvests. For example, for Suboption 1c, the AFA sector’s best year is 1997; the crab sector’s best year is 2003, and the Amendment 80 sector’s best year is 2007. Those harvests were summed and divided into the corresponding sum of the total BSAI CV Pacific cod harvest during 1997, 2003, and 2007. Because the

best years for each rationalized sector do not change under Suboption c or Suboption d, the resulting sideboards are the same.

Suboption 2 is an ‘average annual amount’ option. For Suboptions 2a and 2b, the analyst used the average annual amount within the range of qualifying years for the combined three rationalized sectors. Thus, Suboptions 2a and 2b are also relatively straightforward (Suboption 2b is shown previously in Table 9). Overall, Suboption b results in a higher sideboard than Suboption a. This is because Suboption b includes the earlier years, in which the relative percentage of harvest delivered to motherships and floaters was greater.

For Suboption 2c and 2d, the suite of qualifying years is different for each rationalized sector. The analyst used the average of the three and five years prior to the implementation of each rationalization program for Suboption 2c and 2d, respectively. Those averages were summed and divided into the sum of the averages of the total BSAI CV Pacific cod harvest during those corresponding years. Because there is little difference in the average harvest during the three-year versus the five-year period, the sideboards do not change substantially under Suboption c or Suboption d. Suboption 2d results in a slightly lower sideboard than Suboption 2c, since it averages in several very early years in which there was very little harvest delivered to the AFA and Amendment 80 sectors.

Table 11 Sideboards resulting from Component 1, Option 1, and Component 2

Processing sideboard limit options	Sideboard (as % of total combined CV Pacific cod allocations)	Sideboard in 2008 mt ¹
Suboption 1. greatest amt delivered within...		
a. 2005 - 2007	3.2%	1,664
b. 2003 - 2007	12.2%	6,342
c. 3 yrs prior to program implementation	4.4%	2,287
d. 5 yrs prior to program implementation	4.4%	2,287
Suboption 2. average amt delivered within...		
a. 2005 - 2007	2.7%	1,404
b. 2003 - 2007	6.0%	3,119
c. 3 yrs prior to program implementation	2.8%	1,456
d. 5 yrs prior to program implementation	2.4%	1,248

Source: Numerator of sideboard calculation is retained CV catch only in Areas 541 & 542. ADFG Fishtickets for shoreside deliveries 1994-2007 and mothership deliveries 2001-2007, & NMFS Blend data for mothership deliveries 1994-2000. Denominator of calculation is total BSAI CV catch from NMFS Blend/catch accounting database.

All data exclude CDQ harvest and State AI cod fishery harvest.

¹These estimates are based on the 2008 BSAI Pacific cod ITAC of 152,453 mt. The total CV Pacific cod portion of the ITAC is 34.1% or about 51,986 mt.

Component 1, Option 2: Sideboard date

Component 1, Option 2 proposes a different method by which to establish a limit on offshore processing. Staff assumes that Option 2 could be selected in tandem with Option 1 or the Council could select one without the other. In effect, the Council could select a processing sideboard; or a date prior to which the rationalized sectors could not receive deliveries; or both. Staff also assumes that Suboption 2 should be modified as shown below. The Council should revise the wording accordingly if this is correct.

Suboption 2. the average earliest date a delivery was accepted in ~~any~~ each year, across all qualifying years

Due to the potential combinations of options under Components 1, 2, and 3, the suite of suboptions under Option 2 is as follows:

Option 2. Sideboard date

Limit the date that the affected Federally permitted processing vessels may begin taking deliveries of Pacific cod harvested in Areas 541 or 542 to:

- | | |
|--------------|--|
| Suboption 1. | a. the earliest date a delivery was taken in 2005 – 2007
b. the earliest date a delivery was taken in 2003 – 2007
c. the earliest date a delivery was taken in (AFA: 1996 – 1998; Crab: 2002 – 2004; and Am. 80: 2005 – 2007). ²¹
d. the earliest date a delivery was taken in (AFA: 1994 – 1998; Crab: 2000 – 2004; and Am. 80: 2003 – 2007) |
| Suboption 2. | a. the average earliest date a delivery was accepted within 2005 – 2007
b. the average earliest date a delivery was accepted within 2003 – 2007
c. the average earliest date a delivery was accepted within (AFA: 1996 – 1998; Crab: 2002 – 2004; and Am. 80: 2005 – 2007) ²²
d. the average earliest date a delivery was accepted within (AFA: 1994 – 1998; Crab: 2000 – 2004; and Am. 80: 2003 – 2007) |

Note that in combination with Component 3, there are sixteen proposed suboptions for sideboard dates. This is because the above eight suboptions must be calculated for a single sideboard (Component 3, Option 1) and program-specific sideboards (Component 3, Option 2).

The earliest landing dates for all of the qualifying years are provided in Table 12 below; these dates are used to calculate Option 2. This table shows the earliest landing dates for Pacific cod harvested by catcher vessels in Area 541 or 542, by processing sector, from 1994 through 2007. Generally, over this time period, the landing dates for the shoreside sector have moved from early March to early February, with a few exceptions. Similarly, landing dates for catcher vessels delivering to AFA processing vessels have generally moved from early March to about mid-February during this time period. The only Amendment 80 deliveries were made in March, and deliveries to crab processing vessels have generally ranged from mid-February to mid-March, with the earliest dates being in the most recent years.

While 2008 is not included in Table 12, as it is not a qualifying year, the earliest delivery dates in 2008 are similar to recent years, with the possible exception of the crab and shoreside sectors. In 2008, the

²¹For a single sideboard (Component 3, Option 1), it is assumed that Suboption 1c and 1d mean to use the earliest date a delivery was taken by any of the combined sectors in any of the years identified (i.e., the earliest date by all years reviewed).

²²For a single sideboard (Component 3, Option 1), it is assumed that Suboption 2c and 2d mean to use the average earliest date a delivery was taken by the combined sectors across all of the years identified (i.e., an average of the average dates).

earliest date each sector received deliveries of Pacific cod harvested in Area 541 or 542 was: AFA – February 16; Amendment 80 – March 1; Crab rationalization – February 9; ‘Other mothership’ – June 28, and Shoreside – January 12.

Table 12 Earliest landing date for Pacific cod harvested by catcher vessels in Area 541 or 542, by processing sector, 1994 - 2007

Year	AFA	Am. 80	Crab	Other mothership	Shoreside
1994	--	--	--	19-Mar	5-Mar
1995	11-Mar	--	--	4-Mar	2-Mar
1996	2-Mar	--	23-Mar	2-Mar	8-Mar
1997	1-Mar	--	--	1-Mar	26-Feb
1998	14-Mar	--	--	28-Feb	9-Mar
1999*	6-Mar	20-Mar	25-Sep	8-May	24-Feb
2000	26-Feb	--	19-Feb	19-Feb	10-Jan
2001	17-Feb	--	19-Mar	15-Apr	21-Jan
2002	16-Feb	--	13-Mar	--	4-Feb
2003	1-Feb	--	28-Feb	--	7-Feb
2004	7-Feb	24-Mar	4-Mar	--	12-Feb
2005**	12-Feb	--	3-Mar	--	9-Feb
2006	18-Feb	--	27-Feb	25-Sep	6-Feb
2007	10-Feb	9-Mar	7-Mar	15-Jan	25-Jan

Source: ADFG Fishtickets for shoreside deliveries 1994-2007 and mothership deliveries 2001-2007, & NMFS Blend data for mothership deliveries 1994-2000. Excludes CDQ and AI State water cod fishery. *Year AFA was implemented. **Year BSAI crab rationalization program was implemented.

The sideboard dates resulting from the suboptions under Option 2 are shown below in Table 13. For all calculations, the date provided reflects the earliest or average date that the rationalized sectors received a CV delivery of Pacific cod harvested in Area 541 or 542. The table also shows the results of the options when combined with Component 3, which proposes either a single sideboard which applies to all three of the rationalized sectors, or a program-specific sideboard, which proposes a separate sideboard for each of the three rationalized sectors. Recall that confidential data prevent showing the sideboard limits that would result with program-specific sideboards (refer to Table 11); but the sideboard dates that result from the program-specific sideboard options are provided (Table 13).

Note that the AFA sector determined the earliest dates for the single sideboard options under Suboption 1a and b, as this sector had the earliest CV deliveries of cod in 2003 – 2007. Suboption 1c and d were calculated as the earliest dates for each sector within the three or five years prior to implementation of each rationalization program, respectively. For example, under Suboption 1c, the analyst evaluated the earliest delivery date taken in 1996, 1997, or 1998 for the AFA sector, 2002, 2003, or 2004 for the crab sector, and 2005, 2006, or 2007 for the Amendment 80 sector.²³ Out of those 9 years for those particular sectors, the earliest delivery date overall was February 28. For the program-specific sideboard, each sector was evaluated for its earliest delivery dates separately.

The dates are later in the year under Suboption 2, which averages the earliest dates across various time periods. Suboption 2a and b under a single sideboard are relatively straightforward. Under Suboption 2a, the earliest date for a delivery to any of the three rationalized sectors in each of the years 2005, 2006, and 2007 was used to calculate the average over three years. The same calculation was done for Suboption 2b,

²³Staff recognizes that there could be a different interpretation of how to calculate the single sideboard options under Suboption 1c and d. For example, under Suboption 1c, one could also interpret the language to mean to use the earliest delivery date in 1996, 1997, 1998, 2002, 2003, 2004, 2005, 2006, or 2007 for any of the three rationalized sectors. Calculating Suboption 1c and 1d in this way would result in a sideboard date of Feb. 1 for both options.

during 2003 – 2007. For Suboption 2c and d, the analyst calculated the average delivery date for each sector during the three or five years prior to the implementation of its rationalization program, respectively. Then those three dates were averaged to find an average date that would apply to a single sideboard for all three sectors combined. For the program-specific sideboards, the average earliest delivery date was calculated for each sector separately.

Table 13 Sideboards resulting from Component 1, Option 2, and Component 2 & 3

Processing sideboard date options	Single sideboard ¹	Program-specific sideboard ²
Suboption 1. earliest date delivered within...		
a. 2005 - 2007	Feb 10	AFA: Feb. 10 Crab: Mar 3 Am. 80: Mar 9
b. 2003 – 2007	Feb 1	AFA: Feb. 1 Crab: Feb 28 Am. 80: Mar 9
c. 3 yrs prior to program implementation	Feb 28	AFA: Mar 1 Crab: Mar 4 Am. 80: Mar 9
d. 5 yrs prior to program implementation	Feb 19	AFA: Mar 1 Crab: Feb 19 Am. 80: Mar 9
Suboption 2. average earliest date delivered within...		
a. 2005 - 2007	Feb 13	AFA: Feb 13 Crab: Mar 3 Am. 80: Mar 9
b. 2003 – 2007	Feb 10	AFA: Feb 10 Crab: Mar 2 Am. 80: Mar 16
c. 3 yrs prior to program implementation	Mar 6	AFA: Mar 5 Crab: Mar 5 Am. 80: Mar 9
d. 5 yrs prior to program implementation	Mar 9	AFA: Mar 7 Crab: Mar 5 Am. 80: Mar 16

Source: ADFG Fishtickets for shoreside deliveries 1994-2007 and mothership deliveries 2001-2007, & NMFS Blend data for mothership deliveries 1994-2000. Excludes CDQ and AI State water cod fishery.

¹Component 3, Option 1, proposes a single sideboard for all three rationalized sectors.

²Component 3, Option 2, proposes a separate sideboard for each of the three rationalized sectors.

It is assumed that the options proposed to create a sideboard date (i.e., CV deliveries of Federal non-CDQ Pacific cod harvested in Area 541 or 542 to the rationalized processing sectors would be prohibited prior to this date) could be combined with a processing sideboard, or they could be selected exclusively. Meaning, there is an option for no processing cap, but a date by which Pacific cod CV harvest in the Aleutians could start to be delivered to processing vessels in the three rationalized sectors at issue. This action would effectively work as a prohibition on mothership deliveries until the selected date. Prior to the date, CV cod could be delivered to processing vessels that are not identified as part of these rationalized sectors, or delivered shoreside. If motherships are not allowed to process AI cod earlier in the year, it effectively guarantees a portion of the A season harvest to be delivered shoreside, and likely to Adak, as Adak is the closest shoreside plant in the area that processes Pacific cod. Adak's primary fishery is Pacific cod, and in the past year Adak Fisheries has substantially expanded its cod processing capabilities.

The majority of the dates resulting from the *single* sideboard options are fairly early in the year (February), due to the AFA mothership and CP history of processing cod from the Aleutians earlier in February during the past seven years. Thus, most of the dates under Suboption 1 and a single sideboard do not reflect the crab and Amendment 80 sectors' history of processing. Only the average dates under Suboption 2c and d reflect the crab and Amendment 80 sector, and those are notably later in the year (early March). Clearly, the *program-specific* sideboards under both Suboption 1 and 2 reflect each of the three sector's historical processing dates.

The closure dates for the Federal A season for the BSAI Pacific cod trawl CV sector are shown below. If the trend continues toward a shorter A season, the later dates resulting from the suboptions above could effectively operate as a prohibition on processing A season trawl Pacific cod from Areas 541 and 542 by processing vessels from the three rationalized sectors. Thus, it may be important to select sideboard date options that are structured such that they reflect the actual historical processing patterns of the vessels at issue, as opposed to averaging across various sectors and time periods that do not relate to one another.

Year	Closure date for A season BSAI trawl CV Pacific cod
2008	March 6
2007	March 12
2006	March 8
2005	March 13
2004	March 23

Source: NMFS Information bulletins, 2004 - 2008

Summary

A sideboard is typically established to limit a sector's harvesting or processing activity to its historical share, when excess harvesting and/or processing capacity is likely, due to the sector's participation in a rationalization program. The intent is to prevent the rationalized sector from expanding its share in other fisheries due to this excess capacity, and eroding the shares of other non-rationalized participants. This paper is intended to provide sufficient information for the Council to determine whether it wants to initiate a formal analysis of processing sideboards for Pacific cod in the AI.

The concern is that the lack of sideboards on processing of the BSAI Pacific cod CV allocations by rationalized processing vessels (e.g., AFA, BSAI crab rationalization, Amendment 80) has preempted, and will continue to preempt, an opportunity for these harvests to benefit vessels primarily operating out of Adak, shoreside processors, and the communities of Adak and Atka. There are concerns that the transient markets provided by motherships, floating processors, and catcher processors acting as motherships, may serve to undermine community stability by making it more difficult for shorebased processors to remain in business and provide year-round markets to smaller vessels participating in a suite of fisheries. Pacific cod has been the primary fishery supporting the shoreside processor in Adak; while Pacific cod harvested outside of Atka is typically processed by a (crab) mothership. The shoreplant in Atka does not currently have the capacity to process Pacific cod at the level necessary to make it economically viable.

