

**A Discussion Paper  
of Excessive Share Caps  
in the Groundfish and Crab Fisheries  
in the Bering Sea and Aleutian Islands**

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## **1. Introduction**

This discussion paper examines excessive share caps on harvesters and processors of groundfish and crab resources in the Bering Sea and Aleutian Islands (BSAI). The American Fisheries Act (AFA) directs the North Pacific Fishery Management Council (NPFMC or Council) to establish these caps, presumably as a means to ensure competition in the groundfish and crab fisheries.

Each of the following issues is discussed in a separate section:

- Excessive share cap language in the AFA
- Council actions on excessive share caps
- Goals of excessive share caps
- Relationship of excessive share caps to processing sideboard limits
- Relationship between harvest and processing excessive share caps
- Applying excessive share caps to plants, companies, or entities
- Species aggregations for excessive shares
- Recommended actions

## **2. Excessive Share Cap Language in the American Fisheries Act**

The AFA established a harvesting share cap of 17.5 percent for the BSAI pollock fishery and requires the Council to recommend conservation and management measures that prevent excessive processing shares in the BSAI pollock fishery and excessive harvesting or processing shares in the BSAI groundfish and crab fisheries. AFA language regarding excessive shares is summarized below (unabridged AFA language about excessive shares is in Appendix A).

- Section 210(e)(1) states that no particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.
- Section 210(e)(2) requires the Council to recommend for approval by the U.S. Secretary of Commerce conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In recommending the excessive processing shares, the Council is required to consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.
- Section 211(c)(2)(B) requires the Council to recommend for approval by the U.S. Secretary of Commerce conservation and management measures to prevent any particular individual or entity from harvesting or processing an excessive share of crab or of groundfish in fisheries in the BSAI Management Area.

## **3. Council Actions on Excessive Share Caps**

At its December 1998 meeting, the Council approved a motion to initiate an analysis of the many broadly ranging aspects and mandates of the AFA. At its February 1999 meeting, the Council discussed and approved a motion refining its direction for the analysis of excessive share caps on the processing of BSAI pollock, other groundfish, and crab. The language of the Council motion is shown in the text box below.

### **Excessive Shares**

(language of motion refining direction for analysis of excessive share caps,  
February 1999 NPFMC meeting)

1. Initiate an analysis (for review in December 1999) of excessive share caps on AFA processors of 10%, 12%, 15%, and 17.5% for BSAI pollock.
2. Non-pollock BSAI groundfish and BSAI crab fisheries should also be examined. A sub-option should also be examined which allows differential caps between pollock and non-pollock processors:

Option a: range of 10%, 17.5%, and 40%

Option b: the 1995–1997 average

Excessive share caps should:

- a. Use the 10% ownership rule
- b. Provide grandfather options for existing processors in excess of the 17.5% share
- c. Be applied by species groups (pollock, other groundfish, and crab) and FMP area (BSAI)

While the Council motion of February 1999 did not specifically address the issue of excessive harvesting shares, the language of the AFA indicates that excessive harvesting shares must also be considered. Therefore, this discussion paper assumes that the intent of the Council's motion in February was that similar alternatives for harvesting shares be examined. Further, excessive share caps would be applied to all harvesters and processors, not just AFA entities. In terms of the alternatives above, clarification is needed regarding the definition of 'average' under Option b. The analysts assume that average is not meant to be each individual firm's average during that period (otherwise it could add up to 100% and effectively be an individual quota); rather, a single percentage would be set for a given species group which applies to all operators. Therefore, average in this case is assumed to be the average of the highest operator(s) over the three-year period.

While the options above include a possible grandfather provision for those in excess of 17.5% (presumably for pollock), the Council passed a motion in June stating that they intended to move forward with excessive share caps and they may not recognize processing history after the date of passage of the Act.

#### **4. Goals of Excessive Share Caps**

Language in the AFA implies that the goal of excessive share caps is to preserve competition in the fishing industry of the BSAI. The fact that the issue of excessive share is included in conjunction with an action that allows the formation of pollock processing cooperatives is evidence that Congress recognized the potential that the AFA may reduce competition within some sectors of the BSAI fishing industry. In order to see how the AFA may reduce competition and how excessive share caps may preserve competition, it is necessary first to have a common understanding of competition and of why it is reasonable to try to preserve competition. This section suggests a working definition of competition, examines situations in which excessive share caps can help preserve or enhance competition, and examines situations in which excessive share caps may not preserve or enhance competition.

