AGENDA C-2
APRIL 2006

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver
Executive Director

ESTIMATED TIME
12 HOURS

DATE: March 23, 2006

SUBJECT: IR/IU

ACTION REQUIRED

a) Final action on Amendment 80 EA/RIR/IRFA (T)
b) Discuss alternatives for maximum retainable amounts (MRA) adjustments

Amendment 80

Amendment 80 proposes to allocate rock sole, flathead sole, yellowfin sole, AI Pacific ocean perch, and Atka mackerel to the Non-AFA Trawl catcher processor sector. In addition, the proposed action would allocate PSC limits to the sector for use in their BSAI directed fisheries. The proposed action would establish a cooperative program for qualified Non-AFA Trawl catcher processor participants. To maintain existing fishing activity among non-allocated species in the BSAI and the GOA, sideboards are included in the proposed action. Finally, Amendment 80 includes options for increasing the CDQ program allocation of the five species noted above, secondary species taken incidental in these fisheries, and PSC limits.

In February 2006, the Council reviewed the Amendment 80 EA/RIR/IRFA Public Review draft, but did not take final action. The Council modified some of the components and options of the proposed action and narrowed the focus of the preliminary preferred alternative for some of the components. Staff has updated the EA/RIR/IRFA to reflect the changes to the components and options. The revised EA/RIR/IRFA for Amendment 80 was released for public review on February 17. A copy of this analysis was mailed to you at that time. The executive summary of this analysis is attached as **Item C-2(a)**. In addition, a copy of the current alternatives, components, and options for Amendment 80 is attached as **Item C-2(b)**. The Council is tentatively scheduled to take final action at this meeting.

While the Council could potentially take final action at this meeting, you need to also consider the issues raised in two letters from NMFS **(Item C-2 (c))**. These relate to the need to more explicitly define aspects of the data collection provision, and to earlier proposed vessel monitoring plans (VMPs) and alternative approaches to accomplishment of necessary monitoring. NMFS and Council staff will further explain these issues at this meeting.

MRA Adjustments

In February 2006, the Council initiated an analysis to look at changing the application of the Non-AFA Trawl CP sector's MRA for yellowfin sole, rock sole, flathead sole, Atka mackerel, AI POP, and other flatfish except Greenland turbot. At the April 2006 meeting, the Council is scheduled to receive a discussion paper and review the proposed alternatives for the analysis. NMFS staff will be on hand to report further.

EXECUTIVE SUMMARY

The North Pacific Fishery Management Council (Council) has long recognized the need to reduce bycatch, minimize waste, and improve utilization of fish resources to the extent practicable in order to provide the maximum benefit to present generations of fishermen, associated fishing industry sectors, communities, and the nation as a whole. Since at least 1995, the Non-AFA Trawl CP sector has had the highest discard rate in the Bering Sea and Aleutian Islands (BSAI) groundfish fisheries. Although the overall retention level in that sector has increased in the last decade, it is still well below other BSAI sectors. The Non-AFA Trawl CP sector primarily participates in multi-species fisheries that operates under a "race for fish", where vessels attempt to maximize their harvest in as little time as possible, in order to claim a larger share of the available quota. Because vessels are competing with each other for shares of the total quota, an individual vessel may be penalized for undertaking actions to reduce incidental catch, such as searching for cleaner fishing grounds. To provide the sector with a tool to increase economic efficiency when reducing incidental catch and minimizing waste, the Council in October 2002, initiated Amendment 80, an action that would eliminate the race for fish among members of the sector that wanted to join a cooperative.

Amendment 80 would provide specific groundfish allocations to Non-AFA Trawl CP sector and allow the formation of cooperatives. Sector allocations and associated cooperatives would allow participants to focus less on harvest maximization and more on optimizing their harvest. This in turn could allow reduction of incidental catch, improve retention, and improve utilization, while still improving the economic health of the harvesting and processing, all of which address the problem statement for Amendment 80.

Four strawman alternatives are considered to compare the impacts of the proposed program components, a status quo alternative (Alternative 1) and three alternatives that would allow the formation of multiple (Alternatives 2 and 4) or single (Alternative 3) cooperatives. The alternatives evaluated in this analysis are summarized in the table below.

	Alternative 1 (Status Quo)	Alternative 2	Alternative 3	Alternative 4
Primary Target Species to be Allocated	None	yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch	yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch	yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch
Allocation to Sector	None	*Allocation:* Sector's retained catch over all retained catch, 1998-2002 *Management:* Hard cap *Yellowfin sole:* all yellowfin sole in excess of 125,000 mt threshold to be divided 30% to sector and 70% to other trawl; 2-way rollover; no AFA sideboards for yellowfin sole threshold fishery	*Allocation:* Sector's retained catch over all total catch, 1995-2003 *Management:* Soft cap; rollover to sector *Yellowfin sole:* all yellowfin sole in excess of 100,000 mt threshold to be divided 70% to sector and 30% to other trawl; 2-way rollover; no AFA sideboards for yellowfin sole threshold fishery	*Allocation:* Sector's total catch over all total catch or sector's retained catch over all retain catch using either 1995-2003, 1998-2004, 2000-2004, or a select percentage for each species *Management:* Hard cap for sector and an ICA for fixed gear sectors and general limited access fishery if necessary; rollover of allocated species and PSC to H&G sector or trawl limited access sectors *Yellowfin sole:* all yellowfin sole in excess of 125,000 mt threshold to be divided 60% to H&G sector and 40% to the general limited access fishery; allow rollovers; no AFA sideboards for yellowfin sole threshold fishery
Allocation of Prohibited Species	PSC allocated by target fishery and shared among all trawl vessels	Sector allowance based on average historic PSC usage in directed fishery for allocated primary species plus Pacific cod,1998-2002	Sector allowance based on: a) average PSC usage, by fishery, of all trawl in each PSC fishery group for allocated primary species plus Pacific cod, 1995-2003 b) apply sector proportion as determined above c) reduce by 5%	H&G sector allowance based on average historic usage of PSC from 1995-2003, 1998-2004, 2000-2004 or a select percentage for each PSC species: Halibut: 68.36%-77.22% Red king crab: 45.89% - 51.38% C. opilio: 44.45% - 50.50% Zone 1 C. bairdi; 41.04% - 46.58% Zone 2 C. bairdi: 25.22% - 28.14% Reduce calculated PSC allowance to either 75% or 95% in the third year or phase in PSC reductions 5% per year
Sector Eligibility	Determined by Congress	Determined by Congress	Determined by Congress	Determined by Congress
Cooperative endorsement	None	The license was used to harvest 150 mt of groundfish with trawl gear on a vessel qualified as an eligible Non-AFA Trawl CP, and processed that fish between 1997 and 2002	The license was used to harvest 150 mt of groundfish with trawl gear on a vessel qualified as an eligible Non-AFA Trawl CP, and processed that fish between 1997 and 2004	The license was used to harvest 150 mt of groundfish with trawl gear on a vessel qualified as an eligible Non-AFA Trawl CP, and processed that fish between 1997 and 2004

	Alternative 1 (Status Quo)	Alternative 2	Alternative 3	Alternative 4
Cooperative formation	None	*Threshold:* 15% minimum of eligible participants and must be comprised of at least two separate entities	*Threshold:* 67% minimum of eligible vessels and must be comprised of at least three separate entities	*Threshold:* 30% minimum of eligible vessels and must be comprised of at least three separate entities
Cooperative allocation	None	*Allocation:* based on retain catch history, 1998-2002	*Allocation:* based on total catch history, 1995-2003 drop 3	*Allocation:* based on total catch history, 1998-2004 drop 2
Excessive share limits	None	No limit on consolidation	No single person can hold no more than 50% of the catch history of an allocated species	No single person can hold no more than 20%, 30%, 40%, or 50% of the catch history of an allocated either by species by species basis or on by an aggregate basis Initial allocation grandfathered
Sideboards	None	*For sector:* established based on participation in other fisheries, 1998-2002; for GOA halibut PSC based on usage by area, 1998-2002; only vessels that have GOA wide weekly participation in the flatfish fisheries over the threshold during the qualifying period would be eligible to participate in the GOA *Within sector:* established between cooperative and non-cooperative participants for unallocated species	*For sector:* established based on participation in other fisheries, 1995-2003; for GOA halibut PSC based usage by area, 1995-2003 *Within sector:* established between cooperative and non-cooperative participants for unallocated species	*For sector:* **BSAI** None **GOA** 1) eligible to participate in the GOA flatfish fisheries based on 10 weeks of participation in flatfish fishery using either 1998-2004. May exempt sector vessel with significantly higher participation in GOA flatfish fisheries. 2) Gulf-wide halibut sideboards calculated based on actual usage for each target fisheries within each area for the Non-AFA Trawl CP sector using 1998-2004 or the Council may select a percentage 3) GOA pollock, Pacific cod, and directed rockfish sideboards for the Non-AFA Trawl CP sector based on retained catch of the sector as a percent of retain catch of all sectors from 1998-2004 or the Council may select a percentage
CDQ	7.5% of groundfish and prohibited species (except herring) allocated to CDQ multispecies fishery	10% of allocated species, plus secondary species caught incidentally in directed fisheries, to CDQ multispecies fishery; PSQ proportional to the CDQ allocation	15% of allocated species, plus secondary species caught incidentally in directed fisheries, to CDQ multispecies fishery; PSQ proportional to the CDQ allocation	10% of allocated species and secondary species caught (except Pcod) taken incidentally in directed fisheries, to CDQ multispecies fishery; PSQ proportional to the CDQ allocation

Regulatory Impact Review

Effects on Harvest Participant and Fishing Practices

Alternative 1: Status Quo/No Action

Maintaining the status quo is expected to result in the continuation of existing fishing practices and patterns. Participants in the Non-AFA Trawl CP sector will likely continue to focus the majority of their fishing effort on several flatfish species, Atka mackerel, AI Pacific Ocean perch and Pacific cod in the BSAI. Some vessels in the sector will also participate in GOA fisheries. Under this alternative, trawl participants will continue to race for fish. Trawl fisheries will continue to be prematurely closed due to constraining halibut PSC allowances. Sector discard rates will likely improve, but overall the retention rates will continue to lag behind the rest of the BSAI sectors. Contributing to the improved retention rates is the impending groundfish retention standard (GRS) action. Amendment 79, if approved by the Secretary of Commerce, would phase in the GRS over a four-year period. Originally approved by the Council in June 2003, the GRS was to begin in 2005 with a starting GRS rate of 65 percent. Over the subsequent four-year period, the GRS would gradually increase, culminating at 85 percent in the fourth year. The action would only require Non-AFA Trawl CP vessels greater than or equal to 125 ft. LOA to comply with the GRS. Non-AFA Trawl CP vessels less than or equal 125 ft. LOA would be exempt from the GRS. To monitor and enforce the GRS, sector vessels greater than or equal to 125' LOA would be required to measure all catch on flow scales and all hauls must be observed. Many of the vessels already have flow scales onboard, but seven vessels need to install the scales. All sixteen vessels greater than 125 ft. LOA would also be required to carry an extra observer. Where feasible, GRS could reduce economic returns from fisheries to members of the sector.

Alternative 2

Under Alternative 2, the allocation percentages to the Non-AFA Trawl CP sector are expected to be sufficient to keep the sector's groundfish catch levels about the same as their historic catch. However, the remaining portion of groundfish reserved for the general limited access fishery would be substantially less than historic harvests and may disadvantage members of other sectors, particularly non-AFA catcher vessels. The remaining amount of groundfish reserved for the general limited access fishery is less than the combined AFA Trawl CP and CV sideboards for each of the species. Between 1995 and 1997, vessels whose catch history was assigned to the AFA Trawl CP and CV sectors participated in the fisheries allocated to the Non-AFA Trawl CP sector in larger numbers.

Under this alternative, the yellowfin sole threshold program could provide the opportunity for the AFA Trawl CP and CV sectors and the Non-AFA Trawl CV sector to expand their harvest of yellowfin sole in periods when BSAI pollock TAC declines relative to yellowfin sole. In that circumstance, 30 percent of the TAC over 125,000 mt would be assigned to the Non-AFA Trawl CP sector. The remaining 70 percent of the TAC would be apportioned to the trawl vessels that are not a part of the Non-AFA Trawl CP sector. Allocating 70 percent of the TAC, above the 125,000 mt level, would provide expanded harvesting opportunities for these sectors.

The PSC allocation to the Non-AFA Trawl CP sector under Alternative 2 would likely be sufficient to harvest their entire allocation of groundfish. However, the remaining halibut PSC for all other trawlers could be insufficient to harvest the allocation of groundfish to the general limited access fishery. Given the historically usage of halibut PSC from 1995 to 1998, there is the potential for the remaining trawl sectors to fall short of the necessary halibut PSC needed to harvest the remaining groundfish, if, for example, the Pacific cod TAC were to increase relative to pollock TAC.

Based on the eligibility requirements under this alternative, there appear to be 26 vessels that qualify for the Non-AFA Trawl CP sector. Four vessels with trawl CP licenses failed to harvest the required 150 mt of BSAI groundfish with trawl gear and process that catch between 1997 and 2002.

Under Alternative 2, 15 percent of the qualified vessels would be needed to form a cooperative. In addition, at least three unique entities (using the 10 percent AFA rule) are required for cooperative formation. Since under Alternative 2 there are likely to be 26 qualified vessels, at least four of these vessels would be needed to form a cooperative. If each of the cooperatives had the minimum required four qualified vessels, six cooperatives would be formed in the Non-AFA Trawl CP sector. This provision should help to ensure that each vessel is given the opportunity to join a cooperative. Alternatively, the "odd-person-out" may have less of a voice in deciding the terms of the cooperative agreement. It seems less likely that the "odd-person-out" would be worse off under this alternative than Alternative 3 cooperative structure, which allows only a single cooperative to form. Under this action, each participant would have the option to join any of six potential cooperatives, so it is more likely to find a cooperative that would help them meet their objectives. Participants who elect not to join a cooperative would participate outside a cooperative but within the sector's limited access fishery.

Consolidation in the Non-AFA Trawl CP sector under Alternative 2 would not be constrained. There would be no limit on the percentage of the Non-AFA Trawl CP sector allocation that an eligible participant can own or use. In general, number of vessels in the fishery could be reduced to the minimum number need to harvest the entire allocation. Cost savings associated with a more optimal fleet size is expected to increase the producer surplus generated by the fleet.

Alternative 2 would implement harvest caps on the Non-AFA Trawl CP sector for the species that are not allocated. Sideboard caps would be set using the sector's retained catch of BSAI groundfish species from 1998-2002 in all fisheries relative to the retained catch of all vessels. Sideboards would also be set for GOA halibut PSC based on actual usage relative to the other sectors from 1998-2002. GOA groundfish harvests by the Non-AFA Trawl CP sector would be limited by requiring vessels to have fished a given number of weeks during the qualifying period to participate. Alternatives defining the actual number of weeks required have not been developed, so the impacts cannot be determined.

The Non-AFA Trawl CP sector should have the opportunity to harvest their historic percentages of BSAI groundfish species, given the alternatives selected. These caps do not give the sector the rights to those fish, but instead are limits on their catch. Other sectors could legally harvest portions of the sideboard limits before the Non-AFA Trawl CP sector catches them. Basing the caps on retained catch, results in larger caps, in most cases, relative to using total catch.

Future GOA groundfish harvests cannot be predicted, without additional information on the number of participants that will be allowed to fish in the future. The GOA PSC caps, however, should enable the sector to harvest historic levels of groundfish. GOA halibut PSC catches were not assigned to a specific area, since NMFS does not manage PSC by area in the GOA. Finally, the analysts assumed that any catches by the sector under the Rockfish Pilot program would be deducted from the sideboard cap amounts.

Given the Alternative 2 methods of calculating the BSAI sideboard caps, it is expected that the Non-AFA Trawl CP sector could harvest their historic percentages of various fisheries and still provide sufficient protection for other sectors. Insufficient information is available to make that determination for the GOA. However, given that most fisheries in the GOA are closed due to halibut bycatch and not TAC, the halibut PSC caps should provide adequate protection for most species.

With regards to the meeting the GRS, Non-AFA Trawl CP sector participants would likely be better off under Alternatives 2 than under Alternative 1. Under Alternative 2 sector participants that join a cooperative can pool their individual annual GRS rates across the cooperative. Under Alternative 1, the GRS would be enforced on a vessel by vessel basis. Under Alternative 2, vessels in a cooperative would average their individual annual retention rates, which could help to reduce increased operation costs for those vessels limited by the GRS. Overall, given the flexibility of this alternative, each cooperative will minimize the cost of meeting the GRS to the extent possible.

Alternative 3

Under Alternative 3, the allocation of groundfish species and PSC species would be insufficient to maintain the Non-AFA Trawl CP sector's historic harvest levels (except maybe yellowfin sole). In addition, large portions of the remaining Amendment 80 species would be directed to the general limited access fishery where it would likely remain unharvested without substantial increases in harvest by participants in the fishery. For example, the combined AFA Trawl CP and CV sideboards for rock sole is 7.11 percent. If the Council selected this allocation option for rock sole, the allocation to the general limited access fishery would 70.6 percent of the TAC. Assuming the AFA CP and CV sectors harvested rock sole up to their sideboards, the remaining allocation available for the Non-AFA Trawl CV sector would be 63.49 percent. The Non-AFA Trawl CV sector has traditionally not harvested rock sole to anywhere close to that degree. The alternative does includes a provision to rollover any portion of the general limited access fishery allocation that is projected to go unused by a given date. However, the timing of some of the fisheries and lack of PSC that would be necessary to harvest the rollover decrease the benefits relative to a direct allocation as in Alternative 2.

Under this alternative, relative to Alternative 2, the yellowfin sole threshold program would be less likely to provide an opportunity for the AFA Trawl CP and CV sectors and the Non-AFA Trawl CV sector to expand their harvest of yellowfin sole in periods when pollock TAC declines relative to yellowfin sole. The primary reason is the allocation of the ITAC above the threshold would favor the Non-AFA Trawl CP sector and would diminish the yellowfin sole allocation to the general limited access fishery when ITAC exceeded the threshold from 48 percent to 30 percent. Yellowfin sole ITAC above the threshold would be distributed 70 percent to the Non-AFA Trawl CP sector and 30 percent to all other trawlers. Constraining the success of the threshold program, under this alternative, is the lack of halibut PSC. Like Alternative 2, this alternative does not include reallocation of halibut PSC as part of the rollover provisions, so sectors will have to rely on their initial halibut allowance to harvest any groundfish that is rolled over to them.

Although it cannot be determined with any certainty, the PSC allocation percentages under this alternative could result in an allocation to the Non-AFA Trawl CP sector that may be insufficient for harvesting their entire allocation of the target species, if the sector cannot reduce its PSC catch rates substantially from current levels. In contrast, the remaining portion of halibut PSC reserved for all other trawlers should be sufficient to harvest the remaining portion of unallocated groundfish. Alternative 3 also includes a reduction in the calculated PSC apportionments to the Non-AFA Trawl CP sector by an additional 5 percent.

Like Alternative 2, 26 vessels appear to qualify for the Non-AFA Trawl CP sector. Four vessels with trawl CP licenses failed to harvest the required 150 mt of BSAI groundfish with trawl gear and process that catch between 1997 and 2002.

To form a cooperative under this alternative, 67 percent of the eligible vessels would be required. If the calculation is based on vessels, and 26 vessels are in the sector, then 17 vessels would be required to meet the 67 percent threshold. Those qualified participants who elect not to join a

cooperative would participate outside the cooperative but within the sector (sector limited access fishery).

Consolidation would be limited under Alternative 3. Although numbers of persons over the cap cannot be reported for the Atka mackerel and AI POP fisheries to protect confidential data, no companies are over the cap for yellowfin sole, rock sole, and flathead sole. In general, the changes in the economic impacts of a 50 percent cap versus no cap are small. In either case, the number of vessels in the fishery could be reduced to the minimum number need to harvest the entire allocation.

The sideboard caps under Alternative 3 would be based on the total catch of the Non-AFA Trawl CP sector relative to the total catch of all sectors. Using total catch, as compared to retained catch, tends to reduce the size of the sideboard caps for the Non-AFA Trawl CP sector. Smaller caps will reduce the amount of revenue that the Non-AFA Trawl CP sector can generate. However, they will provide more fish for other sectors to harvest. Whether the other sectors will increase their participation and retention in fisheries other than Pacific cod and select other fisheries is unknown.

Sideboard caps will be set for both GOA groundfish and halibut fisheries under this alternative. Groundfish sideboard caps will have the greatest impact on species that close due to the TAC being harvested. These species are typically Pacific Ocean Perch, Pelagic shelf rockfish, northern rockfish, and Pacific cod. Other species are typically closed as a result of halibut PSC constraints. Given that this alternative would decrease the Non-AFA Trawl CP sector's halibut PSC cap by about 70 mt, they are expected to be worse off under this alternative compared to Alternative 2. Other participants in the GOA fisheries would fair better under this alternative.

In meeting the GRS, Non-AFA Trawl CP sector participants would likely be better off under Alternatives 3 than under Alternative 1, but less so than under Alternatives 2 and 4. Under Alternative 3, sector participants that join the cooperative can pool their annual vessel GRS rates across the cooperative. By averaging individual vessel retention rates across the cooperative, this could help to reduce operation costs for those vessels limited by the GRS. However, unlike Alternatives 2 and 4, which are multiple cooperatives alternatives, Alternative 3 would allow only one cooperative. As a result, there is a chance that some members of the sector will not join the cooperative thus reducing the benefits of GRS pooling. Overall, participants in the cooperative will seek to minimize their cost of meeting the GRS to the extent possible.

Alternative 4

In October 2005, the Council identified a preliminary preferred alternative. While the Council identified several preferred options throughout the proposed action, they did not select preferred options for many the components. In February 2006, the Council narrowed the number of options in some of the components, but still left some components unresolved. As a result, any meaningful analysis of Alternative 4 in comparison to the other alternatives is difficult and in some cases not possible. The following limited analysis overviews those components in Alternative 4 narrow enough to make some general observations in comparison to the other alternatives.

Under Alternative 4, the allocation percentages to the Non-AFA Trawl CP sector are expected to be sufficient to keep the sector's groundfish catch levels about the same as their historic catch. With the exception of the total/total method combined with the year combination 1995 to 2003, the remaining portion of groundfish reserved for the general limited access fishery would be less than historic harvests and may disadvantage members of other sectors, particularly non-AFA catcher vessels in the future. In general, using catch data after 1998 under this alternative will result in larger allocations to the Non-AFA Trawl CP sector and small allocations to the general

limited access fishery. During the 1995 to 1997 period, participants in the AFA Trawl CP and CV sectors participated in larger numbers in many of the fisheries allocated under this proposed action. Alternative 4 also includes an ICA provision in the event that the allocation of an Amendment 80 species to the general limited access fishery is inadequate to support other directed fisheries.

Alternative 4 includes a rollover provision like Alternative 3, but the alternative also includes PSC rollovers and rollbacks of Amendment 80 groundfish species and PSC to the trawl limited access fishery from the Non-AFA Trawl CP sector. Under this provision, NOAA Fisheries would review the fisheries for the purpose of rollovers of both Amendment 80 species and PSC on May 1 and August 1. NOAA Fisheries has suggested the August 1 review be changed to September 1 to allow more time for the fall fisheries to develop to properly estimate projected unused Amendment 80 species and PSC. NOAA Fisheries has also determined that rollbacks from the Non-AFA Trawl CP sector to the trawl limited access fishery of Amendment 80 species and PSC introduce numerous complications that make rollbacks unworkable.

Under this alternative, the yellowfin sole threshold program could provide some increased opportunity for the AFA Trawl CP and CV sectors and the Non-AFA Trawl CV sector to expand their harvest of yellowfin sole in periods when BSAI pollock TAC declines relative to yellowfin sole depending on the allocation percentage below the threshold. In this alternative, 60 percent of the TAC over 125,000 mt would be assigned to the Non-AFA Trawl CP sector. The remaining 40 percent of the TAC would be apportioned to the trawl vessels that are not a part of the Non-AFA Trawl CP sector.

The PSC allocation to the Non-AFA Trawl CP sector under Alternative 4 would likely be sufficient to harvest their entire allocation of groundfish. However, the remaining halibut PSC for all other trawlers could be insufficient to harvest the allocation of groundfish to the general limited access fishery. Given the historically usage of halibut PSC from 1995 to 1998, there is the potential for the remaining trawl sectors to fall short of the necessary halibut PSC needed to harvest the remaining groundfish, if, for example, the Pacific cod TAC were to increase relative to pollock TAC.

Based on the eligibility requirements under this alternative, 26 vessels appear to qualify for the Non-AFA Trawl CP sector. Four vessels with trawl CP licenses failed to harvest the required 150 mt of BSAI groundfish with trawl gear and process that catch between 1997 and 2002.

Under Alternative 4, 30 percent of the eligible vessels would be needed to form a cooperative. In addition, at least three unique entities are required for cooperative formation (using the 10 percent AFA rule). Since under Alternative 4 there are likely to be between 26 qualified vessels, at least seven vessels would be needed to form a cooperative. If each of the cooperatives had the minimum required seven vessels, three cooperatives would be formed in the Non-AFA Trawl CP sector.

Under Alternative 4, excessive share limits are included, but how they are applied has yet to be determined by the Council. Although specifics impacts of this alternative cannot be determine with any certainty, some general observations can be made. Based on the options selected, consolidation for the Non-AFA Trawl CP sector would be limited. On a species by species basis, a maximum of one to three companies will be impacted by the excessive share caps, depending on the cap level. Several other companies could increase their holdings before they reached the proposed caps. On an aggregate species basis, no companies were over the 50 percent cap.

Alternative 4 would implement harvest caps on the Non-AFA Trawl CP sector for the species that are not allocated. However, the Council did not specify a specific sideboard option choosing

instead to leave all of the sideboard options open for consideration, so any meaningful analysis of the sideboards for this alternative is not possible.

With regards to meeting the GRS, Non-AFA Trawl CP sector participants would likely be better off under Alternative 4 than under Alternative 1. Like the previous two alternatives, sector participants that join a cooperative can pool their individual annual GRS rates across the cooperative thereby helping to reduce operation costs for those vessels limited by the GRS. Overall, given the flexibility of this alternative, each cooperative will minimize the cost of meeting the GRS to the extent possible.

Effects on Catcher Processor Efficiency

Production efficiency of the Non-AFA Trawl CP sector under the status quo is limited to some degree by the race for fish under the current LLP fishery and GRS. Sector participants are compelled to race for groundfish with other sector participants, as well as other participants in other sectors throughout the period the fisheries are open. Generally, participants in the Non-AFA Trawl CP sector are equipped to produce whole and head and gut frozen products. Production of these products is likely to continue, if the status quo is maintained. Participants in the Non-AFA Trawl CP must comply with GRS, which could limit production efficiency. With higher retention rates required for vessels greater than 125 ft, sector participants are constrained in production efficiency.

Under Alternatives 2 and 4 more than Alternative 3, the Non-AFA Trawl CP sector is likely to realize some gains in production efficiency capturing greater rents from the allocated fisheries despite having to comply with GRS. Under Alternatives 2 and 4, most eligible participants in the Non-AFA Trawl CP sector are likely to join a cooperative, since operations in the limited access fishery are likely to be less efficient (and less profitable) and it will be easier to meet the cooperative formation requirements. However, there is some potential under Alternative 3 that some eligible participants may elect not to join a cooperative.

Effects on the CDQ Program

Alternatives 2, 3, and 4 would increase CDQ percentage allocations for both primary target and incidental catch species. Under Alternatives 2 and 4, CDQ percentage allocations for each of the primary target species identified in Component 1 and associated secondary species taken incidental in the primary trawl target fisheries would increase to 10 percent. Under Alternative 3, the percentage allocations for both target and incidental catch species would increase to 15 percent. The PSQ percentage allocations would increase proportionately under each alternative, as well. Under Alternatives 2 and 4, the PSQ percentage allocation would increase to 10 percent, and under Alternative 3 would increase to 15 percent. Currently, the CDQ Program receives 7.5 percent of each groundfish TAC and PSC limit as CDQ and PSQ reserves. These reserves are further allocated among six CDQ managing organizations (CDQ groups). CDQ groups plan and conduct fishing operations for their CDQ allocations, and then receive royalties from the harvest of their CDQ. This revenue is used to provide a means for starting and supporting commercial fisheries business activities in CDQ communities in western Alaska.

CDQ groups have had varied, but increasing, success in harvesting their existing CDQ allocations for primary target species. In the last several years, CDQ groups have harvested the majority of their yellowfin sole, Atka mackerel, and Pacific Ocean perch allocations. They have not been very successful at harvesting their rock sole and flathead sole CDQ allocations. The increased CDQ percentage allocations for primary target species considered under Alternative 2, Alternative 3, and Alternative 4 could allow CDQ groups to receive larger CDQ allocations, if the TACs for these species remained constant or increased. If fully harvested, this could provide additional CDQ royalties to CDQ groups. Harvesting any increased allocations of target species probably would result in increased catch of incidental catch species and prohibited species in the

CDQ fisheries. The increases to CDQ and PSQ percentage allocations for incidental catch species proposed under Alternatives 2, 3, and 4 are meant to allow the CDQ Program to have adequate CDQ reserves to account for the additional catch of incidental and prohibited species that could occur along with the catch of increased allocations of primary target species. The actual benefits that each CDQ group would receive from increased primary species allocations cannot be estimated given currently available information. The relatively small size of these quotas, variability in the amount of each primary species harvested in past years, and lack of specific information about CDQ royalty rates makes it difficult to estimate the future CDQ Program benefits associated with increasing CDQ percentage allocations for primary target species.

Effects on Consumers

Although production of the sector is typically high quality, some quality improvements could be achieved as cooperative allocations will remove pressure to rapidly catch and process fish to maximize catch from the fisheries. Improvements will be limited to those in a cooperative, but since most (if not all members of the sector are likely to join cooperatives) these improvements should be realized throughout the fleet. Any improvements in consumer benefits arising from improved quality are likely to be realized by Asian, U.S., and European consumers, as most of the production from this sector is sold into these markets.

Production of the Non-AFA Trawl CP sector participants is likely to be similar to current production under Alternatives 2 and 4. The allocations under Alternative 3 could reduce the amount of the flatfish species allocated to the Non-AFA Trawl CP sector. If the portion of the TACs assigned to sectors, other than the Non-AFA trawl CP sector, is not harvested, and the amounts of those fish rolled-over to the Non-AFA Trawl CP sector cannot be harvested due to halibut constraints, the reduced supply could negatively impact consumers through higher prices. Market prices for these species will depend on other world flatfish markets. If substitute products are available at similar prices, consumer impacts would be small. The lack of information on these markets precludes quantitative estimates of the impacts on U.S. consumers.

Effects on Environmental/Non-use Benefits

Public non-use benefits derived from the management of healthy stocks of these species are likely to be maintained, if the current management is perpetuated.

Under Alternatives 2, 3 and 4, NOAA Fisheries will make annual, exclusive cooperative allocations for the five allocated species. The proposed action will require eligible Non-AFA Trawl CP vessels under 125 ft length overall to meet the GRS. These measures should have the effect of reducing bycatch and discards, contributing additional non-use benefits that might arise from productive use of the resource. In addition, if Alternative 3 reduces the harvest of the allocated species below the allowed catch, the unharvested fish will remain in the BSAI ecosystem, which is considered a benefit to the environment.

Effects on Management, Monitoring, and Enforcement Costs

In addition to the monitoring challenges documented under other quota programs, Amendment 80 includes additional catch accounting and compliance challenges specific to this type of dedicated access program. To address these challenges, additional requirements will be needed to manage these sector allocations and allow single or multiple cooperatives to function. Proposed monitoring components for all non-AFA trawl CPs while fishing in the BSAI are described below.

1. All vessels would be required to weigh all catch on NMFS-approved scales and provide an observer work station.
2. All hauls would available to be observed by NMFS-certified observers.

3. Vessels would be prohibited from having more than one operational line or other conveyance device for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples.
4. Crew would be prohibited from entering any tank located prior to where the observer collects unsorted catch, unless:
    - The flow of fish has been stopped between the tank and the location where the observer collects unsorted catch, and;
    - All catch has been cleared from all locations between the tank and the location where the observer collects unsorted catch, and;
    - The observer has been given notice that vessel crew must enter the tank, and;
    - The observer is given the opportunity to observe activities of the person(s) in the tank.
    - The observer has informed vessel personal that he or she has completed all sampling activities.
5. Unsorted catch would be prohibited from remaining on deck outside of the codend without an observer present, except for fish accidentally spilled from the codend during hauling or dumping.
6. A vessel operator would be required to document the flow of fish within the vessel's factory.
7. Each vessel would be required to provide the opportunity for a pre-cruise meeting.