Much of the concern prompting this action has stemmed from the 2008 A season for Pacific cod in the Aleutians. The shoreside sector has received an increasing share of the Eastern and Central AI Pacific cod deliveries during 2003 - 2007, with an average share of about 72% (refer to Table 9). The rationalized mothership/floater sector received a high of 47% in 2003 and a low of 13% in 2007, with an average share of about 29% over the same time period. In 2008 (preliminary data from the NMFS catch accounting database, through June), the shoreside processing share is reduced compared to previous years. Through June 2008, the majority of the cod harvested from the Federal TAC in Area 541 and 542

has been delivered to the mothership/floaters sector (59%) compared to the shoreside sector (41%). Note that including Pacific cod harvest in Areas 541 and 542 from the State managed AI fishery (through June 2008) does not change those overall percentages. For the shoreside plant in Adak (Adak Fisheries) in particular, the average 2003 – 2007 share of Pacific cod from the Federal TAC in Areas 541 and 542 was 70%; in 2008 through June, this share dropped to 37%.

There are concerns that the action would not provide the intended benefits to shoreside processors. Note that if a sideboard was established that limited deliveries to AFA, crab rationalization, and Amendment 80 CPs/floaters/motherships, catcher vessels could continue to deliver to motherships or floating processors not in one of these rationalized sectors, or shoreside processors, without regulatory limits. Deliveries to ‘other’ motherships or floating processors would negate the purpose of the proposed action with regard to shoreside processors. As provided in the tables, only one to two ‘other’ motherships/floaters, that are not part of the rationalized sectors, have taken CV deliveries of Pacific cod harvested in Area 541 or 542 in recent years. However, as opportunities for floating processors become increasingly limited, there may be increasing interest in the cod fishery. At the same time, concerns also exist regarding the potential for stranding fish in the Aleutians, in the event that ‘other’ floaters are not available, the Adak plant is not operating in a given year, and/or the plant in Atka does not yet have the capacity to process Pacific cod.

The action is intended to benefit catcher vessels and shoreside processors, specifically in Adak, as cod landings in Adak would support the plant and help to provide the year-round markets necessary for smaller vessels that participate in several fisheries. Ultimately, however, the proposed action serves to limit the markets available to all catcher vessels harvesting Pacific cod in the Eastern and Central Aleutians. Thus, while part of the purpose of separate CV sector allocations by gear type is to provide additional opportunities for harvest by smaller vessels, this action may serve to reduce the operational flexibility of and negotiating leverage for AI catcher vessels, which could potentially lead to a lower price for their catch.

Under the proposed options, the sideboard limit is established as: 1) the greatest amount delivered within the range of qualifying years; or 2) the average annual amount delivered within the range of qualifying years. In addition, options allow for three separate, *program-specific* processing sideboards (Component 3, Option 2) or for a *single* sideboard that would apply to all sectors (Component 3, Option 1). A limited amount of data can be provided on each individual rationalized processing sector, due to confidentiality issues. The harvest data attributed to these sectors must be aggregated for the purpose of analysis, due to the limited number of entities in each sector that have participated during the qualifying years. Thus, while the analysts are able to provide the results of the proposed processing sideboard options under a *single* sideboard that would apply to all sectors; they are not able to show the results of the options under three separate, *program-specific* processing sideboards.

Staff currently assumes that the sideboard amount is calculated based on the proposed qualifying years and then converted to a percentage of the total CV catch of Pacific cod in the BSAI (excluding AI State waters cod fishery and CDQ). This is because, as there is not an AI area specific TAC for Pacific cod, the sideboard would be applied to the non-CDQ BSAI Pacific cod CV TAC on an annual basis. The combination of Component 1 (sideboard limit) and Component 2 (qualifying years) and Component 3 (single vs. program-specific sideboards) results in sixteen potential suboptions: eight for a single sideboard that would apply to all three rationalized processing sectors, and eight for program-specific sideboards that would apply to each of the three rationalized processing sectors separately.

The *single* processing sideboards resulting from the suboptions are shown below in Table 14. The numerator of the sideboard calculation is retained CV catch from only Areas 541 and 542, and the denominator is the corresponding total Pacific cod BSAI CV catch in those years. These sideboards thus

reflect the actual level of Pacific cod harvest in Areas 541 and 542 that has been delivered to motherships/floaters in the AFA, crab rationalization, and Amendment 80 processing sectors as a percentage of the total amount of BSAI Pacific cod catcher vessel harvest.

Table 14 Single sideboards resulting from Component 1, Option 1, and Component 2

Processing sideboard limit options	Sideboard (as % of total combined CV Pacific cod allocations)	Sideboard in 2008 mt ¹
Suboption 1. greatest amt delivered within...		
a. 2005 - 2007	3.2%	1,664
b. 2003 - 2007	12.2%	6,342
c. 3 yrs prior to program implementation	4.4%	2,287
d. 5 yrs prior to program implementation	4.4%	2,287
Suboption 2. average amt delivered within...		
a. 2005 - 2007	2.7%	1,404
b. 2003 - 2007	6.0%	3,119
c. 3 yrs prior to program implementation	2.8%	1,456
d. 5 yrs prior to program implementation	2.4%	1,248

Source: Numerator of sideboard calculation is retained CV Pacific cod catch only in Areas 541 & 542. ADFG Fishtickets for shoreside deliveries 1994-2007 and mothership deliveries 2001-2007, & NMFS Blend data for mothership deliveries 1994-2000. Denominator of calculation is total BSAI CV Pacific cod catch from NMFS Blend/catch accounting database. All data exclude CDQ harvest and State AI cod fishery harvest.

¹These estimates are based on the 2008 BSAI Pacific cod ITAC of 152,453 mt. The total CV Pacific cod portion of the ITAC is 34.1% or about 51,986 mt.

The resulting (single) sideboards would range from 2.4 percent to 12.2 percent of the total catcher vessel portion of the BSAI Pacific cod ITAC. The total CV Pacific cod portion of the ITAC is 34.1 percent, or almost 52,000 mt in 2008. Thus, under the 2008 TAC, the proposed sideboards would represent about 1,000 mt to over 6,000 mt. As stated above, through June 2008, the majority of the cod harvested in Areas 541 and 542 has been delivered to the mothership/floater sector (about 59%) compared to the shoreside sector (41%). The amount of harvest landed with each individual rationalized sector cannot be provided due to confidentiality issues, but the rationalized sectors in aggregate received cod deliveries totaling about 6,500 mt thus far in 2008 (refer to Table 8). This equates to about 16 percent of the total BSAI CV Pacific cod (non-CDQ) catch through June 2008, an amount higher than any sideboard option proposed.

Also included in the proposed options are sideboard dates, which would essentially prohibit deliveries of Pacific cod harvested in Areas 541 or 542 from being delivered to any of the three rationalized sectors until that date (refer to Table 13). The dates for the single sideboard options range from February 1 to March 9. The dates for the program-specific sideboard options range from February 1 to March 16. The options are structured such that the Council could choose processing sideboard limits with or without the processing sideboard dates.

As stated previously, a limited amount of data can be provided on each *individual* rationalized processing sector, due to confidentiality issues, which prevents the analysts from being able to provide any results of the options that would establish three separate, *program-specific* processing sideboards (Component 3,

Option 2). However, note that the Council is not necessarily restricted from establishing processing sideboards even if the harvest data necessary to evaluate the proposed options are confidential.

One option would be to create a different method for establishing the sideboard, other than catch history. In the past, the Council has only established sideboards based on harvest or processing history in the specific sector being constrained. Meaning, there is no precedent other than harvest or processing history on which sideboards have been based. However, the Council or the public may have alternative ideas on how to establish a sideboard other than the historical amount that has been delivered to each rationalized processing sector.

Alternatively, the Council could consider a sideboard of 0%, if the Council determines that even *some* catch delivered to the rationalized sectors does not meet the intent of the programs. Essentially, such a sideboard would equate to a prohibition on CPs, motherships, and floaters participating in the AFA, BSAI crab rationalization, and BSAI Amendment 80 from receiving catcher vessel deliveries of Pacific cod harvested in the Eastern and Central Aleutian Islands. The Council could also determine that the action is not warranted (effectively, no sideboard limit).

NOAA GC suggests that the Council could also develop and recommend criteria and justification for a processing sideboard, such as the existing proposal, but NMFS would calculate the actual sideboards resulting from the selected criteria and publish the percentages in the proposed and final rules. Confidential data have been an issue in the development of previous programs, but have not prevented the Council from taking action based on a clearly stated principle. For example, in the GOA rockfish pilot program, confidentiality prevented the analysis from showing some of the prohibited species sideboards resulting from the proposed options. If the rationale and objective of the action is stated clearly (e.g., to limit participants to historical processing levels so as not to expand efforts in specific areas or fisheries), the Council could take action on a sideboard based on history, even if the historical data to establish the sideboard cannot be provided. In this case, the rationale and criteria for the sideboard (e.g., harvest history delivered during specific qualifying years) can be described in the analysis, but NMFS would calculate the actual sideboards resulting from the selected criteria and publish the percentages in the proposed and final rules.

Another approach would be to use fleet-wide annual or weekly processing data for each rationalized sector to calculate a reasonable estimate of the amount of processing for the one or two motherships/floaters/CPs based on the number of weeks they have operated in the Aleutians. The analyst would thus provide as much information about the sector and fishery as possible without violating confidentiality rules. The results of these calculations could either: 1) represent *options* to establish the actual sideboard selected by the Council, or 2) be used as reasonable *estimates* in the analysis for the amount of the sideboards when they are calculated based on actual history under the existing options (i.e., the exact sideboard amount would not be known until it is published in the proposed and final rules).

Finally, upon review of the data provided in this paper, the Council could determine that program-specific sideboards are not necessary, and may exclude those options from a proposed analysis. NMFS will also likely need to provide feedback on the relative feasibility of effectively managing program-specific sideboards versus an aggregate sideboard that would apply to all three rationalized sectors, as well as the possibility of the rationalized sectors (cooperatives) managing the program-specific sideboards to which they are subject.

At this October meeting, the Council could initiate a formal analysis, or request additional information prior to taking this step. The Council could also determine that the action is not warranted.

Appendix 1. AFA Catcher Processors and Motherships

AFA Catcher processors

VESSEL NAME	ADFG	CG NUM	AFA PERMIT
ALASKA OCEAN	60407	637856	3794
AMERICAN DYNASTY	59378	951307	3681
AMERICAN ENTERPRISE	54836	594803	2760
AMERICAN TRIUMPH	60660	646737	4055
ARCTIC FJORD	57450	940866	3396
ARCTIC STORM	54886	903511	2943
ENDURANCE	57201	592206	3360
HIGHLAND LIGHT	56974	577044	3348
ISLAND ENTERPRISE	59503	610290	3870
KATIE ANN	55301	518441	1996
KODIAK ENTERPRISE	59170	579450	3671
NORTHERN EAGLE	56618	506694	3261
NORTHERN GLACIER	48075	663457	661
NORTHERN HAWK	60795	643771	4063
NORTHERN JAEGER	60202	521069	3896
OCEAN PEACE	55767	677399	2134
OCEAN ROVER	56987	552100	3442
PACIFIC GLACIER	56991	933627	3357
SEATTLE ENTERPRISE	56789	904767	3245
STARBOUND	57621	944658	3414
U.S. ENTERPRISE	55125	921112	3004

AFA Motherships

EXCELLENCE	60958	967502	4111
GOLDEN ALASKA	52929	651041	1607
OCEAN PHOENIX	59463	296779	3703

Appendix 2. Processing vessels that contributed to C. Opilio BSAI crab processing quota share allocations

F_PROCSS	I_ADFG	Vessel Name	CP
F0944	41052	ALASKA PACKER	N
F3661	32728	ALASKAN ENTERPRISE	Y
F1484	56973	ALEUTIAN FALCON (M/V)	N
F0138	37268	ARCTIC STAR	N
F1911	34855	BARANOF	Y
F0137	37267	BERING STAR (P/V)	N
Z3724	54865	BLUE DUTCH	Y
F1636	51736	BLUE WAVE (M/V)	N
F0947	34053	BOUNTIFUL (FV)	Y
F1140	30919	COASTAL STAR	N
F9556	35833	COURAGEOUS	Y
F1456	31363	INDEPENDENCE	N
F9719	54865	KISKA ENTERPRISE	Y
F3219	34905	MR B (F/V)	Y
F1551	37374	PAVLOF	Y
F1319	60507	NORTHERN VICTOR	N
F1307	51652	NORTHLAND	N
F1066	55159	OMNISEA	N
Z2436	40837	PACIFIC LADY	Y
F1482	45836	PRIBILOF (M/V)	N
F9604	53810	PRO SURVEYOR	Y
F9723	61182	ROYAL ENTERPRISE	Y
F0945	56146	SEA ALASKA	N
Z2434	04067	SEAWIND (F/V)	Y
F1146	57605	SNOPAC	N
F1589	64242	STELLAR SEA (M/V)	N
F9715	32660	WESTWARD WIND	Y
F3231	53677	YARDARM KNOT M/V	N

Appendix 3. Catcher processors that qualified under BSAI Amendment 80

Name	CG	LLP
ALASKA JURIS	569276	LLG2082
ALASKA RANGER	550138	LLG2118
ALASKA SPIRIT	554913	LLG3043
ALASKA VICTORY	569752	LLG2080
ALASKA VOYAGER	536484	LLG2084
ALASKA WARRIOR	590350	LLG2083
ALLIANCE	622750	LLG2905
AMERICAN NO 1	610654	LLG2028
ARCTIC ROSE	931446	LLG3895
ARICA	550139	LLG2429
BERING ENTERPRISE	610869	LLG3744
CAPE HORN	653806	LLG2432
CONSTELLATION	640364	LLG1147
DEFENDER	665983	LLG3217
ENTERPRISE	657383	LLG4831
GOLDEN FLEECE	609951	LLG2524
HARVESTER ENTERPRISE	584902	LLG3741
LEGACY	664882	LLG3714
OCEAN ALASKA	623210	LLG4360
OCEAN PEACE	677399	LLG2138
PROSPERITY	615485	LLG1802
REBECCA IRENE	697637	LLG3958
SEAFISHER	575587	LLG2014
SEAFREEZE ALASKA	517242	LLG4692
TREMONT	529154	LLG2785
U.S. INTREPID	604439	LLG3662
UNIMAK	637693	LLG3957
VAERDAL	611225	LLG1402

Source: Table 31 to Part 679. 72 FR 52739, 9/14/07.

Note: The Alaska Ranger, Arctic Rose, and Prosperity have sunk.
The Bering Enterprise was sold to Russia and cannot re-enter U.S. fisheries.