For purposes of this discussion, competition can be defined as a situation in which neither buyers nor sellers can earn abnormal profits over a long period.<sup>1</sup> Abnormal profits are the extra profits that are generated as a result of a particular firm setting product prices that are higher than prices that would occur if there were other competitors.<sup>2</sup> If abnormal profits exist in a particular market that is competitive, new firms will enter the market and eventually abnormal profits will be eroded. Abnormal profits in the long run result in inappropriate and inefficient allocation of resources and are generally viewed as harmful to society.

The definition of competition implies that a critical component of competition is that there are no excessive barriers to entry into a given market. The definition of competition also implies that a single buyer or seller can exist in a competitive market, provided that there are no excessive barriers to entry. In such cases, the threat of entry by others acts to ensure that the lone market player keeps prices reasonable. If the lone player sets unreasonably high prices, then eventually others will enter the market and force prices back to a reasonable level.

Market share has often been used as an indicator of markets that are less than competitive, and it is a very useful indicator. However, a disproportionate market share by itself does not indicate that an anti-competitive situation exists, as illustrated by the following hypothetical situation:

A new use of arrowtooth flounder is discovered that depends on the unique ability of these fish to turn to mush after they are harvested. News of the discovery is slow to spread, but one fish processor, who formerly was involved only in salmon, sees the news and begins to buy arrowtooth from trawlers and sell the new product to interested buyers. Because the fish processor was willing to take the risk of starting a new industry, he is the only buyer of raw fish and the only seller of finished product—the processor has a 100 percent share of both the market for selling the finished product and the market for buying the raw product.

On the surface, it is tempting to declare that the fish processor in this scenario has a monopoly. However, because there are no unreasonable barriers that prevent other processors from entering the market, the situation is not a monopoly, and because it is likely that others eventually will enter the market, there may be little need for government regulation to interfere with market forces. Thus, while market share is often viewed as a key factor in the examination of competitiveness, it is not an adequate measure to determine whether a situation is less-than-competitive.

A barrier to entry into a particular market is perhaps the most important factor in market control. If there are no unreasonable barriers to entry, then it is unlikely that a firm will be able to exert enough control over the market to allow it to set prices and earn abnormally high profits over a long period. However, if there are barriers to entry, then it is more likely that buyers of raw products, for example, will be able to set and maintain low prices for inputs, or that sellers of finished products will be able to extract high prices from consumers.

The AFA erected significant barriers to entry into the pollock processing and harvesting markets and therefore it may be reasonable to set policies that regulate how much of the pollock processing and harvesting markets individual firms or entities can control. It may also be reasonable to assume that because AFA processors and harvesters have a market in which they may be able to earn extra profits,

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<sup>1</sup> In the short run at least, almost all firms search for abnormal profits. The quest for abnormal profits through innovation and creativity is one of the most positive aspects of the free market system. However, in the long run, firms in a competitive market realize that the existence of abnormal profits is fleeting and that innovation and creativity will soon be imitated.

<sup>2</sup> Abnormal profits can also be generated if a firm uses unfair practices to limit competition. Microsoft is under investigation not simply because it has a disproportionate share of the software market, but because it has been accused of using unfair practices to limit competition.

their ability to use those profits to gain additional shares of markets for other species and products should also be limited. Processing sideboard limits and excessive share caps for pollock harvesting are two such limits.

The AFA mandates processing and harvesting sideboard limits on the specific companies or entities that have been allowed exclusive access to the pollock resource. The sideboard limits, in theory, prevent these firms from expanding their market shares in non-pollock fisheries. If the sideboard limits are effectively implemented, they may provide adequate protection to processors and harvesters that do not have access to the pollock resource. While pollock excessive share caps may still be warranted (and are mandated by the AFA), the co-op structure itself, and allocations to each co-op, may serve the same effect as excessive share caps.

If processing sideboard limits had not been included as part of the AFA, then excessive share caps would be a reasonable means to provide protection to processors and harvesters that do not have access to the pollock resource. Given that sideboard limits are part of the AFA, it appears that excessive share caps are redundant and are necessary only if sideboard limits are not effective and do not provide adequate protection.