While all vessels would be subject to these requirements, vessels in this fleet vary widely in size, facilities, layout, and fishing practices. Because of this wide variability, a performance based catch monitoring system may be appropriate for some vessels in the Non-AFA Trawl CP fleet. NMFS is exploring the use of vessel-specific monitoring plans (VMP) to provide vessels flexibility in developing a catch monitoring system that works best for their factory layout and fishing practices. Under this alternative monitoring approach, vessel operators or managers may propose a VMP that would meet, exceed or partially substitute for certain regulations. As envisioned, vessels complying with an approved VMP may not be subject to the all requirements described in this section. However, vessel operators who propose VMPs that do not address performance standards would be subject to the regulations (as proposed and if approved by the Secretary). Additionally, vessel operators who do not comply with an approved VMP would be subject to enforcement action and the default regulations. This approach is conceptual at this time, subject to change, and contains some issues that are not fully resolved.

The costs for the monitoring program include both accounting costs (that are itemized to the extent feasible) and other opportunity costs (that are difficult to quantify). Total costs for scale, sample station, observer requirements, and factory modifications necessary to comply with other proposed requirements for each vessel greater than or equal to 125 ft. range between approximately $64,045 and $365,545. Total costs for these categories for each vessel less than 125 ft. range between $182,225 and $406,725. Other costs associated with these proposed monitoring requirements could include decreased operating efficiencies or additional crew.

In addition to costs borne by the vessels, increases in the number of observer days and their associated increase in the amount of data collected is expected to raise overall annual costs of the Observer Program. This budgetary increase can be attributed to additional staffing, augmented spending for observer sampling equipment, data entry contracts, and travel associated with inspecting sample stations, approving VMPs and conducting pre-cruise meetings. The Observer Program estimates increased staffing and costs associated with this action to include 3.5 full time equivalent staff positions and approximately $450,000 annually.

NMFS believes that anticipated benefits of a Non-AFA Trawl CP cooperative as currently outlined, including the expectation of reduced effort and capital inputs through a slower paced fishery substantially depend on these proposed monitoring improvements. A multi-species cooperative, with internal transactions and contracts requires reliable catch accounting to create secure agreements. Because Amendment 80 monitoring requirements would include flow scales, observer stations, observation of every haul, and additional requirements described above; some improvements to management catch accounting may also occur. For example, direct measurement of weight on a flow scale is likely to be more reliable than alternative observer measurements based on volumetrics and density.

Effects on Fishing Crew

The existing patterns of crew participation and compensation are likely to remain about the same, at least until Amendment 79 is implemented. The affects of Amendment 79 are not known with certainty. If Amendment 79 increases to costs for some vessels to the point they cannot cover their fixed and variable costs in the long run they will leave the fishery. Employment in the sector would be reduced. Data were not available for the analysts of Amendment 79 to make any projections regarding which vessels may leave the fishery. Therefore, we recognize the fact that Amendment 79 will impose more costs on the vessels in the sector, but we cannot project which vessels, if any, will leave the fishery.

Alternatives 2, 3 and 4 are likely to have some effect on the total number of crew/processing jobs that are available in the sector. An indication of the impacts Amendment 80 cooperative program could have on the Non-AFA Trawl CP sector can be seen from the impacts the AFA had on the pollock catcher/processor sector. Information from the *Report to Congress and the Secretary of Commerce on the Impacts of the American Fisheries Act* completed April 1, 2002, stated that the number of jobs that were lost in the catcher/processor sector was approximately 1,500, given that nine catcher/processors were retired as part of the Act and six of the 20 eligible catcher/processors or 30 percent were not used to fish pollock by their owners because the remaining vessels were able to efficiently harvest the pollock. Given that average crew size of a pollock catcher/processor was approximately 100, that means that approximately 900 of the 1,500 jobs lost were because of the AFA retiring vessels. The remaining 600 jobs lost were due to vessels idled because of they were excess capacity.

Although the Non-AFA Trawl CP vessels and fisheries are very different from the pollock catcher/processor vessels and fishery, the experience learned from the AFA is that some of the Non-AFA Trawl CP vessels could potentially be idled because of the efficiency increases associated with the Amendment 80 cooperative program. In addition, fishing can be expected to slow down as a result of cooperatives. Crew on vessels that remain in the Amendment 80 fisheries could realize an increase in income from increased harvests and revenues in the fishery. Catch increases are more likely under Alternatives 2 and 4 than Alternative 3. Crew on vessels that remain in the Non-AFA Trawl CP sector would benefit from consolidation of harvests on fewer vessels under Alternatives 2 and 4. Crew members paid on a share basis would benefit from increased revenues by their vessel. Employees that are paid on a wage basis would benefit from longer fishing seasons on the vessels and the corresponding number of hours worked.

Effects on Communities

The fishing communities that are expected to benefit from this proposed action are the locations the vessels offload, take on supplies, and the owners and crew live. Twenty-seven catcher processors appear to be eligible for the Non-AFA Trawl CP sector. Of these vessels, nearly all are based in Seattle. Due to the large size and diversity of Seattle's economy, community-level impacts are not expected to differ between Alternatives 2, 3 and 4. Significant benefits to other communities that are home to some of the other Non-AFA Trawl CP fleet are not expected.

Vessels located in those communities will continue to generate revenue from these fisheries. Changes in benefits to the community could occur, but the magnitude of the change is expected to be relatively small. Impacts on other communities with ties to catcher vessels cannot be quantitatively, but they are expected to be relatively small based on historic participation in the five primary BSAI fisheries and the sideboard caps proposed for other fisheries.

Effects on Net Benefits to the Nation

Under status quo, producer surplus is expected to remain at current levels until Amendment 79 is implemented. After Amendment 79 is implemented, producer surplus will decline. The amount of the decline is equal to the increased processing and monitoring costs of the vessel. Revenues are assumed to remain constant. However, the potential exists that more inferior products could be produced because of retaining fish that are of a size that are in less demand or of the wrong sex (e.g., rock sole during the roe season). Prices paid by consumers are not expected to increase or decrease because of this action.

Alternative 2

Net benefits to the Nation would likely increase under Alternative 2 relative to Alternative 1. Contributing to the increase in net benefits to the Nation is the increase in producer surplus from Non-AFA Trawl CP sector participants fishing in cooperatives. Participants would be able to slow the pace of fishing and processing, thus potentially reducing expenditures on inputs and increasing output slightly. These participants would also be free to consolidate fishing up to the user cap. With fewer vessels, the harvesting costs should also decline. Some additional benefits would also likely accrue from the additional 2.5 allocation for the Amendment 80 species to the CDQ program, which would also benefit from a slower paced fishery.

The alternative would require increased monitoring and enforcement costs necessary for meeting the GRS for Non-AFA Trawl CP vessels under 125 ft. LOA. These costs are associated with additional observer coverage, costs associated with vessel modification to better allow the catch to be observed, and slowing processing and harvesting below optimal levels to enable more accurate counts of total groundfish and PSC catches. Some additional benefits to the Nation could arise through reduction in discards, since sector vessels under 125 ft. LOA will have to meet the GRS.

A producer surplus would likely be generated some net benefits for the Nation under Alternative 2 as a result of pooling individual annual vessel GRS rates. Vessels that join a cooperative would average their individual annual retention rates across all cooperative participants, which would help to reduce operation costs for those vessels limited by the GRS. Overall, each cooperative will seek to minimize the cost of meeting the GRS to the extent possible.

Consumer surplus is expected to increase. The Non-AFA Trawl CP sector will continue to produce mostly frozen round and headed and gutted products primarily. Any improvements in consumer benefits arising from improved quality are likely to be realized by Asian, U.S. and European consumers, as most of the production from this sector is sold into that market.

Alternative 3

Net benefits to the Nation would likely be smaller under Alternative 3 relative to Alternative 2. It is difficult to compare the changes in Net benefits between Alternatives 1 and 3. The amount of fish the Non-AFA Trawl CP sector can legally harvest under Alternative 3 relative to the status quo, is reduced. However, the benefits of cooperatives are expected to increase the overall efficiency of the fleet. The benefit of a cooperative under this alternative will depend on whether a sufficient number of members of the sector are able to reach agreement and whether persons not in the initial cooperative are able to come to terms with the cooperative. If no cooperative forms, sector efficiency would be similar to that of status quo.

An additional unknown under this alternative is how much of the allocation to the general limited access fishery will be harvested by other sectors, and how efficient will they be when harvesting and processing that catch. The allocation to the general limited access fishery under this alternative exceeds the combined AFA Trawl CP and CV sideboards. Without substantial increases in effort by the Non-AFA Trawl Catcher Vessels, large portions of the allocation to the general limited access fishery would go unharvested. If the other sectors do not harvest their portion of the TAC and large amount of quota are rolled over late in the year, it may be of less value to the Non-AFA Trawl CP fleet than if it was available earlier.

Similar to Alternatives 2 and 4, the Nation would likely see an increase in net benefits from the pooling of individual vessel annual GRS rates while in a cooperative. However, unlike Alternatives 2 and 4, which has the potentially for multiple cooperatives, Alternative 3 allows only one cooperative. As a result, there is a chance that some members of the sector will not join the cooperative thus reducing the benefits of pooling annual vessel GRS across the cooperative. In general, members of the cooperative will seek to minimize the cost of meeting the GRS to the extent possible, thereby creating a producer surplus under this alternative.

Under this alternative, the CDQ Program would be allocated 15 percent of the annual TAC for each of the allocated species. The CDQ program would also receive 15 percent of the TAC for the incidental catch species (with the exception of Pacific cod) taken in the Amendment 80 allocated species. The additional 7.5 percent increase in non-pollock groundfish (except Pacific cod) would likely slow the pace of fishing and processing for participants in the CDQ program, thus potentially reducing expenditures on inputs and increase output slightly. However, the benefits will be reduced if the CDQ program fails to harvest their entire allocation.

Like Alternative 2, this alternative could increase the net benefits to the Nation from the reduction in discards. However, producer surplus will be reduced, from what it could have been due to an increase in vessel monitoring costs.

This alternative is expected to increase consumer surplus. The Non-AFA Trawl CP sector will continue to produce frozen round and headed and gutted products primarily. Any improvements in consumer benefits arising from improved quality are likely to be realized by Asian, U.S. and European consumers, as most of the production from this sector is sold into that market.

Alternative 4

Net benefits to the Nation under Alternative 4 are difficult to determine due to the number of components that still need further narrowing. In October 2005, the Council selected a preliminary preferred alternative, but left a number of decisions unresolved. Despite the broad nature of this alternative, it is estimated that the net benefits to the Nation would likely increase under Alternative 4 relative to Alternative 1. Contributing to the increase in net benefits to the Nation is the increase in producer surplus from Non-AFA Trawl CP sector participants fishing in cooperatives. Although allocations of groundfish and PSC have yet to be determined, based on the options selected by the Council that still need to be further narrowed, it is estimated that the groundfish and PSC allocations to the Non-AFA Trawl CP will be comparable to their historic catch and will facilitate the formation of multiple cooperatives under this alternative. Cooperative participants would be able to slow the pace of fishing and processing, thus potentially reducing expenditures on inputs and increasing output slightly. These participants would also be free to consolidate fishing up to the user cap which still needs to identify by the Council. With fewer vessels, the harvesting costs should also decline.

Some additional benefits would also likely accrue from the additional 2.5 allocation for the Amendment 80 species to the CDQ program. The increased CDQ allocation will slow the pace of fishing and processing, thus potentially reducing expenditures on inputs and increase output

slightly. If the CDQ program fails to harvest their entire allocation, any amount of allocation left unharvested would tend to reduce the net benefits.

The alternative would also require increased monitoring and enforcement costs necessary for meeting the GRS for Non-AFA Trawl CP vessels under 125 ft. LOA. These costs are associated with additional observer coverage, costs associated with vessel modification to better allow the catch to be observed, and slowing processing and harvesting below optimal levels to enable more accurate counts of total groundfish and PSC catches. Some additional benefits to the Nation could arise through reduction in discards, since sector vessels under 125 ft. LOA will have to meet the GRS.

Similar to Alternatives 2 and 3, the Nation would also likely see an increase in net benefits from the pooling of annual vessel GRS rates across the cooperative. Individual vessel retention rates would be averaged across all cooperative participants, helping those vessels with historically low retention rates to lower their operating costs. In general, members of each cooperative would seek to minimize their costs of meeting the GRS to the extent possible thereby generating a producer surplus.

Under this alternative, consumer surplus is expected to increase. The Non-AFA Trawl CP sector will continue to produce mostly frozen round and headed and gutted products primarily. Quality of products could improve slightly as cooperative allocations remove pressure to rapidly catch and process fish to maximize catch from the fisheries. Any improvements in consumer benefits arising from improved quality are likely to be realized by Asian, U.S. and European consumers, as most of the production from this sector is sold into that market.

Environmental Assessment

The Environmental Assessment discusses the environment that would be affected by the alternatives, and then describes the impacts of the alternatives. The following components of the environment are discussed: the primary target species to be allocated under the alternatives, prohibited species, other fish species, benthic habitat and essential fish habitat, marine mammals and seabirds, economic and socioeconomic components, and the ecosystem as a whole.

The current fishery management program, represented by Alternative 1, was analyzed in detail in the *Alaska Groundfish Fisheries Programmatic Supplemental Environmental Impact Statement* (NMFS 2004b), the *Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska* (NMFS 2005), and updated in the annual Environmental Assessment of Harvest Specifications for the Years 2005-2006 (NMFS 2004a). These analyses concluded that the groundfish fisheries, in the status quo, are not affecting a significantly adverse impact on the environment.

In most instances, the effects of Alternatives 2, 3 and 4 have been considered together, as there is little difference between these alternatives in terms of their impact on the physical and biological environment. Under these alternatives, a sector allocation is made that will allow the formation of cooperatives. This will likely change fishing patterns, and may distribute fishing for the primary target species over a longer season or more diverse area. Harvest levels for the primary target species will, remain unaffected, as well the existing management measures that distribute the harvest in space and time. As a result, the impact of the alternatives on these species is not assessed to be significant.

Incidental catch patterns may change as a result of Alternatives 2, 3 and 4, as the fisheries endeavor to meet the groundfish retention standard and reduce discards. In addition, an option under the alternatives would require the fisheries to reduce their historic proportion of prohibited species catch. The increased flexibility afforded to the Non-AFA Trawl CP sector under these alternatives should allow the sector to reduce discards. However, prohibited species catch limits

and harvest quotas for other incidental catch species will continue to be set at biologically sustainable levels under these alternatives, and regardless of the ability of the sector to reduce its incidental catch, the impact to the sustainability of these incidental species is not assessed to be significant.

As the amount of overall fishing effort under the alternatives is likely to remain the same or decrease, the alternatives are unlikely to result in a change that would significantly impact seabirds or marine mammals that interact with the groundfish fisheries. Similarly, minimal and temporary impacts to benthic habitat and essential fish habitat are unlikely to be aggravated by these alternatives.

The economic and socioeconomic impacts of the alternatives are summarized in the RIR above.

An evaluation of the effects of the groundfish fisheries on the ecosystem is undertaken annually in the *Stock Assessment and Fishery Evaluation* report. Based on the discussions above regarding population-level impacts of Alternatives 2, 3 and 4, and the lack of other impacts to ecosystem attributes, the alternatives are not assessed to have a significant impact on the ecosystem.

The cumulative effects of the proposed alternatives are also evaluated in the Environmental Assessment. The analysis of past actions affecting the Non-AFA Trawl CP sector showed that, since the mid-1980s, adjustments in the regulatory regime have changed the economic conditions of the groundfish fisheries in which these vessels participate. An increasingly restrictive regulatory environment and escalating compliance costs resulted in economical stress for some Non-AFA Trawl CP owners. The increased restrictions were also a primary reason that flatfish became the primary target species for the Non-AFA Trawl CP sector. Because these species are bottom-dwellers, flatfish fisheries are prone to high incidental catches of prohibited species such as halibut and crab. In addition, flatfish fisheries have limited markets—particularly with regard to size and product quality. These characteristics of the flatfish fisheries, in combination with a "race for fish" regime and other factors, led to a relatively high level of economic and regulatory discards in the Non-AFA Trawl CP sector.

In recent years, the Non-AFA Trawl CP fleet has faced increasing pressure to reduce its discard rate. In 2003, the Council established a minimum groundfish retention standard for Non-AFA Trawl CPs greater than 125 ft length overall. The GRS will result in a substantial reduction in the bycatch of the affected vessels. However, a GRS may also result in substantial costs and lost revenues for these vessels because of holding/processing, transporting and transferring fish that are of relatively low value or "unmarketable." In addition, the GRS measure imposes significant costs on the vessels with increased observer and scale costs.

With the possible exception of the BSAI Pacific cod allocation and rationalization programs, the reasonably foreseeable future actions cited above may have negative effects (to some degree) on the economic performance of Non-AFA Trawl CP sector. The cumulative effects of all actions—past, present, and future—are toward an increasingly restrictive regulatory environment resulting in lower harvests and gross revenues and/or higher operating costs. While some foreseeable future actions may offset these negative effects to some extent, the overall trend points to increasing economic stress for the Non-AFA Trawl CP sector.

The conclusions reached in the direct and indirect effects analysis of the cooperative alternatives indicate that the compliance costs incurred under a GRS may be mitigated by the benefits of participating in a cooperative. The costs of the GRS associated with retaining unwanted fish may be reduced or avoided altogether under a cooperative structure, as vessels can be more selective in what they catch without losing any competitive advantage. In addition, a cooperative structure may allow the sector to manage its PSC allocation in a manner that prevents PSC limits from

being exceeded and thereby avoids the lower harvests and revenues associated with fishery closures when PSC limits are reached.

Initial Regulatory Flexibility Analysis

The directly regulated entities in this action include all of the groundfish harvesters in the BSAI and GOA and the processors that take delivery of their catch, plus the CDQ groups and communities. A total of 996 vessels were classified as small entities in 2003 based on the $3.5 million revenue threshold. Seventy-one vessels were classified as large entities that year. All but one of the 27 vessels in the Non-AFA Trawl CP sector are considered large entities based on the $4 million threshold applied to all vessels owned by an entity. The owners of some catcher processors have requested that the small entity definition be updated to use the processor definition. Changing the criteria would reclassify most of the sector as small entities. NMFS is currently reviewing that definition, but until the review is complete, the current definition will continue to be used.

A total of 36 processors in the BSAI and GOA have less than 500 employees. These processors, on average, generated about $0.9 million in revenue from groundfish and had total revenues from all seafood processing of about $5.2 million. The processors with over 500 employees averaged $43.5 million in groundfish revenues and $79.1 from all fish products (NMFS, 2002). The small processors will be protected by imposing sideboard limits. The protections should have a limited impact though, because many of the species are primarily processed at-sea.

All six CDQ groups and the 65 communities associate with those groups are considered small entities. The alternatives considered in this amendment would either maintain their current allocation or increase the amount of specific species they are allocated. The royalty increases are expected to be small relative to total annual revenues by these groups. These groups are dominated by pollock, crab, halibut, and Pacific cod, but the royalty increases would likely help further the mission of improving the lives of residents of rural Western Alaska.

Alternatives Considered

To address the problem statement, the Council has adopted a suite of components and options that would allocate five primary target species in BSAI to the Non-AFA Trawl CP sector and would allow for cooperative formation by sector participants. Although there are a myriad of different ways to combine the many components and options in the proposed action to form an alternative, the Council has selected four strawman alternatives that represent a range of reasonable alternatives to assess the impacts of the proposed action. Each of the strawman alternatives in the analysis address the problem statement by providing an allocation of the traditional primary species to the sector and allow for the sector to form cooperative(s), which are expected to facilitate a reduction in bycatch by the sector as well as mitigate the costs associated with bycatch reduction. The first alternative is status quo (no action). Although the strawman alternatives differ in several respects the primary difference is in the cooperative structures. The second alternative would allow multiple cooperatives to be formed within the sector. The third alternative would authorize the formation of a single cooperative in the sector. The fourth alternative was selected in October 2005 as a preliminary preferred alternative. The specific differences of these alternatives are described in the sections that follow and are compared in Table 2-1.

Table 2-1 Comparison of the Alternatives

	Alternative 1 (Status Quo)	Alternative 2	Alternative 3	Alternative 4
Primary Target Species to be Allocated	None	yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch	yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch	yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch
Allocation to Sector	None	*Allocation:* Sector's retained catch over all retained catch, 1998-2002 *Management:* Hard cap *Yellowfin sole:* all yellowfin sole in excess of 125,000 mt threshold to be divided 30% to sector and 70% to other trawl; 2-way rollover; no AFA sideboards for yellowfin sole threshold fishery	*Allocation:* Sector's retained catch over all total catch, 1995-2003 *Management:* Soft cap; rollover to sector *Yellowfin sole:* all yellowfin sole in excess of 100,000 mt threshold to be divided 70% to sector and 30% to other trawl; 2-way rollover; no AFA sideboards for yellowfin sole threshold fishery	*Allocation:* Sector's total catch over all total catch or sector's retained catch over all retain catch using either 1995-2003, 1998-2004, 2000-2004, or a select percentage for each species *Management:* Hard cap for sector and an ICA for fixed gear sectors and general limited access fishery if necessary; rollover of allocated species and PSC to H&G sector or trawl limited access sectors *Yellowfin sole:* all yellowfin sole in excess of 125,000 mt threshold to be divided 60% to H&G sector and 40% to the general limited access fishery; allow rollovers; no AFA sideboards for yellowfin sole threshold fishery
Allocation of Prohibited Species	PSC allocated by target fishery and shared among all trawl vessels	Sector allowance based on average historic PSC usage in directed fishery for allocated primary species plus Pacific cod,1998-2002	Sector allowance based on: a) average PSC usage, by fishery, of all trawl in each PSC fishery group for allocated primary species plus Pacific cod, 1995-2003 b) apply sector proportion as determined above c) reduce by 5%	H&G sector allowance based on average historic usage of PSC from 1995-2003, 1998-2004, 2000-2004 or a select percentage for each PSC species: Halibut: 68.36%-77.22% Red king crab: 45.89% - 51.38% C. opilio: 44.45% - 50.50% Zone 1 C. bairdi; 41.04% - 46.58% Zone 2 C. bairdi: 25.22% - 28.14% Reduce calculated PSC allowance to either 75% or 95% in the third year or phase in PSC reductions 5% per year

	Alternative 1 (Status Quo)	Alternative 2	Alternative 3	Alternative 4
Sector Eligibility	determined by Congress	Determined by Congress	determined by Congress	determined by Congress
Cooperative endorsement	None	The license was used to harvest 150 mt of groundfish with trawl gear on a vessel qualified as an eligible Non-AFA Trawl CP, and processed that fish between 1997 and 2002	The license was used to harvest 150 mt of groundfish with trawl gear on a vessel qualified as an eligible Non-AFA Trawl CP, and processed that fish between 1997 and 2004	The license was used to harvest 150 mt of groundfish with trawl gear on a vessel qualified as an eligible Non-AFA Trawl CP, and processed that fish between 1997 and 2004
Cooperative formation	None	*Threshold:* 15% minimum of eligible participants and must be comprised of at least two separate entities	*Threshold:* 67% minimum of eligible vessels and must be comprised of at least three separate entities	*Threshold:* 30% minimum of eligible vessels and must be comprised of at least three separate entities
Cooperative allocation	None	*Allocation:* based on retain catch history, 1998-2002	*Allocation:* based on total catch history, 1995-2003 drop 3	*Allocation:* based on total catch history, 1998-2004 drop 2
Excessive share limits	None	No limit on consolidation	No single person can hold no more than 50% of the catch history of an allocated species	No single person can hold no more than 20%, 30%, 40%, or 50% of the catch history of an allocated either by species by species basis or on by an aggregate basis Initial allocation grandfathered

	Alternative 1 (Status Quo)	Alternative 2	Alternative 3	Alternative 4
Sideboards	None	*For sector:* established based on participation in other fisheries, 1998-2002; for GOA halibut PSC based on usage by area, 1998-2002; only vessels that have GOA wide weekly participation in the flatfish fisheries over the threshold during the qualifying period would be eligible to participate in the GOA flatfish fisheries *Within sector:* established between cooperative and non-cooperative participants for unallocated species	*For sector:* established based on participation in other fisheries, 1995-2003; for GOA halibut PSC based usage by area, 1995-2003 *Within sector:* established between cooperative and non-cooperative participants for unallocated species	*For sector:* **BSAI** None **GOA** 1) eligible to participate in the GOA flatfish fisheries based on 10 weeks of participation in flatfish fishery using either 1998-2004. May exempt sector vessel with significantly higher participation in GOA flatfish fisheries. 2) Gulf-wide halibut sideboards calculated based on actual usage for each target fisheries within each area for the Non-AFA Trawl CP sector using 1998-2004 or the Council may select a percentage 3) GOA pollock, Pacific cod, and directed rockfish sideboards for the Non-AFA Trawl CP sector based on retained catch of the sector as a percent of retain catch of all sectors from 1998-2004 or the Council may select a percentage

	Alternative 1 (Status Quo)	Alternative 2	Alternative 3	Alternative 4
CDQ	7.5% of groundfish and prohibited species (except herring) allocated to CDQ multispecies fishery	10% of allocated species, plus secondary species caught incidentally in directed fisheries, to CDQ multispecies fishery; PSQ proportional to the CDQ allocation	15% of allocated species, plus secondary species caught incidentally in directed fisheries, to CDQ multispecies fishery; PSQ proportional to the CDQ allocation	10% of allocated species and secondary species caught (except Pcod) taken incidentally in directed fisheries, to CDQ multispecies fishery; PSQ proportional to the CDQ allocation

Alternative 1: No Action

With the exception of Amendment 79, which is yet to be approved by the Secretary of Commerce (SOC), the current management of groundfish and prohibited species catch in the BSAI would remain in effect for this alternative. In general, after deducting 7.5 percent for reserves and 7.5 percent for the CDQ program, the remaining portion of TAC is available to any vessel with a federal license. For Eastern Aleutian District and the Bering Sea subarea Atka mackerel, up to 2 percent of the ITAC may be allocated to jig gear. Currently, only one percent is allocated to the jig gear. For further details on the current management of the species to be allocated under this proposed action, please refer to Section 3.1.1.

Although Amendment 79 to the BSAI Groundfish FMP, the groundfish retention standard (GRS), has not yet been implemented, a final rule should be published before final action on Amendment 80, which is scheduled for December 2005. Currently, there are three potential outcomes. One is the SOC could implement GRS in 2006 at 75 percent. Another is that the SOC approves Amendment 79 at 65 percent starting in 2007. Finally, the SOC could disapprove Amendment 79. Due to the timing of Amendment 80 and Amendment 79, the no action alternative could change after initial review of Amendment 80 in October 2005 but before final review in December 2005. For purposes of the initial review of Amendment 80, the no action alternative will include a GRS phased in a over a four year period for Non-AFA Trawl CP vessels greater than 125 ft length overall starting in 2007 at 65 percent and culminating in 2010 at 85 percent. The decision to use this scenario is based on the Council's recommendation to the SOC at the June 2005 meeting to implemented Amendment 79 in 2007 at 65 percent to allow ample time for Non-AFA Trawl CP sector to complete any retrofits necessary to meet the enforcement and monitoring requirements included in Amendment 79. In addition, the Council felt it was important to allow the sector time to develop a vessel buyback program authorized under the Consolidated Appropriations Act of 2005. Finally, the Council also clarified at the June 2005 meeting that the specific years tied to GRS in the original action are of less importance than starting at the intended 65 percent.

Alternative 2: Multiple Cooperatives

This alternative would allocate the following species to the Non-AFA Trawl CP sector: yellowfin sole, rock sole, flathead sole, Atka mackerel by subarea, and Aleutian Islands subarea Pacific Ocean perch—referred to as primary target species. Allocation of these species to the sector would be in proportion to the retained catch of the Non-AFA Trawl CP sector relative to the retained catch of all vessels, for the years 1998 to 2002.[1] Non-AFA Trawl CP sector allocations of the primary target species would be managed as a hard cap: when the sector harvests all of its allocation of a primary target species, all directed fisheries for that species, as well as those fisheries that catch species incidentally, would close for the sector.

The unallocated portion of the primary target species quota would be reserved for the Non-H&G trawl fishery, which is composed of AFA Trawl CP sector, AFA Trawl CV sector and Non-AFA Trawl CV sector. Primary species quota cannot be rolled over between trawl sectors under this alternative.

This alternative includes a quota threshold of 125,000 mt for the yellowfin sole quota. If, in a given year, the quota exceeds this threshold, the excess would be allocated in the following manner: 30 percent to the Non-AFA Trawl CP sector and 70 percent to the limited access trawl fishery. Specifically for this excess allocation, a two-way rollover option is allowed. A portion of

[1] All allocations are after allocations to the CDQ program and, in the case of Atka mackerel, after any allocation to the jig sector.

the yellowfin sole reserve allocated to either the Non-AFA Trawl CP sector or the limited access trawl fishery would be rolled over to the other sector. A portion of the yellowfin sole reserve allocated to either the Non-AFA Trawl CP sector or the limited access trawl fishery would be rolled over to the other sector, if, after a specified data (August 1 or September 1), there is any quota that is projected to remain unused. AFA sideboards do not apply to the yellowfin sole threshold fishery.

The Non-AFA Trawl CP sector would receive a PSC allowance under this alternative, which would be based on the sector's historical usage of PSC in the directed fisheries for the allocated primary species plus Pacific cod during the years from 1998 to 2002, inclusive.

The eligibility criteria for the Non-AFA Trawl CP sector have been determined by Congress in the provisions of the BSAI CP Capacity Reduction Program, which was passed in November 2004. In order to qualify for the sector, a license holder must have trawl and catcher processor endorsements on its License Limitation Program permit (LLP), and must own a Non-AFA vessel that caught and processed 150 mt of groundfish with trawl gear between 1997 and 2002.

Only history from qualified Non-AFA Trawl catcher processor vessels will be credit in the Non-AFA Trawl CP cooperative program. Catch history from the eligible vessel that will be credit to the first license assigned to the qualified vessel will only be from that eligible vessel. Any additional licenses from eligible vessels assigned to a qualified vessel will be applied to the distribution of the sector allocations between cooperatives and cannot be used for cooperative formation. Licenses on eligible vessels will receive a cooperative endorsement provided that the license was used to catch 150 mt of groundfish with trawl gear on a vessel qualified as a Non-AFA Trawl CP and processed that fish between 1997 and 2002.

To operative as a cooperative, membership must include as least three separate entities and must be composed of at least 15 percent of the qualified vessels. Those participants who do not elect to join a cooperative may either form their own cooperative (with at least 15 percent of qualified licenses with cooperative endorsements) or participate outside the cooperative in the sector's limited access fishery.

Allocation of the primary target species among cooperatives and the sector's limited access fishery would be in proportion to the retained catch of the primary target species of the eligible vessels in each pool, for the years 1998-2002. The PSC allowance would be also be allocated to cooperatives and the sector's limited access fishery based on average use of PSC in each target fishery during the 1998-2004 period multiplied by the proportion of the catch history of the allocated fishery. Notwithstanding the qualifying history of the vessel, no qualified vessel will receive an allocation under the cooperative program less than 0.5 of the yellowfin sole catch history, 0.5 percent of the rock sole catch history, and 0.1 percent of the flathead sole catch history.

Within the Non-AFA Trawl CP sector, consolidation would not be constrained. An eligible participant (either individual or entity) would not be limited as to the percentage of the Non-AFA Trawl CP sector allocation it can use or the amount of licenses and qualified catch that it may hold.

Sideboards for the Non-AFA Trawl CP sector would be established in regulation based on the sector's participation in other fisheries during the same years used to calculate the sector's allocation, (1998 to 2002). Sideboards for those species that close on TAC in the GOA and the BSAI would be established based on retained catch of the Non-AFA Trawl CP sector divided by the retained catch of all sectors from 1998 to 2002. Sideboards would also be established for halibut PSC in the GOA based on actual halibut PSC usage by the Non-AFA Trawl CP sector in each target fishery in the deep and shallow water complexes by area between 1998 and 2002.

Only vessels with LLPs that have Gulf wide weekly participation in the flatfish fisheries over a threshold number of weeks during a qualifying period would be eligible to participate in those fisheries. The sideboards would remain in place until such time as other fisheries are rationalized (including sector allocations for the Pacific cod fishery). Within the Non-AFA Trawl CP sector, sideboards would be established between cooperative and non-cooperative participants for unallocated species, based on the same years. Sideboards would apply to eligible licenses and associated vessels from which the catch history arose.

The CDQ program would be allocated 10 percent of each primary target species, and the associated species taken incidentally, except Pacific cod, in the prosecution of these directed fisheries. The prohibited species allowance allocated to the CDQ program as prohibited species quota reserves would also continue to be issued at the same percentage as the CDQ groundfish allocation.