Appendix 4

TABLE 5.—2008 AND 2009 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC
[Amounts are in metric tons]

Gear sector	Percent	2008 and 2009 share of gear sector total	2008 and 2009 share of sector total	2008 and 2009 seasonal apportionment ²	
				Dates	Amount
Total TAC	100	170,720	n/a	n/a	n/a
CDQ	10.7	18,267	n/a	see § 679.20(a)(7)(i)(B)	n/a
Total hook-and-line/pot gear	60.8	92,691	n/a	n/a	n/a
Hook-and-line/pot ICA ¹	n/a	n/a	500	n/a	n/a
Hook-and-line/pot subtotal	n/a	92,191	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	73,844	Jan 1–Jun 10	37,660
				Jun 10–Dec 31	36,184
Hook-and-line catcher vessel ≥ 60 ft LOA.	0.2	n/a	303	Jan 1–Jun 10	155
				Jun 10–Dec 31	149
Pot catcher/processor	1.5	n/a	2,274	Jan 1–Jun 10	1,160
				Sept 1–Dec 31	1,114
Pot catcher vessel ≥ 60 ft LOA ...	8.4	n/a	12,737	Jan 1–Jun 10	6,496
				Sept 1–Dec 31	6,241
Catcher vessel < 60 ft LOA using hook-and-line or pot gear.	2.0	3,033	3,033	n/a	n/a
Trawl catcher vessel	22.1	33,692	n/a	Jan 20–Apr 1	24,932
				Apr 1–Jun 10	3,706
				Jun 10–Nov 1	5,054
AFA trawl catcher/processor	2.3	3,506	n/a	Jan 20–Apr 1	2,630
				Apr 1–Jun 10	877
				Jun 10–Nov 1	0
Amendment 80	13.4	20,429	n/a	Jan 20–Apr 1	15,322
				Apr 1–Jun 10	5,107
				Jun 10–Nov 1	0
Amendment 80 limited access ² ..	n/a	n/a	3,294	Jan 20–Apr 1	2,471
				Apr 1–Jun 10	824
				Jun 10–Nov 1	0
Amendment 80 cooperatives ²	n/a	n/a	17,135	Jan 20–Apr 1	12,851
				Apr 1–Jun 10	4,284
				Jun 10–Nov 1	0
Jig	1.4	2,134	n/a	Jan 1–Apr 30	1,281
				Apr 30–Aug 31	427
				Aug 31–Dec 31	427

¹ The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt for 2008 and 2009 based on anticipated incidental catch in these fisheries.

² The 2009 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2008.

**Measures to support community protections for Eastern Aleutian Islands communities:
Pacific ocean perch and Atka mackerel processing sideboards
July 2008**

At its June 2008 meeting, the Council requested that staff provide a discussion paper on potential options to establish processing sideboards for Pacific ocean perch and Atka mackerel harvests in the Eastern and Central Aleutian Islands (Areas 541 and 542, respectively). The Council motion redirected staff from providing a formal analysis, as requested at the April meeting, to a discussion paper. The purpose of this paper is to review the Council's draft problem statement and provide a preliminary assessment of the proposed options. (Note that at this same meeting, the Council requested a separate discussion paper on potential options to establish processing sideboards for Pacific cod harvests in the Eastern and Central Aleutian Islands.) The problem statement and options included in the June Council motion are as follows:

Draft problem statement:

The final rule for implementing BSAI Amendment 80 allows participants to act as motherships receiving catcher vessel harvests from a Pacific Ocean perch and Atka mackerel allocation that was set aside specifically for vessels outside of the Amendment 80 program. The Council did not anticipate Amendment 80 entities would establish a catcher vessel fleet to target this set-aside and deliver the harvest to Amendment 80 catcher processors. This unanticipated behavior returns the benefits of this set-aside to the Amendment 80 sector participants.

Sideboard limit:

Limit the amount of POP and Atka mackerel harvested in Areas 541 or 542 that may be delivered to Amendment 80 catcher processors acting as motherships to:

- Option 1. the greatest amount delivered within the range of qualifying years
- Option 2. the average annual amount delivered within the range of qualifying years

Qualifying years:

- Option. 2005 – 2007 (three-year period prior to Amendment 80 program implementation)

Problem Statement & Background

While harvesting sideboards have been included as part of each rationalization program established in the North Pacific, processing sideboards are not as common. For example, processing sideboards were not adopted in either the BSAI Crab Rationalization Program or the BSAI Amendment 80 program. Amendment 80 allocates several BSAI non-pollock trawl groundfish fisheries among fishing sectors, and facilitates the formation of harvesting cooperatives in the non-American Fisheries Act (AFA) trawl catcher processor (CP) sector. In effect, the program establishes a limited access privilege program¹ for the non-AFA trawl catcher processor sector.

¹The Magnuson Stevens Act (as amended through Jan. 12, 2007) defines the term: "limited access privilege"— (A) means a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person; and (B) includes an individual fishing quota; but (C) does not include community development quotas as described in section 305(i)."

NOAA Fisheries recently completed its determination of the qualifying vessels under Amendment 80. The license tied to the Amendment 80 quota, as well as all other LLPs assigned to a vessel in the program any time after Amendment 80 program implementation, are restricted from being used by a non-Amendment 80 vessel. The qualification period for the Amendment 80 program was based on harvests from 1997 through 2002; a total of 28 vessels are qualified for the Amendment 80 program.² The 28 licenses originally assigned to the Amendment 80 vessels are listed in the final rule.³ Many of the elements of Amendment 80 were effective on October 15, 2007; the remaining portions of the final rule were effective January 2008.⁴

Amendment 80 was considered necessary to increase resource conservation and improve economic efficiency for harvesters who participate in the BSAI non-pollock groundfish fisheries (i.e., the non-AFA trawl CP sector). The program intended to allow members of the non-AFA trawl CP sector to more nearly optimize fishing effort, which would potentially reduce bycatch, minimize waste, and improve utilization of fish resources. The intended results include increased operational efficiency for vessels in the program, by allowing them to alter their historic fishing patterns and operate under a cooperative structure. The flexibility introduced with Amendment 80, and the ability to operate under a cooperative system, could provide these vessels a competitive advantage over participants in other fisheries that are not currently operating under a rationalized system.

Thus, similar to other rationalization programs, an ancillary goal of Amendment 80 was to limit the ability of the non-AFA trawl CP sector to expand their harvesting capacity into other fisheries not managed under a limited access privilege program. The Council recognized this need by establishing harvesting sideboards in the Gulf of Alaska.⁵ Harvesting sideboards limit harvest of Pacific cod, pollock, and rockfish in the GOA, the eligibility of Amendment 80 vessels to participate in GOA flatfish fisheries, and the amount of halibut PSC that Amendment 80 vessels can catch when harvesting groundfish in the GOA. However, while Amendment 80 allows for consolidation of a rationalized harvesting *and processing* sector, processing sideboards were not established for the Amendment 80 sector in either the Gulf of Alaska or the BSAI.

The draft problem statement above notes that the final rule for Amendment 80 allows the Amendment 80 trawl CPs to act as motherships and receive catcher vessel harvests from a Pacific ocean perch and Atka mackerel allocation created specifically for vessels outside of the Amendment 80 program, i.e., the 'trawl limited access sector'. The trawl limited access sector is comprised of all other BSAI trawl fishery participants not in the Amendment 80 sector, including AFA catcher processors, AFA catcher vessels, and non-AFA trawl catcher vessels. Under Amendment 80, the trawl limited access sector received an allocation of Amendment 80 species (AI Pacific ocean perch, BSAI Atka mackerel, BSAI flathead sole, BSAI Pacific cod, BSAI rock sole, and BSAI yellowfin sole) and crab and halibut PSC.

²The non-AFA trawl CP sector (universe of Amendment 80 vessels) was defined by the Consolidated Appropriations Act of 2005, Section 219(a)(7), which required a CP to have harvested with trawl gear and processed not less than a total of 150 mt of non-pollock groundfish during the period January 1, 1997, to December 31, 2002.

³On May 19, 2008, in the case *Arctic Sole Seafoods v. Gutierrez*, the Western District of Washington ruled that a qualified owner of an Amendment 80 vessel may "replace a lost vessel with a single substitute vessel." This ruling would allow a person to replace an Amendment 80 vessel that has suffered an actual total loss, constructive total loss, or permanent ineligibility to receive a fishery endorsement under 46 U.S.C. 12108. For example, a person could replace a lost Amendment 80 vessel with another vessel that had historically been active processing AI Atka mackerel or POP. Thus, the Council should clarify whether an Amendment 80 replacement vessel would be subject to the proposed sideboard restriction, or if the restriction is intended to apply only to the list of Amendment 80 vessels originally identified to be used in the fishery as listed in Table 31 to part 679.

⁴The final rule is published at 72 FR 52668 (September 14, 2007).

⁵The GOA sideboard limits were based upon the harvest of species not allocated by the main portion of Amendment 80 (Component 1), during the same qualification years used to determine the non-AFA trawl CP sector's allocation of the target species (1998 through 2004). Sideboards apply to all Amendment 80 vessels and all LLP licenses that can be used on an Amendment 80 vessel. Sideboards apply to all Amendment 80 vessels, with a limited exemption for the F/V GOLDEN FLEECE. Note that there are no BSAI sideboards for any species for Amendment 80 vessels.

The proposed action focuses on limiting catcher vessel deliveries of POP and Atka mackerel in Area 541 (Eastern Aleutian District) and Area 542 (Central Aleutian District) to Amendment 80 CPs. In Areas 541 and 542 for Atka mackerel, the trawl limited access allocation starts at 2 percent of the TAC, increasing 2 percent each year up to the maximum of 10 percent. For Pacific ocean perch, the allocation in Areas 541 and 542 begins at five percent of the TAC for the first year, increasing to the maximum amount of 10 percent in the second year. (As an aside, in Area 543 (Western Aleutian District), the Pacific ocean perch allocation is fixed at 2 percent.) Please reference Table 1 below.

Note that the AFA sectors will continue to be subject to harvesting sideboards limiting their participation in the AI Pacific ocean perch and AI Atka mackerel fisheries (Table 2), thus, the new trawl limited access allocations of these species could be harvested in large part by the non-AFA trawl CV sector. Only the AFA CP sideboard for Central AI Atka mackerel exceeds the trawl limited access allocation in the first years.

Table 1 Trawl Limited Access Aleutian Islands Pacific ocean perch and Atka Mackerel Allocations under Amendment 80

Species	Year	Area 541 (eastern AI)		Area 542 (central AI)		Area 543 (western AI)	
		% allocation	allocation in mt	% allocation	allocation in mt	% allocation	allocation in mt
Atka mackerel	year 1	2%	319	2%	434	0	0
	year 2	4%	637	4%	868	0	0
	year 3	6%	956	6%	1301	0	0
	year 4	8%	1275	8%	1735	0	0
	year 5	10%	1593	10%	2169	0	0
POP	year 1	5%	214	5%	222	2%	136
	year 2	10%	428	10%	445	2%	136

Source: 2008 and 2009 harvest specifications, NMFS. Note that Year 1 = 2008 TAC. Years 2 through 5 correspond to 2009 – 2012, and are projections.

Table 2 Trawl limited access AFA CV, CP, and non-AFA CV Aleutian Islands Pacific ocean perch and Atka mackerel allocations and AFA sideboards in Area 541 & 542, 2008 - 2009

Species	Year	Area 541 (eastern AI)					Area 542 (central AI)				
		trawl limited access allocation	AFA CV sideboard	AFA CV sideboard (mt)	AFA CP sideboard	AFA CP sideboard (mt)	trawl limited access allocation	AFA CV sideboard	AFA CV sideboard (mt)	AFA CP sideboard	AFA CP sideboard (mt)
Atka mackerel	year 1 (2008)	2%	0.32%	28	0%	1	2%	0.01%	1	11.5%	2496
	year 2 (2009)	4%	0.32%	22	0%	1	4%	0.01%	1	11.5%	1952
POP	year 1 (2008)	5%	0.77%	34	2%	88	5%	0.25%	11	0.1%	4
	year 2 (2009)	10%	0.77%	33	2%	86	10%	0.25%	11	0.1%	4

The options proposed to resolve the identified problem are processing sideboards, or limits on the amount of Pacific ocean perch and Atka mackerel harvested in the Eastern and Central AI that can be delivered to Amendment 80 CPs. Note that the proposed rule for Amendment 80 did prohibit any Amendment 80 vessel from catching, receiving, or processing fish assigned to the BSAI trawl limited access sector (72 FR 30073, 5/30/07). The proposed rule (p. 30073) explained the issue as follows (please reference the entire rule for details):

“The Council clearly recommended that persons who are not participants in the Amendment 80 sector be prohibited from catching Amendment 80 species assigned to the Amendment 80 sector. It is also clear that the Council intended to prohibit Amendment 80 vessels from catching Amendment 80 species assigned to the BSAI trawl limited access sector.

The Council noted that Amendment 80 vessel owners and operators, specifically Amendment 80 vessel owners and operators participating in Amendment 80 cooperatives, could consolidate fishing operations, receive CQ from other cooperatives, and otherwise benefit from the exclusive harvesting privileges this proposed LAPP provides. Because Amendment 80 vessels could also process catch onboard, the allocation of a portion of the ITAC to the Amendment 80 sector would effectively provide exclusive processing opportunities for that amount of the ITAC to Amendment 80 vessels. Conceivably, Amendment 80 vessels in cooperatives could consolidate processing activities. It is not clear that the Council considered or intended that Amendment 80 vessels should serve as processing platforms for multiple cooperatives, harvesters in the Amendment 80 limited access fishery, and the BSAI trawl limited access sector. Processing restrictions for other cooperatives and the Amendment 80 limited access fishery are discussed in Sections VII and VIII of this preamble.

Therefore, the proposed rule would prohibit any Amendment 80 vessel from catching, receiving, or processing fish assigned to the BSAI trawl limited access sector. NMFS has determined that this prohibition would best meet the Council's recommendation to provide an allocation of ITAC to the Amendment 80 sector, but not encourage the consolidation of fishing or processing operations in the BSAI trawl limited access sector. Additionally, allowing Amendment 80 vessels to receive or process fish caught by vessels in the BSAI trawl limited access sector could allow Amendment 80 vessels to serve as motherships (i.e., a processing platform that is not fixed to a single geographic location), or stationary floating processors, for the BSAI trawl limited access sector fleet. This could increase the potential that catch formerly delivered and processed onshore, or at specific facilities onshore, could be delivered and processed offshore. This change in processing operations could have economic effects. The Council did not specifically address these issues at the time of final Council action."

However, while the final rule for Amendment 80 prohibits the use of an Amendment 80 vessel assigned to an Amendment 80 cooperative for a calendar year to receive or process catch from any Amendment 80 vessel not assigned to that Amendment 80 cooperative (or in the Amendment 80 limited access fishery) for that calendar year, it specifically does not limit the ability of Amendment 80 vessels to receive and process catch from other fisheries, such as the BSAI trawl limited access fishery.