However, excessive share caps, unlike the sideboard limits, are meant to apply to all processors and harvesters regardless of their ability to participate in the pollock fishery. Excessive share caps are intended to preserve and ensure competition in non-pollock fisheries of the BSAI. However, other than the processing sideboard limits that prevent firms involved in pollock from increasing their market shares, there may not be any significant barriers to entry into markets using these resources. License limitation, given the large number of licenses and the fact that the program does not apply to processors, cannot be considered a significant barrier to entry. Therefore, it may be that excessive share caps are unwarranted and could actually reduce competition and efficiency rather than enhance and preserve competition.

The following hypothetical situation, based on the previous example, illustrates how excessive share caps could potentially reduce competition:

An excessive share cap limiting any firm from processing more than 33 percent of the arrowtooth flounder resource is enacted after the processor (in the above example) has invested in new machinery. If the processor had known that it would be limited to 33 percent of the arrowtooth, it would not have acquired the loan to purchase the new equipment. Since revenues from only 33 percent of the arrowtooth resource are not enough to meet the loan payments, the processor declares bankruptcy and goes out of business. Without a buyer for arrowtooth, the trawlers who took the risk to deliver to the new processors must scramble to find new markets for the resource they had harvested in the past.

This scenario demonstrates one way excessive share caps can be detrimental to competition. The basic point is that share caps could provide disincentives for some operators to enter a fishery, thereby reducing competition. Additionally, the dynamics between harvesters and processors need to be taken into account. While a share cap could enhance competition among processors of a given species under some circumstances, it could result in negative impacts to the harvesters delivering to those processors (an issue identified by the Processor Sideboard Committee).

## **5. Relationship to Processing Sideboard Limits**

For AFA processors, excessive share caps on species other than pollock are very similar to processing sideboard limits—both would limit their ability to increase market shares. Depending on how sideboard limits are implemented, they could be more restrictive or less restrictive than excessive share caps.

If processing sideboard limits are implemented in the aggregate—all processors combined cannot process more than a fixed amount—then excessive share caps may be more restrictive because individual firms will face their own excessive share cap as well as the aggregate cap on all processors combined. Thus, for example, if the excessive share cap for Pacific cod is 17.5 percent and the sideboard limit for all AFA processors is 80 percent, then a company that chooses to focus on Pacific cod early in the year may be forced to shut down because of the share cap before other AFA processors are limited by the sideboard.

If processing sideboard limits are implemented as individual limits based on processing history, then it is likely that processing sideboard limits will be more restrictive than excessive shares. This conclusion is true if a single excessive share cap is set at a level that would allow the firm with the largest share to continue to process that share. Individual sideboard limits based on the processing history of each firm would be less than the excessive share cap for all processors except the specific processors whose market shares determine excessive share levels, under this scenario.

For processors that are not allowed to process pollock, excessive share caps could limit their ability to realize the full potential of their markets and their investments, and at the same time do not appear to offer significantly greater protection from AFA processors that is not already guaranteed by the processing sideboard limits. This aspect may be considered a benefit of excessive share caps from the perspective of AFA processors, or of non-AFA processors who fear a competitor may garner a larger share in the absence of such caps.

## **6. Relationship Between Harvest and Processing Excessive Share Caps**

For companies that own catcher-processors or harvesting vessels and processing facilities, there is a direct relationship between harvesting and processing share caps. If harvesting caps are set lower than processing caps, then processing firms will need to employ additional harvest vessels from outside the company if they wish to process up to the level they are allowed.

In addition, the relationship between harvest and processing excessive share caps may have significant bearing on the definition of entities in the AFA. In Chapter 8 of the original AFA analysis, the discussion of processing sideboard limits used the convention that a linkage between two companies through a harvest vessel does not mean that the two processing companies should be considered a single entity. If both harvesting and processing excessive share caps are imposed, then that convention probably should be reconsidered, particularly if excessive share caps are imposed at the entity or company level rather than at the individual facility level.

## **7. Applying Excessive Share Caps to Plants, Companies, or Entities**

Excessive shares must be applied to individual processors or harvesters rather than to sectors or to the industry as a whole. Furthermore, the AFA and language approved in the Council motion indicate that excessive shares are to apply not only to beneficiaries of the AFA, but also to non-AFA processors and harvesters. A major decision point is whether excessive shares should be applied to individual plants or vessels (facilities), or whether they should be applied to individual companies or entities. If the goal of excessive shares is in fact to maintain competition in the fisheries of the North Pacific, then it is reasonably clear that excessive shares must be applied to individual companies or entities. Applying caps to individual facilities will allow companies to evade the caps and decrease competition simply by acquiring facilities of another company.