Alternative 3: Single Cooperative

This alternative would allocate the following species to the Non-AFA Trawl CP sector: yellowfin sole, rock sole, flathead sole, Atka mackerel by subarea, and Aleutian Island Pacific Ocean perch--referred to as the primary target species. Allocation of these species to the sector would be in proportion to the retained catch of the Non-AFA Trawl CP sector relative to the total catch by all vessels, for the years 1995 to 2003. The unallocated portion of the primary target species quota would be reserved for the Non-H&G trawl fishery, which is made up of the AFA Trawl CP sector, AFA Trawl CV sector, and the Non-AFA Trawl CV sector. In order for Non-AFA trawl catcher vessels to participate in the Non-H&G trawl fishery, they must qualify by harvesting 1,000 mt of groundfish catch history between 1995 and 2004, and the posses the appropriate LLP endorsements (the general limited access fishery). Non-AFA Trawl CP sector allocations of the primary target species would be managed as a soft cap: when the sector harvests all of its allocation of a primary target species, the species would be placed on prohibited species status, and would need to be discarded.

Alternative 3 also includes a rollover provision: any portion of the primary target species in the general limited access fishery projected to remain unharvested would be rolled over to the Non-AFA Trawl CP sector.

This alternative also includes a quota threshold of 100,000 mt for the yellowfin sole quota. If, in a given year, the quota exceeds this threshold, the excess would be allocated in the following manner: 70 percent to the Non-AFA Trawl CP sector and 30 percent to the limited access trawl fishery. Any yellowfin sole above the threshold that is projected by the NOAA Regional Administrator to go unharvested would be rolled over to the other threshold recipients (Non-AFA Trawl CP sector or the general limited access fishery).

The Non-AFA Trawl CP sector would receive a PSC allowance under this alternative. PSC usage of all trawl vessels in each PSC fishery group for allocated primary species plus Pacific cod, from 1995 to 2002, would be calculated, to which the proportion of the Non-AFA Trawl CP sector's share of the target species quota (as determined in Component 3) would be applied. The sector's PSC allowance for each prohibited species would be 95 percent of the total amount calculated using this formula.

The eligibility criteria for the Non-AFA Trawl CP sector have been determined by Congress in the provisions of the BSAI CP Capacity Reduction Program. In order to qualify for the sector, a license holder must have trawl and catcher processor endorsements on their LLP and must own a vessel that caught and processed 150 mt of groundfish with trawl gear between 1997 and 2002.

Only catch history from sector eligible vessels will be credited in the Non-AFA Trawl CP cooperative program. The catch history assigned to the first license of the eligible vessel will be the catch history of the eligible vessel. Any additional licenses from other eligible vessels will be assigned to the eligible vessel for the purposes of determining the distribution of sector allocations and PSC between cooperative and sector's limited access pool, and will not count toward cooperative formation. A cooperative endorsement will be assigned to each eligible license provided that the license was used to catch 150 mt of groundfish with trawl gear on a vessel qualified as a Non-AFA Trawl CP sector and processed that fish between 1997 and 2004.

To operate as a cooperative, membership must include as least three separate entities and would need to be composed of at least 67 percent of the qualified vessels. Those participants who do not elect to join a cooperative could participate outside the cooperative in the sector's limited access fishery.

Allocation of the primary target species to the cooperative and sector's limited access fishery would be in proportion to the total catch of the primary target species of the eligible license holders included in each pool, for the years 1995-2003, dropping the three lowest annual catches for the license, by species, during this period. PSC allocation to the cooperative and the sector's limited access fishery would be based on average use of PSC for each of the allocated species plus Pacific cod from the years 1998-2004 multiplied by catch history of the allocated fishery. Notwithstanding the qualifying history of the vessel, no qualified vessel will receive an allocation under the cooperative program less than 0.5 of the yellowfin sole catch history, 0.5 percent of the rock sole catch history, and 0.1 percent of the flathead sole catch history.

Consolidation in the Non-AFA Trawl CP sector would be limited by a use cap that applies to each person (using individual and collective rule). No single person may use or hold more than 50 percent of the sector's combined allocation for each allocated species. However, if a person's attributed history at initial allocation is greater than the use cap threshold, the person's ability to exceed the cap would be grandfathered.

Sideboards for the Non-AFA Trawl CP sector would be established in regulation based on the sector's participation in other fisheries during the same years used to calculate the sector's allocation, (1995 to 2003). Sideboards for those species that close on TAC in the GOA and the BSAI would be established based on total catch of the Non-AFA Trawl CP sector divided by the total catch of all sectors from 1995 to 2003. Sideboards would also be established for halibut PSC in the GOA based on the usage by the Non-AFA Trawl CP sector in each target species in the deep and shallow water complexes by area between 1995 and 2003. The sideboards would remain in place until such time as other fisheries are rationalized (including sector allocations for the Pacific cod fishery). Within the Non-AFA Trawl CP sector, sideboards would be established between cooperative and non-cooperative participants for unallocated species, based on the same years. Sideboards would apply to eligible licenses and associated vessels from which the catch history arose.

The CDQ program would receive an allocation of 15 percent of each primary target species, and the associated species taken incidentally in the prosecution of these directed fisheries. The prohibited species allowance allocated to the CDQ program as prohibited species quota reserves would be issued at the same percentage as the CDQ groundfish allocation.

Alternative 4: Preliminary Preferred Alternative

In October 2005, the Council created a new strawman alternative, which is intended to be the preliminary preferred alternative. In selecting the preliminary preferred alternative, the Council narrowed the options for some components, but also left some decisions with multiple options to be considered at a later date. In February 2006, the Council further narrowed its preliminary

preferred alternative, but again left some components purposely broad at this time. As a result, the analysis of this alternative is somewhat challenging at this time. The following is general description of the components and options selected for Alternative 4.

This alternative would allocate the following species to the Non-AFA Trawl CP sector: yellowfin sole, rock sole, flathead sole, and Atka mackerel and AI POP by subarea. Allocation of these species to the sector would be either 1) in proportion to the retained catch of the Non-AFA Trawl CP sector relative to the retained catch by all vessels or 2) in proportion to the total catch of the Non-AFA Trawl CP sector relative to the total catch of all vessels, for the years 1995-2003, 1998-2004, or 2000-2004. The unallocated portion of the primary target species quota would be reserved for the general limited access fishery, which is made up of the AFA Trawl CP sector, AFA Trawl CV sector, and the Non-AFA Trawl CV sector, and an ICA for the fixed gear sectors. Non-AFA Trawl CP sector allocations of the primary target species would be managed as a hard cap; when the sector harvests all of its allocation of a primary target species, the cooperative would be restricted from directed fishing for that species. Allocations to the general limited access fishery would be managed using an incidental catch allowance (ICA) that would be taken off the top prior to allocation to Non-AFA Trawl CP sector and the general limited access fishery.

Alternative 4 also includes a rollover provision; any portion of the primary target species and PSC in the general limited access fishery projected to remain unharvested by NOAA Fisheries would be rolled over to the Non-AFA Trawl CP sector. In addition, any portion of the primary allocated species and PSC that NOAA Fisheries determines will not be utilized by the Non-AFA Trawl CP sector would be reallocated to the trawl limited access fishery. NOAA Fisheries will perform a review on May 1, August 1, and any time after August 1 as appropriate to determine rollover amounts by considering current catch and PSC usage, historic catch and PSC usage, harvest capacity and stated harvest intent.

This alternative also includes a quota threshold of 125,000 mt for the yellowfin sole quota. If, in a given year, the quota exceeds this threshold, the excess would be allocated in the following manner: 60 percent to the Non-AFA Trawl CP sector and 40 percent to the limited access trawl fishery. Any yellowfin sole above the threshold that is projected by the NOAA Regional Administrator to go unharvested would be rolled over to the other threshold recipients (Non-AFA Trawl CP sector or the general limited access fishery). AFA sideboards do not apply to the yellowfin sole threshold fishery.

The Non-AFA Trawl CP sector would receive a PSC allowance under this alternative. The allocation would be based on historical usage of PSC by the Non-AFA Trawl CP sector using the same years selected in the allocation of primary species. The sector's PSC allowance for each prohibited species would be reduced to 75 percent or 95 percent of the total calculated amount. The PSC reduction would start in the third year of the program and would be phased in at a rate of 5% per year. The Council may select percentages and/or amounts of PSC allocated to the Non-AFA Trawl CP sector in substitute for a calculated approached. On February 2006, the Council selected the following percent ranges for each of the PSC allowances:

- Halibut 68.36 – 77.22
- Red king crab 45.89 – 51.38
- C. opilio 44.45 – 50.50
- Zone 1 C. bairdi 41.04 – 46.58
- Zone 2 C. bairdi 25.22 – 28.14

The eligibility criteria for the Non-AFA Trawl CP sector was been determined by Congress in the provisions of the BSAI CP Capacity Reduction Program. In order to qualify for the sector, a

license holder must have trawl and catcher processor endorsements on their LLP and must own a vessel that caught and processed 150 mt of groundfish with trawl gear between 1997 and 2002.

Only catch history from eligible vessels will be credited in the cooperative program. The catch history assigned to the first license of the eligible vessel will be the catch history of the eligible vessel. Any additional licenses from other eligible vessels will be assigned to the eligible vessel for the purposes of determining the distribution of sector allocations and PSC between cooperative and sector's limited access pool, and will not count toward cooperative formation. A cooperative endorsement will be assigned to each eligible license provided that the license was used to catch 150 mt of groundfish with trawl gear on a vessel qualified as a Non-AFA Trawl CP sector and processed that fish between 1997 and 2004.

Licenses and vessels used to qualify for Amendment 80 (either to included in the Non-AFA Trawl CP sector or to be used in Amendment 80 cooperative formation) are restricted from being used outside of the Amendment 80 sector, except that any eligible vessel authorized to fish pollock under the AFA would still be authorized to fish under this statute.

To operate as a cooperative, membership must include as least three separate entities and would need to be composed of at least 30 percent of the qualified vessels. Those participants who do not elect to join a cooperative could participate outside the cooperative in the sector's limited access fishery.

Allocation of the primary target species and PSC allowances to a cooperative (and sector's limited access fishery) would be in proportion to its members total catch of the primary target species by the eligible vessel during the years 1998-2004 dropping the two lowest catch years by species. Notwithstanding the qualifying history of the vessel, no qualified vessel will receive an allocation under the cooperative program less than 0.5 of the yellowfin sole catch history, 0.5 percent of the rock sole catch history, and 0.1 percent of the flathead sole catch history.

Consolidation in the Non-AFA Trawl CP sector would be limited by a use cap that applies to each person (using individual and collective rule). No single person may use or hold more than 20, 30, 40, or 50 percent of the sector's combined allocation for each allocated species or applied on an aggregate basis. However, if a person's attributed history at initial allocation is greater than the use cap threshold, the person's ability to exceed the cap would be grandfathered.

Sideboards for the Non-AFA Trawl CP sector would be established in regulation based on the sector's participation in other fisheries during the same years used to calculate the sector's allocation. Sideboards for those species that close on TAC in the GOA would be established based on total or catch of the Non-AFA Trawl CP sector from 1998-2004. There would be no BSAI groundfish sideboards.

The alternative includes several GOA sideboards provisions: 1) eligibility to participate in the GOA flatfish fisheries based on participation in that fishery for greater than 10 weeks, 2) exemption for Non-AFA Trawl CP vessel with significant higher participation in GOA flatfish fisheries, and 3) Gulf-wide halibut sideboards for deep and shallow water complex fisheries based on the bycatch rate for each target fisheries. The sideboards would remain in place until such time as other fisheries are rationalized (including sector allocations for the Pacific cod fishery). Within the Non-AFA Trawl CP sector, sideboards would be established between cooperative and non-cooperative participants for unallocated species, based on the same years. Sideboards would apply to eligible vessels and LLPs used to generate harvest shares.

The CDQ program would receive an allocation of 10 percent of each primary target species, and the associated species taken incidentally in the prosecution of these directed fisheries. The prohibited species allowance allocated to the CDQ program as prohibited species quota reserves would be issued at the same percentage as the CDQ groundfish allocation.

Components and Options for Amendment 80

Provided below are the components and options that define the sector allocations in Amendment 80. These components and their respective options and suboptions are divided into four issues comprising 13 components in total. The four issues are allocations of BSAI non-pollock groundfish between the Non-AFA Trawl CP sector and the trawl limited access fishery, PSC allowance for the Non-AFA Trawl CP sector and the trawl limited access fishery, cooperative formation requirements for the Non-AFA Trawl CP sector, and the option for implementing a yellowfin sole threshold fishery. Note that Alternatives 2, 3, and 4 represent specific combinations of components and options for analysis. The Council's current suite of preferred alternatives has been identified in this document by an asterisk. For some components, multiple options have been selected as the Council's preferred alternative. In those cases, single alternative will be selected at the time of final action. It is important to note that the Council may select any alternative considered in this document at the time of final action and is not limited to the preferred alternatives identified in this draft. The Council's preferred alternative will be analyzed in the final document.

Issue 1: Sector Allocation of BSAI Non-Pollock Groundfish to the Non-AFA Trawl Catcher Processor Sector and CDQ Program

Component 1 Allocate only the following primary target species to the Non-AFA Trawl CP sector: yellowfin sole, rock sole, flathead sole, Atka mackerel, and Aleutian Islands Pacific Ocean perch. Species could be added or deleted through an amendment process.

Component 2 CDQ allocations for each primary target (Component 1) species in the program shall be removed from the TACs prior to allocation to sectors at percentage amounts equal to one of the following.

Option 2.1 7.5%

*Option 2.2 10%

Option 2.3 15%

CDQ allocations for secondary groundfish species (except Pacific cod) taken incidental in the primary trawl target fisheries shall be removed from the TACs prior to allocation to sectors at percentage amounts equal to one of the following:

Suboption 2.1 7.5%

*Suboption 2.2 10%

Suboption 2.3 15%

Suboption 2.4 At species specific percentages that reflect historical incidental catch rates in the directed fisheries for the primary species by the Non-AFA Trawl Catcher Processor sector during 1998-2003.

Suboption 2.5 The Council can select percentages for each of the secondary species allocated to the CDQ Program

Component 3 Identifies the sector allocation calculation (after deductions for CDQs, ICSs, and other existing fishery allocations, i.e., Atka mackerel jig) for the Non-AFA Trawl CP sector. Atka mackerel and Aleutian Islands Pacific Ocean perch allocations will be calculated for individual subareas and all subareas combined (541/EBS, 542, and 543). The remaining portion of the primary species TAC included in this program would be allocated to the BSAI trawl limited access fishery.

For purpose of allocation to the Non-AFA Trawl CP sector, each primary species allocation is based upon the years and percentage of catch history selected in Component 4 using one of the following:

*Option 3.1 Total legal catch of the sector over total legal catch by all sectors

Suboption 3.1.1 An ICA would be taken off the top to accommodate incidental bycatch that applies only to fixed gears.

*Option 3.2 Retained legal catch of the sector over retained legal catch by all sectors

Suboption 3.2.2 Allocations would be managed as a hard cap for the H&G sector, and for the Non H&G sector, an ICA would be taken off the top to accommodate incidental bycatch by the non-H&G sector. Staff should include tables that show anticipated ICA amounts in the non-H&G fisheries and actual catch of non-Amendment 80 sector be added to table 3.2, including display of discards.

Option 3.3 Retained legal catch of the sector over total catch by all sectors

Legal landing means, for the purpose of initial allocation of QS, fish harvested during the qualifying years specified and landed in compliance with state and federal permitting, landing, and reporting regulations in effect at the time of the landing. Legal landings exclude any test fishing, fishing conducted under an experimental, exploratory, or scientific activity permit or the fishery conducted under the Western Alaska CDQ program.

Option 3.4 Management of groundfish allocations

Suboption 3.4.1 Allocations would be managed as a hard cap. When the allocation is reached, further fishing would be prohibited.

Suboption 3.4.2 Allocations would be managed as a soft cap. When the allocation is reached, species would be prohibited status.

*Option 3.5 This option may be selected in conjunction with Options 3.1 through 3.4. Target species and PSC rollover: any unharvested portion of the Amendment 80 target species or unharvested portion of PSC in the limited access fishery that is projected to remain unused shall be rolled over to vessels that are members of Amendment 80 cooperatives.

Any roll over of halibut PSC to the Non-AFA Trawl CP sector shall be discounted by 5%. That is, if 100 mt of halibut is available for roll over, then 95 mt of halibut would be re-allocated to the Non-AFA Trawl CP sector. Once the initial allocation has been determined, the Non-AFA Trawl CP sector may re-allocate the PSC among the target species.

In addition, NMFS shall determine whether the Non-AFA Trawl CP sector will utilize the TAC or PSC allowance available to it. In the event that NMFS determines that a portion of a TAC or PSC allowance will not be utilized, it shall be reallocated to the BSAI trawl limited access fishery. PSC will be reallocated to the BSAI trawl limited access fishery in the same proportion as PSC that is allocated in the annual specs.

NMFS shall perform a review on or before May 1 and August 1 each year, and at such other times after August 1 as it deems appropriate. In making its determination, NMFS shall consider current catch and PSC usage, historic catch and PSC usage, harvest capacity and stated harvest intent, as well as other relevant information.

Component 4 Catch history years used to determine the allocation to the Non-AFA Trawl CP sector in Component 3.

*Option 4.1 1995-2003

Option 4.2 1997-2002

Option 4.3 1998-2002

*Option 4.4 1998-2004

Option 4.5 1999-2003

*Option 4.6 2000-2004

*Option 4.7 The Council can select percentages for each of the species allocated to the Non-AFA Trawl CP sector.

Issue 2: PSC Allowance for the Non-AFA Trawl Catcher Processor Sector and the CDQ Program

Component 5 Increase PSQ reserves allocated to the CDQ program (except herring and Chinook salmon) to levels proportional to the CDQ allocation of primary species under Component 2.

Component 6 PSC allowances of halibut and crab to the Non-AFA Trawl CP Sector.

Option 6.1 Apportion PSC to Non-AFA Trawl CP sector:

*Suboption 6.1.1 Allocation based on historical usage of PSC by the Non-AFA Trawl Catcher Processor sector rather than the sector's allocation, with the remainder available to the other sectors.

Suboption 6.1.2 Allocation based on the PSC taken in the Non-AFA Trawl Catcher Processor sector directed fishery for allocated primary species plus Pacific cod.

Suboption 6.1.3 Percentage allocations (estimates for PSC associated with Pacific cod catch would be based on the process laid out in Component 3) selected in Component 3 multiplied by the relevant total PSC catch by all trawl vessels in each PSC fishery group for allocated primary species plus Pacific cod.

Suboption 6.1.4 Allocation of PSC to the non-AFA Trawl CP sector shall be determined by that sector's percentage allocations of target species groups (contained in Component 3) multiplied by the trawl PSC amounts for those target species groups as set forth in the annual specifications.

Sectoral PSC allocations will be calculated using a predetermined fixed target fishery bycatch rate, based on the 2002-2004 average consumption rate across the trawl sectors based on the lesser of the TAC or the previous year's catch, with initial allocations of the PSC to all trawl target fisheries adjusted pro rata such that their sum equals the overall trawl PSC allocation.

The following maximum and minimum allowances shall apply to the initial PSC allocations: Non-AFA Trawl CP sector shall receive an allowance of not less than 2,200 mt of halibut and not more than 2,450 mt of halibut. Trawl limited access sectors shall receive an allowance of not less than 950mt of halibut and not more than 1,200 mt of halibut. Minimum and maximum allowances of crab PSC for each sector may be selected within the range of alternatives identified in the January 2006 Amendment 80 analysis.

Option 6.2 Select a Non-AFA Trawl CP sector PSC reduction option from the following that would apply to any PSC apportionment suboption selected in 6.1. PSC reduction options can vary species by species. Any reduction in the Non-AFA Trawl CP sector should not result in an increase in PSC allocation to any other sector.

Suboption 6.2.1 Reduce apportionments to 60% of calculated level.

*Suboption 6.2.2 Reduce apportionments to 75% of calculated level.

Suboption 6.2.3 Reduce apportionments to 90% of calculated level.

*Suboption 6.2.4 Reduce apportionments to 95% of calculated level.

*Suboption 6.2.4.1 Start the reduction in the third year of the program.

Suboption 6.2.5 Do not reduce apportionments from calculated level.

*Suboption 6.2.6 Phase in PSC reductions 5% per year for Suboptions 6.2.1–6.2.4.

Suboption 6.2.7 Reductions under Suboptions 6.2.1–6.2.4 apply only to vessels that participate in the Non-AFA Trawl CP sector's limited access fishery.

*Option 6.3 The Council can select percentages and/or amounts for PSC allocated to the Non-AFA Trawl CP sector.

Ranges for PSC allocations to the Non-AFA Trawl Catcher Processor sector are (from Tables 3-42 to 3-45 in the January 2006 analysis):

Halibut.....68.36% - 77.22%
Red king crab.....45.89% - 51.38%
C. opilio.....44.45% - 50.50%
Zone 1 C. bairdi...41.04% - 46.58%
Zone 2 C. bairdi...25.22% - 28.14%

If Amendment 85 is implemented prior to Amendment 80, the Non-AFA Trawl CP sector would receive an allocation of PSC in accordance with Amendment 85. Upon implementation of Amendment 80, no allocation of PSC will be made to the Non-AFA Trawl CP sector under Amendment 85.

Issue 3: Cooperative Development for the Non-AFA Trawl Catcher Processor Sector

Basis for the distribution to the LLP license holder is the catch history of the vessel on which the LLP license is based and shall be on a fishery-by-fishery basis. The underlying principle of this program is one history per license. In cases where the fishing privileges (i.e., moratorium qualification or LLP license) of an LLP qualifying vessel have been transferred, the distribution

of catch history to the LLP shall be based on the aggregate catch histories of (1) the vessel on which LLP license was based up to the date of transfer, and (2) the vessel owned or controlled by the LLP license holder and identified by the license holder as having been operated under the fishing privileges of the LLP qualifying vessel after the date of transfer. (Only one catch history per LLP license.)

Component 7 The BSAI non-pollock groundfish CP buyback legislation establishes the vessels eligible to participate as a catcher processor in the BSAI non-pollock groundfish fisheries. The members of the Non-AFA Trawl Catcher Processor subsector are defined as the owner of each trawl CP:

a.) that is not an AFA Trawl CP

b.) to whom a valid LLP license that is endorsed for BSAI Trawl CP fishing activity has been issued; and

c.) that the Secretary determines who has harvested with trawl gear and processed not less than a total of 150 mt of non-pollock groundfish during the period January 1, 1997 – through December 31, 2002.

This definition establishes the vessels that can participate in the Amendment 80 program.

Restrict LLPs that are used for eligibility in Amendment 80 (either to be included in the Non-AFA CP sector or to be used in Amendment 80 cooperative formation) from being used outside of the Amendment 80 sector, except that any eligible vessel which is authorized to fish Pollock under the AFA would still be authorized to fish under the statute.

Only history from eligible vessels will be credited in the program. The catch history credited to an eligible vessel will be catch history of that vessel. The catch history credited to an eligible vessel for the first license assigned to that vessel will only be the catch history of the eligible vessel. Any additional license assigned to an eligible vessel will be credited with the catch history during the Component 10 period of the eligible non-AFA trawl CP from which the license arose, except that no history can be assigned to more than one vessel at a given time. The catch history of any vessel that meets the non-AFA and catch criteria of Component 7 which has sunk, is lost or becomes inoperable, or becomes otherwise ineligible during or after the qualifying period will be credited to the license that arose from that vessel.

Component 8 Establishes the licenses that would be authorized for participation in a cooperative and would receive a cooperative endorsement. Component 8 also establishes the number of vessels required before the cooperative is allowed to operate. No later than November 1 or December 1 of each year, an application must be filed with NOAA fisheries by the cooperative with a membership list for the year.

A cooperative endorsement will be assigned to one license for each vessel meeting the qualification of Component 7. Additional licenses assigned to a vessel will not count toward the coop formation threshold, but will receive a cooperative endorsement provided that:

Option 8a.1 the license was used to catch 150 mt of groundfish with trawl gear on a vessel qualified as an eligible Non-AFA Trawl CP, and processed that fish between 1997 and 2002.

Option 8a.2 the license was used to catch 150 mt of groundfish with trawl gear on a vessel qualified as an eligible Non-AFA Trawl CP, and processed that fish between 1997 and 2003.

*Option 8a.3 the license was used to catch 150 mt of groundfish with trawl gear on a vessel qualified as an eligible Non-AFA Trawl CP, and processed that fish between 1997 and 2004.

In order to operate as a cooperative, membership must be comprised of at least three separate entities (using the 10% AFA rule) and must be:

Option 8b.1 At least 15 % of the eligible vessels

*Option 8b.2 At least 30% of the eligible vessels

Option 8b.3 At least 67% of the eligible vessels

Option 8b.4 At least 100% of the eligible vessels

Option 8b.5 All less one distinct and separate vessel using the 10% threshold rule

Option 8b.6 All less one vessel

Component 9 Determines the method of allocation of PSC limits and groundfish between the cooperative and eligible Non-AFA Trawl CP participants who elect not to be in a cooperative. For the Atka mackerel fishery, include in the analysis the use of an inter-cooperative agreement to address the daily catch restrictions in critical habitat without triggering SSL consultation.

*Option 9.1 Catch history is based on total catch

Option 9.2 Catch history is based on total retained catch

Assign PSC within the sector to allocated target species and Pacific cod based on the average use of PSC in each target species from the years 1998-2004, expressed as a percent of the total PSC allocation to the sector.

Each eligible vessel will then receive an allocation percent of PSC for catch of allocated target species and Pacific cod equal to its proportion of the catch history of the allocated fishery.

This PSC allocation will not change from year to year (i.e., will not fluctuate annually with the TAC).

Component 10 Determines which years of catch history are used for establishing cooperative allocations. The allocation of groundfish between the cooperative and those eligible participants who elect not to join a cooperative is proportional to the catch history of groundfish of the eligible license holders included in each pool. Applicable PSC limits are allocated between the cooperative and non-cooperative pool in same proportions as those species that have associated PSC limits. The catch history as determined by the option selected under this component would be indicated on the Sector Eligibility Endorsement, which indicates the license holder's membership in the Non-AFA Trawl CP sector. The aggregate histories would then be applied to the cooperative and the non-cooperative pool.

Notwithstanding the qualifying history of the vessel, no qualified vessel will receive an allocation under the program of less than:

0.5 percent of the yellowfin sole catch history
0.5 percent of the rock sole catch history
0.1 percent of the flathead sole catch history

Option 10.1 1995-2003, but each vessel drops its 3 lowest annual catches by species during this period

Option 10.2 1997-2003, but vessel holder drops its two lowest annual catches by species during this period

Option 10.3 1998-2002, but vessel holder drops its lowest annual catch by species during this period

Suboption 10.3.1 Each vessel does not drop its lowest annual catch by species during this period

Option 10.4 1998-2003, but each vessel drops its lowest annual catch by species during this period

Suboption 10.4.1 Each vessel drops two years during this period

Option 10.5 1999-2003, but each vessel drops its lowest annual catch by species during this period

Option 10.6 1997–2004, but each vessel drops its two lowest annual catch by species during this period

Option 10.7 1997 – 2004, but each vessel drops its three lowest annual catch by species during this period

*Option 10.8 1998 – 2004, but each vessel drops its two lowest annual catch by species during this period

Option 10.9 Select the highest percentage allocation by species, for each vessel using total catch of the vessel over the total catch of the sector for the following four suites of years: 1997-2003, drop 2; 1997-2004, drop 2; 1997-2004, drop 3; 1998-2004, drop 2. Different year scenarios may be chosen for different species.

Add all of the percentages together and then adjust proportionally to 100%.

In the event that the Non-AFA Trawl CP sector receives an exclusive allocation of Pacific cod, that allocation will be divided between cooperatives and the sector's limited access fishery in the same manner (and based on the same history) as the division of the other allocated species within the sector.

Component 11 Determines if excessive share limits are established in the Non-AFA Trawl CP sector.

Option 11.1 There is no limit on the consolidation in the Non-AFA Trawl CP sector.

*Option 11.2 Consolidation in the Non-AFA Trawl Catcher Processor sector is limited such that no single person (using the individual and collective rule) can hold catch history more than a fixed percentage of the overall sector apportionment history. The cap would be applied on a species by species basis (options: 20%, 30%, 40%, or 50% of the sector's allocation).

*Suboption 11.2.1 Cap would be applied on an aggregated basis.

*Suboption 11.2.2 Persons (individuals or entities) that exceed the cap in the initial allocation would be grandfathered.

Option 11.3 No vessel shall harvest more than 5%, 10%, 15% or 20% of the entire Non-AFA Trawl CP sector allocation.

Suboption 11.3.1 Vessels that are initially allocated a percentage of the sector allocation that is greater than the vessel use cap shall be grandfather at their initial allocation.

Component 12 Establishes measures to maintain relative amounts of non-allocated species until such time that fisheries for these species are further rationalized in a

manner that would supersede a need for these sideboard provisions. Sideboards shall apply to eligible licenses and associated vessels from which the catch history arose.

Option 12.1 BSAI and/or GOA sideboards for the Non-AFA Trawl CP sector would be established by regulation using the same years used to calculate the apportionment of PSC and groundfish between the Non-AFA Trawl CP and limited access pool until such time as these other fisheries are rationalized, when the allocations are determined in these newly rationalized fisheries.

Suboption 12.1.1 Sideboards would be allocated between cooperative and non-cooperative LLP holders, based on the same formula as Component 10.

Option 12.2 BSAI and/or GOA sideboards for the Non-AFA Trawl CP sector would be established by regulation by establishing percentages and/or amounts for the species/fisheries not included in this program. These measures maintain relative amounts of non-allocated species until such time that fisheries for these species are further rationalized in a manner that would supersede a need for these sideboard provisions.

Suboption 12.2.1 Sideboards would be allocated between cooperative and non-cooperative LLP holders, based on the same formula as Component 10.

*Option 12.3 In the BSAI, Pacific cod will be managed under existing sector apportionments, with rollovers, until new Pacific cod sector allocations are implemented. Pacific cod will be allocated between the cooperative and non-cooperative sub-sectors based on the same formula as Component 10.

In the BSAI, management of unallocated species should remain status quo.

Option 12.4 GOA sideboard provisions

Sideboard provisions for Amendment 80 qualified non-AFA trawl CP sector with valid GOA LLP with appropriate area endorsements are as follows:

*Suboption 12.4.1 Vessels associated with LLPs that have Gulf weekly participation of greater than 10 weeks in the flatfish fishery during the years defined in Component 10 will be eligible to participate in the GOA flatfish fisheries.

*Suboption 12.4.2 If the analysis shows that one non-AFA trawl CP vessel has significantly higher participation in the GOA flatfish fisheries relative to other non-AFA trawl CP vessels, that vessel may be considered for an exemption from Amendment 80 halibut sideboards in the GOA and may participate fully in the GOA open-access flatfish fisheries. The history of this vessel will not contribute to the Non-AFA Trawl CP sideboards and its catch will not be subtracted from these sideboards.

*Suboption 12.4.2.1 If a vessel is given an exemption to Amendment 80 GOA sideboards, they may not lease their Bering Sea Amendment 80 history.

*Suboption 12.4.3 Gulf-wide halibut sideboards for the deep and shallow complex fisheries would be established by season calculated based on:

Option A: Bycatch rate approach for each of the target fisheries within each of the regulatory areas (610, 620, 630, and 640) for the Amendment 80 qualified non-AFA trawl sector for the years defined in Component 10

*Option B: Actual usage for the Amendment 80 qualified non-AFA trawl sector for the years defined in Component 10

Option C: The Council may select a percentage for halibut sideboards which is between options A and B.

*Suboption 12.4.4 GOA Pollock, Pacific cod, and directed rockfish species (POP, NR and PSR) sideboards for the Amendment 80 qualified non-AFA trawl CP sector would be established using the years defined in Component 10, where catch is defined as retained catch by Gulf area as a percentage of total retained catch of all sectors in that area.

*Suboption 12.4.5 While the CGOA rockfish demonstration program is in place, the CGOA rockfish demonstration program takes precedence. The demonstration program would remove the need for catch sideboards for the CGOA directed rockfish species. The Amendment 80 CPs deep halibut mortality sideboard cap for the 3rd seasonal allowance (in July) will be revised by the amount of the deep complex halibut mortality allocated to the rockfish demonstration program for the Amendment 80 qualified non-AFA trawl CP sector while the demonstration program is in effect.

*Suboption 12.4.6 Sideboards apply to vessels (actual boats) and LLPs used to generate harvest shares that resulted in allocating a percentage of the Amendment 80 species TACs to the non-AFA trawl CP sector. The intent is to prevent double-dipping with respect to GOA history related to sideboards.

*Suboption 12.4.7 On completion of a comprehensive rationalization program in the GOA, any sideboards from the BSAI Amendment 80 plan amendment will be superseded by the allocations in the GOA rationalization program.