This change from the proposed rule was based on public comment received and is discussed in the final rule (72 FR 52679, 9/14/07). In effect, the preamble to the proposed rule stated several reasons for the proposed prohibitions on receiving and processing unsorted catch from the BSAI trawl limited access sector onboard an Amendment 80 vessel, including, but not limited to: (1) uncertainty over whether the Council intended to allow unrestricted delivery of unsorted catch; and (2) concern over the unintended consequences of allowing Amendment 80 vessels to receive catch from non-Amendment 80 vessels.

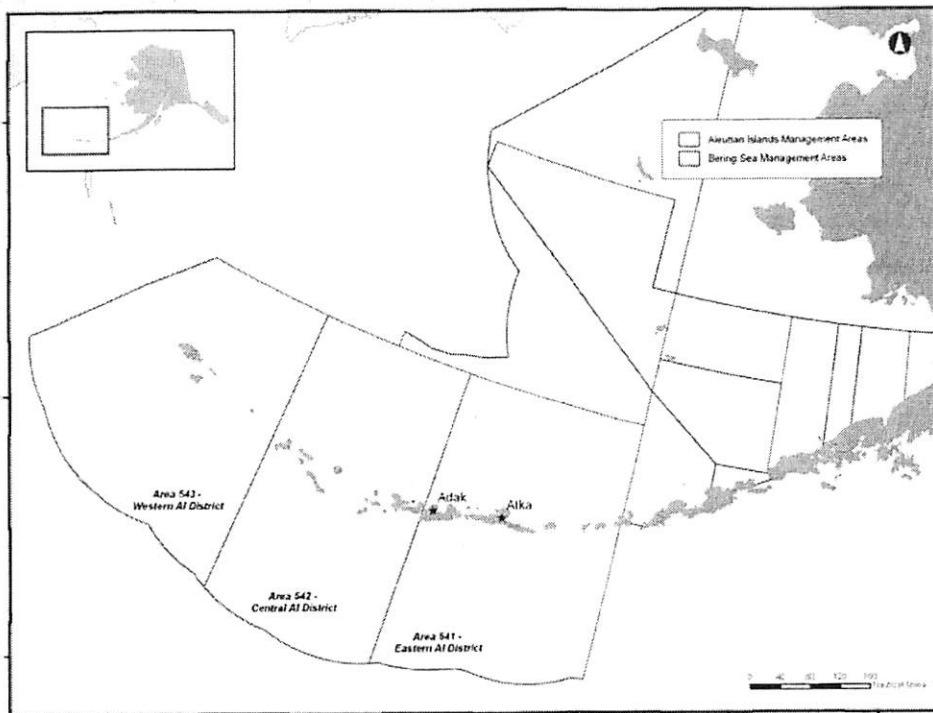
In light of public comment, NMFS reviewed the rationale for the proposed prohibitions, examined the administrative record, and developed additional analysis on the economic impacts of these proposed prohibitions. In general, during each year of a recent time period (2003 – 2006), only one Amendment 80 vessel received catch from a non-Amendment 80 vessel each year. The final rule reports that it appears that the non-Amendment 80 vessel and the Amendment 80 vessel are owned by the same entity, and the proposed prohibition would have limited the ability of this one entity to continue to deliver and process unsorted catch as it has historically. The analysis indicated that the practice of delivering unsorted catch from non-Amendment 80 vessels to Amendment 80 vessels is not as widespread as suggested by some commenters, although the final rule notes that industry participants may wish to engage in such practices in the future. On this issue, the final rule concludes: "Based on the above, previous concerns that permitting this practice would create a significant shift in processing patterns away from existing shore-based processors do not appear to be supported, particularly if current rates of delivery of unsorted catch

from the BSAI trawl limited access sector to the Amendment 80 sector continue” (72 FR 52680, 9/14/07).⁶

In sum, the draft problem statement for this action asserts that the Council did not anticipate that Amendment 80 entities would establish a catcher vessel fleet to target the BSAI trawl limited access allocations of Pacific ocean perch and Atka mackerel in the Aleutians, and deliver that harvest to Amendment 80 CPs. However, the proposed and final rules for Amendment 80 clearly anticipated and analyzed this issue, and did not find its future potential impacts on the non-Amendment 80 sectors or onshore processing sectors likely to be substantial.

While the need to protect coastal communities and their shoreside processing opportunities is not specifically mentioned in the draft problem statement, the Council motion from June 2008 notes that the action under consideration to establish processing sideboards is intended to protect two Aleutian Islands communities. These are Atka and Adak, both of which are located in Area 541, the Eastern Aleutian Islands (see Figure 1 below).

Figure 1 Map of Federal Reporting Areas 541, 542, and 543 (Aleutian Districts)



Proponents of the proposed action from Adak contend that lack of sideboards on processing of the BSAI trawl limited access sector allocations of POP and Atka mackerel by Amendment 80 vessels preempted a significant opportunity for Area 541 (EAI) harvests to benefit vessels operating out of Adak. They assert that a catcher vessel fleet affiliated with Amendment 80 entities is targeting the BSAI trawl limited access allocations of POP and Atka mackerel and delivering to Amendment 80 catcher processors, and that this allocation was clearly not intended to benefit Amendment 80 entities. Table 7 in the Amendment 80

⁶Note that NMFS highlighted this issue to the Council during the public comment period on the proposed rule, and the Council did not submit comments suggesting that it had intended to restrict processing by Amendment 80 vessels in this manner.

proposed rule provides key rationale developed by the Council for the specific allocations of ITAC and PSC to the Amendment 80 and BSAI trawl limited access sectors. Relative to the BSAI trawl limited access sector allocation of AI POP and Atka mackerel, it states:

“(1) Historic (from 1998 through 2004) and more recent (2005 and 2006) catch data indicate that the Amendment 80 sector caught and retained nearly 100 percent of the TAC of these species in all management areas.

(2) AI POP in Areas 541 and 542, and Atka mackerel in Areas BS/541 and 542 may be harvested by smaller trawl vessels, primarily operating out of Adak, Alaska. These smaller trawl vessel operators expressed a desire to harvest Atka mackerel during the development of the Program.

(3) A specific allocation to the BSAI trawl limited access sector would provide additional opportunities for harvest by smaller trawl vessels. The total allocation to the BSAI trawl limited access sector would increase slightly each year to provide the BSAI trawl limited access sector time to scale operations up to the level of the allocation.” (emphasis added) (72 FR 30066, 5/30/07)

It may help to amend the draft problem statement to clearly state that the issue is specific to the *trawl limited access allocations* of AI POP and Atka mackerel, if that is the intent. In addition, it may help to clarify that the concern with returning the benefits of the trawl limited access allocation to the Amendment 80 sector is the notion that those benefits are redistributed from a non-Amendment 80 trawl sector that could target those species in Area 541 and 542, and adjacent shorebased processors. In that case, one may assert that the transient markets provided by Amendment 80 CPs acting as motherships undermine community stability by making it more difficult for shorebased processors to remain in business and provide year-round markets to smaller vessels participating in a suite of fisheries. In addition, to the extent that this action would slow the harvest of the allocations, it could benefit smaller vessels. The public and the Council may benefit from changes to the problem statement that clarify the problem, whether real or perceived, at this point.

Background data on the Atka mackerel and POP fisheries

The first several tables provide background information on the POP and Atka mackerel fisheries for reference. Table 3 shows the total harvest (retained and discarded catch) of POP and Atka mackerel in the BSAI by year and operating type (CP or CV), from 2003 through June 2008. This provides the last five full years of data, plus the 2008 data that are available at this time. This table includes harvest from any gear type, although the vast majority is from vessels using trawl gear. The majority of the harvest by both species has been by CPs, most notably Amendment 80 CPs. The CV harvest of Atka mackerel has been relatively steady between 1,000 and 2,000 mt each year; the CV harvest of POP has gradually increased each year since 2003, but has remained less than 1,000 mt. Note that the 2008 data only includes harvest through June 2008.

Note also that the 2008 and 2009 harvest specification tables for Atka mackerel and POP are provided as Appendix 1 to this paper for reference.

Table 3 Total catch of Atka mackerel and Pacific ocean perch in the BSAI, 2003 - 2008

Year	Harvest sector ¹	Species	Vessel Count	Metric tons	% of total by species
2003	CP	Atka M	59	52,053	96%
	CV	Atka M	208	1,992	4%
	CP	POP	51	13,518	97%
	CV	POP	181	374	3%
2004	CP	Atka M	55	54,490	97%
	CV	Atka M	175	1,577	3%
	CP	POP	50	10,818	96%
	CV	POP	122	403	4%
2005	CP	Atka M	55	56,621	98%
	CV	Atka M	152	1,021	2%
	CP	POP	53	9,313	95%
	CV	POP	114	505	5%
2006	CP	Atka M	52	56,127	98%
	CV	Atka M	149	1,344	2%
	CP	POP	51	11,413	95%
	CV	POP	106	647	5%
2007	CP	Atka M	46	52,725	97%
	CV	Atka M	159	1,374	3%
	CP	POP	51	16,337	95%
	CV	POP	103	857	5%
2008 (through June)	CP	Atka M	36	19,197	99%
	CV	Atka M	112	155	1%
	CP	POP	34	3,114	85%
	CV	POP	73	560	15%

Source: NMFS Catch accounting database, 2003 - 2008. 2008 data include harvests through June 2008.

Metric tons = total catch (retained and discarded) by CVs and CPs using any gear type. Excludes CDQ harvests.

¹Harvest sector indicates whether a vessel was acting as a CV or CP during a given landing. A given vessel may operate as both a CV and CP.

Vessel count means the unique number of vessels that landed each species.

The Atka mackerel allocations are allocated equally between two seasons, with the A season from January 20 – April 15 and the B season from September 1 - November 1. Any harvest of between seasons is primarily from incidental catch of Atka mackerel in other directed fisheries. Unharvested TAC in the A season can be rolled over to the B season. The Pacific ocean perch fishery for the BSAI trawl limited access sector opened on February 26 this year; this fishery is not seasonally allocated. While some harvest occurred in February/March of this year in the Aleutian Islands, most catch occurred in July.⁷

Note also that one vessel in the BSAI trawl limited access fishery registered for the HLA (harvest limited area)⁸ Atka mackerel fishery for the B season. None of the vessels in the BSAI trawl limited access

⁷As of August 2008: for the Pacific ocean perch fishery in the Bering Sea, most catch occurred during week ending 2/9; for Western AI, the majority of the harvest occurred during weeks ending 7/19 and 7/26; for the Central AI, during the week ending 7/19; for the Eastern AI, during the week ending 7/12. Personal communication, J. Hogan, NMFS, 8/6/08.

⁸In general, the HLA is a brief Atka mackerel directed fishery in the Central or Western AI for which trawl vessels must pre-register by the first work day after January 1 or July 31. Vessels are randomly assigned to fish in the Central or Western AI, starting 48 hours after the Eastern AI closes. The HLA lasts no longer than 14 days, and participating vessels may only directed fish for Atka mackerel during the HLA.

fishery registered for the HLA Atka mackerel fishery during the A season. If any portion of the Atka mackerel or POP incidental catch allowance or ITAC assigned to the BSAI trawl limited access sector is determined to be unlikely to be harvested, NMFS can reallocate that remaining amount to the Amendment 80 cooperatives.

Table 4 differs from the previous tables in that it breaks out the total trawl harvest of Atka mackerel in Areas 541 and 542 combined (Eastern and Central AI, respectively), compared to the total trawl harvest of Atka mackerel in the entire BSAI, by trawl operating type, from 2003 through June 2008. While the vast majority of the Atka mackerel trawl harvest has been taken by CPs, the CV harvest in 2007 increased substantially compared to prior years. Few vessels contributed to this increase. Recall that the BSAI trawl limited access allocations of Atka mackerel in Areas 541 and 542 were not effective until this year (2008), with the implementation of Amendment 80. Most of the Atka mackerel catch not attributed to Areas 541 and 542 is from Area 543 (Western AI). Note that currently, the Eastern AI/Bering Sea Atka mackerel allocation is combined; however, harvest from the Bering Sea is primarily incidental catch, and has recently been 3,000 to 4,000 mt annually.

Table 4 Total trawl catch of Atka mackerel in the Eastern and Central AI and BSAI, 2003 - 2008

YEAR	Harvest Sector ¹	(Area 541 & 542 only) Vessel Count	(Area 541 & 542 only) Metric tons ²	BSAI Vessel Count	BSAI Metric tons ³
2003	CP	14	31,016	37	52,031
	CV	32	50	121	1,787
2004	CP	14	30,793	39	54,454
	CV	21	31	113	1,436
2005	CP	13	35,961	38	56,598
	CV	16	5	108	785
2006	CP	14	40,761	39	56,116
	CV	20	21	101	992
2007	CP	15	41,697	39	52,703
	CV	37	1,039	110	1,317
2008	CP	9	13,007	30	19,194
	CV	36	142	97	155

Source: NMFS Catch accounting database, 2003 - 2008. 2008 data include harvests through June 2008. Harvest (mt) is total catch (retained and discarded) by CVs and CPs using trawl gear. Excludes CDQ harvests.

¹Harvest sector indicates whether a vessel was acting as a CV or CP during a given landing. A given vessel may operate as both a CV and CP.

²Area 541 = Eastern AI and Area 542 = Central AI.

³The harvest areas included in the BSAI column are the Eastern AI/BS, Central AI, and Western AI allocations. Harvest from the BS is primarily incidental catch (recently 3,000 mt to 4,000 mt per year).

Table 5 shows the same information as Table 4, but for Pacific ocean perch. Table 5 breaks out the total trawl harvest of POP in Areas 541 and 542 combined, compared to the total trawl harvest of POP in the entire BS and AI, by trawl operating type, from 2003 through June 2008. While the vast majority of the POP trawl harvest has been taken by CPs, the Aleutian Islands CV harvest in 2007 and 2008 increased substantially compared to prior years. Note that most of the POP catch not attributed to Areas 541 and

542 is from Area 543 (Western AI). The Bering Sea allocation of POP is relatively small compared to the Aleutians (refer to Appendix 1 for the harvest specifications).

Like with Atka mackerel, the trawl limited access allocations of POP in Areas 541 and 542 were not effective until this year (2008), with the implementation of Amendment 80. Thus, there is not yet a year of complete data to show whether those allocations are fully prosecuted and by which sectors.

Table 5 Total trawl catch of Pacific ocean perch in the Eastern and Central AI and BSAI, 2003 - 2008

Year	Harvest Sector	(Area 541 & 542 only) Vessel Count	(Area 541 & 542 only) Metric tons	Harvest Sector ¹	Area	Vessel Count	Metric tons
2003	CP	13	6,724	CP	AI	13	12,753
	CV	31	8	CV	AI	31	8
				CP	BS	29	765
				CV	BS	98	364
2004	CP	14	5,326	CP	AI	14	10,475
	CV	20	18	CV	AI	20	18
				CP	BS	34	340
				CV	BS	90	386
2005	CP	14	4,513	CP	AI	14	8,926
	CV	15	17	CV	AI	15	17
				CP	BS	30	386
				CV	BS	87	487
2006	CP	15	5,873	CP	AI	15	11,022
	CV	20	31	CV	AI	21	31
				CP	BS	32	391
				CV	BS	74	614
2007	CP	16	8,648	CP	AI	16	15,693
	CV	38	412	CV	AI	38	647
				CP	BS	29	640
				CV	BS	85	210
2008	CP	9	2,328	CP	AI	9	2,967
	CV	37	440	CV	AI	37	527
				CP	BS	22	112
				CV	BS	19	0

Source: NMFS Catch accounting database, 2003 - 2008. 2008 data include harvests through June 2008. Harvest (mt) is total catch (retained and discarded) by CVs and CPs using trawl gear. Excludes CDQ harvests.