The question of whether to apply the caps to companies or to entities is a question of definition. The analysis of processor sideboards contained in Chapter 8 of the original AFA analysis, defines companies

as a facility or group of facilities that are linked by a common ownership of 50 percent or more. In the same document, entities were defined using the "10 Percent Ownership Rule" as follows:

If a company has a 10 percent or more ownership stake in an AFA-eligible processing facility, then all other processing facilities in which that company has 10 percent ownership will also be considered part of the AFA entity. For purposes of the analysis, the lease of a facility will be considered ownership of that facility.

Since it appears that the excessive share caps could be applied to non-AFA facilities and to harvesters as well as processors, the "10 Percent Ownership Rule" for excessive shares is adapted as follows:

If a company has a 10 percent or more ownership stake in a processing plant or vessel or in a harvesting vessel, then all other facilities in which that company has 10 percent ownership will also be considered part of the entity. For purposes of the analysis, the lease of a facility will be considered ownership of that facility.

Figure 1 shows how the 10 Percent Ownership Rule would be applied to form entities in the case of AFA processing sideboards. If a company has an ownership stake of 10 percent or more in a processing facility, then all other processing facilities in which that company has 10 percent ownership will also be considered part of the AFA entity. Application of the 10 percent rule to the ownership structure results in one entity in which all three facilities are capped.

**Figure 1. Application of the "10 Percent Rule" to Define Entities**

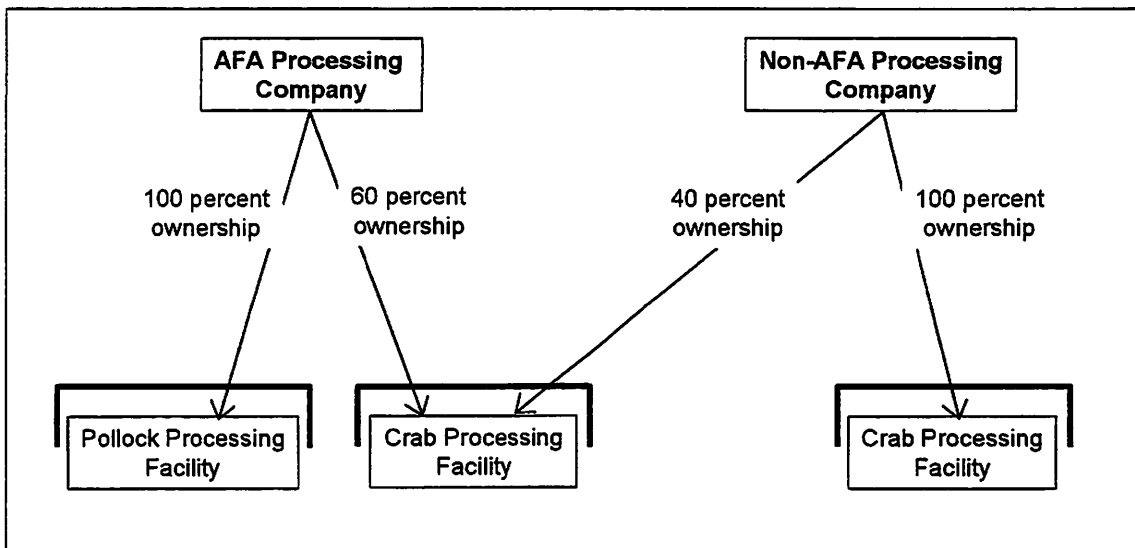
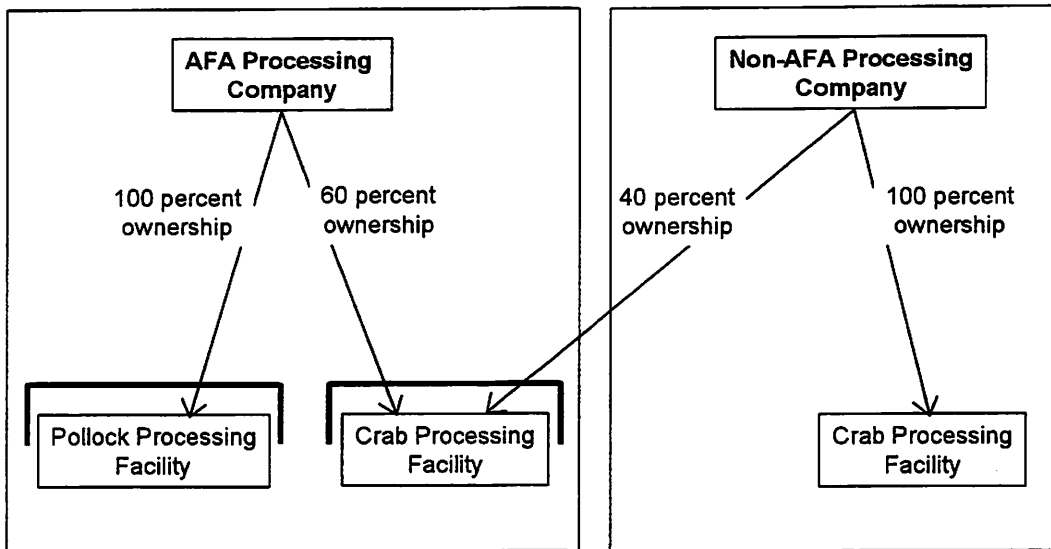