Suboption 12.4.8 Sideboards for PSC and GOA groundfish would be allocated between cooperative and non-cooperative LLP holders, based on the same formula as Component 10.

Suboption 12.4.9 Each cooperative contract will include a provision that that cooperative will not exceed its aggregate cooperative sideboard. The cooperative contract should also include third party enforceability provisions.

Issue 4: Development of a Yellowfin Sole Threshold Fishery

Component 13 The Council will allocate yellowfin sole above the threshold to participating sectors when the ITAC is anticipated to reach the threshold level. ITAC below the threshold level would be allocated to the Non-AFA Trawl Catch Processor sector based on the formula determined in Components 3 and 4. Threshold levels for other species may be developed at a later

date. AFA sideboards do not apply to the YFS threshold fishery. The Council will allocate yellowfin sole above the threshold to participating sectors when the ITAC is anticipated to reach the threshold level.

Option 13.1 Threshold Rollover options:

Suboption 13.1.1 No rollover provision

Suboption 13.1.2 Any unharvested portion of the threshold reserve allocated to the limited access fishery that is projected to remain unused by a specific date (August 1 or Sept 1) shall be reallocated to the Non-AFA Trawl CP sector. Any unharvested portion of the threshold reserve allocated to the Non-AFA Trawl CP sector that is projected to remain unused by a specific date (August1 or September 1) shall be reallocated to the limited access fishery.

*Suboption 13.1.3 Allow rollovers of any portion of the yellowfin sole TAC that is projected by the NOAA Regional Administrator to go unused. The NOAA Regional Administrator would be responsible for determining both the amount and the timing of the rollover.

Option 13.2 Yellowfin sole threshold options:

Suboption 13.2.1 80,000 mt

Suboption 13.2.2 100,000 mt

*Suboption 13.2.3 125,000 mt

Suboption 60% Non-AFA Trawl CP sector and 40% limited access fishery

Suboption 13.2.4 150,000 mt

Suboption 13.2.5 175,000 mt

Option 13.3 Allocate the threshold reserve to the Non-AFA Trawl CP sector and the BSAI limited access fishery using one of following suboptions:

Suboption 13.3.1 30% Non-AFA Trawl CP sector and 70% limited access fishery

Suboption 13.3.2 50% Non-AFA Trawl CP sector and 50% limited access fishery

Suboption 13.3.3 70% Non-AFA Trawl CP sector and 30% limited access fishery

Other Elements of Amendment 80

This section provides additional specifics and elements for the Non-AFA Trawl CP cooperative program. These specifics and elements are common for any cooperative program that might be developed.

- The cooperative program developed in Amendment 80 would not supersede pollock and Pacific cod IR/IU programs.
- The Groundfish Retention Standards (GRS) (Amendment 79) would be applied to the cooperative as an aggregate on an annual basis and on those vessels who did not join a cooperative as individuals. All vessels in the sector, consistent with NMFS catch monitoring plan, would be required to have on board NOAA Fisheries approved scales to determine total catch and either maintain observer coverage of every haul for verification

that all fish are being weighed or use an alternative scale-use verification plan approved by NOAA Fisheries.

- Non-AFA Trawl CP sector participants that did not elect to join a cooperative would be subject to all current regulations including all restrictions of the LLP and the GRS if approved.
- All qualified license holders participating in the fisheries of the Non-AFA Trawl CP sector for Amendment 80 species would need to have trawl and catcher processor endorsements with general licenses for BSAI and the additional sector eligibility endorsement. Length limits within the license would also be enforced such that any replacement vessel entering the fishery would not exceed the Maximum Length Overall (MLOA) specified on the license.
- Permanent transfers of Sector Eligibility Endorsements would be allowed if transferred with the associated Groundfish LLP. Sector Eligibility Endorsement, the associated groundfish LLP license, and associated catch histories would not be separable or divisible. All transfers must NOAA Fisheries for approval in order to track who owns the Sector Eligibility Endorsements. The purchaser must be eligible to own a fishing vessel under MarAd regulations or must be a person who is currently eligible to own a vessel.
- Annual allocations to the cooperative will be transferable among Non-AFA Trawl CP cooperative members. Such transfers will not need NOAA Fisheries approval.
- Annual allocations to the cooperative will be transferable among Non-AFA Trawl CP cooperatives. Inter-cooperative transfers must be approved by NOAA Fisheries.
- Any non-trawl or non-BSAI catches by qualified license holders that are considered part of the Non-AFA Trawl CP sector will not be included in the defined cooperative program. In addition, these non-trawl or non-BSAI catches allocated to the Non-AFA Trawl CP sector would not necessarily be excluded from other rationalization programs.
- Catch history used for allocation and eligibility purposes will be legal and documented catch.
- Disposition of groundfish species not allocated to the Non-AFA Trawl CP sector will not change as a result of the cooperative program developed in Amendment 80.
- Bycatch limits for non-specified species or marine resources would not be established. However, if the Council deems that bycatch is unreasonable, specific regulations to minimize impacts would be considered.
- The cooperative(s) would need to show evidence of binding private contracts and remedies for violations of contractual agreements would need to be provided to NOAA Fisheries. The cooperative would need to demonstrate adequate mechanism for monitoring and reporting prohibited species and groundfish catch. Participants in the cooperative would need to agree to abide by all cooperative rules and requirements.
- Specific requirements for reporting, monitoring and enforcement, and observer protocols will be developed in regulations for participants in the cooperative program and will not be the purview of the cooperative. The Council should specify their goals and objectives for in-season monitoring and program evaluation. Recordkeeping and reporting portions of the program can then be developed to ensure that goals and objectives of the program are met in a cost effective manner.

- A detailed annual report will be required from each cooperative(s). Fishery managers will review the annual report and determine if the program is functioning as desired. It is recommended that in-depth assessments of program be undertaken under the auspices of the Council/NOAA Fisheries periodically (for example, every five years). The in-depth studies will report the accomplishments of the program and indicate whether any changes are necessary.
- A socioeconomic data collection program will be implemented under the Non-AFA Trawl CP Cooperative Program. The program will collect cost, revenue, ownership, and employment data on a periodic basis to provide the information necessary to study the impacts of the program. It is anticipated that the data collected under this program will be similar to the data collected under the BSAI crab rationalization program. Details of the collection will be developed in the analysis of the alternatives. Direct staff to work with NOAA Fisheries Staff to develop specific elements for the collection of socioeconomic data collection program and include those elements in an Appendix to the Amendment 80 EA/RIR/IRFA.

Table 3-63a Number of vessels below minimum allocation and the additional mt needed to meet minimum for each year combination from Component 10 using retained catch

Year Combination Option	Number of vessels under minimum	Additional tons needed to meet minimum (mt)	Total Tons catch by all vessels (mt)	Additional tons as a percent of total tons
Flathead Sole (0.1%)				
1995-2003 drop 3	*	*	79,703	*
1997-2003 drop 2	*	*	67,094	*
1998-2002 drop 1	*	*	54524	*
1998-2002	*	*	61,849	*
1998-2003 drop 1	*	*	64,058	*
1998-2003 drop 2	*	*	55,622	*
1999-2003 drop 1	3	113	48,235	0.23%
1997-2004 drop 2	*	*	78,380	*
1997-2004 drop 3	*	*	69,611	*
1998-2004 drop 2	*	*	67,040	*
Yellowfin Sole (0.5%)				
1995-2003 drop 3	3	2,974	382,287	0.78%
1997-2003 drop 2	4	3,724	314,878	1.18%
1998-2002 drop 1	6	4,593	206,160	2.23%
1998-2002	6	5,394	232,861	2.32%
1998-2003 drop 1	6	5,951	260,951	2.28%
1998-2003 drop 2	5	4,859	223,974	2.17%
1999-2003 drop 1	6	5,022	204,409	2.46%
1997-2004 drop 2	4	4,771	367,493	1.30%
1997-2004 drop 3	4	3,959	326,613	1.21%
1998-2004 drop 2	5	6,169	276,590	2.23%
Rock Sole (0.5%)				
1995-2003 drop 3	*	*	96,623	*
1997-2003 drop 2	*	*	77,966	*
1998-2002 drop 1	6	1,138	54,613	2.08%
1998-2002	6	1,316	60,667	2.17%
1998-2003 drop 1	6	1,475	67,995	2.17%
1998-2003 drop 2	6	1,195	58,162	2.05%
1999-2003 drop 1	6	1,382	56,534	2.44%
1997-2004 drop 2	*	*	98,637	*
1997-2004 drop 3	*	*	87,530	*
1998-2004 drop 2	5	1,512	78,833	1.92%

Table 3-63b Number of vessels below minimum allocation and the additional mt needed to meet minimum for each year combination from Component 10 using total catch

Year Combination Option	Number of vessels under minimum	Additional tons needed to meet minimum (mt)	Total Tons catch by all vessels (mt)	Additional tons as a percent of total tons
Flathead Sole (0.1%)				
1995-2003 drop 3	0	0	102,349	0.00%
1997-2003 drop 2	0	0	85,350	0.00%
1998-2002 drop 1	*	*	67973	*
1998-2002	*	*	77,322	*
1998-2003 drop 1	*	*	79,863	*
1998-2003 drop 2	*	*	69,237	*
1999-2003 drop 1	3	138	60,024	0.23%
1997-2004 drop 2	0	0	100,260	0.00%
1997-2004 drop 3	0	0	89,021	0.00%
1998-2004 drop 2	*	*	84,147	*
Blended Option	0	0		0
Yellowfin Sole (0.5%)				
1995-2003 drop 3	3	2,787	497,703	0.56%
1997-2003 drop 2	3	3,451	397,225	0.87%
1998-2002 drop 1	5	5,290	267,381	1.98%
1998-2002	5	6,145	301,701	2.04%
1998-2003 drop 1	5	6,827	331,996	2.06%
1998-2003 drop 2	5	5,695	284,748	2.00%
1999-2003 drop 1	5	6,935	349,278	1.99%
1997-2004 drop 2	4	4,309	461,755	0.93%
1997-2004 drop 3	3	3,332	408,993	0.81%
1998-2004 drop 2	6	5,696	256,781	2.22%
Blended Option	4	3,083	396,566	0.78%
Rock Sole (0.5%)				
1995-2003 drop 3	*	*	213,213	*
1997-2003 drop 2	*	*	170,716	*
1998-2002 drop 1	5	2,455	122,671	2.00%
1998-2002	5	2,849	138,635	2.05%
1998-2003 drop 1	5	2,987	149,456	2.00%
1998-2003 drop 2	5	2,478	128,008	1.94%
1999-2003 drop 1	6	2,689	123,883	2.17%
1997-2004 drop 2	*	*	210,448	*
1997-2004 drop 3	*	*	186,886	*
1998-2004 drop 2	4	2,818	167,741	1.68%
Blended Option	*	*		*

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

Item C-2(C)

March 28, 2006

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Stephanie,

The Office of Management and Budget (OMB) has issued new guidance on the collection of survey and census data. This guidance pertains to the cost and earnings information that the Council would like to collect from the non-American Fisheries Act (non-AFA) trawl catcher processors under Amendment 80 to the Fishery Management Plan for Groundfish of Bering Sea and Aleutian Islands Groundfish Management Area (FMP).[1] The OMB guidance (Guidance on Agency Survey and Statistical Information Collections: January 20, 2006) requires the completion of an extensive questionnaire by the agency seeking OMB approval for an information collection (see http://www.whitehouse.gov/omb/inforeg/pmc_survey_guidance_2006.pdf). If the Council moves forward with the proposed Cost, Earnings and Employment Survey under Amendment 80, we will need substantial assistance to comply with this guidance.

Based on the content of the Council's proposed survey of the non-AFA trawl catcher processors, the NOAA clearance officer at OMB advises that we will need to comply with both Parts A and B of the supporting statement (attached) required for all information collections subject to the Paperwork Reduction Act. OMB has advised agencies that supporting statements for new information collections of the nature being proposed by the Council may take several weeks or months to pass through the OMB approval process.

In developing the documentation for the Council's proposed survey, either the Council or NMFS must address the following purpose, intent, and technical questions. NMFS staff were required to provide this and other information during OMB review of the economic data collection adopted by the Council as part of its Crab Rationalization Program.

1. Why is this data collection necessary? What questions is it designed to address, and how will the information be used?
2. Is the collection intended for economic research, regulatory enforcement, program monitoring, or some other purpose?

[1] See Appendix 3 to the EA/RIR/IRFA for Amendment 80 which shows the proposed Cost, Earnings and Employment Survey.

3. How often would data be collected?
4. How would data be stratified?
5. Show how the collection of each variable is the optimum method for collection, in comparison with other data sources.
6. Precisely what economic models and regressions will be used?
7. If a cost function is to be constructed, what specific data elements will be used for which analyses?
8. How will each variable be used in economic models or regressions?
9. How will data be verified?
10. How is confidentiality to be assured?

Additionally, NOAA General Counsel has raised questions concerning the level of legal process that may be necessary for the data verification protocol described in the Amendment 80 analysis starting on page 209 of the March 16, 2006, EA/RIR/IRFA. The agency's use of an independent auditor, as described in the analysis, may require the development of an administrative process governing when and how the agency may conduct such an audit and a description and analysis of which party would be responsible for the costs of the audit. NOAA General Counsel also has concerns about the verification protocol's description of whether and when NOAA Fisheries Enforcement may become involved.

In summary, addressing OMB guidelines on information necessary to support approval of the proposed economic information collection and legal concerns about the proposed data verification protocol will require additional assessment. As with the economic data collection under the Crab Rationalization Program, a data committee appointed by the Council would provide helpful assessment and selection of variables and information collection instruments. The input from such a committee and further Council guidance is essential in securing OMB approval for this data collection program in a timely manner.

Sincerely,

for Robert D. Mecum
Acting Regional Administrator

Attachment

Attachment

Supporting Statement for Paperwork Reduction Act Submissions

General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:
* requiring respondents to report information to the agency more often than quarterly;
* requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
* requiring respondents to submit more than an original and two copies of any document;
* requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
* in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
* requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
* that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
* requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.
Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.
Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

12. Provide estimates of the hour burden of the collection of information. The statement should:
* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.
* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).
* The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
* If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use

existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

B. Collections of Information Employing Statistical Methods

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the Form OMB 83-I is checked, "Yes," the following documentation should be included in the Supporting Statement to the extend that it applies to the methods proposed:

1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection methods to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.

2. Describe the procedures for the collection of information including:
* Statistical methodology for stratification and sample selection,
* Estimation procedure,
* Degree of accuracy needed for the purpose described in the justification,
* Unusual problems requiring specialized sampling procedures, and
* Any use of periodic (less frequent than annual) data collection cycles to reduce burden.

3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.

4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of test may be submitted for approval separately or in combination with the main collection of information.

5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

March 27, 2006

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Dear Stephanie,

The Council is tentatively scheduled to take final action on Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands (Amendment 80). Amendment 80 would allocate certain groundfish species to the non-American Fisheries Act (non-AFA) trawl catcher/processor fleet and allow the formation of cooperatives. As we have informed the Council, dedicated access privilege programs that allocate fish to cooperatives or individuals require enhanced monitoring of catch to ensure accurate accounting of harvest relative to these individual quotas. For purposes of the Amendment 80 allocations, this would require catch monitoring on a haul by haul basis under specific catch monitoring standards that could be costly to implement for some vessel owners.

NMFS has explored ways to reduce these costs using a flexible monitoring approach that would allow vessel owners or operators to propose a vessel specific Vessel Monitoring Plan (VMP) that would be approved by NMFS if the VMP met certain monitoring performance standards. Vessels operating under a NMFS approved VMP would be exempted from regulations prohibiting crew members in fish bins where unobserved presorting of catch can occur. As envisioned, an approved VMP would have improved NMFS' confidence that an observer could detect illegal presorting activities within a fish bin.

Council staff last described the VMP concept to the Council at the February 2006 meeting, highlighting that the agency was continuing to develop the concept. Since that time, NOAA General Counsel identified its concern with the legality and enforceability of regulations that allow individual waivers from general provisions of regulatory programs, e.g., contractual-like individual exceptions to the general regulatory prohibition on crew in bins. Difficulties also were identified that thwarted the development of regulatory criteria for VMPs for all the non-AFA trawl catcher/processors which would: (1) be enforceable, (2) consistently and effectively meet the objectives of an adequate catch monitoring program, and (3) be efficient and cost effective for the agency to implement. Further, we learned from conversations with industry that the type of VMPs being contemplated could easily be accommodated by a fairly simple set of regulatory provisions that addressed agency concerns. Specifically, vessels could use video technology, or factory modifications to ensure that an observer has an unobstructed line-of-sight from the observer sample station into the fish bin so that any sorting activity could be monitored.

AGENDA C-2
Supplemental
APRIL 2006

FISHING VESSEL OWNERS' ASSOCIATION
INCOPORATED

ROOM 232, WEST WALL BUILDING • 4005 20TH AVE. W.
SEATTLE, WASHINGTON 98199-1290
PHONE (206) 284-4720 • FAX (206) 283-3341

SINCE 1914

March 28, 2006

Ms. Stephanie Madsen
Chairwoman
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

RE: Amendment 80

Dear Ms. Madsen:

These comments are relative to Amendment 80 to the Bering Sea and Aleutian Island Management Plan. The members of the Fishing Vessel Owners' Association (FVOA) are concerned about how the Council deals with the reduction in the Halibut PSC cap for the BSAI. The members of the FVOA have significant holdings of halibut in the Bering Sea and their potential harvest is affected by the size of the PSC halibut cap.

Currently, the trawl cap in the Bering Sea is at 3400 mt. The option to reduce this cap with rationalization of the non-pollock fleet ranges from 0 to 40%.

The Council has attempted several times to address the halibut and other PSC caps. The first time was with Amendment 3 to the BSAI Management Plan. Council documents report the following with respect to the regulation action of Amendment 3.

> "Regulation Summary: Amendment 3 reduced bycatch of prohibited species in foreign groundfish fisheries. Essentially, total PSC allocations for foreign nations were based on bycatch rates multiplied by the nations TALFF allocation. Bycatch rate reductions to be met by 1986 from status quo base years (1977-80) were as follows: halibut, 50%; king and Tanner crab, 25%; salmon, 75%. The target level of salmon bycatch was 17,473 fish. If bycatch apportionments for any PSC species were met or exceeded, that nation's fleet was prohibited from fishing in the entire BSAI area, unless exempted by the NMFS Regional Director."

The council reports the following as to the results of the action taken on the foreign fleets operating under TALFF.

Results: The foreign fleet successfully reduced bycatch in their fisheries (of course part of this reduction is attributable to reduced TALFF). However, bycatch savings were offset by the growing joint venture (JV) fisheries. The adjacent table illustrates these results.

Bycatch in foreign and JV groundfish fisheries in the BSAI 1983-1986.
Source: Guttormsen et al. 1990.

	Halibut (mt)		Salmon (#)		King crab (#)	
Year	Foreign	JV	Foreign	JV	Foreign	JV
1983	1,872	438	18,173	24,493	404,013	630,144
1984	2,128	617	16,516	67,622	292,223	398,865
1985	1,789	1,026	10,003	10,420	219,783	1,005,290
1986	1,192	1,711	1,643	19,340	14,631	260,435

From the US halibut fishermen's perspective, the foreign restrictions seemed to work and were a form of co-op-style operation now suggested as an option under Amendment 80. The foreign fleet's success was significantly accomplished by self-imposed restrictions in order to make the most of this PSC Cap. These successes were short-lived as the domestic fleet soon took over phasing all foreign fishing out by 1988.

The problems that seemed to be addressed with a market-based incentive program on the foreign fleet were not automatically transferred to US operations. The result was a very high bycatch of Bering Sea juvenile halibut stocks by the US fleet during the late 1980's and early 1990's. This is verified in the Council and IPHC historical documents. The current trawl PSC Cap for halibut is 3400 Mt.

In order to look at alternatives to reduce the trawl cap further, the Council set up the Halibut bycatch working group (HBWG). There were nine recommendations of the working group. The first three focused on Alaska fisheries. Those recommendations were as follows (IPHC Technical Report 25):

"U.S. Fisheries

(1) Bring all groundfish fisheries off Alaska under existing caps in 1992 and ensure that all fisheries adhere to specified bycatch controls.
(2) Support development and expansion of incentive programs in 1992.
(3) Promote a downwards ratcheting of caps starting in 1993 at 10 percent per year based on a rate or vessel quota incentive program. The goal would be to reduce mortality as far as possible over time consistent with the need to harvest the groundfish resources. The foreign fishery levels achieved in the mid-1980's shall provide an initial yardstick for monitoring success."

The Council eventually adopted a Bering Sea and Aleutian Island halibut cap as well as a cap for the Gulf of Alaska. The second and third proposals have evolved into options now contained in Amendment 80, which has taken better than a decade to mature from the HBWG's original recommendations. It is clear, however, based on the HBWG recommendations, that it was believed a significant reduction could be realized with proper incentives. The HBWG suggested starting off with a 10% ratcheting down of the Cap. They did not give an annual goal.

In attempting to review the current bycatch rate of PSC halibut in the CDQ Bering Sea fisheries, apparently their rock sole activity is limited to the point that the data is restricted due to confidentiality limitations. The yellowfin sole activity has been limited to about 5,000 to 6,000 Mt., with the use of about 40 Mt of halibut. It is therefore difficult to look at these prototype-co-op operations and see how the market forces will encourage different fisheries behavior.

In fact the non-CDQ fleet, in 2005, had quotas of rock sole and yellowfin sole of 35,502 Mt and 87,784 Mt respectively. They harvested 100% of each quota in 2005. In 2004, the non-CDQ fleet harvested 113% of their rock sole quota and 94% of their yellowfin sole catch. The halibut PSC Caps were obviously not very restraining on either one of these

fisheries in 2004 and 2005. It is our opinion that renewed economic incentive practices stimulated with the proposed co-ops will result in lower over catches of halibut PSC.

FVOA therefore requests a 15% initial reduction in halibut PSC limits with an additional 15% reduction over the next three years following implementation of Amendment 80. This could result in a 30% reduction in the PSC cap for the BSAI trawl activities. We further recommend that the co-ops be able to use or assign their Pacific cod to be harvested with fixed gear in order to extend the use of their PSC Caps.

Sincerely,

Robert D. Alverson
Manager

RDA:cmb

ADAK
Fisheries LLC

March 28, 2006

Ms. Stephanie Madsen
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK
99501-2253

RE: Amendment 80 - Alternative for Aleutian Island Species

Dear Madame Chair,

Adak can't survive as a fishery based community on a single species. Adak must have access to the range of species that are on our doorstep. Pollock remains out of reach due to sea lion restrictions for now. King crab has been locked up by the Crab Rationalization plan. AI mackerel and POP are species on Adak's doorstep. Adak can't sit by and be frozen out of another fishery.

Amendment 80 will allow the H&G sector fisheries to rationalize their target species by allocating to coops which equate to de-facto individual quotas. The allocation to the H&G sector coops will provide for internal transfers and consolidation, but there is no mechanism for transfers from their sector to another sector. Adak Fisheries' concern is that this precludes entry to the fishery by catcher vessels. We won't even be able to buy quota from the H&G sector in order to enter the fishery.

No other fishery has been rationalized without a "tax" for Alaskan interests. In each case Alaskan communities adjacent to the resource shared in the benefit.

Components 3 & 4 of Am. 80 will determine the amount of Atka mackerel and AI POP that will be available to non-H&G vessels in the General Limited Access fishery, and in turn determine the maximum amount of those species that Adak Fisheries and other processors could purchase from catcher vessels.

Adak Fisheries offers the following recommendations:

- **Incidental Catch Allowance (*sub-option of Option 3.2*)**
ICA's should be set for the General Limited Access fishery for Amendment 80 species

- **General Limited Access Allocation** ***(Option. 4.7)***
A minimum of 10% of the TAC for Atka mackerel and AI POP be allocated to the General Limited Access sector for directed fishing. (*10% is within the range presented in table 3.31*)

- **Area Apportionment of AI species**
Staff has identified the need to address issue of sub-area apportionment of AI Amendment 80 species though it is not explicit within the options. Allocations of Atka mackerel and AI POP by sector should be apportioned by sub-areas, such that a minimum of 10% of the General Limited Access allocation is available to directed fishing in 541 and 542.

- **Rollovers** ***(sub-option of component 3)***
Date certain rollovers of any un-used portion of the General Limited Access sector's seasonal apportionment of Atka Mackerel be made on May 15th for the A season and Sept. 30th for the B season; for AI POP the rollover would be made on Sept. 30th.

- **AFA CV sideboards**
AFA CV sideboards redundant and should be extinguished for Amendment 80 species, as the direct allocations to the H&G sector provide the protections required by the AFA.

The Atka mackerel biomass is estimated at 446,200 tons. The ABC is 110,000 tons, with a TAC of 63,000 tons. Because our request is limited to 541 & 542, we are effectively asking that less than 5,000 tons be left in the General Limited Access fishery.

The AI POP biomass is estimated at 385,240 tons. The ABC is 11,840 tons, with a TAC of 11,200 tons. Our request for 10% of 541 & 542 equates to 600 tons for the General Limited Access fishery.

Adak may not have a fleet ready to jump into these fisheries today, but rationalization is 'forever' and we need recognition of our position as stakeholders of the resource at our doorstep now.

Thank you for considering our concerns.

dave fraser

Adak Fisheries, LLC
100 Supply Road
Adak, Alaska 99546

ADAK
Fisheries LLC

March 29, 2006

Ms. Stephanie Madsen
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska
99501-2253

RE: Amendment 85 – P. Cod Allocations

Dear Madame Chair,

Adak Fisheries is primarily dependant on the P. cod fishery in the Aleutian Islands. While most other Bering Sea processing plants are broadly diversified, Adak lives or dies based on access to P. cod. Our access will be determined by the Council action on Amendment 85, particularly with reference to the choice of Alternatives under Part II.

Part II determines the interaction of a TAC split of the Bering and Aleutians with the sector allocations. Adak Fisheries supports adopting a CV trawl allocation in the Aleutian Islands based on recent harvest patterns. Since the adoption of SSL mitigation measures in 2001, there has been a significant shift in harvest patterns by sector. Only option 6.4 captures those harvest patterns.

Adak Fisheries requests that the Council:

- **Select option 6.4 based on the years 2002-2003, which also reflects the continuing fishing patterns by various sectors through 2004 and 2005.**

The analysis states clearly that Options 3 & 5 have identical impacts and that they do ***"not appear to meet the concerns described in the problem statement."***

Likewise, Option 4, maintains a "race for fish" between sectors within areas, and within an area between sectors. It is the impact of that race that has forced Adak to seek relief through a state water fishery.

Adak Fisheries believes that the Council should be pursuing a TAC split between the Bering and Aleutians. Doing so would provide a more stable access to the AI cod resource by the catcher vessel sectors upon which we are dependent. It is also a precautionary measure to spatially disperse effort in proportion to biomass. Finally, it is a more direct and efficient way of addressing the concerns of our community than extending a state water trawl fishery into the future.

The need to take action now on Part II is embedded in the problem statement. However, in the event the Council defers action on Part II, the default alternative (Option 3) will be most disruptive to all sectors. Thus, we ask that the Council commit to not implement a TAC split prior to implementation of final action of the decision should it proceed with a trailing amendment.

Adak Fisheries also supports the following general actions under Amendment 85:

- Separate allocation of cod to the AFA trawl CV sector combined with the "3 amigos" of at least 22%.
- Allocation to non-AFA trawl CVs in Federal and parallel P. cod fisheries in the Aleutian Islands that at least maintains their recent harvest levels.
- Provide an opportunity for new participation in the CV Pot and Hook-and-line CVs <60' and jig vessels in Federal and parallel P. cod fisheries the Aleutian Islands.
- Adopt the CV rollover hierarchy in Alt. 4.2.

Because <60' fixed gear vessels have almost no history in AI cod fisheries, none of the options provide a meaningful AI allocation to <60' Pot and Hook & Line, plus Jig. This precludes any development of a small boat cod fishery, except through a state water P. cod fishery. Adak Fisheries asks that the Council:

- **Make a pro-rata adjustment of AI sector allocations to provide up to 10% of the AI allocation to the <60' Pot and Hook-and-line CV sector and the Jig sector for harvested in the Aleutian Islands.**

The Council initially adopted a 1.4% allocation of the fixed gear allocation to this sector at the request of representatives of the Adak community. A variety of circumstances have precluded the ability to make use of this allocation.

- Construction of the small boat harbor in Adak just occurred in 2005.
- Table 3-6 (page 91) shows that only 5 CV Pot vessel under 60' hold AI endorsements.
- In 2005 the season closed April 9th for the 1.4% allocation (including rollovers from jig).

The attached page, shows how highly dependent Adak Fisheries and the community of Adak are on P. cod and the outcome of Council action on Am. 85.

Thank you for considering our concerns.

dave fraser

Adak Fisheries, LLC
100 Supply Road
Adak, Alaska 99546

Putting Adak's Dependency on P. Cod in Perspective:

It may be argued that Adak is "asking for too much," of the AI cod allocation to be made available to the CV sectors upon which it depends. Our request needs to be put in perspective. Compared to an average Bering Sea AFA processor, what we are trying to survive on is a drop in the bucket. Here are some comparisons:

Pollock:

- The average AFA shorebased processor will do 92,667 tons of pollock this year – estimated wholesale value $75,000,000.
- Adak Fisheries will do 1000 tons of pollock this year, 1% of what an average AFA processor will do.

Crab:

- The average AFA shorebased processor will do about 6,000,000 lbs of crab this year – estimated wholesale value about $22,000,000
- Adak Fisheries' crab allocation is about 62,000 lbs this year - wholesale value about $300,000, less than 1.5% of what an average AFA processor will do.

Cod:

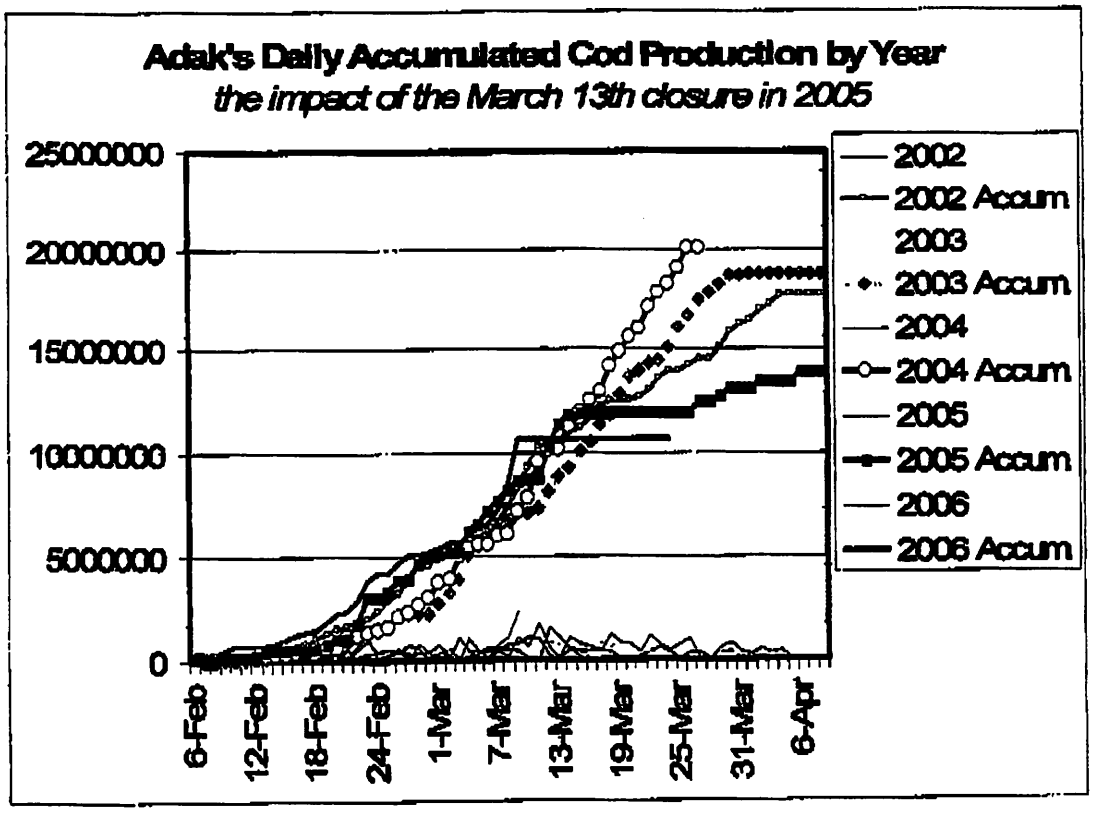
- The average AFA shorebased processor will do about 4,000 tons of P. cod this year – estimated wholesale value about $6,000,000.
- Adak Fisheries has done up to 10,000 tons in a year, but as a result of continuing compression of the seasons caused by the race between BS and AI, we did only 5,000 this year's federal season.