¹Harvest sector indicates whether a vessel was acting as a CV or CP during a given landing. A given vessel may operate as both a CV and CP.

²Area 541 = Eastern AI and Area 542 = Central AI.

³The harvest areas included in the AI rows are the Eastern AI, Central AI, and Western AI allocations.

Background data on Adak and Atka

Adak and Atka are the two communities located in the Eastern AI that the processing sideboards are intended to protect, by limiting the amount of deliveries of Atka mackerel and POP that Amendment 80 CPs can receive from catcher vessels harvesting these species in the Eastern and Central AI.

Limited profiles of Atka and Adak are provided here for reference from two sources.⁹ Atka is located on Atka Island towards the end of the Aleutian Island archipelago. It is the western most fishing community in the Aleutian chain, and has a 2000 U.S. Census population of 92. Residents of Atka are primarily Alaska Native (Aleut), and the economy is predominantly based on subsistence living as well as commercial fishing. Atka is a CDQ community, represented by APICDA, and has a small onshore processor (Atka Pride Seafoods) which serves the local fleet and employs local residents. The primary species processed are halibut and sablefish, and the commercial fleet delivering to Atka is involved mainly in those fisheries. According to the CFEC, 4 permits were held by 3 permit holders in Atka in 2006, and 2 permits were held by 2 permit holders in 2007.

Note that the Council received a letter from city leaders in Atka at its April 2008 meeting, related to a proposal from Adak Fisheries for NMFS to develop an emergency rule to require that all trawl cod harvested in the region be delivered onshore in the 2009 A season.¹⁰ While that proposal is not being developed, Atka noted that such processing restrictions would reduce their revenue opportunities. The letter notes that they currently depend upon a floating processor (Independence, Trident Seafoods) to purchase and process Pacific cod. Trident pays a local sales tax to Atka, as well as raw fish taxes. The letter notes that Atka is planning to transition to a shoreplant for processing crab and Pacific cod in the future.

Both APICDA and Atxam Corporation, the village corporation in Atka, recently purchased processing quota share for Western AI golden king crab, with APICDA purchasing the maximum amount of shares under the cap. Atka plans to use Trident's floater to process that crab this season, with plans to reconstruct its onshore processor and add a crab processing line in time for the 2009/2010 crab season.¹¹ The intent is to reconstruct the plant and add Pacific cod capacity as well, but representatives of Atka have emphasized that the ability to use a stationary floating processor in Atka is necessary in both the short and long-term for the viability of that community. Anecdotal evidence suggests that a high volume of cod is necessary to make cod operations economically viable, whether the operation is a shorebased plant or floating processor. Atka recognizes it would need to substantially increase its shoreplant capacity in order to make cod processing economically feasible.

Adak is located on Kuluk Bay on Adak Island in the Aleutian chain. It is the southernmost community in Alaska, with a 2000 U.S. Census population of 316, although estimates of year-round residents vary. According to City of Adak staff estimates, in 2007, the population was about 120 year-round residents. Unlike Atka, Adak is not a CDQ community. Most are aware of Adak's significant role during World War II as a U.S. military operations base, and the Aleut Corporation's current efforts to develop Adak as a commercial center and civilian community with a private sector economy focused heavily on commercial fishing. Through Congressional action, Adak currently receives an exclusive allocation of Western AI brown king crab (allocated to a non-profit entity representing Adak) and an allocation of the

⁹Community information on Atka is from the "Community Profiles for North Pacific Fisheries – Alaska", U.S. Dept. of Commerce, NOAA Fisheries, NMFS, AFSC. December 2005, pp. 297 – 300. Community information on Adak is from the "Comprehensive Baseline Commercial Fishing Community Profiles: Sand Point, Adak, St. Paul, and St. George, Alaska", prepared for the NPRB and NPFMC by EDAW, June 2008.

¹⁰Letter from L. Prokopeuff, M. Snigaroff, and L. Lokanin, to E. Olson, Council Chair, April 2, 2008.

¹¹Larry Cotter, APICDA, personal communication, August 15, 2008.

AI pollock fishery (allocated to the Aleut Corporation). Adak is pursuing a broader range of fisheries for a resident fleet to be able to deliver to Adak Fisheries, the shoreside processor located on Adak.

As a relatively new civilian community, the local fleet in Adak is fairly small, composed primarily of vessels 32' or less in length overall. According to the CFEC, 10 permits were held by 6 permit holders in Adak in 2006, and 6 permits were held by 3 permit holders in 2007. Of the six permit holders in Adak in 2006, five had a permit for groundfish, with one also having a halibut/sablefish permit. One permit holder had a salmon permit, which was combined with a crab/other permit. The community profiles document (EDAW, June 2008) reports that at the time of fieldwork in 2007, five small vessels were considered 'local' by residents and actively engaged in, or attempting to be engaged in, local fisheries. Additionally, there are a number of other vessels that spend time in Adak and may have the community name painted on their vessel, but are not considered part of the local fleet as they have stronger homeporting and fishing effort ties elsewhere.

The following tables show various species or categories of species delivered to the shoreside plant in Adak (Adak Fisheries) during 2003 - 2007. A waiver of confidentiality was offered by and obtained from a representative of Adak Fisheries in order to provide the ADF&G fishticket data for this processor.¹² Harvest from the Aleutian Islands is differentiated from the Bering Sea, and Pacific ocean perch and Atka mackerel harvest data are provided when possible. Harvest amounts from fewer than three vessels cannot be reported due to confidentiality rules. Note that some crab landings that were custom processed at the Adak facility under another processor name were not included, as the confidentiality waiver only applies to Adak Fisheries. Similar information is not provided for the shoreside processor in Atka, due also to confidentiality limitations. However, the two primary species processed in Atka are halibut and sablefish. Table 6 shows that the majority of the deliveries to Adak Fisheries during this time period have been Pacific cod. Note that the State water Pacific cod fishery in the AI was established by the Alaska Board of Fisheries in 2006, and this harvest is included. The allocation to the State water Pacific cod fishery is 3% of the BSAI Pacific cod ABC. Table 7 shows the same type of information for Adak Fisheries from January through June 2008. The 2008 data are provided in a separate table, as the data source is different from that of Table 6. Harvest data in Table 7 is from the NMFS catch accounting system, since 2008 fishticket data are not yet available.

Note that Pacific cod continues to be the primary species delivered to Adak thus far in 2008. Relatively little Atka mackerel or Pacific ocean perch has been delivered in recent years; however, as previously noted, 2008 is the first year of the BSAI trawl limited access sector allocations for these species in the AI. Part of the stated impetus for creating these allocations is that POP and Atka mackerel in Areas 541 and 542 may be harvested by smaller trawl vessels, primarily operating out of Adak. These smaller trawl vessel operators expressed a desire to harvest Atka mackerel during the development of Amendment 80, and the allocations were intended to provide additional opportunities to do so. As stated in the rule, the total allocation to the BSAI trawl limited access sector increases slightly each year to provide the BSAI trawl limited access sector time to scale operations up to the level of the allocation.

¹²Received by ADF&G, signed by William Tisher, July 30, 2008.

Table 6 Number of vessels delivering and amount (mt) to Adak Fisheries, by species or species group, 2003 - 2007

YEAR	FMP Area	Species	Vessel count	Metric tons
2003	AI	Pacific cod	23	8,706
	AI	crab	15	925
	AI	halibut	29	610
	AI	other groundfish	27	294
	BS	BS groundfish	3	2
2004	AI	Pacific cod	19	9430
	AI	crab	7	679
	AI	other groundfish	30	159
	AI	Atka mackerel	4	0
	AI	POP	4	3
	BS	BS groundfish	2	conf.
	BS/AI	halibut	25	430
2005	AI	Pacific cod	16	6,438
	AI	crab	2	conf.
	AI	halibut	21	326
	AI	other groundfish	19	292
	BS	BS groundfish	2	conf.
2006	AI	Pacific cod	19	6,449
	AI	halibut	11	117
	AI	other groundfish	18	972
	AI	POP	1	conf.
	WG	WG halibut	1	conf.
2007	AI	Pacific cod	41	12,435
	AI	crab	2	conf.
	AI	other groundfish	17	1,385
	AI	POP	2	conf.

Source: ADF&G Fishtickets, 2003 – 2007.

Includes deliveries of any species to Adak Fisheries, including CDQ and AI State water Pacific cod fisheries. Retained catch only.

Note: The category "other groundfish" may include small amounts of octopus and/or sculpin. Small amounts of custom processed crab species that were physically processed in Adak under another plant name are not included.

Table 7 Number of vessels delivering and amount (mt) to Adak Fisheries, by species, 2008

Year	FMP Area	Species	Vessel Count	Metric tons
2008	AI	Arrowtooth Flounder	22	11
2008	AI	Atka Mackerel	18	2
2008	AI	BSAI Alaska Plaice	1	conf.
2008	AI	BSAI Other Flatfish	14	<1
2008	AI	BSAI Roughey Rockfish	19	<1
2008	AI	BSAI Shortraker Rockfish	5	3
2008	AI	BSAI Squid	4	<1
2008	AI	Flathead Sole	17	2
2008	AI	Greenland Turbot	5	5
2008	AI	Northern Rockfish	19	12
2008	AI	Other Rockfish	26	7
2008	AI	Other Species	26	47
2008	AI	Pacific Cod	37	5347
2008	AI	Pacific Ocean Perch	19	282
2008	AI	Pollock	18	425
2008	AI	Rock Sole	20	75
2008	AI	Sablefish	7	99
2008	AI	Yellowfin Sole	11	<1

Source: NMFS Catch accounting system, January through June 2008.
 Includes CDQ and AI State waters fisheries. Includes total catch (retained and discarded).
 Small amounts of custom processed crab species that were physically processed in Adak
 under another plant name are not included.

Table 8 shows the number of unique vessels that delivered to Adak and Atka during 2003 – 2007, in order to provide an idea of the size of the recent fleet delivering to these two communities. Metric tons (retained catch) landed are provided for Adak, as Adak Fisheries waived confidentiality of these data. However, landings data for Atka are masked. Note that while Table 8 shows deliveries from all FMP areas delivered to these communities, the vast majority is from Areas 541 (EAI) and 542 (CAI).

Table 8 shows that 27 to 70 vessels annually have delivered species harvested in the Aleutian Islands to Adak during 2003 – 2007, with those annual harvests ranging from about 7,000 mt (2005) to 14,000 mt (2007). A few vessels also delivered species harvested in the Bering Sea, and one in the Western Gulf. Table 8 also shows that 3 to 7 vessels annually delivered species harvested in the AI to Atka. The amount of catch delivered to Atka cannot be reported due to confidentiality rules. There are a few catch records for each community without statistical area information.

Table 8 Number of unique vessels delivering any species to Adak and Atka during 2003 - 2007, and tons landed

Year	FMP Area	City	Vessels	Metric tons
2003	AI	Adak	70	10,535.6
	BS	Adak	3	2.0
	-	Atka	2	**
	AI	Atka	7	**
2004	AI	Adak	48	10,665.1
	BS	Adak	5	23.4
	-	Adak	1	**
	-	Atka	3	**
	AI	Atka	6	**
2005	AI	Adak	34	7,222.0
	BS	Adak	2	**
	-	Atka	1	**
	AI	Atka	5	**
2006	AI	Adak	27	7,566.6
	WG	Adak	1	**
	AI	Atka	7	**
2007	AI	Adak	48	14,137.9
	AI	Atka	3	**

Source: ADF&G Fish tickets, 2003 - 2007.

Includes retained catch from all stat areas. Note that some catch records are missing stat area information.

**Confidential data.

The 'city' column refers to landings processed under the Adak or Atka plant names.

A small amount of crab landings that were custom processed in Adak under another plant name are excluded.

The CFEC data (not provided) also show that there are two Adak vessels delivering to Adak and two Atka vessels delivering to Atka during 2003 – 2007. This means that Adak and Atka are reported as the vessel owner's residence, based on CFEC vessel ownership records. However, 'homeport' information, or vessel owner residence information, may not provide a complete picture of the fleet of vessels delivering to these communities. Additional vessels can be considered 'local' by residents and actively engaged in local fisheries. Table 9 and Table 10 attempt to provide some information on the fleet of vessels that deliver various levels of landings to each of these communities, even though they may not be 'homeported' in these communities.

Table 9 provides a summary of participation patterns during 2003 – 2007. This table shows that of the 116 unique vessels that have made landings in Adak during 2003 – 2007, 5 of those have delivered all five years; 9 have delivered in four of the five years; 17 have delivered in three of the five years; 31 have delivered in two of the five years; and about half (54) have delivered in only one of the five years. The vessels represented in each column are unique vessels, and the rows are additive. Thus, there are 31 (17+9+5) vessels that have delivered to Adak in at least three of the five years during 2003 – 2007.

Table 9 Participation pattern of vessels that delivered to Adak and Atka, 2003 - 2007

Community	Number of vessels that delivered 1, 2, 3, 4, or 5 years during 2003 - 2007					Total # of unique vessels with landings in 2003 - 07
	1 year	2 years	3 years	4 years	All 5 years	
Adak	54	31	17	9	5	116
Atka	2	3	1	3	1	10

Source: ADF&G Fishtickets & CFEC records (retained catch only), 2003 - 2007. Includes catch from all areas. The 'city' column refers to landings processed under the Adak or Atka plant names.

In Atka, there are significantly fewer vessels delivering shoreside. Table 9 shows that of the 10 unique vessels that have reported deliveries to Adak during 2003 - 2007, 1 of those has made landings in Atka all five years; 3 have delivered in four of the five years; 1 has delivered in three of the five years; 3 have delivered in two of the five years; and two have delivered in only one of the five years. Thus, half of the vessels (5) have made landings in Atka in at least three of the five years during 2003 - 2007.

Finally, Table 10 shows that of the total number of unique vessels (116) that made landings in Adak during 2003 - 2007, a range of 4 to 10 vessels annually made 10 landings or more; and 9 to 23 vessels annually made 5 or more landings. Vessels with 10 or more landings made up 40 percent to 58 percent of the total landings to Adak. Vessels that made at least 5 landings in a given year comprised the majority of the annual catch - from 62 percent in 2007 to a high of 90 percent in 2003. In any one year, a low of 27 vessels and a high of 70 vessels made landings in Adak during 2003 - 2007.