Figure 2 shows how the "limited 10 percent rule," as discussed at the AFA Sideboard Committee meeting in August, would be applied under the processing sideboards. The "limited 10 percent rule" would limit the use of the 10 percent rule to all facilities owned by companies that have a direct ownership link of 10 percent or more to AFA pollock processing facilities. Companies whose only link to an AFA processor is through a non-pollock facility would not be limited by the processing sideboard limits. The same ownership structure results in 2 entities under the limited 10 percent rule. As shown in Figure 2, the limited 10 percent rule is only applicable in the context of the AFA processing sideboard limits because it defines the limits of an entity based on an ownership connection to a pollock processor. Under excessive share caps, both AFA and non-AFA entities will be limited, and thus entities must be defined regardless of ownership connections to pollock processing facilities. This aspect implies that for excessive shares the two companies in Figure 2 would be linked under a single entity.

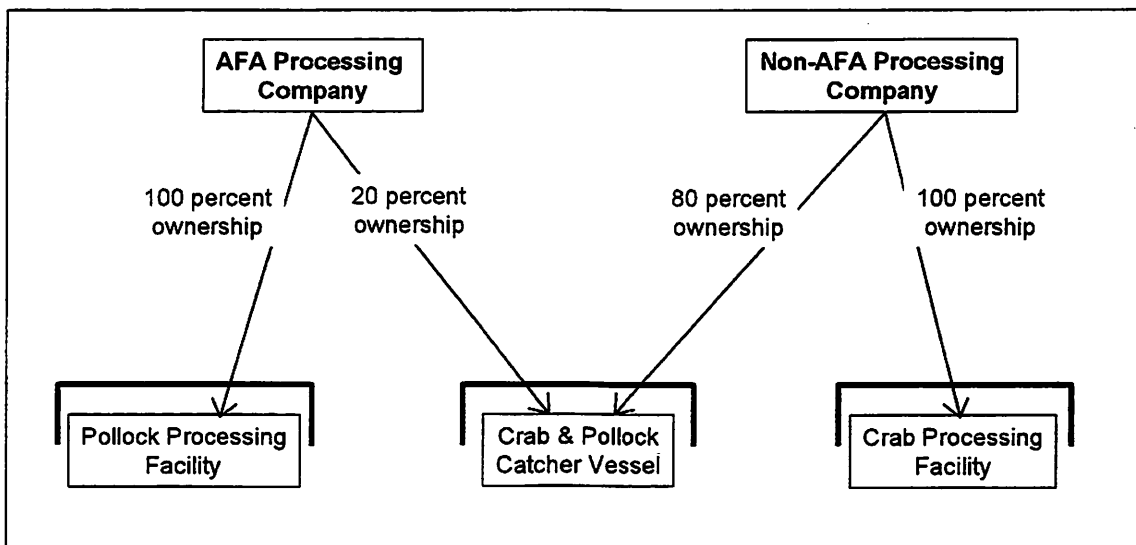


**Figure 2. Application of the "Limited 10 Percent Rule" to Define Entities**



Because excessive share caps are defined in terms of both processing and harvesting it stands to reason that under excessive share caps the definition of entities must consider all ownership connections between companies including ownership linkages through harvesting vessels. Figure 3 shows how two companies that would not have been defined as an entity under rules used in the analysis of AFA processing sideboards, would be considered a single entity under excessive share caps through their common ownership of a harvesting vessel.