For pollock, crab and P. cod combined, (and excluding salmon - of which Adak has none) the average AFA shorebased processor will gross 10 times what Adak Fisheries will gross.

Even if the full AEC A season pollock was harvestable, Adak Fisheries would still only gross about 2% of an average AFA shorebased processor.

Alt. 6.4 of Amendment 85 (Adak's preferred alternative) would provide around 11,674 tons to trawl AFA CVs fishing the Aleutians, or about 30% of the combined BSAI trawl AFA CV allocation (contrasted to nearly 700,000 tons of cod and pollock for trawl CVs delivering to BS processors.) However, Adak Fisheries must still compete with other the floaters belonging to AFA processing companies such as Stellar Sea, the Katie Anne and the Independence that also process in the Aleutians.

In each of the last 3 years the Aleutian Island trawl P. cod fishery has closed earlier as the result of the race with the Bering Sea P. cod fishery. The net effect is that the CV trawl cod fleet and Adak Fisheries have been "cut off at the knees" earlier each year.



Cod catches by area

Year	BS	AI	total	ABC	AI% ABC	AI trawl	trawl % of AI
1998	158,526	34,726	193,252	210,000	16.5%	20,531	59.1%
1999	145,865	28,130	173,995	177,000	15.9%	16,437	58.4%
2000	151,372	39,684	191,056	193,000	20.6%	20,362	51.3%
2001	142,452	34,207	176,659	188,000	18.2%	15,826	46.3%
2002	166,552	30,801	197,353	223,000	13.8%	27,929	90.7%
2003	176,659	32,455	209,114	223,000	14.6%	31,478	97.0%
2004	184,945	28,865	213,810	223,000	12.9%	25,766	89.3%
2005	143,492	20,911	204,877*	206,000	10.2%	18,975	90.7%

- from Nov. 2005 SAFE document (* *2005 total from NMFS in-season reports*)

Fishermen's Finest

Fishermen's Finest, Inc.

1532 N.W. 56th Street • Seattle, WA 98107
TEL: (206) 283-1137 • FAX: (206) 281-8681

March 29, 2006

Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W. 4th Ave., Suite 306
Anchorage, AK 99501

Re: AGENDA ITEM C – 2, AMENDMENT 80
AGENDA ITEM C – 3, AMENDMENT 85

Dear Madam Chair,

Fishermen's Finest, Inc. operates two non-AFA catcher processor vessels that fish in the Amendment 80 sector. By this letter, the company comments on the above-referenced Agenda Items.

On February 11, 2004, the Council requested a NOAA GC opinion on disposition of the catch history of the AFA nine retired vessels. NOAA GC issued an opinion letter on June 4, 2004, to the Executive Director of the Council. Both letters are attached.

Firstly, while the letters were included in the Agenda Item C-6 in June of 2004, we find that a significant omission occurred , when neither of these letters was included in either the Initial Review Draft or Public Review Draft of the EA/RIR/IRFA for Amendment 80, since "[t]he issue has been raised relative to consideration by the North Pacific Fishery Management Council (Council) of Amendment 80...." Page 1, June 4, 2004, letter from NOAA GC to the Executive Director, North Pacific Fishery Management Council. Accordingly, FFI, Inc. requests that, along with this letter, the attachments be included in the administrative record for Agenda Item C-2, Amendment 80 and Agenda Item C-3, Amendment 85.

Secondly, the opinion requested by the Council and delivered by NOAA GC addressed issue of disposition of the catch history of the nine retired factory trawlers in the context of controlling statutory language for protection of non-AFA vessels and processors in non-AFA fisheries.

NOAA GC letter quotes from the legislative history of the AFA, including Senator Stevens' section-by-section analysis of the AFA, and Senator Murray's statement on the legislation, as printed in the Congressional Record.

The AFA protections for fishermen and processors in non-AFA fisheries are clearly intended to restrict AFA-eligible vessels' participation in those fisheries, and thereby prevent "unintended consequences," "adverse effects resulting from increased competition," and "a competitive advantage" on the part of such AFA vessels. As stated in the referenced section-by-section analysis:

> "The Congress intends for the North Pacific Council to consider particularly any potential adverse effects on fishermen in other fisheries resulting from increased competition in those fisheries from vessels eligible to fish in the BSAI directed pollock fishery...."

Senator Murray stated, during consideration of the AFA:

> "...they should not be empowered by this legislation to gain a competitive advantage in these other fisheries to the detriment of participants who have not benefited from the resolution of the pollock fishery problems..."

> "Those of us involved intimately in the development of this legislation strongly urge the Councils to...ensure that other fisheries are held harmless to the maximum extent possible."

SIDEBOARD SPECIES

The AFA sideboard caps are based on the 1995-1997 catch history of the AFA eligible 20 plus 9 retired factory trawlers and the catcher vessels.

The attached tables show that, since the 1999 implementation of the AFA, the pollock TAC has been both at its lowest and highest levels in the past 26 years. During the two post-AFA years, when the pollock TAC was at its lowest, just above and below 1 million MT, retention of yellowfin sole by the AFA CP and CV fleets was no more than 7,000 MT, combined. The AFA CP cod has been harvested in amounts less than that sideboard as well. In periods of historically low and high pollock TACs, the AFA fleet has not participated in the directed mackerel, POP, rocksole or flathead sole fisheries. There is no significant dependence on these species prior to the AFA, nor is there recent participation after the AFA. In accordance with the AFA, the Council should insure that vessels historically dependent on the H&G allocation and presently participating in the H&G fisheries are not adversely affected by the introduction of increased competition from the AFA vessels through a new sector allocation scheme.

The statutory sideboards should not be turned into allocations that would preempt the non-pollock fishermen from participating fully in the multi-species fisheries, upon which they are and historically have been critically dependent. The sideboards were meant as protections for non-pollock fishermen from increased competition from the rationalized pollock fleet, and the clear intent of the AFA is to ensure that protections remain fully effective in any future approach to management.

BSAI TWO MILLION MT CAP

The pollock TAC has historically averaged 1.2 million MT, or 60% of the 2 million MT cap. In 1999 when the AFA was implemented, the pollock TAC was 992,000 MT, or 50% of the BSAI total 2 million MT cap. From 2000 – 2006, the pollock TAC has systematically increased from 1 million MT to 1.5 million MT, or 75% of the entire BSAI 2 million MT cap. One user group currently has **exclusive** access to 75% of the BSAI 2 million MT cap and shared access to the remaining 25% of the cap. The potential for an adverse impact on the non-AFA H&G vessels is clearly demonstrated by those numbers.

It is interesting to note that the excessive harvest share cap in the AFA is 17.5% of the pollock available to the directed fishery. The 17.5% cap is an amount that is now greater than the TACs of the five Amendment 80 species combined. Meanwhile, excessive share cap options for the aggregated target species in Amendment 80 start as low as 5% per H&G vessel, an equivalent tonnage of a single AFA catcher vessel's pollock allocation.

CONCLUSION

In accordance with the AFA, allocations to the H&G sector – under both Amendment 80 and Amendment 85 – must not allow the AFA-eligible vessels to affect adversely the H&G sector's small, but critically important share of the BSAI 2 million MT cap. Because the Council's actions in addressing the referenced agenda items must be consistent, not only with the AFA, but also with the Magnuson-Stevens Act, allocations must take into account recent participation, historical dependence, the economics of the fishery, and the capability of vessels in the fishery to be used in other fisheries, as provided by section 303(b)(6), and must be "fair and equitable," as required by National Standard 4.

The legislative history of the AFA confirms that non-pollock fishermen should not suffer adverse impacts or competitive harm as a result of the AFA. Interpretation of the sideboards as allocations or entitlements would do just that.

Thank you for this opportunity to comment.

Susan Robinson

Susan Robinson

AGENDA C-6
JUNE 2004
Supplemental

UNITED STATES DEPARTMENT OF COMME
National Oceanic and Atmospheric Administ
Office of General Counsel
P.O. Box 21109
Juneau, Alaska 99802-1109

DATE: June 4, 2004

FOR: Chris Oliver
Executive Director
North Pacific Fishery Management Council

THROUGH: Lisa L. Lindeman
Alaska Regional Counsel
NOAA General Counsel

FROM: Robert Babson
Attorney
NOAA General Counsel, Alaska Region

SUBJECT: Non-Pollock Catch History of the Nine Catcher Processors Listed in Section 209 of the American Fisheries Act.

This responds to your February 11, 2004, request for a legal opinion regarding whether the twenty catcher processors listed in section 208(e) of the American Fisheries Act (AFA) can claim the non-pollock fishing history of the nine catcher processors removed from the fishery pursuant to section 209 of the AFA. The issue has been raised relative to consideration by the North Pacific Fishery Management Council (Council) of Amendment 80 to the Bering Sea and Aleutian Islands (BSAI) groundfish fishery management plan under which the Council is considering sector allocations of BSAI groundfish and prohibited species catch limits based on each sector's catch history. In order to answer the question, the provisions of both sections 209 and 211(a) and (b) must be analyzed.

Discussion

Section 209 of the AFA provides, in pertinent part:

> Effective December 31, 1998, the following vessels shall be permanently ineligible for fishery endorsements, and any claims (including relating to catch history) associated with such vessels that could qualify any owners of such vessels for any present or future limited access system

permit in any fishery within the exclusive economic zone of the United States (including a vessel moratorium permit or license limitation program permit in fisheries under the authority of the North Pacific Council) are hereby extinguished....(emphasis added.)

On October 21, 1998, the AFA's primary sponsor, Senator Stevens, inserted a section-by-section analysis of the AFA in the Congressional Record.[1] The analysis explains section 209 in the following manner.

Section 209 identifies nine catcher/processors that, effective December 31, 1998, are permanently ineligible for fishery endorsements. Section 209 also extinguishes all claims associated with vessels that could qualify the owners of the vessels for any limited access system permit. (Emphasis added.)

144 Cong. Rec. S12780 (daily ed. Oct. 21, 1998). By its own terms, and its legislative history, it is clear that section 209 extinguishes only future claims of the owners of the nine listed vessels.

Section 211 of the AFA (entitled "PROTECTIONS FOR OTHER FISHERIES; CONSERVATION MEASURES") deals with the non-pollock fishing history of both the nine vessels listed in section 209 and the twenty vessels listed in section 208(e) of the AFA and provides in pertinent part:

(a) General.—The North Pacific Council shall recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.

(b) Catcher/Processor Restrictions.—

* * * *

(2) Bering Sea Fishing.—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from, in the aggregate—

(A) exceeding the percentage of the harvest available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors and the catcher/processors

[1]This section-by-section analysis, along with the comments made by the AFA's sponsors, printed in the Congressional Record, constitute the legislative history of the AFA.

listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;

(B) exceeding the percentage of the prohibited species available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total of the prohibited species harvested by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount of prohibited species available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;....

In accordance with the title of section 211 of the AFA, the purpose of subsection (a) is explained in Senator Steven's section-by-section analysis as follows:

Subsection (a) of section 211 directs the North Pacific Council to submit measures for the consideration and approval of the Secretary of Commerce to protect other fisheries under its authority and the participants in those fisheries from adverse impacts caused by the subtitle II of the American Fisheries Act or by fishery cooperatives in the BSAI directed pollock fishery. **The Congress intends for the North Pacific Council to consider particularly any potential adverse effects on fishermen in other fisheries resulting from increased competition in those fisheries from vessels eligible to fish in the BSAI directed pollock fishery** or in fisheries resulting from any decreased competition among processors. (Emphasis added.)

144 Cong. Rec. S12781 (daily ed. Oct. 21, 1998). The section-by-section analysis goes on to explain the purpose of subsection (b)(2) of section 211 as follows:

Subsection (b) includes specific measures to restrict the participation in other fisheries of the catcher/processors eligible to participate in the BSAI directed pollock fishery (other than the vessel or vessels eligible under paragraph (21) of section 208(e)). While these types of limitations are appropriately for the North Pacific Council to develop, the catcher/processors eligible under section 208(e) may form a fishery cooperative for 1999 before the North Pacific Council can recommend (and the Secretary approve) necessary limitations. The restrictions in subsection (b) would therefore take effect on January 1, 1999, and remain in effect thereafter unless the North Pacific Council recommends and the Secretary approves measures that supersede (sic) the restrictions. **Subparagraphs (A) and (B) of paragraph (2) prohibit the catcher/processors eligible to participate in the BSAI directed pollock fishery from exceeding the aggregate amounts of targeted species and bycatch in other fisheries that catcher/processors from the BSAI directed pollock fishery caught on average in 1995, 1996,**

> **and 1997....The limitations in subparagraphs (A), (B), and (C) do not ensure that the BSAI pollock eligible catcher/processors will be able to harvest any amount of fish, they simply establish additional caps after which those catcher/processors, as a class, will be prohibited from further fishing.** (Emphasis added.)

Id.

The overall purpose of section 211, including the subsections discussed above, also was discussed by Senator Murray in her comments to the Senate.

> In addition, the bill attempts to ensure adequate protections for other fisheries in the North Pacific and Pacific from any potential adverse impacts resulting from the formation of fishery cooperatives in the pollock fishery. The formation of fishery cooperatives will undoubtedly free up harvesting and processing capacity that can be used in new or expanded ways in other fisheries. Although many of these vessels and processors have legitimate, historic participation in these other fisheries, they should not be empowered by this legislation to gain a competitive advantage in these other fisheries to the detriment of participants who have not benefitted from the resolution of the pollock fishery problems.
>
> While we have attempted to include at least a minimum level of protections for these other fisheries, it is clear to many of us that unintended consequences are likely. It is therefore imperative that the fishery management councils not perceive the protections provided in this bill as a statement by Congress that these are the only protections needed. In fact, the opposite is true. Although the protections provided for the head and gut groundfish offshore sector from the pollock offshore sector are more highly developed and articulated in the bill, the protections for other fisheries are largely left for the Councils to recommend. Those of us involved intimately in the development of this legislation **strongly urge the Councils to monitor the formation of fishery cooperatives closely and ensure that other fisheries are held harmless to the maximum extent possible.** (Emphasis added.)

144 Cong. Rec. S12708 (daily ed. Oct. 20, 1998) (statement by Sen. Murray).

Conclusion

Senator Stevens' section-by-section analysis states that the Council may consider the combined non-pollock fishing history of the twenty catcher processors listed in section 208(e) and the nine vessels listed in section 209 of the AFA in determining the overall percentage of harvest and prohibited species available for the twenty catcher processors in the non-pollock fishery. This combined non-

pollock fishing history is in the nature of a cap, not an allocation to which the twenty catcher processors listed in section 208(e) have a statutory right.[2]

Accordingly, in making sector allocations under Amendment 80, the Council may consider the combined non-pollock fishing history of the twenty vessels listed in section 208(e) and the nine vessels listed in section 209, except that allocations based upon the non-pollock fishing history of the section 209 vessels may not be made to the owners of those vessels and any allocation must comply with the overall caps set forth in section 211(b). Section 211(a) of the AFA, however, also requires the Council to recommend conservation and management measures to protect the participants in non-pollock fisheries. Such recommended conservation and management measures must protect other fisheries under the jurisdiction of the Council (and the participants in those fisheries, including processors) from adverse impacts caused by the AFA or fishery cooperatives in the directed pollock fishery. As indicated by the legislative history, these recommendations should include conservation and management measures to protect other fishermen from adverse impacts resulting from increased competition.

cc: Jane Chalmers
Sam Rauch
Jim Balsiger

[2]This is also made clear in the language of section 208 itself. Subsection (I) provides in pertinent part:

> (i) Eligibility Not a Right - Eligibility under this section shall not be construed –
>
> *
>
> (2) to create any right, title, or interest in or to any fish in any fishery;. . .

North Pacific Fishery Management Council

Stephanie Madsen, Chair
Chris Oliver, Executive Director

Telephone: (907) 271-2809

605 W 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Fax: (907) 271-2817

Visit our website: www.fakr.noaa.gov/npfmc

February 11, 2004

RECEIVED FEB 18 2004

Lisa Lindeman
NOAA General Council
P.O. Box 21109
Juneau, AK 99802-1109

Dear Ms. Lindeman:

In April 2003, the Council expanded Amendment 80 to include sector allocations of BSAI groundfish and PSC. Sector allocations will be primarily based on each sector's catch history. The Council is considering catch history ranging from 1995 to 2003. The question has been raised whether the owners of the 20 catcher processors listed in section 208 (e) of the American Fisheries Act (AFA) can claim the non-pollock catch history of the nine catcher processors (AFA 9) that were retired on Dec 31, 1998, under section 209 of the AFA, for the purpose of sector allocations in Amendment 80a.

The confusion surrounding the fishing history of the AFA 9 stems from different interpretations of section 209 and section 211 (b)(2)(A) and (B) of the AFA by the industry. Paraphrasing section 209 of the AFA, it states that all catch history associated with the AFA 9 that could be used to qualify for any present or future limited access permit system in any fishery within the EEZ is extinguished. However, section 211(b)(2)(A) and (B) states that catch history of the AFA 9 is used to determine the catcher processor sideboards and PSC limits for the remaining 20 AFA vessels identified in section 208 (e).

To help clarify the confusion surrounding the AFA 9 catch history prior to final action on Amendment 80, the Council, at the December 2003 meeting, asked NOAA GC to provide a formal legal opinion concerning the status of the catch history associated with the AFA 9 and the implications of section 209 and section 211(b) for any sector allocations of non-pollock groundfish that may be granted to the 20 catcher processor vessels identified in Section 208 (e). The Council has asked that the NOAA GC legal opinion be available prior to Amendment 80 final action which is scheduled for October 2004. However, if at all possible, the Council would benefit from a NOAA GC opinion prior to initial review of Amendment 80 which is scheduled in June 2004.

Sincerely,

Chris Oliver
Executive Director

cc: Jim Balsiger
Sue Salveson

S:\4GAIL\NMFS AFA9.wpd

Pollock TAC, Yellowfin Sole TAC and Catch from 1995 to 2005

	Pollock TAC	Yellowfin Sole TAC	Yellowfin Sole Catch
1995	1,307,600	190,000	124,740
1996	1,226,600	200,000	129,659
1997	1,159,000	230,000	181,389
1998	1,134,800	220,000	101,154
1999	995,000	207,980	67,320
2000	1,142,000	123,262	83,850
2001	1,403,000	113,000	63,395
2002	1,486,100	86,000	72,999
2003	1,492,810	83,750	74,418
2004	1,493,050	86,075	69,046
2005	1,497,510	90,686	87,787

Source: NMFS Catch Statistics, 1995-2005. All Sectors.

Biomass, OY/ABC, TAC, catch (metric tons), and exploitation rate for walleye pollock in the eastern Bering Sea/Aleutian Islands, 1977-1996. Source: Draft Stock Assessment and Fishery Evaluation Document for Groundfish Resources in the Bering Sea/Aleutian Islands Region as Projected for 1996, NPFMC Document, November 1995 and NMFS OPUS database Jan. 1996.

Eastern Bering Sea and Aleutian Islands
WALLEYE POLLOCK

Year	BIOMASS (1)	OY/ABC (2)	TAC	CATCH	EXPLOITATION RATE
1977	7,900,000		950,000	985,995	12%
1978	7,600,000		950,000	985,713	13%
1979	6,700,000		950,000	923,385	14%
1980	6,300,000	1,300,000	1,100,000	1,016,435	16%
1981	9,000,000	1,300,000	1,100,000	1,029,021	11%
1982	10,300,000	1,300,000	1,100,000	1,013,942	10%
1983	11,200,000	1,300,000	1,100,000	1,041,389	9%
1984	10,400,000	1,300,000	1,300,000	1,180,614	11%
1985	10,900,000	1,200,000	1,300,000	1,237,489	11%
1986	9,600,000	1,200,000	1,300,000	1,235,172	13%
1987	9,600,000	1,300,000	1,288,000	1,207,154	13%
1988	9,800,000	1,660,000	1,345,000	1,360,049	14%
1989	6,771,700	1,457,900	1,345,950	1,292,543	19%
1990	6,458,300	1,603,600	1,404,039	1,352,877	21%
1991	7,007,553	1,777,460	1,385,000	1,346,464	19%
1992	6,849,000	1,566,600	1,289,580	1,438,412	21%
1993	6,746,000	1,440,700	1,251,080	1,253,749	19%
1994	8,699,000	1,418,350	1,387,600	1,371,154	16%
1995	8,711,000	1,328,700	1,307,600	1,229,705	14%
1996	7,914,505	1,346,600	1,226,600		

Note 1: Exploitable biomass of pollock not measured in Aleutian Islands since 1991.

Note 2: OYs (optimum yield) were used in Eastern Bering Sea/Aleutian Island groundfish allocations from 1977 to 1981 and are essentially equivalent to ABCs since 1982.

H&G Environmental Workgroup
2104 SW 170th Street
Burien, WA 98166
Phone (206) 660-0359
Fax (206) 243-7686

Ms. Stephanie Madsen
Chair
North Pacific Fishery Management Council
605 W 4th Avenue, Suite 306
Anchorage, AK 99501-2252

March 31, 2006

RE: Interaction of Atka mackerel SSL regulations and Amendment 80

Dear Madam Chair:

The draft Amendment 80 analysis identifies several potential issues affecting how Amendment 80 would need to be reconciled with existing sea lion regulations affecting the Atka mackerel fishery. The key issue here is whether adequate SSL protections could be achieved via harvest rate controls built into cooperative agreements in lieu of continuing the current platoon management system. Additionally, the downstream effects of cooperative management for mackerel are considered in relation to the current requirement that the cod fishery west of 178 degrees West longitude remain closed while the mackerel is open in the harvest limitation areas (HLA) within AI statistical areas 542 and 543. The H&G companies I work for on environmental issues is directly has noted the potential problem with the sea lion regulatory issues affecting the mackerel and cod fisheries and therefore we would like to take this opportunity to outline how at least equally effective SSL protections can be built into Amendment 80. We hope this information will help the Council in its consideration of what provisions need to be incorporated into Amendment 80 so as to ensure that at least equal SSL protections are in place under Amendment 80 while allowing the mackerel fishery to form fishing cooperatives. These cooperatives are needed so that the expected Amendment 80 benefits can be achieved. Finally, we provide a suggested approach for avoiding downstream effects on the AI trawl cod fishery west of 178 degrees West longitude which is tied to the regulations affecting HLA mackerel fishery.

Ensuring that at least equivalent protection measures for sea lions are in force under Amendment 80 fishing cooperatives:
Platoon management for mackerel contains regulations that divide the fleet targeting mackerel within the HLA sub-areas into two equal numbers of vessels. This was done to reduce the number of vessels allowed to fish in the HLA sub-areas within Areas 542 and 543 at any one time. The goal of these regulations was to reduce the daily removal rate of mackerel inside the two HLA sub-areas. Prior to platoons, vessels targeting mackerel tended to fish the same area simultaneously starting in Area 542 and then Area 543 with the result of high daily harvest rates. The underlying objective of dividing this localized effort into two separate groups was to reduce the possibility of competition with sea lion foraging.

The dedicated mackerel fleet since 1997 has been comprised of H&G vessels alone. For these vessels, participation in fishing cooperatives under Amendment 80 seems inherently likely. This is because the "race for fish" without cooperatives creates especially high operational costs and inefficiencies for the mackerel fishery. So it is very likely that H&G vessels with Atka mackerel fishing history in the HLA portions of areas 542 and 543 will elect to form cooperatives. To achieve the same SSL protections that existed under platoon management for the harvesting done by those core mackerel vessels, we feel that the Council simply needs to require under Amendment 80 that cooperative and inter-cooperative agreements be enforced to control harvest rates for those vessels in each HLA sub-area. Thus, for mackerel cooperatives to be authorized to operate within the non-AFA CP sector, the Council and NMFS should require cooperative and inter-cooperative agreements for H&G vessels to be in place to ensure that the daily harvests by those core mackerel vessels in the HLA sub-areas not exceed the per sub-area harvest rates from those vessels under platoon management. The yardstick here should be the rates catch per day per HLA area those vessels generated over some reasonable snapshot of recent history. This seems to be a rather straight-forward matter.

Applying a parallel approach for any non-H&G vessels that want to participate in the mackerel fishery post Amendment 80. In all probability, given the logistics of mackerel fishing in the HLA areas of 542 and 543, it is likely that only larger boats will be interested in the fishery in the foreseeable future. These will likely be AFA catcher processors or catcher vessels that are already involved in AFA cooperatives. For this reason, it is reasonable to expect that the non-H&G sector vessels that elect to fish for mackerel in the HLA sub-area fisheries would already be involved in binding cooperative agreements affecting pollock and possibly cod. This is a reasonable expectation because the AFA pollock cooperatives have successfully used cooperative agreements to allocate cod harvests among pollock cooperative participants since the formation of AFA cooperatives. So if these vessels elect to participate in the mackerel fishery under access privileges received from Amendment 80 sector allocations, these rights would simply be brought into the overall portfolio of fishing privileges held by members of AFA cooperatives. So just as for the H&G cooperatives, binding agreements that effectively spread out the harvesting between HLA areas to equalize the harvesting rates as much as possible may well also be required for non-H&G sectors.

For vessels that have not participated in the mackerel fishery since platoon management was implemented, there would be no benchmark of harvest rates per specific HLA sub-area in recent years to set as a performance standard for SSL protections. This problem is not uniquely an Amendment 80 issue, however, because even without Amendment 80 pollock catcher processors could have elected to fish for mackerel under the sideboards. This would have effectively increased the harvest rate over previous year's rates. The way the platoon system would have dealt with the additional fishing effort is simply that the effort would have been spread between the HLA sub-areas so that the increase in catch rates would not have occurred just one of the HLA sub-areas. The AFA cooperatives could be required to use binding agreements to spread the harvest between the HLA sub-areas in terms of number of vessels fishing at one time per HLA sub-area. As with the H&G sector cooperatives, annual cooperative reporting to NMFS and the Council could be required to report the harvest rates per area to ensure that the cooperatives do what is required to manage the per HLA sub area harvest rates.

A somewhat more difficult challenge is what to do with H&G or AFA sector vessels seek that do not elect to join cooperatives but seek to fish in the HLA sub-areas. While this appears to us to be a fairly unlikely outcome it certainly warrants some discussion. In this case, we feel the existing platoon management regulations should be required of those vessels, whether they are H&G vessels or not. These requirements include pre-registering with NMFS to participate in the

mackerel fishery and assignment into platoons for mackerel in the HLA portions of Areas 542 and 543. Thus for any vessels not electing to participate in binding cooperative agreements that ensure sufficient sea lion protections, the platoon management that would be required of them is exactly what would have occurred if they had elected to fish Atka mackerel this year under the current SSL measures.

Mechanism to allow cod trawling west of 178 degrees West longitude:
The final matter affecting the mackerel fishery that would need to be addressed under Amendment 80 is to modify the current regulations affecting cod trawling in the HLA areas so that openings are not necessarily triggered by closures of the HLA mackerel sub-areas. Under the present regime, cod trawling in the HLA areas cannot occur until the HLA platoon fishing has taken the sub-area TAC or is otherwise closed by NMFS. In the most likely scenario described above for use of cooperatives and inter-cooperative agreements to control daily mackerel catch rates in the HLA sub-areas, everyone targeting mackerel would do so under cooperative agreements. This would result in the outcome described in the staff's analysis where the cod fishery would not have the same trigger mechanism to create access to the cod trawl fishery in the HLA in Areas 542 and 543. We believe, however, these cooperative agreements could once again be used to control access to the cod fishery in the HLA areas once mackerel fishing is no longer taking place. This could be done by an agreement that simply set a date for closing mackerel fishing and allowing cod fishing or it could be done by an agreement that mackerel boats would suspend mackerel fishing for an agreed upon window of time. Once again, the effectiveness and farness of allowing cooperatives to manage the fleet's access to the cod fishery to the HLA areas could be reviewed under annual cooperative reporting requirements to the Council and NMFS. One addition to this that should be considered under the scenario of letting the coops manage SSL measures is that the closure date for mackerel that triggers access of the cod fishery to the HLA areas might still be pre-arranged and noticed to the Council in the annual TAC setting process. This would allow fishermen to plan their seasons around a window of time for cod fishing. Once again, if there continues to be platoon management for some vessels that decide not to participate in mackerel cooperatives, then the existing mechanism would have to be the trigger to open the cod fishery, i.e. when the platoon mackerel fisheries in the HLA are closed cod fishing in the HLA for cooperative or non-cooperative vessels would be allowed.

Thanks in advance for considering these comments. Please give me a call if you have questions or require further explanation.

Sincerely,

John R. Gauvin

DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Office of the Commissioner

Frank H. Murkowski, Governor
William C. Noll, Commissioner

April 6, 2006

Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Re: CDQ Allocation History

Dear Chair Madsen:

I have provided a table below identifying the allocation history for Council members as requested.

	Long Term Average	March 14, 2005	2006 Rollover	December 2005	May 2006
APICDA	16%	11%	14%	15%	15%
BBEDC	21%	22%	21%	20%	19%
CBSFA	6%	6%	5%	10%	8%
CVRF	25%	24%	24%	20%	22%
NSEDC	22%	22%	22%	20%	20%
YDFDA	11%	15%	14%	15%	16%

Explanation.

1. "Long-Term Average" is the average allocation from the CDQ program's beginning to date.
2. "March 14, 2005" is the so-called Blatchford recommendations.
3. "2006 Rollover" are the current allocations.
4. "December 2005" are the allocations promulgated, as requested by the Delegation.
5. "May 2006" are the allocations resulting from in-depth review by the CDQ Team.

550 W. 7th Avenue, Suite 1770, Anchorage, Alaska 99501-3510
Telephone: (907) 269-8100 Fax: (907) 269-8125 Text Telephone: (907) 465-5437
Website: http://www.commerce.state.ak.us/

Please let me know if I can answer any additional questions you may have.

Sincerely,

William C. Noll
Commissioner

cc: Council Members
CDQ Team

550 W. 7th Avenue, Suite 1770, Anchorage, Alaska 99501-3510
Telephone: (907) 269-8100 Fax: (907) 269-8125 Text Telephone: (907) 465-5437 Website: http://www.commerce.state.ak.us/

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

March 27, 2006

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Dear Stephanie,

The Council is tentatively scheduled to take final action on Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands (Amendment 80). Amendment 80 would allocate certain groundfish species to the non-American Fisheries Act (non-AFA) trawl catcher/processor fleet and allow the formation of cooperatives. As we have informed the Council, dedicated access privilege programs that allocate fish to cooperatives or individuals require enhanced monitoring of catch to ensure accurate accounting of harvest relative to these individual quotas. For purposes of the Amendment 80 allocations, this would require catch monitoring on a haul by haul basis under specific catch monitoring standards that could be costly to implement for some vessel owners.

NMFS has explored ways to reduce these costs using a flexible monitoring approach that would allow vessel owners or operators to propose a vessel specific Vessel Monitoring Plan (VMP) that would be approved by NMFS if the VMP met certain monitoring performance standards. Vessels operating under a NMFS approved VMP would be exempted from regulations prohibiting crew members in fish bins where unobserved presorting of catch can occur. As envisioned, an approved VMP would have improved NMFS' confidence that an observer could detect illegal presorting activities within a fish bin.

Council staff last described the VMP concept to the Council at the February 2006 meeting, highlighting that the agency was continuing to develop the concept. Since that time, NOAA General Counsel identified its concern with the legality and enforceability of regulations that allow individual waivers from general provisions of regulatory programs, e.g., contractual-like individual exceptions to the general regulatory prohibition on crew in bins. Difficulties also were identified that thwarted the development of regulatory criteria for VMPs for all the non-AFA trawl catcher/processors which would: (1) be enforceable, (2) consistently and effectively meet the objectives of an adequate catch monitoring program, and (3) be efficient and cost effective for the agency to implement. Further, we learned from conversations with industry that the type of VMPs being contemplated could easily be accommodated by a fairly simple set of regulatory provisions that addressed agency concerns. Specifically, vessels could use video technology, or factory modifications to ensure that an observer has an unobstructed line-of-sight from the observer sample station into the fish bin so that any sorting activity could be monitored.

For these reasons, NMFS has decided not to propose VMPs as a monitoring option for Amendment 80. Rather, vessel owners or operators would be required to choose one of the following options designed to allow an observer to monitor activity within fish bins:

1. Vessel crew would be prohibited from entering a fish bin unless the flow of fish has been stopped and an observer is given the opportunity to monitor activity with the fish bin;or
2. From the observer sample station and the location where the observer collects unsorted catch, an observer must be able to monitor all areas of the bin where crew could be located. This option could be accomplished by installingone or more viewing ports in the fish bin; or
3. A vessel owner or operator could choose to install and maintain video cameras, a monitor for the observer to monitor activities within fish bins, and a digital video recording system for all areas of the bin where crew could be located. If the video camera, monitoring or recording equipment becomes inoperable or does not effectively allow the observer to monitor activities within the fish bins, then the vessel owner/operator must comply with Option 1.