In Atka, there were significantly fewer vessels delivering overall; ten unique vessels delivered shoreside during 2003 - 2007. Two to 6 vessels made at least 10 annual landings in 2003 - 2005, and 1 to 7 vessels made at least 5 landings annually. Vessels that made at least 5 landings in a given year comprised the vast majority of the annual catch - more than 95 percent in most years. In any one year, a low of 3 vessels and a high of 7 vessels delivered shoreside to Atka during 2003 - 2007.

Table 10 Number of vessels with at least one, five, or ten landings in Adak and Atka annually and percent of harvest, 2003 - 2007

ADAK	Number of vessels with at least one landing per year	% of harvest	Number of vessels with at least 5 landings per year	% of harvest	Number of vessels with at least 10 landings per year	% of harvest
2003	70	100%	23	90%	10	58%
2004	54	100%	19	80%	4	36%
2005	35	100%	9	74%	4	47%
2006	27	100%	12	75%	6	54%
2007	48	100%	16	62%	9	40%
ATKA	Number of vessels with at least one landing per year	% of harvest	Number of vessels with at least 5 landings per year	% of harvest	Number of vessels with at least 10 landings per year	% of harvest
2003	7	100%	7	100%	6	99%
2004	6	100%	6	100%	5	59%
2005	5	100%	4	99%	2	conf.
2006	7	100%	5	95%	0	0%
2007	3	100%	1	conf.	0	0%

Source: ADF&G Fish tickets, 2003 - 2007 (retained catch only) and CFEC records. Includes catch from all areas.

Review and clarification of the proposed options

There are effectively two proposed options for establishing processing sideboard limits on POP and Atka mackerel harvested in Areas 541 and 542 that may be delivered to Amendment 80 CPs:

- Option 1. The greatest amount delivered within 2005 – 2007
- Option 2. The average annual amount delivered within 2005 – 2007

There are several questions surrounding the options that need to be addressed, as well as some assumptions that may be well understood but are not explicit in the language of the options. These are summarized in the following bullets. The first questions pertain to how the sideboards are structured:

- Staff interprets the above options as the amounts delivered (whether greatest or average) from catcher vessels to Amendment 80 CPs acting as motherships. The Council should clarify whether total or retained catch should be used.
- Staff currently assumes that Option 1 means the greatest annual amount delivered within 2005 – 2007 (not the total amount aggregated across all three years).
- Staff currently assumes that there would be separate processing sideboards for POP and Atka mackerel. The Council should clarify if that is not the correct interpretation of the options.
- All sideboard limits to date have been expressed as percentages of an ITAC or allocation. The options propose a processing sideboard ‘amount’. Staff currently assumes that this amount would be calculated into a percentage based on the proposed qualifying years, so as to fluctuate with the TAC. Two different ways to do this are provided below; the Council would need to select a preferred approach:
 1. Convert the Am. 80 processing history in Areas 541/542 to a percentage of the total trawl CV catch of each species in Areas 541/542 to determine the sideboard percentage. That percentage would be applied to the trawl limited access allocation for each species in those areas on an annual basis. This approach would allow the processing sideboard to increase or decrease as the trawl limited access allocations increase or decrease. Note that the trawl limited access allocations are scheduled to step-up (percentage increase) over time, which would result in the sideboards increasing as well.
 2. Convert the Am. 80 processing history in Areas 541/542 to a percentage of the total catch of each species in Areas 541/542 to determine the sideboard percentage. That percentage would be applied to the total TACs for each species in those areas on an annual basis. This approach would result in a sideboard that fluctuates with the TAC, but would not be linked to the step-up in the trawl limited access allocations.
- The Council should clarify whether the sideboards are to be established in the aggregate for Areas 541 and 542. In effect, one processing sideboard for all POP harvested in Areas 541 and 542 combined, and one processing sideboard for all Atka mackerel harvested in Areas 541 and 542 combined. This is the current staff assumption, and is a simpler approach to administer and manage than separate sideboards for each area.

The following questions pertain to which sector(s) the sideboard is applied:

- Staff assumes that the processing sideboard would apply to all eligible Amendment 80 CPs, whether they are in a cooperative or the Amendment 80 limited access fishery. The Council should clarify if that is an incorrect assumption.

The central idea of this action is that Amendment 80 created surplus processing capacity by allowing for consolidation of a rationalized (Amendment 80) processing sector. Since Amendment 80 CPs that do not join an Amendment 80 cooperative can participate in the Amendment 80 limited access fishery, those vessels will continue to compete with each other. The final rule notes that participants in the Amendment 80 limited access fishery will not realize the same potential benefits from consolidation and coordination and will not receive an exclusive harvest privilege that accrues to members of an Amendment 80 cooperative.¹³ NMFS manages the Amendment 80 limited access fishery similar to the way the fisheries were managed prior to implementation of the program. Thus, it spurs the question as to whether the Council intends to apply the processing sideboard to all eligible Amendment 80 CPs, or to limit its application to Amendment 80 CPs participating in cooperatives.

Eligible Amendment 80 quota share holders can form a cooperative with other Amendment 80 quota share holders on an annual basis, provided they meet specific criteria. In 2008, seven Amendment 80 vessels chose not to participate in a cooperative and five instead participated in the Amendment 80 limited access fishery. Four of these vessels are owned by the same company. Even if Amendment 80 vessels choose not to participate in a cooperative, there is the potential for such a limited universe of vessels in the Amendment 80 limited access fishery that it is possible to gain some benefits similar to rationalization. The limited number of participants facilitates the ability to create harvest agreements with one another. In addition, one company may own all the vessels participating in the Amendment 80 limited access fishery, or there may only be one or two vessels that focus on a particular species, thus reducing competition that would otherwise be associated with an (unrationalized) limited access fishery.

For these reasons, absent further Council direction, staff assumes that the processing sideboards would apply to all eligible Amendment 80 CPs, as the current language of the motion does not discern between those in cooperatives and those in the Amendment 80 limited access fishery.

- Are the sideboards intended to apply only to Amendment 80 CPs acting as motherships, or also to Amendment 80 CPs acting as stationary floating processors?

It is necessary for the Council to clarify whether the sideboard would apply only to Amendment 80 CPs acting as motherships, or also to Amendment 80 CPs potentially acting as stationary floating processors. The language of the motion currently states that the sideboard applies to "Amendment 80 CPs acting as motherships." While it may be unlikely that Amendment 80 CPs would act as stationary floating processors, the potential remains, and the implementing regulations would need to clearly articulate the CPs to which the sideboard applies.

Federal regulations currently define a mothership as "a vessel that receives and processes groundfish from other vessels" (50 CFR 679.2).¹⁴ The same regulations define a stationary floating processor as "a vessel of the United States operating as a processor in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI." Thus, one interpretation is that stationary floaters are a subset of motherships that

¹³NMFS assigns the Amendment 80 limited access fishery the amount of the Amendment 80 sector's allocation of Amendment 80 species ITAC and crab and halibut PSC that remains after allocation to all of the Amendment 80 cooperatives.

¹⁴A second part of the definition states: "With respect to subpart E of this part, a processor vessel that receives and processes groundfish from other vessels and is not used for, or equipped to be used for, catching groundfish." Subpart E refers to the regulations implementing the Groundfish Observer Program.

operate in State waters in a single geographic location, and thus are included in the definition of mothership. If it is not the Council's intent to include Amendment 80 CPs acting as stationary floating processors, it should clarify the sector to which the sideboard should apply. As currently stated, the proposed processing sideboards would apply to all Amendment 80 CPs receiving and processing groundfish from other vessels harvesting POP and Atka mackerel in Areas 541 and 542, regardless of whether they were acting as a 'true' mothership or a stationary floating processor.

Finally, the last question pertains to the scope of the sideboards:

- Do the proposed processing sideboards apply to POP and Atka mackerel harvested in the Eastern and Central AI from the trawl limited access allocation only? Or do they also include the Eastern AI/Bering Sea Atka mackerel jig allocation?

The draft problem statement references a need to protect the POP and Atka mackerel BSAI trawl limited access allocations ("POP and Atka mackerel allocation that was set aside specifically for vessels outside of the Amendment 80 program"). However, the options do not specifically limit the processing sideboards to apply only to deliveries of POP and Atka mackerel from the BSAI trawl limited access allocations or trawl gear only in Areas 541 and 542. As stated, the language could be interpreted to limit deliveries to Amendment 80 CPs of POP and Atka mackerel harvested in the Eastern and Central AI from all sources and gear types.

Clearly, the sideboard does not intend to limit the amount of POP and Atka mackerel that Amendment 80 vessels in cooperatives may deliver to each other. And the final rule for Amendment 80 already prohibits an Amendment 80 vessel assigned to an Amendment 80 cooperative to receive or process catch from any Amendment 80 vessel not assigned to that Amendment 80 cooperative (or in the Amendment 80 limited access fishery) for that calendar year. But it is unclear whether the intent is to limit the amount of Eastern AI/BS Atka mackerel that Amendment 80 CPs may receive from jig vessels. Note that Amendment 80 did not affect the Eastern AI/BS jig allocation. The jig allocation of BSAI Atka mackerel was established under BSAI Amendment 34, and was effective in January 1998.¹⁵ The regulation allows jig vessels to receive up to 2 percent of the TAC of Atka mackerel specified for the Eastern AI/BS, based on past harvests in recent years, anticipated harvests, and the extent to which a jig allocation will support development of a jig fishery for Atka mackerel while minimizing the annual amount that remains unharvested. In recent years, the jig allocation has been 0.5% of the Eastern AI and the Bering Sea subarea TAC (after subtraction of the CDQ allocation and ICA); this equates to 80 mt in 2008 and a projected 61 mt in 2009.

NMFS reports that no vessels have targeted Atka mackerel with jig gear in the Eastern AI/Bering Sea since this allocation was established in 1998. The most recent jig harvest reported in the NMFS blend database was from 1994 and 1995, with very little relative harvest. There are no regulations that allow for reallocation or use by any other sector if the jig allocation remains unharvested in a given year.

Given the questions above, it may benefit the public to clarify the language of the options if the proposed processing sideboards are intended to apply only to Amendment 80 CPs acting as motherships that receive POP and Atka mackerel from the BSAI trawl limited access allocations in the Eastern and Central AI. The language could be revised as follows, or could also be revised to include the EAI/BS Atka mackerel jig allocation:

¹⁵See 50 CFR 679.20(a)(8)(i). Final rule: <http://209.112.168.2/rules/bsa34.pdf>

Sideboard limit:

“Limit the amount of POP and Atka mackerel from the BSAI trawl limited access allocations harvested in Areas 541 or 542 that may be delivered to Amendment 80 catcher processors acting as motherships to...”

Preliminary analysis of options

The proposed options are currently as follows:

Limit the amount of POP and Atka mackerel harvested in Areas 541 or 542 that may be delivered to Amendment 80 catcher processors acting as motherships to:

- Option 1. the greatest amount delivered within the range of qualifying years
- Option 2. the average annual amount delivered within the range of qualifying years

Qualifying years:

- Option. 2005 – 2007 (three-year period prior to Amendment 80 program implementation)

Table 11 shows the total catcher vessel harvest of Atka mackerel and Pacific ocean perch harvested in Areas 541 and 542, by the processor sector to which the fish were delivered, during 2003 through June 2008 combined. The processing sectors are motherships, shoreside processors, and stationary floating processors. Because there were only two stationary floating processors that received Atka mackerel and Pacific ocean perch catcher vessel deliveries from these areas, the data for that sector cannot be shown due to confidentiality restrictions. Thus, deliveries to the stationary floating processor sector, of which there are relatively few, are combined with the shoreside processor sector.

Table 11 Total catcher vessel harvest of Atka mackerel and Pacific ocean perch from Areas 541 and 542, by processing sector, 2003 - June 2008

Processing sector	Species	Processor count (# processors taking deliveries)	# Am. 80 CPs acting as motherships	Vessel count (# of vessels delivering)	Metric Tons (2003 - June 08)
Mothership	Atka M	5	2	38	1,192
Shoreside + stationary floaters	Atka M	9	-	68	108
Mothership	POP	5	2	37	272
Shoreside + stationary floaters	POP	9	-	79	655

Source: NMFS catch accounting database. Total catch (retained and discarded), includes data from 2003 - June 2008. Excludes CDQ harvest.

Note: Vessel count shows number of unique vessels delivering each species to each processing sector.

Note: Shoreside and stationary floating processors are combined for the purposes of this table, in order to avoid confidentiality concerns. Seven shoreside processors and two stationary floating processors reported for each species during the 2003 - June 2008 time period.

There are a total of 8 unique shoreside processors that received deliveries of either of these species during 2003 – June 2008, located in Dutch Harbor, Akutan, Adak, King Cove, and Atka. The data show that some of these processors received very little of each species (<1 mt), which may represent incidental catch when delivering another target species in some cases. Note that the tables in these sections use the NMFS catch accounting database, and include both retained and discarded catch. Table 11 shows that motherships received the majority of the deliveries (92 percent) of Atka mackerel during this 2003 – June 2008, with two of those being Amendment 80 CPs acting as motherships. In the POP fishery, motherships received about 30 percent of the catcher vessel deliveries in those areas.

Confidentiality limitations also preclude the analyst from providing harvest data by individual year in most years (see Table 12 below). In the earlier years (2003 – 2006) there were typically 1 or 2 motherships processing these species in Area 541 and 542 each year, and 1 or 2 stationary floating processors, thus, there are not enough entities to provide harvest data. The years in which the analyst can provide the amount (in mt) delivered to motherships separately from that of the shoreside and stationary floating processor sectors are provided below in Table 12.

In 2006, three motherships received about one-third of the Atka mackerel deliveries; 2006 data are confidential for POP. In 2007, the mothership sector (comprised of 4 vessels) received the vast majority of Atka mackerel catcher vessel harvest from the Central and Eastern AI, with one Amendment 80 CP operating as a mothership. As mentioned previously, few vessels contributed to the vast majority of the 2007 Atka mackerel CV harvest. For POP, the mothership sector received about one quarter of the deliveries in 2007.

In 2008, the Eastern and Central AI POP fisheries for the BSAI trawl limited access sector opened on February 26. The directed fishery for Eastern AI POP for the BSAI trawl limited access sector was closed on March 19 and the fishery was put on bycatch status. The directed fishery reopened on April 18 and was placed on bycatch status again on April 29. The directed fishery for Central AI POP for the BSAI trawl limited access sector was closed on May 8 and the fishery was put on bycatch status. For the data provided thus far in 2008 (through June 2008), the mothership sector received about one-third of the POP deliveries. The remaining CV harvest in Areas 541 and 542 has been delivered to shoreside processors or stationary floating processors.