**Figure 3. Demonstration of Entity Created by Ownership Linkage through a Harvest Vessel**



The complications in defining entities that could arise from a literal interpretation of the AFA as shown in Figure 3 may be significant. Complexities could result particularly because the BSAI fishing industry was Americanized from a relatively small base of individuals with a wide range of investments and partnerships, and therefore it is likely that there are many investment relationships among various players.

The matter is also complicated by the fact that the asset values of processing facilities typically are many times the asset values of harvest vessels. If the literal interpretation of the 10 percent rule is used, then it is likely that even a small investment in a harvest vessel could create a linkage between multi-million-dollar processing firms. The following example demonstrates the issue.

Two competing processing companies each have an asset value of \$75 million. The principals in the two companies both got their start in the industry as 50/50 partners in a small trawl vessel with a current asset value of \$1 million. This partnership still exists, and the trawl vessel delivers in alternate years to each processor.

Under a literal interpretation of the 10 percent ownership rule for excessive shares, the two processing companies would be treated as a single entity because of joint ownership in the harvest vessel. However, in terms of asset values, each principal's investment in the harvest vessel is less than 7 percent of the total asset value of each of the processors. Under an asset value interpretation of the 10 percent rule, the two processors would not be considered linked.<sup>3</sup>

## **8. Species Aggregations for Excessive Shares**

The Council motion of December 1998 indicates that excessive share caps will be defined for pollock, other groundfish, and crab in the BSAI. This discussion paper uses a literal interpretation of the Council motion to restate excessive share caps as follows and substitutes the word "firm" for "facility," "company," or "entity," pending clarification from the Council:

### **Excessive Shares for Harvesting**

- No firm may harvest more than the excessive share cap of pollock from BSAI waters. The excessive share cap of pollock will be defined each season as a fixed amount calculated by multiplying the pollock share cap percentage by the total allowable catch (TAC) of pollock.
- No firm may harvest more than the excessive share cap of "other groundfish" from BSAI waters, where "other groundfish" are defined as an aggregation of all groundfish other than pollock managed by the NPFMC in the BSAI. The excessive share cap of other groundfish will be defined each season as a fixed amount calculated by multiplying the sum of TACs of all non-pollock groundfish by the share cap percentage for other groundfish.
- No firm may harvest more than the excessive share cap of crab from BSAI waters, where "crab" is defined as an aggregation of all king, tanner, and hair crab species managed jointly by the NPFMC and the State of Alaska in the BSAI. The excessive share cap of crab will be defined each season as a fixed amount calculated by multiplying the sum of guideline harvest levels (GHLs) of all king, tanner, and hair crab by the share cap percentage for crab.

### **Excessive Shares for Processing**

- No firm may process more than the excessive share cap of pollock from the waters of the BSAI. The excessive share cap of pollock will be defined each season as a fixed amount calculated by multiplying the pollock share cap percentage by the total allowable catch (TAC) of pollock.
- No firm may process more than the excessive share cap of "other groundfish" from the waters of the BSAI, where "other groundfish" are defined as an aggregation of all groundfish other than pollock managed by the NPFMC in the BSAI. The excessive share cap of other groundfish will be defined each season as a fixed amount calculated by multiplying the sum of TACs of all non-pollock groundfish by the share cap percentage for other groundfish.

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<sup>3</sup> The asset value interpretation of the 10 percent rule is the equivalent of the "multiplicative" interpretation that was discussed in Chapter 8 of the original AFA analysis.

- No firm may process more than the excessive share cap of crab from the waters of the BSAI, where "crab" is defined as an aggregation of all king, tanner, and hair crab species managed jointly by the NPFMC and the State of Alaska in the BSAI. The excessive share cap of crab will be defined each season as a fixed amount calculated by multiplying the sum of guideline process levels (GHLs) of all king, tanner, and hair crab by the share cap percentage for crab.