NMFS currently is working to describe the technical specifications for each of these options. Future versions of the analysis prepared for Amendment 80 will reflect these changes and associated costs. If the Council chooses to take final action in April, they should be aware that the costs of the monitoring program have changed and the current analysis does not include these revised costs. NMFS staff will be available at the April meeting to answer specific questions if they arise.

Sincerely,

for Robert D. Mecum
Acting Administrator, Alaska Region

Adjustment of the Maximum Retainable Amount Accounting Interval for Selected Groundfish Species for the Non-American Fisheries Act Trawl Catcher Processors in the Bering Sea and Aleutian Islands

NOAA Fisheries Progress Report for the North Pacific Fisheries Management Council March, 2006

In February 2006, the Council requested that NOAA Fisheries provide a discussion paper for the April 2006 meeting that describes the scope of an analysis and alternatives for a regulatory amendment to modify the current accounting period required for the maximum retainable amounts (MRAs) for selected groundfish caught by the non-American Fishery Act (AFA) trawl catcher processor (C/P) sector. Representatives from the non-AFA trawl C/P sector have requested that this regulatory amendment be implemented in 2007 to reduce regulatory discard amounts. The Council also requested that the staff describe potential regulatory changes that may be considered relevant to action on Amendment 80 to further address the MRA accounting interval for these same species.

Potential Decision Points for this Council Meeting

This discussion paper provides information on a proposal from members of the non-AFA trawl C/P sector to consider changing the current MRA accounting period for a select number of species. The report presents some decision points for the Council to review including; (1) a problem statement, (2) components and options as well as potential alternatives that may be considered for a regulatory amendment, (3) a discussion of some management, catch accounting, and accounting issues associated with the range of components and options developed, and (4) tradeoffs in program complexity and scheduling implications.

Background

Current regulations on Maximum Retainable Amounts

MRA regulations located at 50 CFR 679.20(e) establish the calculation method and MRA amounts for groundfish species that are closed to directed fishing. The MRA amount is calculated as a percentage of the retained amount of species closed to directed fishing relative to the retained amount of basis species or species groups open for directed fishing. Table 11 of 50 CFR 679 (see Table 1 in Appendix) lists retainable percentages for Bering Sea and Aleutian Island (BSAI) groundfish species. Amounts that are caught in excess of the MRA percentage must be discarded. With the exception of BSAI pollock caught by the non-AFA trawl C/P sector, current regulations limit vessels to MRA amounts at any time during a fishing trip.

A fishing trip is defined at 50 CFR 679.2 as:

> (i) With respect to retention requirements of MRA, IR/IU, and pollock roe stripping, an operator of a catcher/processor or mothership processor vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed in an area until
>
> (A) The effective date of a notification prohibiting directed fishing in the same area under § 679.20 or § 679.21;
>
> (B) The offload or transfer of all fish or fish product from that vessel;
>
> (C) The vessel enters or leaves an area where a different directed fishing prohibition applies;

(D) The vessel begins fishing with different type of authorized fishing gear; or
(E) The end of a weekly reporting period, whichever comes first.

Note: This action does not anticipate any changes to the current definition of "fishing trip" at 50 CFR 679.2

Current management function of MRAs

MRAs are the primary tool NMFS uses to regulate the catch of species closed to directed fishing. The MRA tables are a matrix of proportions. They represent a range of rates of expected or accepted incidental catch of species closed to directed fishing relative to target species. As a management tool, MRAs rely on the ability of the vessel operator to selectively catch the target species. The target species is called a basis species in regulation. The species closed to directed fishing is the incidental species. The MRA percentages are intended to slow the rate of harvest of a species when insufficient total allowable catch (TAC) or prohibited species catch (PSC) amounts are available to support a directed fishery.

NMFS prohibits directed fishing for a species to manage a specified quota for groundfish or prohibited species (e.g. salmon, crab, halibut limits). When NMFS prohibits directed fishing, retention is allowed up to an amount calculated with the MRA. The MRA tables show retainable proportions of incidental species relative to species open to directed fishing. Vessel operators calculate the MRA through three basic steps. First, they identify and calculate the round weight of the basis (or target) species on board. Next, they identify the appropriate fraction from the MRA table, and then multiply that rate against the round weight of the basis species. The calculated maximum amount limits retention of the incidental species. The vessel discards catch of the incidental species in excess of that amount to avoid violation of current regulation. The vessel operator calculates the MRA at any time for the duration of the fishing trip. The sector proposal for calculating the MRA referred to the current accounting period as 'instantaneous.'

A fishing trip begins with harvesting fish. By regulation, several conditions end a trip for a C/P (based on whichever condition occurs first): (1) NMFS prohibits directed fishing for any species in the federal reporting area where the vessel is fishing, (2) the vessel offloads, (3) the vessel moves into an area where a directed fishing closure exists, (4) the vessel switches gear, or (5) the weekly reporting period ends. A trip defines the period during which a vessel operator calculates the amount of incidental species retained relative to the basis species.

Current regulations also grant CPs not listed under the AFA special exceptions from the MRA regulations regarding the incidental catch of pollock where under some circumstances the instantaneous computation of the MRA does not apply. Instead, the MRA is calculated at the point of offload. Under these current regulations, BSAI groundfish vessels may retain pollock at any rate during a fishing trip, as long as at the end of the trip they meet the required MRA proportion and as long as improved retention and improved utilization (IR/IU) requirements are met. IRIU regulations for pollock supersede some of the retention flexibility for current MRA requirements by mandating that vessels must retain up to 100 percent of all pollock until reaching the MRA.

After NMFS prohibits directed fishing, MRAs are the predominant regulation controlling catch. The MRA rate regulates incidental species catch in other groundfish target fisheries. Ideally, the application of an MRA rate slows catch of a species so that catch depletes the TAC by the end of the year. Beyond management of a TAC to obtain optimum yield, MRA calculations perform two additional functions. First, MRAs limit retention to species' expected or accepted incidental catch rate. Alternately, the MRA functions as a trip limit for retention of incidental catch of a species. This function allows for limited targeting of a species up to the MRA amount ("topping off").

For several incidental/basis species combinations, the use of low MRA rates may reduce the incentive for topping off that would occur in the absence of this tool. In these cases, the MRAs represent the expected catch of an incidental species absent deliberate action by the vessel operator to maximize that incidental

catch. The requirement to not exceed MRA proportion at any time during a trip limits the vessel operators' ability to maximize catch. This restriction is used to limit total catch of species low in TAC amount (relative to the species caught in the directed fisheries), at greater risk of being caught in excess of the overfishing level, and high in monetary value. Some rockfish species meet these criteria.

Current regulations establish a relatively high MRA for particular species. For example, a generous rate of 35 percent was established for Greenland turbot relative to flathead sole (see Table 1 in Appendix) as a basis species. Experience demonstrated the directed trawl Greenland turbot fishery incurred high halibut bycatch rates. In response, managers closed the directed fishery for trawl gear and increased the MRA relative to flathead sole. The higher MRA allows for increased indirect targeting on Greenland turbot and slowed the bycatch of halibut. In contrast to the previous example, regulations encourage 'topping off.' The MRA functions as a management tool allowing catch of Greenland turbot and more moderate halibut bycatch. For other species where restricting catch to an incidental rate is not a consideration, regulations establish a default MRA rate of 20 percent.

Brief history of flatfish retention and discards in the BSAI

MRAs and the associated accounting intervals were developed in regulation during a period when programs to increase retention and utilization of retained catch in the North Pacific were relatively new. Prior to1997, when regulations for an IRIU program were implemented, the Council displayed interest in increasing both the rate and amount of groundfish retained in the North Pacific. While improvements have been made in the amount and rate of groundfish retention for all BSAI groundfish sectors, the non-AFA trawl C/P sector currently exceeds groundfish discard rates routinely achieved by other BSAI groundfish sectors. Catch, retention, and discard data (Table 1) identify relative amounts and rates by sector and year. Appendix Table 2 shows discards by species for the non-AFA trawl C/P sector for the years 1999-2004. Appendix Table 3 shows the same discard data as a percentage of total catch. The non-AFA trawl C/P sector discard of rock sole fluctuated between 1999 and 2004 from 8,600 metric tons in 1999 to 23,600. In 2004 discards for this sector were estimated to be18,900 mt. In the flatfish fisheries, discards from the non-AFA trawl C/P sector have fluctuated but not improved during this period varying from 11,200 mt in 1999, 7,700 mt in 2001, and 11,500 mt in 2004. "Other flatfish" and groundfish species discards varied through this period without evident trends.

A number of factors are likely to have contributed to generally higher total discards and percentage of discard between the non-AFA trawl C/P sector and other BSAI groundfish sectors. These include the type of bottom trawl gear authorized for use in this fishery; the locations that this trawl gear is deployed; mixed stock nature and distribution of the species; regulations that apply to this sector; and market and other economic tradeoffs associated with each vessel and the sector.

Surimi and fillet trawl C/P sector discards of Atka mackerel remained relatively stable from between 400 mt to nearly zero. Yellowfin sole discards varied, but show a decline from 1999 (200 mt) to 2004 (80 mt). The pot C/P sector realized little change in discard amounts while the longline catcher processing sector saw yellowfin sole discards increase in each of the three years.

BSAI catch accounting data from 1999 to 2004 (Table 1 and, Appendix Tables 2 and 3) highlight some additional differences in catch, retention, and discard between the diverse mix of species caught and retained by non-AFA trawl C/P sector and other BSAI sectors.

- As identified in Table 1, in 2004, the non-AFA trawl C/P sector retained catch of groundfish was approximately 67.6 percent of total catch. In comparison with all other combined BSAI groundfish sectors, retained catch in 2004 was approximately 3.3 percent of total catch of those sectors.
- Of 128.6 mt of discarded groundfish catch from all BSAI sources in 2004, 76.3 percent of reported discards are estimated to be from the non-AFA trawl C/P sector.

- Flatfish make up 55.7 percent of the catch for non-AFA trawl C/Ps in the BSAI and 55.1 percent of the discarded catch.
- In 2004, surimi and fillet trawl C/P sector's groundfish discards accounted for 0.5 percent of discarded catch. Flatfish accounted for approximately 68 percent of the surimi and fillet trawl C/P sector's discarded groundfish, but only 6 percent of this sector's total discards.
- In 2004, the longline C/P sector's total discards were 3.3 percent of total catches for that sector, and flatfish species accounted for approximately 13.5 percent of those discards.
- In 2004, the longline C/P sector's retention of non-pollock, non-Pacific cod fish accounted for 4.2 percent of total catch while discards in the same category accounted for 12.24 percent of total catch. Thus, the sector had an estimated non-pollock, non-Pacific cod retention rate of 25 percent.
- In 2004, the shore plant, floater, and mothership sector's total discards was approximately 2 percent of that sector's total catch.
- In 2004, yellowfin sole was approximately 1.3 percent of total catches for the pot C/P sector.

Table 1. Discarded catch, total catch, and percent discarded as percent of total catch in BSAI fisheries in 1999-2004, by sector, (1,000's mt)

year	1999	2000	2001	2002	2003	2004
non-AFA Trawl Catcher Processors (HT-CP)						
Total Discard	88.67	90.33	70.09	87.3	82.82	98.12
Total Catch	268	294	272	287	273	303
Percent Discarded by sector	33.1%	30.7%	25.8%	30.4%	30.3%	32.4%
Surimi and Fillet Trawl Catcher Processors (AFA)						
Total Discard	7.91	9.93	3.33	3.12	1.87	2.72
Total Catch	445	507	613	653	533	529
Percent Discarded by sector	1.8%	2.0%	0.5%	0.5%	0.4%	0.5%
Pot Catcher Processors						
Total Discard	0.1	0.2	0.18	0.06	0.04	0.04
Total Catch	4	3	3	2	2	3
Percent Discarded by sector	2.5%	6.7%	6.0%	3.0%	2.0%	1.3%
Longline Catcher Processors						
Total Discard	15.82	20.25	19.25	17.05	14.8	17.4
Total Catch	113.00	126.00	135.00	130.00	121.00	122.00
Percent Discarded by sector	14.0%	16.1%	14.3%	13.1%	12.2%	14.3%
All Shore Plants, Floaters, and Motherships						
Total Discard	21.58	11.9	6.72	12.05	12.48	10.36
Total Catch	445	507	613	653	533	529
Percent Discarded by sector	4.8%	2.3%	1.1%	1.8%	2.3%	2.0%

Source: data prepared for Amendment 79 from Northern Economics and NMFS catch accounting data.

Economic and Regulatory Discards in the non-AFA trawl C/P sector

Groundfish discards are defined in regulation as either "economic" or "regulatory." Economic discards are targeted fish that are not retained because the harvester doesn't want them (undesirable size, sex, quality, etc.). Regulatory discards are fish (targeted or not) required by regulation to be discarded, retained not exceeding a specified amount/rate, or to be retained but not sold. When MRA regulations require catch of an incidental species to be discarded, the decision to discard incidental catches may be influenced by many factors. Compliance with regulation as catch of an incidental species is approaching some retention limit may be one factor, but other variables related to profit seeking may influence a decision to not retain catch. In the non-AFA trawl C/P fleet, data on retention of flatfish species during periods where directed fisheries are open versus periods when retention is restricted through an MRA, suggests that this policy may have impacted retention decisions. As shown in Table 2, closures of the rock sole, flathead sole, and "other flatfish" fisheries to directed fishing occurred regularly from 1999-2002. While some discards during these closures may be economic discards, no discards that occur during open periods are likely to be regulatory discards. Table 3 shows retained catch and discards of rock sole, flathead sole, and "other flatfish" during periods open and closed to directed fishing from 1999-2002. Over the four year period, 22 percent of total discards of these species may have been regulatory discards.

Table 2. Rock sole/flathead sole/"other flatfish" fishery closures 1999-2002

Year	1999		2000		2001		2002	
Period	From	To	From	To	From	To	From	To
Closure #1	1-Jan	20-Jan	1-Jan	20-Jan	1-Jan	20-Jan	1-Jan	20-Jan
Closure #2	26-Feb	30-Mar	4-Mar	1-Apr	20-Mar	1-Apr	1-Mar	1-Apr
Closure #3	27-Apr	4-Jul	30-Apr	4-Jul	27-Apr	1-Jul	20-Apr	30-Jun
Closure #4	31-Aug	31-Dec	25-Aug	31-Dec	24-Aug	31-Dec	29-Jul	31-Dec

Source: NOAA Fisheries Trawl Closure Tables, 2003.

Table 3. Retention and discard amounts of rock sole, flathead sole, and "other flatfish" in open and closed flatfish fisheries in the non-AFA trawl C/P Sector from 1999-2003

Year	1999		2000		2001		2002		2003	
Status	Retained	Discarded	Retained	Discarded	Retained	Discarded	Retained	Discarded	Retained	Discarded
Open (mt)	19,534	23,095	25,420	30,165	12,496	26,737	13,168	23,213	17,048	8,382
Open (%)	30.2	35.7	33.2	39.4	23.9	51.2	20.0	35.3	36.3	17.8
Closed (mt)	16,018	6,074	14,378	6,551	7,217	5,728	18,072	11,333	12,031	9,500
Closed (%)	24.7	9.4	18.8	8.6	13.8	11.0	27.5	17.2	25.6	20.2

Source: NOAA Fisheries Trawl Closure Tables, 2003.

Other regulatory discards also contribute to total discards by the non-AFA trawl C/P sector. The non-AFA trawl C/P sector is not allowed to conduct directed fishing for many high value species, including sablefish and Greenland turbot, and some rockfish. In addition, many discards of yellowfin sole are regulatory discards. In 2002, the non-AFA trawl C/P sector discarded over 15,800 mt of pollock, 20,000 mt of rock sole, yellowfin sole, flathead sole, and "other flatfish", as well as over 800 mt of sablefish and Greenland turbot during periods for which directed fishing for those species was closed. In short, approximately 36,000 mt (44 percent) of the 81,000 mt of groundfish discarded by the non-AFA trawl C/P sector may be regulatory discards. Cumulative discards by species groups are shown in Figure 1, along with total retained catch. Figure 2 is similar to Figure 1 except that economic discards and possible regulatory discards are shown separately.

Figure 1. Cumulative discarded and retained catch of non-AFA trawl C/Ps in 2002, byspecies group
(Source: Developed by Northern Economics using Blend Data provided by NOAA Fisheries-AFSC, 2002.)

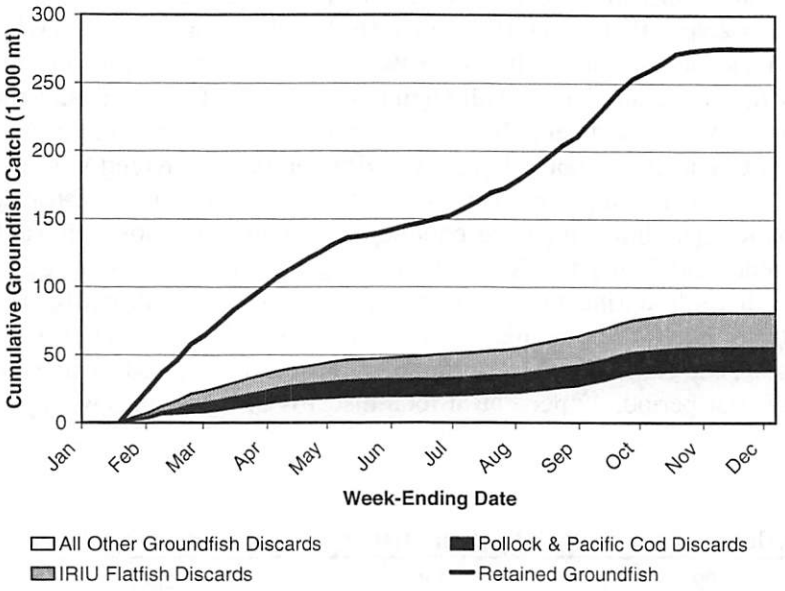
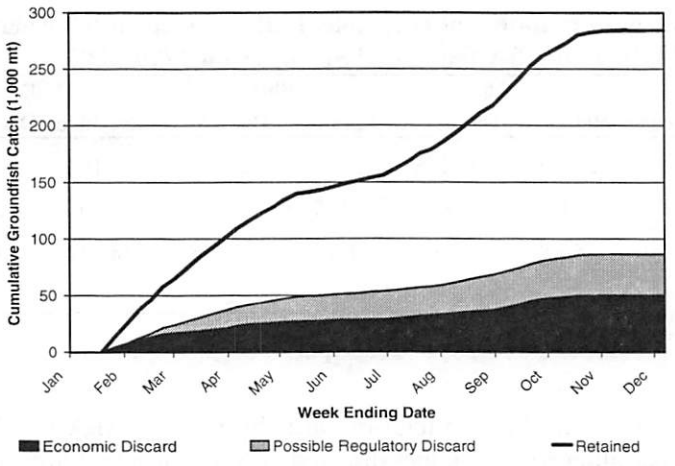


Figure 2. Cumulative discarded and retained catch of non-AFA trawl C/Ps in 2002, by discard type
(Source: Developed by Northern Economics using Blend Data provided by NOAA Fisheries-AFSC, 2002.)



While regulatory discards account for a considerable proportion of the non-AFA trawl C/P sector's discards, the regulations requiring these discards were implemented to meet specific objectives. For example, one objective has been to ensure that participants in trawl flatfish fisheries do not take more than an annually specified share of halibut, pollock, and sablefish that are reserved for competing sectors through cooperatives and/or individual fishing quota (IFQ) programs. The proposed regulatory amendment explores changing the accounting accounting interval for MRAs of selected species as a tool to reduce regulatory discards.

Review of Draft Problem Statement

NMFS has drafted a problem statement for Council review with some key features. The problem statement identifies the non-AFA trawl C/P sector as the intended group for adjusting MRA accounting. The MRA accounting adjustment is proposed for this sector because of its history of groundfish retention and utilization challenges resulting from specialized gear and multi-species fisheries this sector participates in. The non-AFA trawl C/P sector includes all of the vessels defined by Congress in the 2005 BSAI vessel buyback program. The Council could consider adding other sectors to the analysis, however, expanding the scope to additional sectors could also impact the time required to complete an analysis. The problem statement also focuses on evaluation of two MRA accounting periods, weekly and offload, although others could be considered.

The problem statement also assumes that for species considered in this proposal, the current MRA calculation that occurs throughout the trip instantaneously compels vessels to discard incidental catch in excess of the MRA. Opportunity for increased retention would be provided if the calculation is performed at the end of the trip or at the time of offload. This could be accomplished by allowing for more efficient use of basis species caught during the trip to increase total retention by the end of the trip. Where market conditions and other economic factors are favorable for retaining incidental species, vessel operators could have greater flexibility, to retain for incidental species caught early in the fishing trip with an increase in the MRA accounting interval.

> Problem Statement (draft): The non-AFA trawl C/P sector (authorized under the BSAI groundfish buyback program in the Consolidated Appropriations Act of 2005) participates in multispecies bottom trawl fisheries with naturally occurring incidental catch rates of nontarget groundfish, that are higher than many other BSAI sectors. Efforts to improve retention of many groundfish species utilized by this sector may be restrained by regulations at 50 CFR 679.20(e) that establish maximum retainable allowances (MRA) that are enforced at any time during a fishing trip. The sector has reported that the current instantaneous MRA accounting period forces the discard of incidentally caught species that otherwise would be retained. MRAs are a widely used groundfish management tool to reduce targeting on a species and slow harvest rates as an allocation is approached. However, sometimes species managed with MRAs must be discarded when incidental catch at anytime during a fishing trip exceed the MRA, even though economic incentives exist to retain that species and overall catch at the end of a fishing trip would not exceeded the MRA. Thus, the instantaneous period of MRA accounting requires discard of some species, particularly at the beginning of a fishing trip, that might otherwise be retained without undermining the intent of the MRA as a tool to slow overall harvest rates. This regulatory amendment would evaluate an extension of the MRA accounting period for multiple groundfish species to provide increased opportunity for retention of species harvested by the non-AFA trawl C/P sector and, while not subjecting incidentally caught species to increased conservation concerns.

Review Components for changing MRA Accounting

NMFS has identified the following components that could be addressed in a proposed MRA regulatory amendment, subject to review and revision by the Council:

Component 1: Define Species – Modify the accounting interval for all groundfish species (excluding pollock, sablefish, Alaska plaice, other species, and squid). This includes the following species: yellowfin sole, rock sole, flathead sole, Atka mackerel, Pacific Ocean perch, "Other flatfish", arrowtooth flounder, Greenland turbot, and rockfish.

> **Option 1:** Applies to yellowfin sole, rock sole, flathead sole, "Other flatfish" and arrowtooth flounder.

Option 2: Applies to Amendment 80 species (yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch) as well as "Other flatfish", and arrowtooth flounder.

Component 2: Define Sector – Any change in the current MRA accounting interval applies only to the non-AFA trawl catcher processor sector (authorized under the BSAI groundfish buyback program in the Consolidated Appropriations Act of 2005)

Component 3: Define Time Period – The MRA accounting period for species defined in Component 1 would be changed from any time during a fishing trip to:

Option 1: the end of a reporting week[1], or
Option 2: at the time of product offload.

Review of Potential Alternatives for MRA accounting period of selected species

Alternative 1. No action, and no change in MRA accounting period.

Alternative 2. In the BSAI, allow the calculation of the MRA of yellowfin sole, rock sole, flathead sole, "other flatfish", and arrowtooth flounder to occur at *the end of a reporting week*, for the non-AFA trawl catcher processor sector. [1]

Option: Include Aleutian Islands Pacific Ocean perch and Atka mackerel.

Alternative 3. In the BSAI, calculate the period of accounting for MRA of yellowfin sole, rock sole, flathead sole, "other flatfish", arrowtooth flounder, Atka mackerel and Aleutian Islands Pacific Ocean perch at *the time of an offload*, for the non-AFA trawl catcher processing sector.[1]

Option: Include Greenland turbot and rockfish species in offload accounting.

Structure of analysis and major issues

Analysis for the MRA accounting adjustment proposal

If the Council chooses to proceed with a regulatory amendment for the MRA accounting interval an EA/RIR/IRFA evaluating some environmental and economic effects of the proposed action would be developed. NMFS does not have access to sufficient data on market prices of products, sector and vessel cost data, or management and sector behavioral models to explain or project the change in retention or economic consequences of any of the proposed alternatives. Thus, the analysis for this proposed regulatory amendment would be largely a qualitative exercise.

The analysis would be organized to evaluate the components and alternatives compared with the status quo. Under the current set of components and three alternatives, the analysis could focus on the selection tradeoffs for the two alternative accounting intervals, and the optimum combination of species to include in the MRA accounting adjustment program. In addition to any components the Council requests, the tradeoffs to be explored would include the species mix most likely to be helpful to the sector for increasing retention versus in-season management catch accounting risk or other conservation concerns.

[1] The following regulation defining a fishing trip in current regulations would still apply to Component 2 and 3 and Alternative 2 and 3:
(A) or on the effective date of a notification prohibiting directed fishing in the same area under § 679.20 or § 679.21;
(B) or the vessel enters or leaves an area where a different directed fishing prohibition applies. For example, when a vessel engages in directed fishing in the AI from the BS (or BS to the AI).

While much of the analysis would be qualitative, some data would be drawn from Amendment 80 and the pollock MRA analysis, while additional data reports may need to be generated to evaluate management implications for species in the "Other flatfish" category. Effects analyses may include discussion of tradeoffs between the two or more MRA accounting intervals and the factors affecting them, and the expectation for a given accounting interval and species to achieve increased retention. Also, discussion of conservation, management risk, and accounting issues associated with any given accounting interval/species combination would be included.

Factors effecting whether a weekly or offload accounting interval will increase retention of a corresponding incidental species.

The analysis for this action would present a qualitative discussion of the potential for Alternative 2 or Alternative 3 to increase retention of a given incidentally caught species. Under Alternative 3, extending MRA accounting to the point of offload would, by definition, effectively increase the length of a fishing trip. Under Alternatives 2 and 3, three (rather than five) conditions would define the end of a fishing trip: (1) vessel offloads, (2) NMFS prohibits directed fishing, and (3) vessel movement to an area where a different directed fishing closure applies. The two eliminated conditions are that the vessel switches gear and a weekly reporting period ends. The elimination of gear switching has little impact on trip status. Trawl C/Ps rarely switch gear within the trawl category (between non-pelagic and pelagic gear), but never switch between trawl, hook-and-line, pot, or jig gear.

Under Alternative 3, extending MRA accounting beyond a weekly reporting period to a point of offload, changes the application of the definition of a trip and may increase the amount of retained incidental species. Typically, vessels offload every 20 to 25 days. Absent any other trip ending events, a trip increases from a maximum of seven to as many as 25 days. Especially in combination with elimination of the instantaneous calculation requirement, increased trip time is likely to allow vessels more opportunity to encounter incidental species and accumulate basis species. NMFS and the Council created the weekly reporting period trip limit to deliberately reduce the opportunity to directly or indirectly target incidental species.

Improvements in pollock retention following recent changes to pollock MRA accounting interval regulations.

While many economic and biological factors may impact the vessel operator's decision to retain a species, the 2004 regulations that extend the accounting interval for the BSAI pollock fishery provide some insight to retention practices with respect to adjustments to the MRA accounting period. The EA/RIR/IRFA for the pollock MRA projected that under conditions where retention of pollock could increase profitability of non-AFA trawl C/P sector deliveries, the policy of extending the accounting period was likely to increase retention of pollock. This program was implemented on June 14, 2004, and during 2005, retention of pollock has increased in some months (Figure 3). While the reported 2005 increases in non-AFA trawl C/P sector pollock retention may not be directly transferred to the species considered in Alternatives 2 and 3, they suggest a potential connection between relaxed MRA accounting intervals and improved retention.

The incidental catch of pollock through May 7, 2005 was 22,600 mt which was less than the same time period in 2004 (26,300 mt; Figure 3). The total groundfish catch in the non-pollock fisheries for January through April is about 236,000 mt for both 2004 and 2005, indicating an average incidental catch rate of pollock in those fisheries of about 10 percent. Roughly 40 percent of the pollock incidental catch occurs in the Pacific cod target and the remainder in the yellowfin sole, rock sole, and flathead sole fisheries (in descending order).

The current exception for MRA accounting of pollock allows a trip to be defined solely at the point of offload. Under AFA, NMFS closes pollock to directed fishing for all vessels except those authorized under the AFA and the Community Development Quota program. The two additional trip conditions are

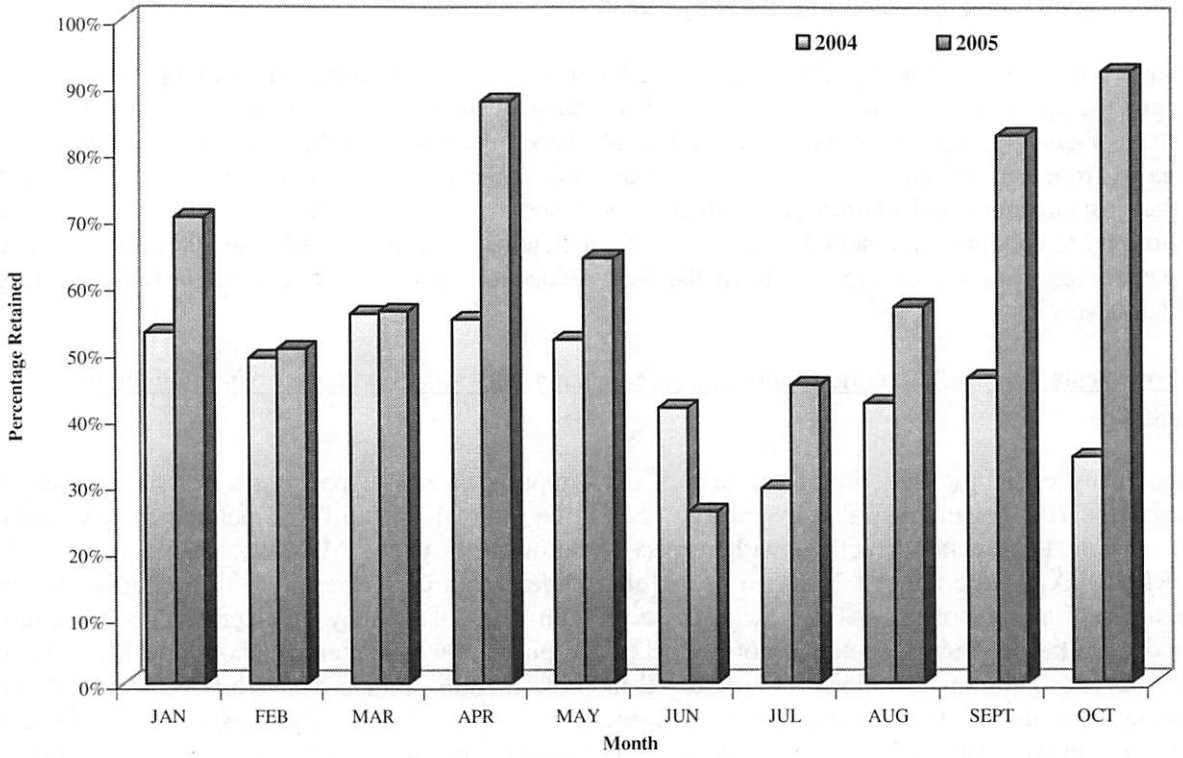
not relevant because pollock is closed to directed fishing the entire year. The two relevant conditions are directed fishing prohibitions and vessel movement into an area with a different directed fishing closure. When either condition is invoked, trip length is limited relative to the offload definition.

If the MRA is calculated at the time of offload, vessel operators have the option to retain and utilize additional pollock. Choosing to retain incidental species at an early point in a trip could increase the probability that a maximum amount of incidental species could eventually be caught for each trip. Front loading assumes enough basis species are required to be caught by the trip end date, otherwise, incidental species are discarded.

In the non-pollock fisheries, pollock retention rates (i.e., of the total incidental pollock caught, the proportion that was retained) are highest in the hook-and-line C/P Pacific cod target (87%) with a total catch of 1,453 mt of pollock. Within the flatfish targets, total catch of pollock from January to May dropped by 14 percent from 23,448 mt in 2004 to 20,143 mt in 2005. However, retention rates increased from 54 percent in 2004 to 60 percent in 2005 during the same period. Fewer pollock were caught but retention rates were higher.

Figure 3. Monthly

2004/2005 Retention of Pollock by the H&G Fleet



For non-pollock species, the current status of instantaneous accounting limits the amount of indirect targeting of highly valued incidental species. The proportions that constitute many MRAs were designed to reflect the upper end of expected incidental catch rates.

Effect of changing MRA accounting on retention of species closed to directed fishery.