For the Atka mackerel harvest reports provided through June 2008, the mothership sector has received the majority of Atka mackerel deliveries, and very little relative CV harvest in Areas 541 and 542 has been delivered to shoreside processors or stationary floating processors. NMFS opened directed fishing for Atka mackerel in the Eastern AI/Bering Sea for the BSAI trawl limited access sector from March 18 through March 20. The Central AI Atka mackerel fishery for the BSAI trawl limited access sector opened on January 20 and went on bycatch status on April 15. The B season for both areas is scheduled to open on September 1.

Table 12 also provides a separate column for the number of Amendment 80 CPs receiving catcher vessel deliveries of Atka mackerel and POP harvested in Areas 541 and 542. **Note that there are only two eligible Amendment 80 catcher processors that operated as motherships during 2003 – 2008.** One of the Amendment 80 CPs received catcher vessel deliveries of Atka mackerel and Pacific ocean perch in 2007 and 2008, and the other received catcher vessel deliveries of both species only in 2008. Thus, the only year during the qualifying period in which any catch was delivered to an Amendment 80 CP is 2007. Due to confidentiality restrictions, the amount of harvest they received cannot be provided for any individual year or a series of years. Thus, a quantitative analysis of the proposed sideboard options cannot be provided. As the options only include 2005 through 2007, there is only one CP with data for which to evaluate the proposed options. However, even if the options encompassed 2008, data for only two entities still could not be provided.

While the data to evaluate the proposed options cannot be provided, some information about the proposed processing limits is intuitive. Because there were no deliveries to Amendment 80 CPs from these areas in 2005 and 2006, the sideboard would be based only on 2007. Because there is only one year (within the three-year qualifying period) in which an Amendment 80 CP received catcher vessel deliveries of POP and Atka mackerel, Option 1 would result in a processing sideboard for each species that is three times greater than the sideboard resulting from Option 2. This is because Option 1 is based on the highest annual amount delivered within the range of qualifying years (2005 – 2007), and Option 2 is based on the average amount over the three-year period. Averaging in 2005 and 2006, in which no deliveries were

reported, substantially reduces the resulting sideboard under Option 2. This is true whether the sideboard is established in aggregate for Atka mackerel and POP or separately for each species.

Table 12 Total catcher vessel harvest of Atka mackerel and Pacific ocean perch from Areas 541 and 542, by processing sector and year, 2006 - June 2008

Year	Processing sector	# processors	# Am. 80 CPs acting as motherships	Species	# vessels	Metric tons
2003	Mothership	2	0	Atka M	13	conf.
	Shoreside + floaters	6	na	Atka M	40	**
2004	Mothership	2	0	Atka M	3	conf.
	Shoreside + floaters	5	na	Atka M	21	**
2005	Mothership	1	0	Atka M	2	conf.
	Shoreside + floaters	5	na	Atka M	16	**
2006	Mothership	3	0	Atka M	11	10
	Shoreside + floaters	3	na	Atka M	15	22
2007	Mothership	4	1	Atka M	6	1,033
	Shoreside + floaters	6	na	Atka M	34	6
2008	Mothership	4	2	Atka M	25	140
	Shoreside + floaters	5	na	Atka M	26	3
2003	Mothership	2	0	POP	13	conf.
	Shoreside + floaters	7	na	POP	47	**
2004	Mothership	1	0	POP	2	conf.
	Shoreside + floaters	4	na	POP	18	**
2005	Mothership	1	0	POP	2	conf.
	Shoreside + floaters	2	na	POP	14	conf.
2006	Mothership	3	0	POP	10	**
	Shoreside + floaters	2	na	POP	15	conf.
2007	Mothership	3	1	POP	5	107
	Shoreside + floaters	6	na	POP	37	305
2008	Mothership	4	2	POP	25	156
	Shoreside + floaters	5	na	POP	27	283

Source: NMFS catch accounting database. Total catch (retained and discarded); 2008 data is through June. Excludes CDQ harvest.

Note: "# vessels" shows the number of unique vessels delivering each species to each processing sector.

Note: Shoreside and stationary floating processors are combined for the purposes of this table, in order to avoid confidentiality concerns. A maximum of two stationary floating processors reported for either species during any one year.

Conf. = confidential data. ** = data masked to prevent revealing confidential data by simple subtraction, using Table 4.

na = not applicable.

Relatively little Atka mackerel and POP were harvested by trawl catcher vessels in Areas 541 and 542 in recent years. Even if the data are confidential, the tables show that *some* CV harvest was delivered to Amendment 80 CPs in 2007. Thus, it is clear that Option 1, in which the sideboard is established at the highest amount delivered to Amendment 80 CPs, is likely to result in a relatively high sideboard.

Note that if a sideboard was established that limited vessel deliveries to Amendment 80 CPs, catcher vessels could continue to deliver to non-Amendment 80 motherships, stationary floating processors, or shoreside processors without regulatory limits. During 2003 – 2008, one AFA CP operating as a mothership has consistently received deliveries of both AI species, as well as one or two other (non-Amendment 80, non-AFA) motherships. As stated previously, one to two stationary floating processors have also received deliveries of both Atka mackerel and POP from the AI, albeit small amounts, on a relatively consistent basis during this time period.

Summary

A sideboard is typically established to limit a sector's harvesting or processing activity to its historical share, given that excess harvesting and/or processing capacity is likely, due to the sector's participation in a rationalization program. The intent is to prevent the rationalized sector from expanding its share in other fisheries due to this excess capacity, and eroding the shares of other non-rationalized participants. This paper was intended to provide sufficient information for the Council to determine whether it wants to initiate a formal analysis of processing sideboards for POP and Atka mackerel in the AI. The concern is that the lack of sideboards on processing of the BSAI trawl limited access sector allocations of POP and Atka mackerel by Amendment 80 vessels has preempted, and will continue to preempt, an opportunity for these harvests to benefit vessels primarily operating out of Adak, shoreside processors, and the communities of Adak and Atka. There are concerns that the transient markets provided by Amendment 80 CPs acting as motherships may serve to undermine community stability by making it more difficult for shorebased processors to remain in business and provide year-round markets to smaller vessels participating in a suite of fisheries. In addition, to the extent that this action would slow the harvest of the AI trawl limited access allocations, it could benefit smaller trawl vessels.

Note that if a sideboard was established that limited deliveries to Amendment 80 CPs, catcher vessels could continue to deliver to non-Amendment 80 motherships, stationary floating processors, or shoreside processors without regulatory limits. Ultimately, however, the proposed action serves to limit the markets available to trawl catcher vessels harvesting Atka mackerel and POP in the Eastern and Central Aleutians. Thus, while the trawl limited access allocations were intended to provide additional opportunities for harvest by smaller trawl vessels, this action may serve to reduce the operational flexibility of and negotiating leverage for AI catcher vessels, which could potentially lead to a lower price for their catch.

A limited amount of data can be provided, due to confidentiality issues. There is only one year (two, if 2008 is included) in which the Amendment 80 sector has history operating in this capacity (receiving deliveries of Atka mackerel and POP in Areas 541 and 542), and only one vessel (two, if 2008 is included) operating in this manner. Due to the limited number of vessels, the data necessary to evaluate the proposed options are confidential.

In addition, 2008 is the first year in which the Amendment 80 program has been effective, making it difficult to speculate as to the scope of the potential concern in the future. If this is a viable, profitable fishery, one would expect deliveries to CPs to continue. This is also the first year in which the BSAI trawl limited access allocations for these species are available. The POP allocation is scheduled to step up from 5 percent to 10 percent next year, and the Atka mackerel allocation is scheduled to step up by 2 percent annually for five years. According to the proposed rule, these allocations were intended to provide additional opportunities for harvest by smaller trawl vessels, understanding that many of those would be operating out of Adak. The allocations were intended to increase slightly each year to provide the BSAI trawl limited access sector time to scale operations up to the level of the allocation. At this time, there is limited history of a shorebased fishery for these species, so it has yet to be established whether such fisheries are economical.

The Council is not necessarily restricted from establishing a processing sideboard even if the harvest data necessary to evaluate the proposed options are confidential. One option would be to create a different method for establishing the sideboard, other than catch history. Harvest sideboards have been adopted for each rationalization program since the AFA, yet only the AFA adopted processing sideboards. In the past, the Council has established sideboards based on harvest or processing history in the specific sector being constrained. Meaning, there is no precedent other than harvest or processing history on which sideboards have been based. However, the Council or the public may have alternative ideas on how to establish a sideboard other than the historical amount that has been delivered to the Amendment 80 sector.

Alternatively, the Council could consider a sideboard of 0%, if the Council determines that even *some* catch delivered to Amendment 80 CPs does not meet the intent of the BSAI trawl limited access allocations. Essentially, such a sideboard would equate to a prohibition on Amendment 80 CPs from receiving catcher vessel deliveries of Atka mackerel and POP harvested in the Eastern and Central Aleutian Islands. This is similar to what was initially in the proposed rule for Amendment 80, and then modified in the final rule. The Council could also determine that the action is not warranted (effectively, a sideboard of 100%).

NOAA GC suggests that the Council could also develop and recommend criteria and justification for a processing sideboard, such as the existing proposal, but NMFS would calculate the actual sideboards resulting from the selected criteria and publish the percentages in the proposed and final rules. Confidential data have been an issue in the development of previous programs, but have not prevented the Council from taking action based on a clearly stated principle. For example, in the GOA rockfish pilot program, confidentiality prevented the analysis from showing some of the prohibited species sideboards resulting from the proposed options. If the rationale and objective of the action is stated clearly (e.g., to limit participants to historical processing levels so as not to expand efforts in specific areas or fisheries), the Council could take action on a sideboard based on history, even if the historical data to establish the sideboard cannot be provided. In this case, the rationale and criteria for the sideboard (e.g., harvest history delivered during specific qualifying years) can be described in the analysis, but NMFS would calculate the actual sideboards resulting from the selected criteria and publish the percentages in the proposed and final rules.

Another approach would be to use Amendment 80 fleet-wide annual or weekly processing data for each species to calculate a reasonable estimate of the amount of processing for the one or two CPs based on the number of weeks they have operated as motherships in the Aleutians. The analyst would thus provide as much information about the sector and fishery as possible without violating confidentiality rules. The result of this calculation could either: 1) represent an *option* to establish the actual sideboard selected by the Council, or 2) be used as a reasonable *estimate* in the analysis for the amount of the sideboard when it is calculated based on actual history under the existing options (i.e., the exact sideboard amount would not be known until it is published in the proposed and final rules).

At this October meeting, the Council could initiate a formal analysis, or request additional information prior to taking this step. The Council could also determine that the action is not warranted.

Appendix 1. 2008 and 2009 harvest specifications for Atka mackerel and Pacific ocean perch

TABLE 4.—2008 AND 2009 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector ¹	Season ^{2,3}	2008 Allocation by area			2009 Allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District	Western Aleutian District	Eastern Aleutian District/Bering Sea	Central Aleutian District	Western Aleutian District
TAC	n/a	19,500	24,300	16,900	15,300	19,000	13,200
CDQ reserve	Total	2,087	2,600	1,808	1,637	2,033	1,412
	HLA ⁴	n/a	1,560	1,085	n/a	1,220	847
ICA	Total	1,400	10	10	1,400	10	10
Jig ⁵	Total	80	0	0	61	0	0
BSAI trawl limited access	Total	319	434	0	488	678	0
	A	159	217	0	244	339	0
	HLA ⁴	n/a	130	0	n/a	203	0
	B	159	217	0	244	339	0
Amendment 80 sectors	HLA ⁴	n/a	130	0	n/a	203	0
	Total	15,615	21,256	15,082	12,202	16,957	11,778
	A	7,807	10,628	7,541	6,101	8,479	5,889
	HLA ⁴	4,684	6,377	4,525	3,660	5,087	3,533
Amendment 80 limited access	B	7,807	10,628	7,541	6,101	8,479	5,889
	HLA ⁴	4,684	6,377	4,525	3,660	5,087	3,533
	Total	8,232	12,809	9,298	n/a	n/a	n/a
	A	4,116	6,405	4,649	n/a	n/a	n/a
Amendment 80 cooperatives	HLA ⁴	n/a	3,843	2,789	n/a	n/a	n/a
	B	4,116	6,405	4,649	n/a	n/a	n/a
	HLA ⁴	n/a	3,843	2,789	n/a	n/a	n/a
	Total	7,383	8,447	5,784	n/a	n/a	n/a
Amendment 80 cooperatives	A	3,812	4,224	2,892	n/a	n/a	n/a
	HLA ⁴	n/a	2,534	1,735	n/a	n/a	n/a
	B	3,692	4,224	2,892	n/a	n/a	n/a

TABLE 4.—2008 AND 2009 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC—Continued

[Amounts are in metric tons]

Sector ¹	Season ^{2,3}	2008 Allocation by area			2009 Allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District	Western Aleutian District	Eastern Aleutian District/Bering Sea	Central Aleutian District	Western Aleutian District
	HLA ⁴	n/a	2,534	1,735	n/a	n/a	n/a

¹ Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtraction of the CDQ reserves, jig gear allocation, and ICAs, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

² Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery. The A season is January 1 (January 20 for trawl gear) to April 15, and the B season is September 1 to November 1.

³ The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

⁴ Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2008 and 2009, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

⁵ Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtraction of the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

TABLE 7.—2008 AND 2009 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch						Flathead sole	Rock sole	Yellowfin sole	
	Eastern Aleutian District		Central Aleutian District		Western Aleutian District		BSAI	BSAI	BSAI	
	2008	2009	2008	2009	2008	2009	2008 and 2009	2008 and 2009	2008	2009
TAC	4,900	4,810	4,990	4,900	7,610	7,490	50,000	75,000	225,000	205,000
CDQ	524	515	534	524	814	801	5,350	8,025	24,075	21,935
ICA	100	100	10	10	10	10	4,500	5,000	2,000	2,000
BSAI trawl limited access	214	420	222	437	136	134	0	0	44,512	37,368
Amendment 80	4,062	3,776	4,224	3,929	6,650	6,545	40,150	61,975	154,413	143,697
Amendment 80 limited access ¹	2,154	0	2,240	0	3,526	0	4,392	14,972	61,431	0
Amendment 80 co-operatives ¹	1,908	0	1,984	0	3,124	0	35,758	47,003	92,982	0

¹ The 2009 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2008.



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September 24, 2008

Mr. Eric Olson, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99601

Re: D-1 (a) and (b) -- Aleutian Islands Processing Sideboards for (a) Pacific Cod and (b) Atka Mackerel/AI POP in areas 541 and 542

Dear Mr. ^{Eric}Chairman:

I am writing to you on behalf of United States Seafoods, LLC (USS) to comment on agenda items D-1(a) and (b) -- Aleutian Islands Processing Sideboards for Pacific cod and Atka mackerel and Aleutian Islands Pacific ocean perch (POP) in areas 541 and 542. As you know, USS is a long time participant in the Aleutian Islands (AI) groundfish trawl fisheries and manages Amendment 80 catcher processors and non AFA catcher vessels that are dependant on the AI Pacific cod, Atka mackerel, and POP fisheries. We have spent many years and considerable resources developing our integrated fleet (our catcher vessels deliver AI cod, mackerel, and POP to our catcher processors¹ acting as motherships), and consequently both of these packages have the potential to do serious harm to our company.