### Other Issues

- Processing and harvesting share cap percentages are not required to be set at the same level.
- CDQ harvesting and processing amounts included under all share calculations, or separate?

If excessive share caps are defined as described here, and the share cap percentages are set at a relatively high level, then it is likely that potentially negative impacts on competition in non-pollock fisheries can be avoided while meeting the mandates of the AFA. At the same time, however, it is likely that defining excessive share caps in this manner may render them insignificant, because they are likely to have little or no impact on any processing or harvesting firm.

Table 1 shows the 1999 TACs for species that would be included under the excessive share calculation for other groundfish. If the excessive share cap were set at 17.5 percent (the level at which the pollock excessive cap for harvesting is set), then any given firm would be able to harvest or process 100 percent of any given species for which TACs are set, with the exception of Pacific cod and yellowfin sole—the cap would limit a given firm to 99.3 percent of the Pacific cod or 84.6 percent of the yellowfin sole. Alternatively, if excessive share caps were set as low as 7.5 percent, then a single firm would be able to harvest or process 70 percent of the Atka mackerel as well as 100 percent of the rockfish and Greenland turbot without exceeding the caps.

**Table 1. Total Allowable Catch Levels of Other Groundfish Species in the BSAI**

Species	Total Allowable Catch (Metric Tons)	Percent of "Other Groundfish"
Pacific cod	177,000	17.61
Atka mackerel	66,400	6.61
Yellowfin sole	207,980	20.69
Greenland turbot	9,000	0.90
Arrowtooth	134,354	13.37
Rock sole	120,000	11.94
Flathead sole	77,300	7.69
Other flatfish	154,000	15.32
True Pacific ocean perch	14,900	1.48
Other Pacific ocean perch	267	0.03
Sharpchin and northern rockfish	4,230	0.42
Shortraker and roughey rockfish	965	0.10
Other rockfish	1054	0.10
Sablefish	2,720	0.27
Squid	1,970	0.20
Other Species	32,860	3.27
<b>Other Groundfish Total</b>	<b>1,005,000</b>	<b>100.00</b>

Setting a general excessive share cap for crab species in the BSAI is more complicated than setting an excessive share cap for "other groundfish." One major problem is that, unlike groundfish TACs, GHs are guidelines and not predetermined maximum harvest levels. In addition, allowable harvests of specific stocks of crab in the Bering Sea have fluctuated significantly in recent years. These issues combine to make excessive share caps in crab difficult if not impossible to implement.

## **9. Data Confidentiality and Excessive Shares**

Under the AFA, confidentiality restrictions prohibiting the release of individual company data were relaxed—catch and processing amounts of the beneficiaries of AFA could be released for the purposes of implementing necessary regulations. For processors and harvesters that do not benefit from the AFA, confidentiality restrictions are still imposed. Therefore, in many situations decisionmakers will not be allowed to see and understand the data upon which their decisions must be based. In the past, analysts have provided decisionmakers with the catch or processing amounts of the four highest competitors. This convention has been used because of an assumption on the part of regulatory agents that it would be nearly impossible to estimate any one individual's total. If this convention is used for determining excessive share cap levels, then it is likely that the decisions could be challenged in court as arbitrary.

## **10. Possible Actions**

To some extent, the Council faces a dilemma concerning excessive share caps for harvesters and processors, particularly with regard to crab and groundfish species other than pollock. The AFA asks that the Council recommend action, but it appears likely that a rigorous examination of the issue would indicate that action may not be warranted, in the context of the current suite of alternatives. From this perspective, it appears that the Council has four choices at this time:

1. Continue with the analysis of the alternatives as currently stated. Given that the alternatives as currently stated do not appear to have the potential to create significant impacts (given the level of species aggregation primarily), it is possible that the analysis could be limited in scope and be available to the Council for initial review in time for the December meeting, but more likely the February 2000 meeting. However, accurate identification of ownership linkages remains a major hurdle for staff. A regulation requiring such information be submitted to NMFS could facilitate monitoring of caps, but it would not resolve our problems in analyzing such caps.
2. Refine the alternatives to acknowledge the existence of specific markets. Excessive share caps would be analyzed and tailored for each market that is identified in the analysis. This may include further definition of species aggregation with an analysis based on the Statement of Work (SOW) drafted by NMFS and Council staff. Such an analysis would be initiated after the October meeting and is not likely to be available for review until at least February 2000, and more likely April. Compiling necessary ownership linkages and associated data aggregations will be a major part of the analysis, as will a detailed analysis describing the markets for the various species. A decision on how to define entities is crucial, prior to embarking on detailed analyses. Finally, a confirmation of the objectives of excessive share caps is necessary. While such caps could impose 'costs', there may also be benefits, depending on the objective against which the alternatives would be assessed. This discussion paper presumes that Congress' intent was to preserve competition.
3. Notify Congress and NMFS that the Council has examined the issue and finds that processing sideboards for AFA processors, harvest sideboards for AFA harvesters, and excessive harvest share caps for pollock provide adequate protection for non-AFA processors and harvesters. Excessive