MRA accounting changes may cause the current MRA to be less limiting to retention of incidental catch, particularly when its calculation occurs at the end of a trip (Alternative 3). Vessel operators have an economic incentive to maximize the value of each trip or aggregation of trips. For example, if Alternative 3 were to include certain rockfish species (e.g. shortraker rockfish) it would provide increased opportunity to top-off on higher valued incidental species early in the trip rather than accumulating them

in an incidental manner. Intentional indirect target behavior could increase the overall catch of species that have closed other target groundfish fisheries due to overfishing concerns in the past. While the proposal accomplishes discard reduction and accounting simplification, depending upon which species are included, the relaxed accounting regulations could encourage greater catch of incidental species that require protection.

In 2005, Bering Sea rockfish were closed to directed fishing for the entire year. Catch for most rockfish species was moderate relative to the TAC. Catch did not approach overfishing. However, the status of groundfish stocks changes each year, sometimes dramatically. The thrust of rockfish management is to disassociate species complexes into their constituent species. A greater number of species categories with smaller allowable biological catches and overfishing levels increases the potential for a species to reach overfishing levels. Thus, it will be important to carefully consider which species are good candidates for increased MRA accounting based upon management risk and uncertainty.

Historically, indirect targeting of rockfish species has driven catch levels high enough to approach overfishing levels. When fisheries are closed to prevent overfishing, some annual revenues in this sector are likely foregone as the sector substitutes effort into the next best target alternative. In the BSAI, shortraker rockfish are incidentally caught in several directed fisheries. Those fisheries include AFA pollock; IFQ sablefish and halibut, CDQ sablefish and halibut; non-pelagic trawl Pacific cod, Atka mackerel, Pacific Ocean perch, and arrowtooth flounder; hook-and-line Pacific cod, and Greenland turbot. An action to prevent overfishing of shortraker rockfish considers curtailing or closing of some or all of these fisheries. Alternative 2 along with Option 1 are intended to ameliorate conservation risks of targeting on species such as rockfish, which is at risk of overfishing or reaching a TAC.

Effect of Amendment 80 on modification of MRA accounting period for the non-AFA trawl C/P sector

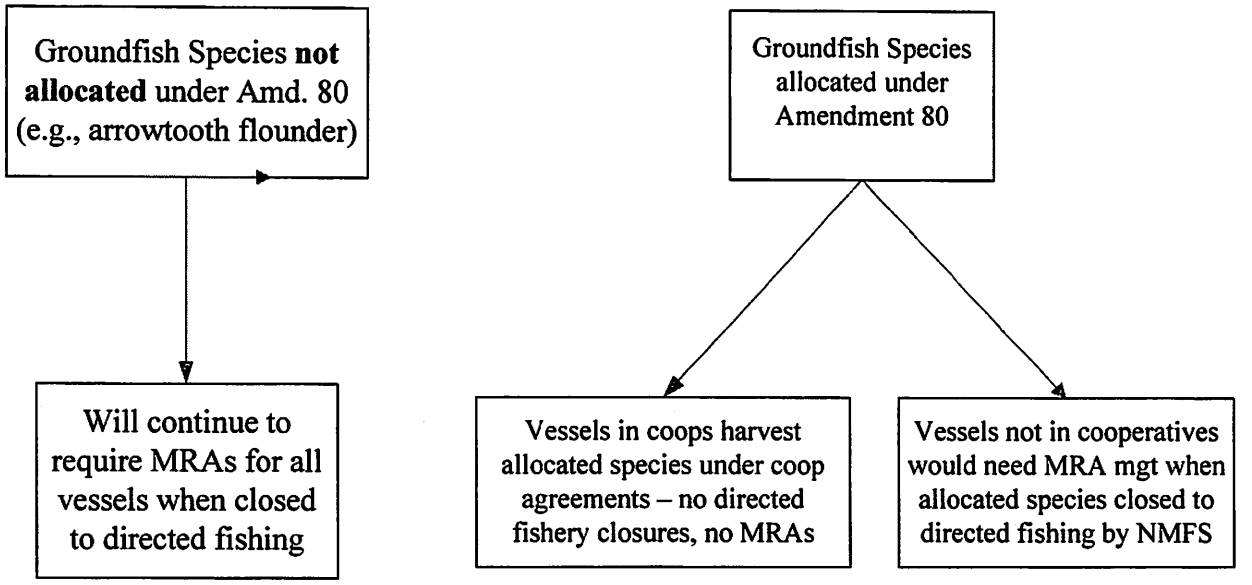
Depending on the preferred alternative adopted by the Council for Amendment 80, MRAs would be moot for the groundfish species allocated to the non-AFA trawl C/P sector and subsequently to cooperatives (Figure 4). However, MRAs still would be applicable for all non-allocated and groundfish allocated to the sector, but fished outside of cooperatives. This premise assumes that co-op allocations of groundfish allocated to the non-AFA trawl C/P sector would be managed as "hard caps" by cooperatives under contractual agreements and that NMFS would not directly manage co-op allocations using directed fishery closures. Cooperatives would be expected to mange their respective allocations to meet both directed and incidental catch needs and cease fishing when an allocation is reached. *Thus, the rulemaking that would implement Amendment 80 would remove the applicability of MRAs to vessels participating in a cooperative for the species allocated under Amendment 80 (yellowfin sole, rock sole, flathead sole, Atka mackerel, and Aleutian Islands Pacific Ocean perch). This action would be necessary regardless of any change to the MRA accounting period now under consideration by the Council.* MRAs for co-op participants would continue to be applied for non-allocated species (e.g., arrowtooth flounder, "Other flatfish", Greenland turbot) and any change to the MRA accounting period under consideration by the Council for these species would continue under Amendment 80 for *all vessels* in the non-AFA trawl C/P sector, whether or not they participate in a co-op.

Species allocated under Amendment 80, but fished outside of cooperatives, would continue to be directly managed by NMFS using directed fishing closures and species-specific MRA restrictions. Thus, vessels in the non-AFA trawl C/P sector that do not participate in a cooperative during a fishing year would not be exempt from any MRA restrictions. Further, any change to the accounting period for all species-specific MRAs now being considered by the Council would continue under Amendment 80 for vessels not participating in a cooperative.

In summary, Amendment 80 by itself would drive changes to the existing MRA regulations to exempt co-op allocations from MRA restrictions that the Council should recognize in its final action on this amendment. Any change to the existing MRA accounting period for a species to enhance the opportunity

for retention, whether or not that species would be allocated under Amendment 80, is a separate regulatory action that can be independently developed and implemented at any time.

Figure 4. Diagram showing when MRAs apply to vessels in the non-AFA trawl C/P sector under Amendment 80, assuming allocated species are managed under "hard caps."



Additional elements and effects to evaluate in an EA/RIR/IRFA

- Provide a management-based evaluation for including sensitive species such as Greenland turbot and rockfish in preferred alternative and how they differ by type of accounting requirement. Describe which of the species may be more amenable to weekly versus offload accounting.
- Evaluate tradeoffs for each species in the "Other flatfish" category. Some species in the "Other flatfish" category could be overfished with relaxed MRA accounting.
- Update tables showing retention and discards of candidate MRA species by management component. This would include yellowfin sole, Arrowtooth, rock sole, rex sole, Pacific Ocean perch, Atka mackerel, "Other flatfish," and others.
- Evaluate applicability of existing regulatory text for pollock MRA as it applies to MRA accounting adjustment for the non-AFA trawl C/P sector, noting any changes to regulatory text.

Scheduling for Analysis and Amendment Package

The non-AFA trawl C/P sector has expressed considerable interest in having this MRA regulatory amendment implemented as soon as possible to provide another tool to reduce bycatch. The action does not need to be implemented on the start date of the fishing year to be of assistance to the fleet. If, however, the Council would like to relieve these restrictions as quickly as possible, implementation would be influenced by the following factors.

1. Keep the scope of the sectors included in the final action limited to the non-AFA trawl C/P fleet.
2. Simplify the proposed regulatory amendment by limiting the number of species affected (for example to the species identified in Component 1 - Option 1).
3. Choose an MRA accounting period (such as weekly) that is not demanding for NMFS to evaluate from a management and accounting perspective.

Optimistic case schedule for proposed regulatory amendment for change to MRA accounting for selected species in non-AFA trawl C/P fisheries:

2006	
June 8	Council initial review
October 5	Council final action
October 20	Begin regional review of EA/RIR/IRFA
October 30	Proposed rule starts making rounds around the Region
November 24	Proposed rule sent to DC
December 22	Publish proposed rule in FR (45-day comment period) pending secretarial approval
2007	
February 8	Comment period ends
February 28	Revisions to the EA/RIR IRFA and construction of FRFA complete.
March 13	Final rule starts making rounds around the Region
March 30	Final rule to D.C.
April 28	Publish final rule
May 31	Effective date

Appendix Table 1. Table 11 to Part 679–BSAI Retainable Percentages *(Updated 10/18/02)*

BASIS SPECIES		INCIDENTAL CATCH SPECIES[5]															
		Pollock	Pacific cod	Atka mackerel	Alaska plaice	Arrow-tooth	Yellow-fin sole	Other flatfish[2]	Rock sole	Flathead sole	Green-land turbot	Sable-fish[1]	Short-raker/ rougheye	Aggregated rockfish[6]	Squid	Aggregated forage fish[7]	Other species[4]
110	Pacific cod	20	na[5]	20	20	35	20	20	20	20	1	1	2	5	20	2	20
121	Arrowtooth flounder	0	0	0	0	na[5]	0	0	0	0	0	0	0	0	0	2	0
122	Flathead sole	20	20	20	35	35	35	35	35	na[5]	35	15	7	15	20	2	20
123	Rock sole	20	20	20	35	35	35	35	na[5]	35	1	1	2	15	20	2	20
127	Yellowfin sole	20	20	20	35	35	na[5]	35	35	35	1	1	2	5	20	2	20
133	Alaska Plaice	20	20	20	na[5]	35	35	35	35	35	1	1	2	5	20	2	20
134	Greenland turbot	20	20	20	20	35	20	20	20	20	na[5]	15	7	15	20	2	20
136	Northern	20	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
141	Pacific Ocean perch	20	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
152/ 151	Shortraker/ Rougheye	20	20	20	20	35	20	20	20	20	35	15	na[5]	5	20	2	20
193	Atka mackerel	20	20	na[5]	20	35	20	20	20	20	1	1	2	5	20	2	20
270	Pollock	na[5]	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20
710	Sablefish[1]	20	20	20	20	35	20	20	20	20	35	na[5]	7	15	20	2	20
875	Squid	20	20	20	20	35	20	20	20	20	1	1	2	5	na[5]	2	20
Other flatfish[2]		20	20	20	35	35	35	na[5]	35	35	1	1	2	5	20	2	20
Other rockfish[3]		20	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Other species[4]		20	20	20	20	35	20	20	20	20	1	1	2	5	20	2	na[5]
Aggregated amount non-groundfish species		20	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20

1 Sablefish: for fixed gear restrictions, see 50 CFR 679.7(f)(3)(ii) and 679.7(f)(11).

2 Other flatfish includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Alaska plaice, and arrowtooth flounder.

3 Other rockfish includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch; and northern, shortraker, and rougheye rockfish. The CDQ reserves for shortraker, rougheye, and northern rockfish will continue to be managed as the "other red rockfish" complex for the BS.

4 Other species includes sculpins, sharks, skates and octopus.
Forage fish, as defined at Table 2 to this part are not included in the "other species" category.

5 na = not applicable

6 Aggregated rockfish includes all of the genera *Sebastes* and *Sebastolobus*, except shortraker and rougheye rockfish.

7 Forage fish are defined at Table 2 to this part.

Appendix Table 2. Discarded catch in BSAI fisheries in 1999-2004, by species and processing component

Species & Sector	1999	2000	2001	2002	2003	2004
	Discarded Catch (1,000 mt)					
Non-AFA Trawl Catcher Processors						
Atka Mackerel	4.70	2.60	4.31	7.4	11.73	10.67
Arrowtooth Flounder	6.80	5.50	6.68	5.5	6.54	11.38
Flathead Sole	2.70	3.30	2.13	2.6	2.68	3.52
"other flatfish"	12.50	12.77	8.86	14.2	10.79	9.88
Other Groundfish	7.30	8.80	8.54	9.7	5.90	6.20
Pacific Cod	1.30	0.70	0.79	1.1	0.72	0.45
Pollock	14.95	14.60	14.45	15.9	13.24	19.36
Rockfish	6.80	5.50	7.59	5.1	6.69	6.00
Rock Sole	20.00	23.56	8.60	15.3	13.83	18.91
Turbot/Sablefish	0.40	0.28	0.49	0.3	0.21	0.30
Yellowfin Sole	11.22	12.72	7.65	10.2	10.49	11.45
Surimi and Fillet Trawl Catcher Processors (AFA)						
Atka Mackerel	0.60	0.00	0.00	0.00	0.18	0.01
"other flatfish"	1.50	1.65	0.77	0.75	0.42	0.71
Other Groundfish	0.78	4.20	1.04	0.84	0.29	0.63
Pacific Cod	0.40	0.10	0.08	0.02	0.01	0.03
Pollock	2.76	1.34	0.32	0.19	0.19	0.14
Rockfish	0.10	0.10	0.37	0.24	0.30	0.05
Rock Sole	0.90	1.80	0.62	0.76	0.35	0.77
Turbot/Sablefish	0.00	0.00	0.03	0.01	0.01	0.00
Yellowfin Sole	0.87	0.74	0.10	0.31	0.12	0.38
Pot Catcher Processors						
Atka Mackerel	0.00	0.00	0.00	0.00	0.00	0.00
"Other flatfish"	0.00	0.00	0.10	0.00	0.00	0.00
Other Groundfish	0.10	0.10	0.04	0.02	0.02	0.01
Pacific Cod	0.00	0.00	0.02	0.02	0.00	0.00
Pollock	0.00	0.00	0.01	0.00	0.00	0.00
Rockfish	0.00	0.00	0.00	0.00	0.00	0.00
Rock Sole	0.00	0.00	0.00	0.00	0.00	0.00
Turbot/Sablefish	0.00	0.00	0.00	0.00	0.00	0.00
Yellowfin Sole	0.00	0.10	0.01	0.02	0.02	0.03
Longline Catcher Processors						
Atka Mackerel	0.07	0.15	0.14	0.04	0.01	0.04
"other flatfish"	1.50	2.10	1.78	1.49	1.35	1.86
Other Groundfish	11.40	13.23	13.34	11.40	9.84	12.55
Pacific Cod	1.43	2.70	1.76	2.14	1.81	1.62
Pollock	0.60	1.00	0.99	0.85	0.79	0.58
Rockfish	0.24	0.35	0.40	0.18	0.15	0.18
Rock Sole	0.06	0.03	0.03	0.04	0.04	0.03
Turbot/Sablefish	0.34	0.41	0.18	0.30	0.25	0.08
Yellowfin Sole	0.18	0.28	0.63	0.61	0.56	0.46
All Shore Plants, Floaters, and Motherships						
Atka Mackerel	0.10	0.01	0.07	0.12	1.56	0.75
"other flatfish"	1.43	1.59	1.01	1.86	2.14	2.57
Other Groundfish	3.46	1.74	1.83	2.11	2.28	1.52
Pacific Cod	0.41	0.49	0.26	0.87	0.58	0.35
Pollock	11.20	5.49	1.97	4.37	2.76	3.17
Rockfish	0.06	0.15	0.18	0.35	0.35	0.16
Rock Sole	4.62	1.91	0.78	1.85	1.87	1.61
Turbot/Sablefish	0.10	0.22	0.36	0.28	0.72	0.08
Yellowfin Sole	0.20	0.30	0.26	0.24	0.22	0.15

Source: NPFMC Sector Profiles and Catch Accounting Database, 1999-2004

Appendix Table 2 continued. Discarded catch as percent of total catch in BSAI fisheries in 1999-2004, by species and processing component

Species & Sector	1999	2000	2001	2002	2003	2004
	Discarded Catch as Percent of Total Groundfish Catch					
Non-AFA Trawl Catcher Processors						
Atka Mackerel	1.78	0.89	1.60	2.60	4.32	3.55
Arrowtooth Flounder	2.53	1.88	2.47	1.96	2.38	3.77
Flathead Sole	1.04	1.13	0.79	0.93	0.99	1.17
"other flatfish"	4.67	4.35	3.28	4.63	3.98	3.29
Other Groundfish	2.75	3.00	3.16	3.43	2.16	2.05
Pacific Cod	0.50	0.22	0.29	0.42	0.26	0.14
Pollock	5.57	4.97	5.35	5.58	4.83	6.42
Rockfish	2.52	1.87	2.81	1.79	2.45	1.98
Rock Sole	7.48	8.02	3.18	5.37	5.08	6.29
Turbot/Sablefish	0.16	0.10	0.18	0.11	0.07	0.10
Yellowfin Sole	4.19	4.33	2.83	3.57	3.87	3.80
Surimi and Fillet Trawl Catcher Processors (AFA)						
Atka Mackerel	0.00	0.00	0.00	0.00	0.04	0.01
"other flatfish"	0.34	0.32	0.13	0.13	0.10	0.15
Other Groundfish	0.17	0.85	0.17	0.14	0.07	0.13
Pacific Cod	0.09	0.02	0.01	0.01	0.00	0.01
Pollock	0.62	0.27	0.05	0.09	0.07	0.05
Rockfish	0.02	0.03	0.06	0.04	0.07	0.01
Rock Sole	0.20	0.36	0.10	0.14	0.08	0.16
Turbot/Sablefish	0.00	0.01	0.00	0.00	0.00	0.00
Yellowfin Sole	0.20	0.15	0.02	0.05	0.02	0.08
Pot Catcher Processors						
Atka Mackerel	0.00	0.00	0.03	0.04	0.10	0.00
"other flatfish"	0.00	0.00	0.01	0.00	0.00	0.01
Other Groundfish	0.02	0.16	1.30	1.13	0.97	0.29
Pacific Cod	0.10	0.16	0.80	1.01	0.00	0.02
Pollock	0.00	0.02	0.17	0.05	0.00	0.00
Rockfish	0.00	0.00	0.01	0.00	0.00	0.00
Rock Sole	0.00	0.03	0.01	0.00	0.01	0.01
Turbot/Sablefish	0.00	0.00	0.02	0.00	0.00	0.00
Yellowfin Sole	0.00	1.97	0.46	0.82	1.21	1.01
Longline Catcher Processors						
Atka Mackerel	0.06	0.12	0.10	0.03	0.01	0.03
"other flatfish"	1.36	1.69	1.31	1.15	1.11	1.52
Other Groundfish	10.10	10.52	9.86	8.79	8.11	10.27
Pacific Cod	1.27	2.16	1.30	1.65	1.49	1.33
Pollock	0.50	0.80	0.73	0.66	0.65	0.48
Rockfish	0.21	0.27	0.29	0.14	0.12	0.15
Rock Sole	0.05	0.03	0.02	0.03	0.03	0.02
Turbot/Sablefish	0.33	0.33	0.13	0.23	0.21	0.07
Yellowfin Sole	0.16	0.22	0.46	0.47	0.46	0.37
All Shore Plants, Floaters, and Motherships						
Atka Mackerel	0.02	0.00	0.01	0.01	0.18	0.09
"other flatfish"	0.24	0.23	0.13	0.21	0.25	0.31
Other Groundfish	0.29	0.51	0.23	0.24	0.26	0.18
Pacific Cod	0.07	0.07	0.03	0.10	0.07	0.04
Pollock	1.87	0.80	0.25	0.51	0.32	0.38
Rockfish	0.01	0.02	0.02	0.04	0.04	0.02
Rock Sole	0.77	0.28	0.10	0.21	0.22	0.19
Turbot/Sablefish	0.02	0.03	0.05	0.03	0.08	0.01
Yellowfin Sole	0.04	0.04	0.03	0.03	0.03	0.02

Source: NPFMC Sector Profiles and Catch Accounting Database, 1999-2004

Amendment 80

April 2006

Changes Since February 06

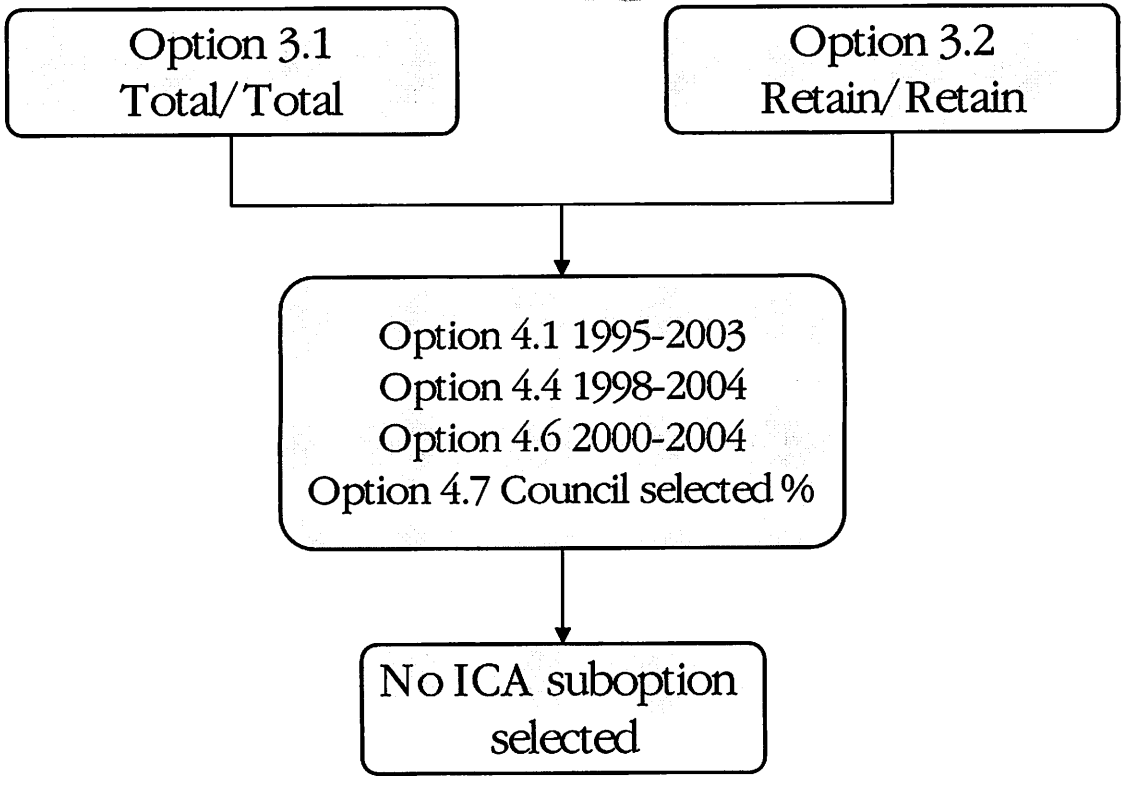
- Expanded discussion on annual TAC deductions (pages 88-89)
- Atka mackerel and AI POP area breakout (pages 91-95)
- Expanded discussion on rollovers and rollbacks (pages 104-106)
- New PSC allocation option (pages 125-133)
- Revised Components 7, 8, 9, 10 to reflect a change to a vessel based cooperative program
- Revised H&G sector PSC allocation (pages 144-146)
- Prepared tables showing effects of minimum allocations (supplemental)

Changes Since February 06

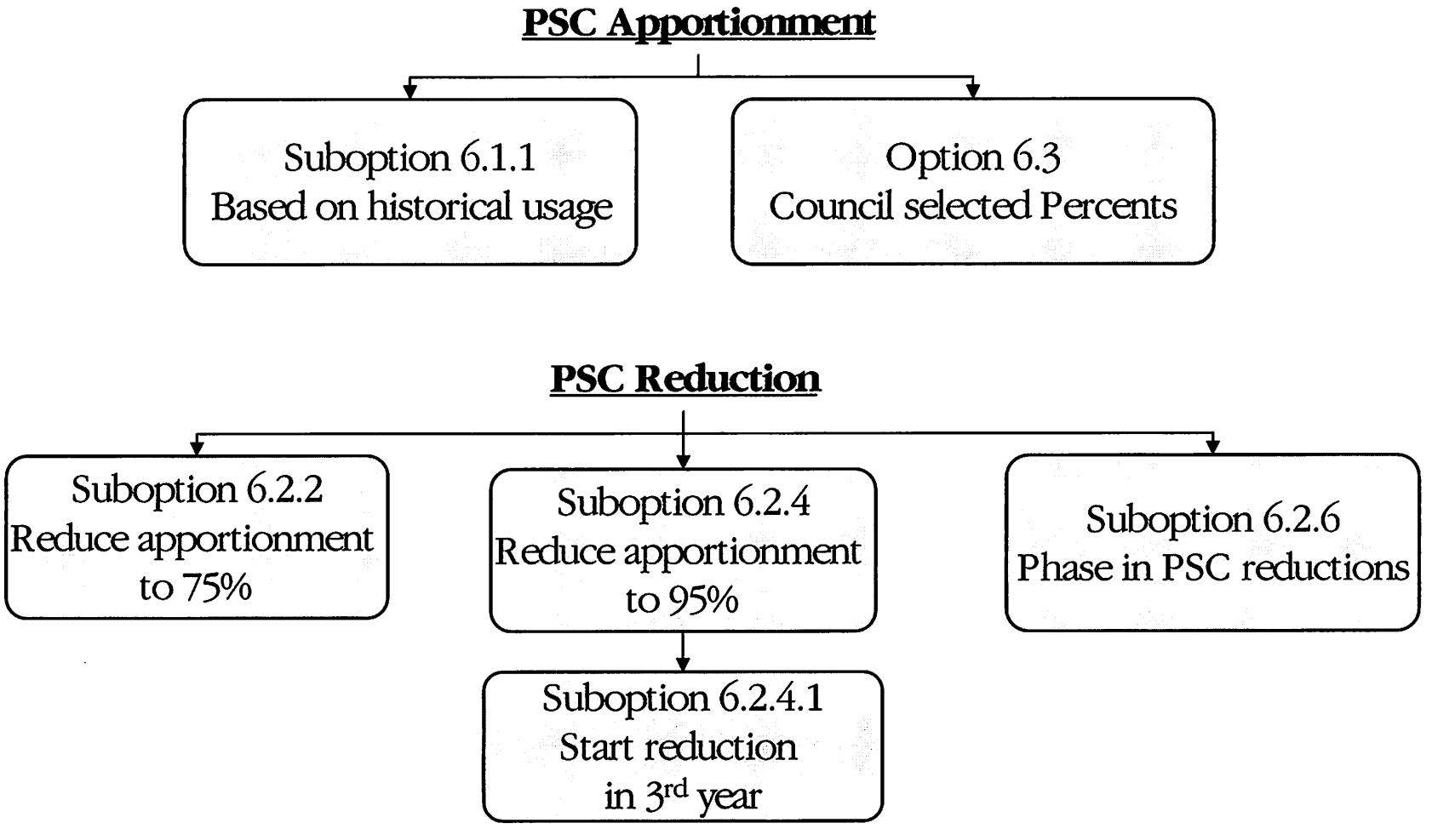
- Discussion on Atka mackerel and AI POP allocation within the H&G sector (pages 141-154)
- Vessel use cap analysis (pages 160-162)
- Revised other elements of Amendment 80 based on February changes (page 200)
- Prepared a Draft Cost, Earnings, and Employment Survey (Appendix 3)

Sector Allocation

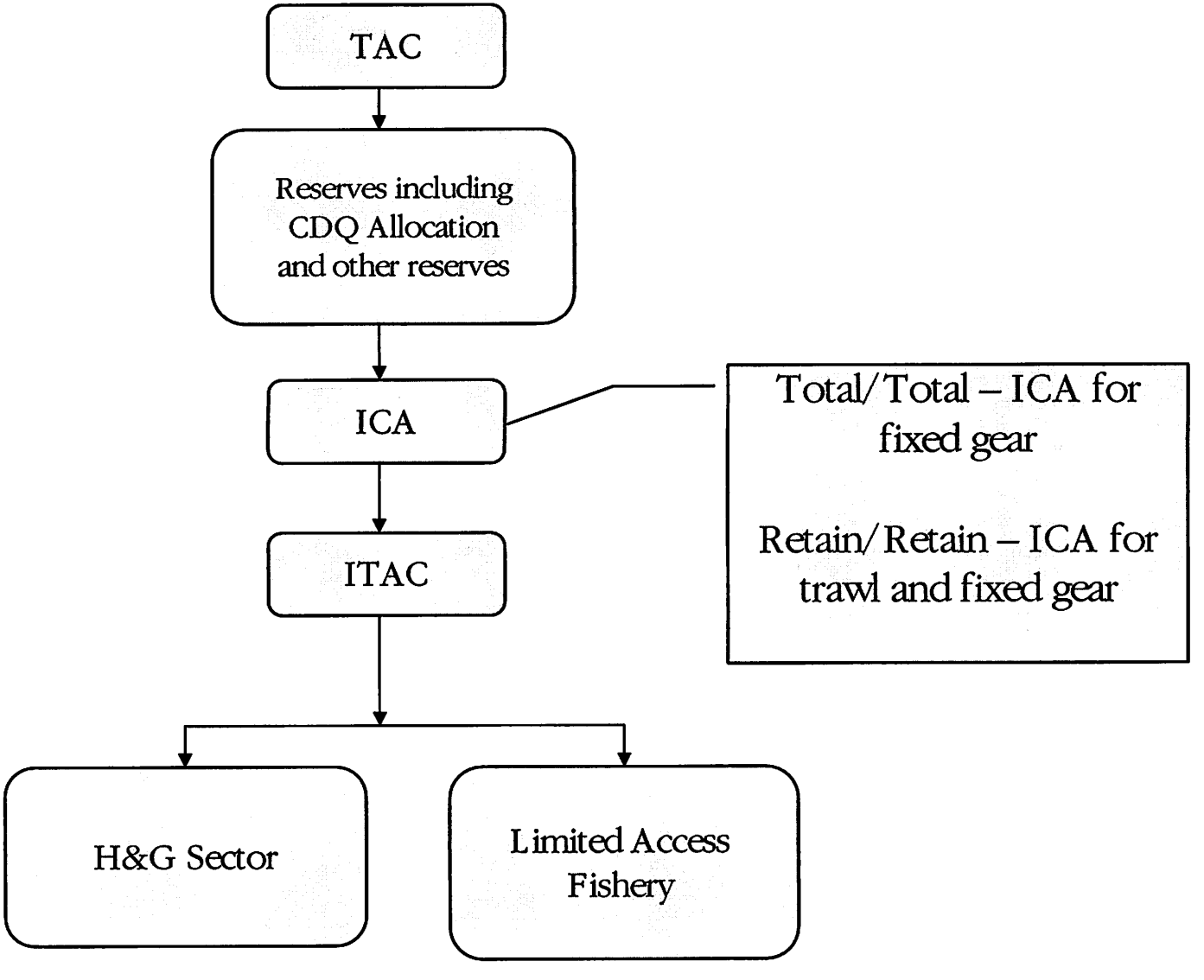
PPA Decisions for Sector Allocations (groundfish)



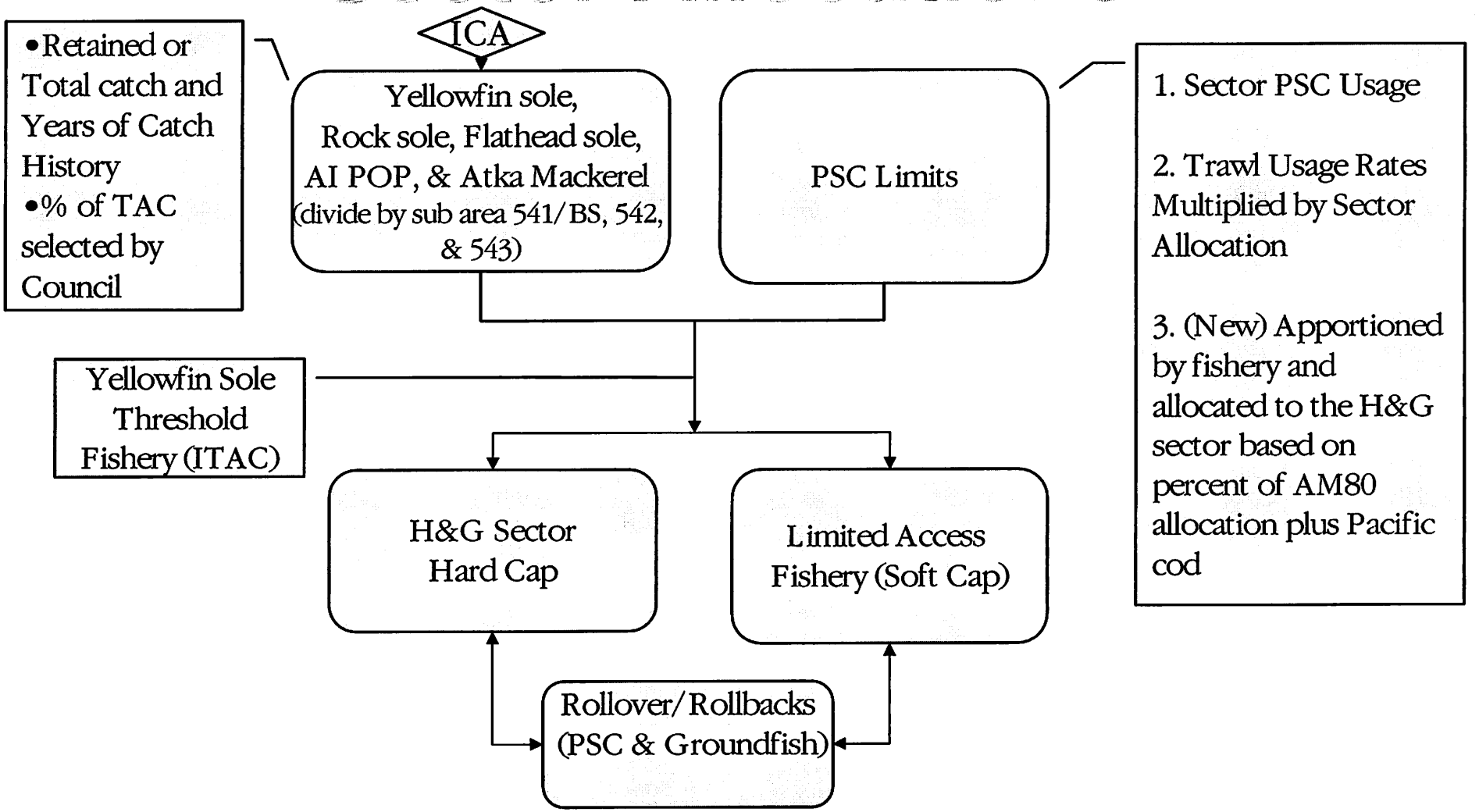
PPA Decisions for Sector Allocations (PSC)