It is our belief, and the two excellent discussion papers make fairly evident, that both the cod and Atka mackerel/POP processing sideboards actions are quite flawed and raise a number of practical and legal issues. Some of the issues that make us question whether these packages should move forward, include:

- **The Nature of the Problem** -- Recent developments suggest that the situation in Adak is very complex, and simply will not be solved by these or any other well intentioned fishery management action;
- **Potential for Harm** -- As currently constructed, these actions are likely to cause significant economic harm to those communities, harvesters, and processors that participate in the affected fisheries;

¹ Principally the F/T Seafreeze Alaska, Alaska's 1st trawl catcher processor which has been participating in the AI groundfish fisheries since the early 1980's.

- **No Conservation Benefit** -- These highly controversial actions promise to be a significant distractions yet offer no conservation benefits whatsoever;
- **Fatal Legal Flaws** -- These actions on their face are inconsistent with the basic requirements of the Magnuson-Stevens Act and other applicable law; and
- **Anti-competitive Effect** -- By restricting processing competition in the AIs these actions are likely to create an anti-competitive environment raising a number of anti-trust concerns.

Since, further action on both of these packages is so problematic we ask that you NOT continue to develop either of these packages.

Discussion of Legal Issues Raised by These Actions

Anti-Trust/Anti-Competitive Effect of Creating a Single Regional Processor:

Though both the Atka mackerel/POP and Pacific cod processor motions do not explicitly establish processor quota or a processor monopoly, the intent and practical effect of these motions is exactly that -- implicating significant anti-trust considerations in connection with Council action on these issues. As a result of regional geography and an apparent grant of an exclusive right to run a processing facility in Adak (as referenced in the public testimony at the April 2008 Council meeting), limiting the ability of certain vessels to process Pacific cod, POP, and Atka mackerel, as proposed, would establish a *de facto* monopsony².

In an AI monopsony one would expect the negotiating position of harvesters to be reduced relative to the remaining processor, the grounds price for landed fish to go down, ultimately making the AI groundfish fisheries less attractive to harvesters. If the goal is to develop a local fleet that participates in the 541 and 542 trawl fisheries, then it seems that the council should encourage processing options in the AIs rather than restricting them as proposed by these actions. The State of Alaska and its current administration, recognize that competition drives natural resource development, and as Governor Palin noted recently "[w]e need to do the same with our fisheries ... [o]pen it up for competition and let those processors have to compete for the right to purchase that resource from the fishermen."³

The restrictions proposed here do just the opposite and may, in themselves, violate Section 1 of the Sherman Act, which prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce." (15 U.S.C. § 1). In addition, the regulatory creation of such a monopsony would implicate all of the anti-competitive concerns previously raised by the Department of Justice (e.g., Statement of J. Bruce McDonald before the Committee on Commerce, Science and Transportation, United States Senate, February 25, 2004, available at <http://www.usdoj.gov/atr/public/testimony/202572.htm>), namely, the elimination of competition, inhibition of product innovation and resource utilization efficiency, and diminution of any incentive for the protected processor to invest in new equipment, cut costs, or increase product quality. In the end, no legitimate safety or market objective would be furthered by the sideboards promoted by the proposed motions, but the harvesters and ultimate consumers of these products would suffer from the artificial restrictions to processor entry, a situation likely to draw sharp criticism from the Department of Justice. At the very least, we would expect further analysis of the proposed motions

² An imperfect market situation in which many sellers are facing one or few buyers that have inordinate market power.

³ Taken from an interview published in the Anchorage Daily New on July 8, 2008.

to contain extensive discussion of the potential impact on competition and an opinion by the Department of Justice as to the anticompetitive effect and legality of the proposed scheme.

National Standard 4 Prohibits the Adoption of these Actions:

The proposed motions likely violate National Standard 4 because they (a) are unfair and inequitable; (b) have no intended or actual effect on conservation, and (c) promote consolidation of an excessive share of harvesting privileges. We therefore believe that any analysis of the proposed motions should carefully consider the applicability of and their compliance with National Standard 4. Moreover, we suspect that the proposed motions clearly fail this standard, which is why we oppose their adoption by the Council.

The proposed motions contain options that result in a *de facto* allocation of processing privileges by limiting the ability of the AFA, Amendment 80 fleets, and Crab processing vessels from processing the covered species in Areas 541 and 542. In particular, the restriction on water-based processors in the region, taken in conjunction with the Aleut Corporation's real estate monopoly, and the exclusive processing arrangement between the Aleut Corporation (working through the City of Adak) and Adak Fisheries, LLC (AF), has the effect of allocating an exclusive processing right to AF in areas 541 and 542. This effect is likely significant and direct enough to qualify as a "direct distribution of fishing privileges" thereby invoking the allocation requirements of Standard 4. Even if the proposed motions aren't considered an allocation in themselves, they clearly modify the terms of an earlier allocation, further warranting the application of National Standard 4. It is clear that had these sideboards been included in the original packages, National Standard 4 would have been applied as a part of that allocation process, so it does not make sense that by adding these sideboards as a subsequent amendment the required consideration of National Standard 4 can be circumvented.

Under National Standard 4, allocations must be (a) fair and equitable; (b) reasonably calculated to promote conservation; and (c) implemented in such a way that no one person acquires an excessive share of privileges. MSA § 301(a)(4). The proposed motions fail all three standards. First, the *de facto* allocation they create, and the convoluted approach required to create them, is hardly fair and equitable. As the regulations implementing the MSA explain "[t]he motivation for making a particular allocation should be justified in terms of the objectives of the FMP." 50 C.F.R. § 600.325(c)(3)(i). The motions promote no conservation or resource management purpose, however. In fact, the sole purpose of the motions is to create a monopsony for the purpose of facilitating the establishment of a new processing enterprise on Adak for the benefit of its non-citizen and non-local members. We are at a loss to discern any valid FMP objective that are furthered by the proposed motions, and as a result, must conclude that they fail the fair and equitable allocation standard of National Standard 4.

The disconnect between the proposed motions and an identifiable conservation objective as required by National Standard 4 also prevent their adoption. The two proposed motions seek to impose additional limitations and restrictions on a select group of vessels. They are unique, however, insofar as they are the first proposed processing sideboards that are completely disconnected with any resource management objectives. Unlike sideboards restrictions previously adopted by the Council, these motions do not seek to prevent the shift of harvesting capacity from a rationalized fishery into another existing fishery. Instead, the proposed motions seek to exclude processing capacity (and processing capacity alone) from competing with a new processing enterprise. Neither motion directly results in any conservation or management benefit, and more notably, neither reflects an incidental restriction derived from an otherwise legitimate conservation

or management measure. The two proposed motions are solely exclusionary, both in intent and effect, and only serve to restrict processing competition. As such, neither reflects any legitimate conservation purpose and therefore cannot survive the scrutiny of National Standard 4.

Finally, the proposed motions fail National Standard 4 because they promote the consolidation of processing privileges and create conditions fostering inordinate control. While the motions do not explicitly call for an allocation of processing privileges to AF, their effect will be exactly that. Given that the owners of almost all available real property in the City of Adak have entered into an exclusive processing arrangement and the only potential competitors of that processor are the potentially sideboarded fleets, adopting the proposed motions will be the equivalent of issuing exclusive processing rights to AF. This would be directly contrary to the restriction on consolidation of excessive shares in National Standard 4.

National Standard 5 Prohibits the Adoption of these Actions:

The proposed motions also likely violate National Standard 5 because they are wholly divorced from any concept of resource management, and in fact these actions are likely to undermine the current orderly management of the AI groundfish fisheries. Some of the potential impacts include, increasing localized harvesting pressure around Adak, and the displacement of some of the AI cod harvesting fleet into the more PSC intensive EBS cod fishery. As discussed above, the proposed motions would establish a management measures that have no positive impact whatsoever on the utilization of fishery resources except to take processing opportunities away from the historic AI processors and allocate them to AF. As National Standard 5 explicitly prohibits action that is intended to act solely as an economic allocation, we believe that the proposed motions fail this criterion and should therefore not be adopted by the Council.

The regulations implementing National Standard 5 provide guidance as to when action runs afoul of that standard -- "[a]n FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency." 50 C.F.R. § 600.300(b)(2)(i). Further, "an FMP may not contain management measures that impede the use of cost-effective techniques of harvesting, processing, or marketing, and should avoid creating strong incentives for excessive investments in private sector fishing capital and labor." 50 C.F.R. § 600.300(b)(2)(ii). Adoption of the proposed motions would do exactly that: redistribute gains and burdens while imposing impediments to improvements in processing capacity in the region. The immediate effect of the proposed motions will be the elimination of processor competition and the establishment of a single regional processor. This action neither furthers nor is a consequence of resource management measures, but is instead a blatant exclusion of competition in the processing sector. No efficiency or management gains would be realized by implementing the proposed motions. In fact, by establishing a monopsony, the motions would severely undermine efficiency, as the beneficiaries of such a regulatory subsidy would have no incentive to invest capital in its equipment or otherwise work to improve processing efficiency, cut costs, and/or increase product yield. The bottom line is that competition is good for processing efficiency and results in the higher use of products and better prices for harvesters. Exceptions to competition are sometimes made to protect long-term investments in processing facilities (as was the case in the Crab Rationalization program), but in this case the proposed motions merely seek to facilitate a new business at the expense of the historic AI processing fleet. Accordingly, and as National Standard 5 clearly mandates, the proposed actions must fail.

National Standard 8's Requirement to Consider Communities Does Not Support these Actions:

The proposed motions likely violate National Standard 8 because they (a) impede sustained participation of existing fishing communities, and (b) augment adverse economic impacts on those communities. Under the MSA, a "fishing community" is one that "is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs." 50 C.F.R. § 600.345(b)(3). Further, a fishing community "is a social or economic group whose members reside in a specific location and share a common dependency on commercial, recreational, or subsistence fishing." *Id.* Because the local fishing community of Adak is in the developmental stages, and the allocative effect of the proposed motions would adversely impact other fishing communities, National Standard 8 should prevent their implementation.

As a threshold matter, it is fairly evident that Adak is, at best, a newly developing "fishing community" within the meaning of National Standard 8. The sponsors of the motions are quite forthright insofar as they admit that the intent of the motions is to protect a new business in the hopes of developing a residential fleet that did not exist a decade before, and as the discussion papers point out, does not exist now. No matter how noble these intentions are, however, National Standard 8 is clear – analysis of management measures should focus on the impact on those communities with substantial dependence on the fishery and/or those that are substantially engaged in that fishery. As Adak's dependence and engagement is new and developing, it should be given less consideration under National Standard 8; particularly when compared to other communities with more long-standing interest in the AI fisheries. In terms of process, it is worth noting that while these actions came up at the April and June Council meetings, this is the first meeting that AI Processing Sideboards have been formally noticed on the Council agenda. All of the affected communities and stakeholders, therefore, have not yet had an opportunity to fully participate in the public discussion on these issues, and should be allowed to do so before you decide to proceed forward.

To the extent that the proposed motions work to the detriment of other long-standing fishing communities, National Standard 8 compels their rejection. And, as the Council record and testimony from Atka at the April council meeting on this matter reflects, one fishing community that stands to be significantly impacted by these actions is Atka. Accordingly, we believe that National Standard 8 should prohibit the adoption of the two proposed motions. At the very least, National Standard 8 mandates that an extensive analysis of the potential impact the measures will have on Atka and other impacted communities.

These Actions Constitute an "End-Run" Around Established MSA FMP Framework:

If adopted, the proposed motions would push the BS/AI groundfish fishery management plan beyond the framework anticipated under the MSA. The MSA grants authority to the Council and NMFS to regulate fishing activity and take other actions necessary for the conservation and management of the regulated fisheries. Notably, as defined in the MSA, "fishing" and "fishery" do not include processing activity, except to the limited extent it may be an "operation at sea in support of, or in preparation for" other fishing activities. MSA § 3(16). Throughout the MSA, explicit references to limited authority over processing activity further indicates that the broad authority that the Act gives the Council the power to regulate fishing likely does not cover processing as well. Prior processing limitations and sideboards have been implemented as part of comprehensive management schemes that primarily focused on regulation of fishing activity clearly within the scope of the MSA. These two motions are unique in that they are wholly divorced from any notion of resource management

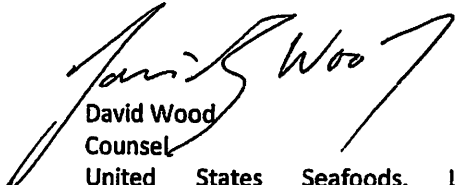
or conservation – the sole purpose, as stated on their face and implicit in their effect, is to reallocate the economic opportunity associated with the right to process Pacific cod, Atka mackerel, and POP in areas 541 and 542. The motions accordingly mark a significant departure from prior actions and likely exceed the anticipated scope of authority delegated to the Council under the MSA.

The novelty of these issues is reflected in some of the MSA requirements that would apply to the proposed motions, but for the fact that the MSA does not really contemplate management measures solely applicable to processing activity. For example, the practical impact of the proposed sideboards, in conjunction with the exclusive right that AF has to process on Adak, is to establish a form of limited access processing privilege (LAPP) in favor of AF. Of course, the definition of a LAPP is limited to harvesting activity, so no processing allocation, no matter how specific, is likely to be deemed to be a LAPP (though we believe that to be the case because the drafters of the MSA clearly did not contemplate that the Council would utilize allocation of processing privileges as a fishery management tool). Were that not the case, however, MSA Section 303(A), would apply, prohibiting non-citizens from holding the processing privilege. And, on the information currently available, AF does not appear to qualify as a citizen. The resulting irony is that while a non-citizen is prohibited from holding a LAPP, it may receive and/or be the beneficiary of a similarly restrictive processing right allocation only because the MSA does not explicitly establish processing privileges as a harvesting management tool. At worst, the proposed motions expose a gap between the grant of authority to the Council under the MSA and the contemplated action, and at best it emphasizes why regulation of processing activity alone is ill advised under the MSA's current FMP framework.

In summary, these AI Processing Sideboard actions raise a number of threshold issues that should prevent them from moving forward. However, if you decide to continue to develop either of these packages we urge you to do so with great caution, and narrow the approach and substance of the actions to reflect the identified issues. Also, in the event that you do decide to move forward please consider the advantages of developing these packages through a committee, given the complexity of these issues raised and the limited number of stakeholders directly involved such an approach will likely be much more productive than the process we find ourselves in now. The committee or workgroup process would also have the added benefit of putting the involved parties in the same room together which would encourage a business solution.

I appreciate the opportunity to submit these comments, and look forward to discussing this issue with you and other Council members in greater detail at the October meeting.

Sincerely yours,



David Wood
Counsel
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