processing shares for pollock may in fact be effected through the co-op structure prescribed by the Act. Furthermore, there appear to be no compelling problems in terms of competition outside of the AFA/non-AFA dynamic. Therefore, excessive harvesting and processing share caps for crab and groundfish species other than pollock may not be necessary at this time.

4. Recognize the fact that market shares may be an indicator of an anti-competitive situation and direct Council staff to initiate a program that establishes a process for monitoring market share. The process would define markets on an ongoing basis and regularly report market shares to NMFS and the Council. Finding that a firm or very small number of firms control significantly disproportionate shares of a particular market would signal that an investigation into that market should be undertaken, and perhaps warrant Council action to implement caps. It should be noted that current confidentiality statutes would impede such a monitoring program.

Assuming that we proceed with a full analysis of excessive share alternatives, we anticipate the following major tasks:

1. Summarize the harvesting and processing share information for 1995-99 based on the 10% rule as defined in the AFA, or upon some variation of that rule. Also provide data aggregations for the specified alternatives based upon the same rule. We likely would contract out some or all of this work.
2. This information would then be forwarded to a second contractor who would prepare an analysis to include the following (proposed) issues:
  - Discuss levels of market shares and market structures that frequently are associated with excessive market power.
  - Discuss the Department of Justice perspective on excessive market shares. (possible input from NOAAAGC on this.)
  - Determine which of the share cap alternatives are associated with market shares that typically would be considered excessive.
  - Discuss the expected effects of each of the alternative harvesting and processing share caps on the following:
    - a. the ex-vessel prices and value
    - b. economic viability of independent vessel owners
    - c. fishery product prices and value through primary processing
    - d. economic viability of processors
    - e. fishery input markets
    - f. the geographical distribution of landings and processing
    - g. the spatial and temporal distribution of catch
    - h. harvesting and processing costs
    - i. management costs

NOTE: It may be appropriate to have NMFS or Council staff address some of these effects in the RIR/IRFA and eliminate them from the scope of work for the contractors.

- Discuss the option of allowing harvesting and processing shares to be limited principally by market forces and Department of Justice antitrust enforcement efforts.

3. The third major task would be for Council/NMFS staff to take the analyses prepared by the contractors and complete the analyses in the form of an EA/RIR/IRFA for Council review. Given this game plan, it is not likely that we could have a thorough analysis completed before February, and April may be a more feasible target date for initial review.

## **Appendix A**

### **SEC. 2.10. FISHERY COOPERATIVE LIMITATIONS**

(a)...

#### **(e) EXCESSIVE SHARES.—**

(1) **HARVESTING.**—No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

(2) **PROCESSING.**—Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the North Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

(3) **REVIEW BY MARITIME ADMINISTRATION.**—At the request of the North Pacific Council or the Secretary, any individual or entity believed by such Council or the Secretary to have exceeded the percentage in either paragraph (1) or (2) shall submit such information to the Administrator of the Maritime Administration as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either such percentage. The Administrator shall make a finding as soon as practicable upon such request and shall submit such finding to the North Pacific Council and the Secretary. For the purposes of this subsection, 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.

### **SEC. 2.11. PROTECTIONS FOR OTHER FISHERIES; CONSERVATION MEASURES**

(a)...

#### **(c) CATCHER VESSEL AND SHORESIDE PROCESSOR RESTRICTIONS.—**

(1)...

#### **(2) BERING SEA CRAB AND GROUND FISH.—**

(A)...

(B) Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from harvesting or processing an excessive share of crab or of groundfish in fisheries in the Bering Sea and Aleutian Islands Management Area.