Annual Deductions



Sector Allocations



Component 3 and 4 – Allocation to the H&G sector

	R/T	R/R
■ Atka Mackerel (for all subareas)	80% - 100%	
■ Flathead sole	62% - 98%	
■ AI POP (for all subareas)	84% - 100%	
■ Rock sole	37% - 97%	
■ Yellowfin sole	59% - 93%	

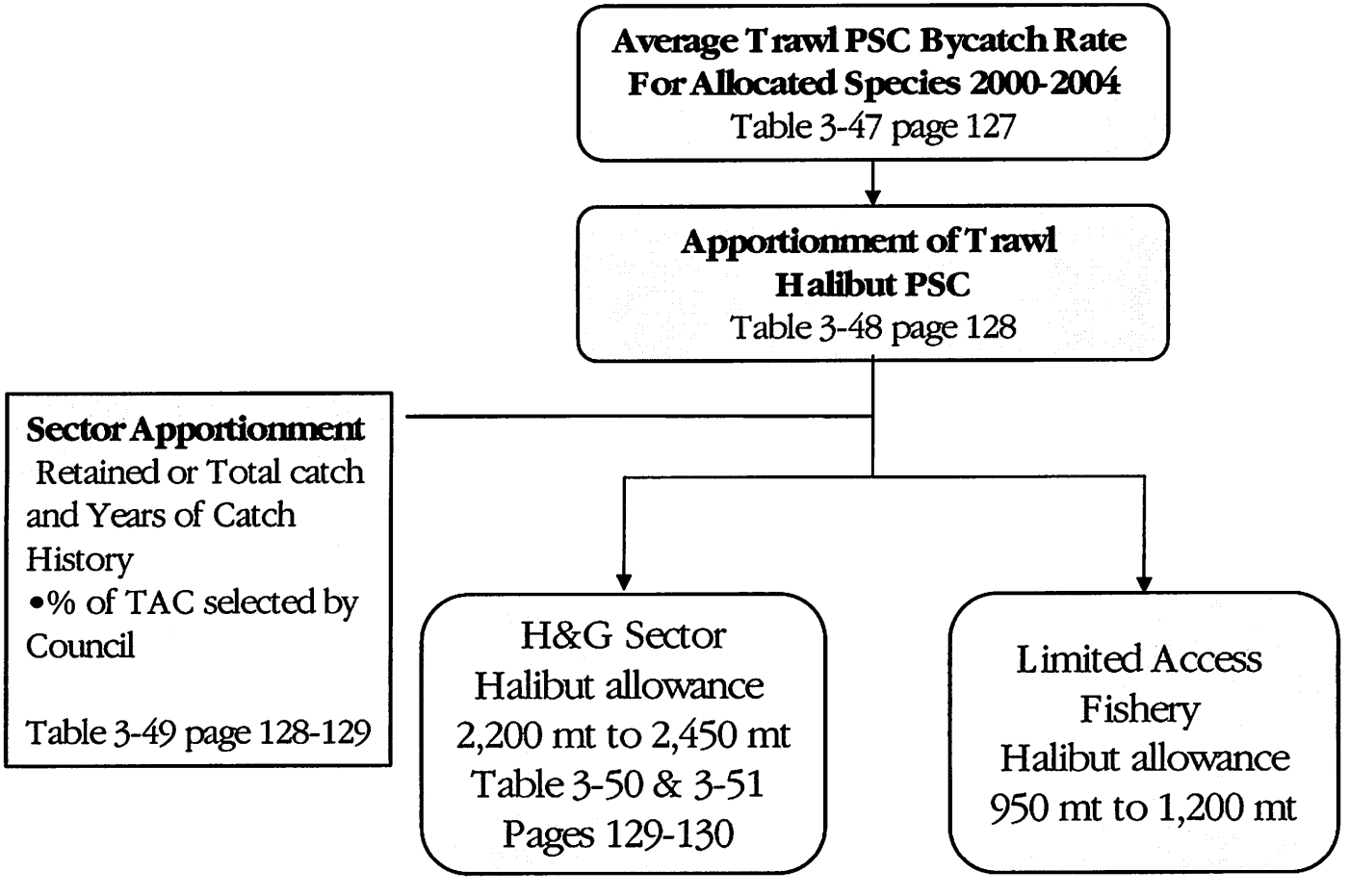
Component 3 and 4 – Allocation of Atka Mackerel to the H&G sector based on catch history in subarea

	R/T	R/R
■ Eastern AI/BS	75% - 100%	
■ Central AI	75% - 100%	
■ Western AI	80% - 100%	

Component 3 and 4 – Allocation of AI POP to the H&G sector based on catch history in subarea

	R/T	R/R
■ Eastern AI	88% - 100%	
■ Central AI	82% - 100%	
■ Western AI	83% - 100%	

New PSC Apportionment Option
Suboption 6.1.4



Component 6 – Effect of PSC Allocation

- Option 1 yields a larger allowance to the H&G sector
- Option 3 yields a smaller allowance to the H&G sector
- Option 4 if allocation of groundfish similar to current fishing levels, the 2,450 mt ceiling will require the H&G sector to reduce their halibut PSC bycatch rate

Component 6 – PSC Allowance to the H&G Sector

Options	Halibut	Red King Crab	C. opilio	C. bairdi Z1	C. bairdi Z2
Option 1 (Sector PSC usage for all groundfish)	68% - 83%	38% - 97%	42% - 98%	43% - 94%	27% - 97%
Option 2 (Sector PSC usage for AM80 species plus Pcod)	63% - 77%	37% - 96%	41% - 96%	43% - 93%	25% - 95%
Option 3 (Trawl PSC usage for all groundfish plus Pcod adjusted for sector allocation)	41% - 72%	15% - 88%	24% - 88%	17% - 79%	15% - 88%

Component 6 – Halibut PSC Allowance to the H&G Sector using Option 6.1.4

Estimated 2005 Halibut Allocation to the Non-AFA Trawl CP Sector under Suboption 6.1.4 (mt)						
Years	Retained/Retained		Total/Total		Retain/Total	
	With AFA 9	Without AFA 9	With AFA 9	Without AFA 9	With AFA 9	Without AFA 9
1995-2003	**2,310**	**2,354**	**2,161**	**2,157**	1,504	1,498
1997-2002	**2,360**	**2,395**	**2,217**	**2,216**	1,593	1,589
1998-2002	2,525	2,539	**2,361**	**2,354**	1,743	1,736
1998-2004	2,598	2,608	**2,443**	**2,439**	1,835	1,831
1999-2003	2,671	2,671	2,515	2,515	1,902	1,902
2000-2004	2,665	2,665	2,523	2,523	1,927	1,927

Bold numbers indicate PSC allocation within the 2,200 mt to 2,450 mt range

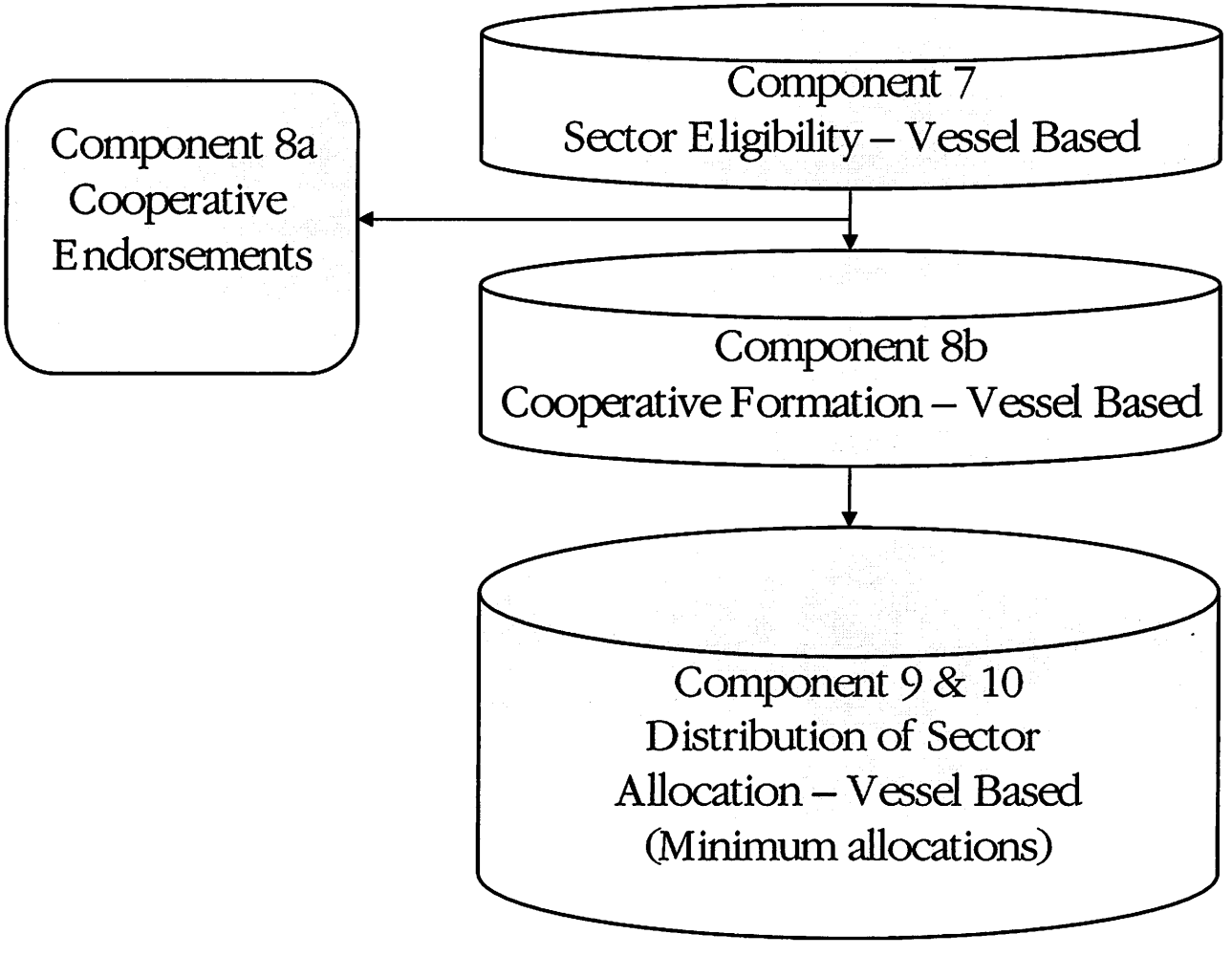
Component 6 – Halibut PSC Allowance to the H&G Sector using Option 6.1.4

Estimated 2005 Halibut Allocation to the Non-AFA Trawl CP Sector under Suboption 6.1.4 (percent of 3,400)						
Years	Retained/Retained		Total/Total		Retain/Total	
	With AFA 9	Without AFA 9	With AFA 9	Without AFA 9	With AFA 9	Without AFA 9
1995-2003	**68%**	**69%**	**64%**	**63%**	44%	44%
1997-2002	**69%**	**70%**	**65%**	**65%**	47%	47%
1998-2002	74%	75%	**69%**	**69%**	51%	51%
1998-2004	76%	77%	**72%**	**72%**	54%	54%
1999-2003	79%	79%	74%	74%	56%	56%
2000-2004	78%	78%	74%	74%	57%	57%

Bold numbers indicate PSC allocation within the 2,200 mt to 2,450 mt range

Cooperative Formation and Allocation

Cooperative Formation



Cooperative Formation

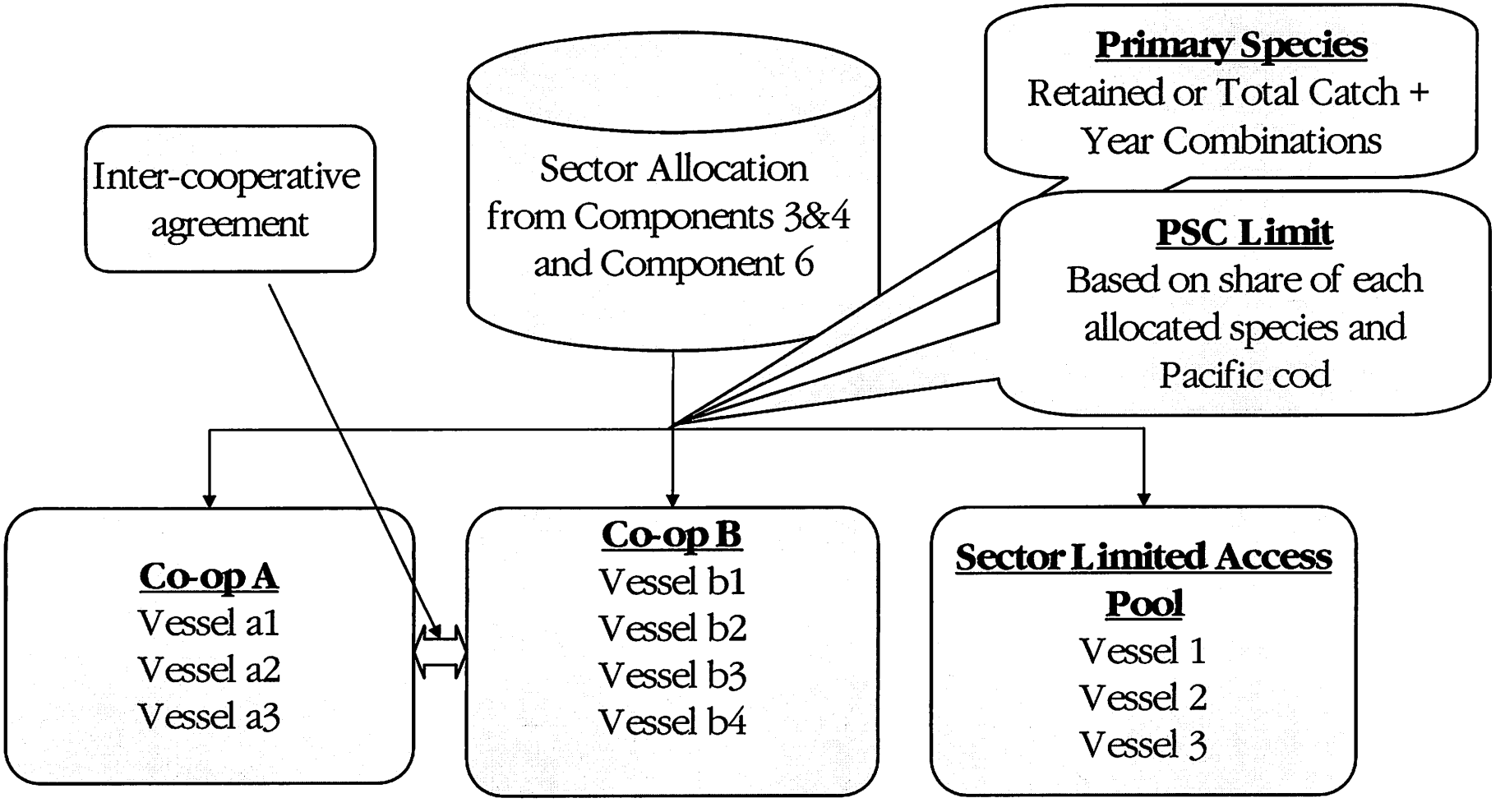
Where is the Catch History Attached?

Active Vessels
Catch history of vessel is attached to vessel

Sunk, Lost, Inoperable, or Ineligible Vessels
Catch history is attached to the license that arose from vessel

Which can then be stacked on eligible Non-AFA Trawl CP vessels

Cooperative Allocation: Multiple Cooperatives



Cooperative Allocation: Effect of Minimum Allocation

- Using Total or Retained Catch
  - Flathead sole (.01%) less than 3 vessels
  - Yellowfin sole (.05%) 3-6 vessels & .5% - 2.5%
  - Rock sole (.05%) less than 3 vessels to 6 vessels & approximately 2%

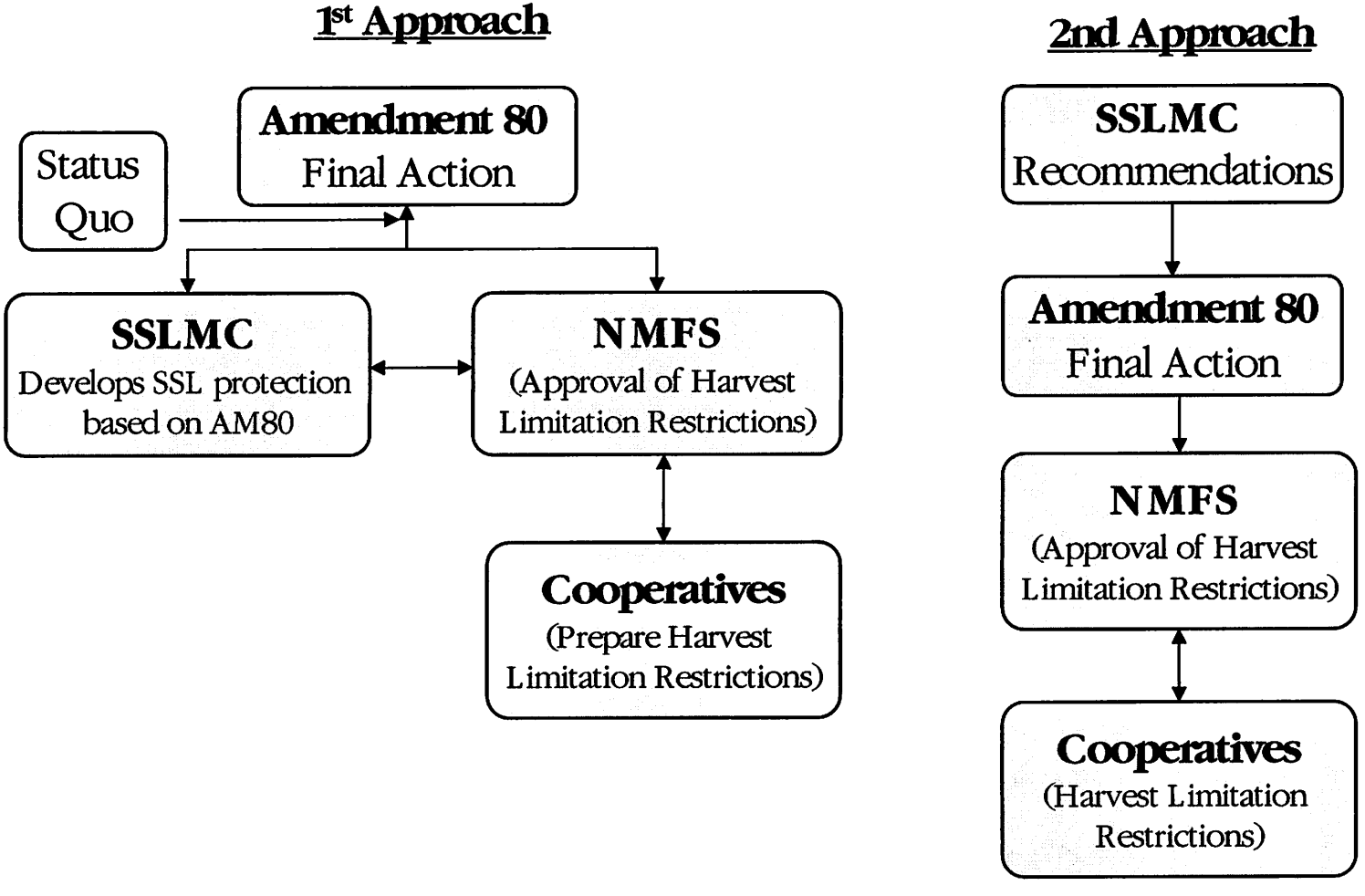
Cooperative Allocation:
Atka Mackerel and AI POP

- Distribution of Atka mackerel and AI POP to cooperative by subarea (541, 542, & 543)
  - Historical catch
  - Equal amount in each subarea
- Two uses for Atka mackerel
  - Incidental catch/top off in EAI/BS
  - Directed Atka mackerel in CAI and WAI

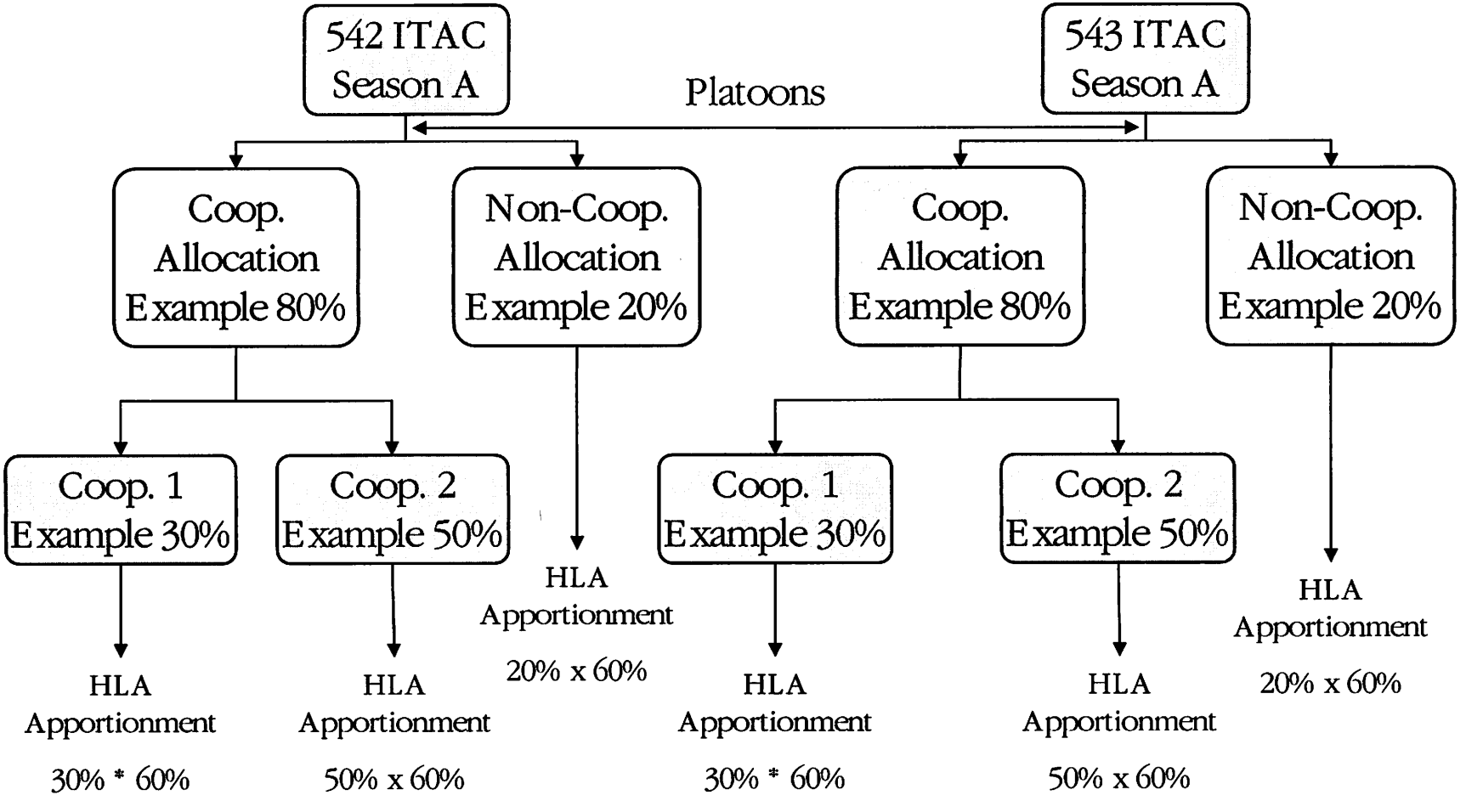
Cooperative Allocation:
Atka Mackerel Fisheries in HLA

- Current Management Structure
  - Two equal seasonal allowances:
    - A Season Jan 20th through Apr 15th
    - B Season Sept 1st through Nov 1st
  - Steller sea lion protection measures (limit rate of mackerel removals from critical habitat)
    - Areas 542 and 543 open 48 hours after 541 closes
    - Restrict catch in HLA to 60% of seasonal TAC
    - Must register vessel with NMFS to fish in A Season HLA
    - Registered vessels assigned to area by lottery
    - Each platoon of vessels switch areas/HLA

Cooperative Allocation:
Atka Mackerel Fisheries in HLA

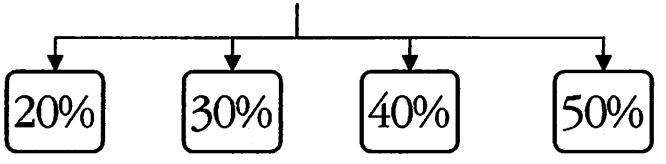


Atka Mackerel Allocations Under Amendment 80

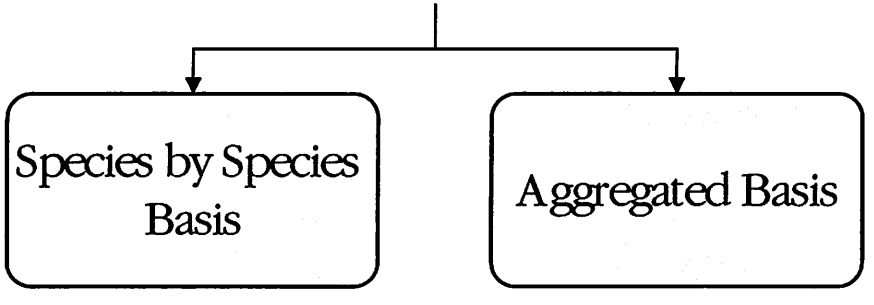


PPA Decisions for Excessive Shares

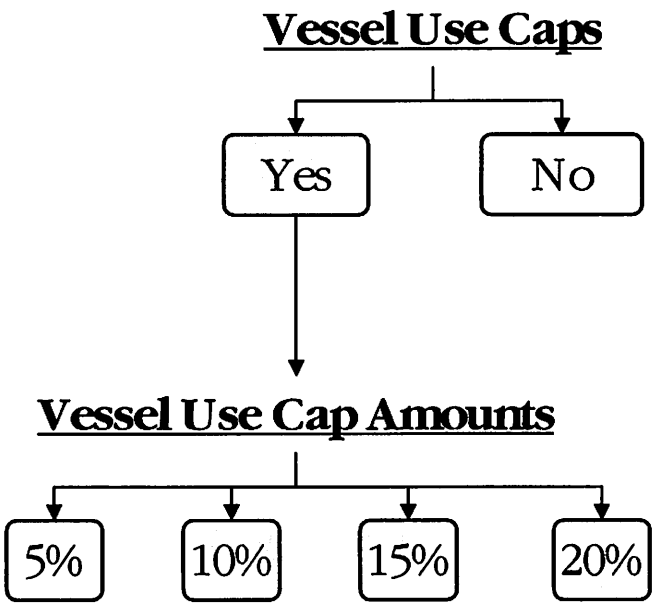
Excessive Share Cap Amounts



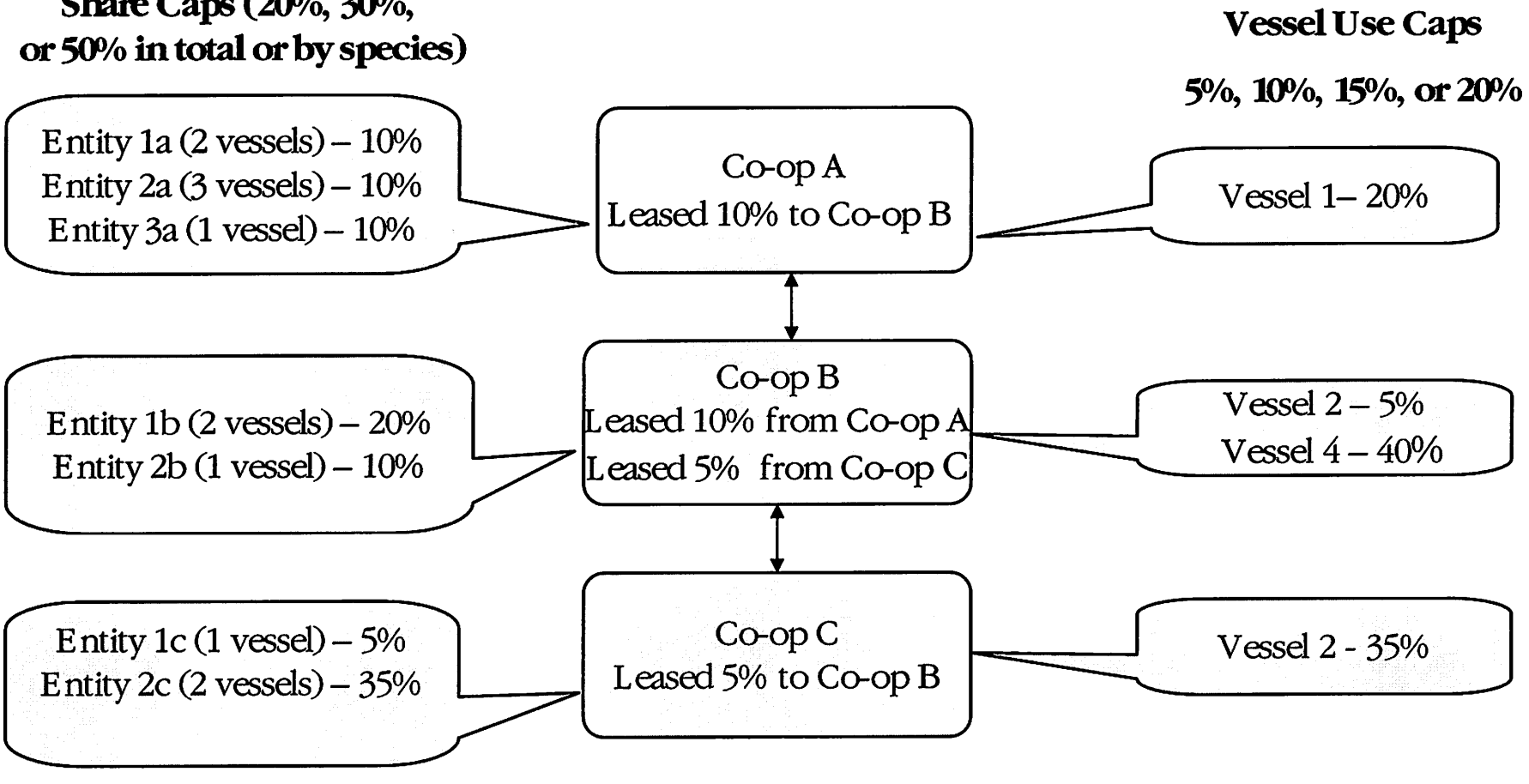
How Excessive Shares will be Determined



PPA Decisions for Vessel Caps



Component 11 – Excessive Share Limits



Component 11 – Vessel Use Caps

- No vessel were over the 20% cap
- 1 to 3 vessels were over the 15% cap between 1995 to 1998
- 1 to 4 vessels were over the 10% cap every year since 1995
- 7 to 9 vessels were over the 5% cap every year since 1995

Sideboards

PPA Decisions for Sideboards

- Suboption 12.4.2 – Need % of total weeks fished in Gulf relative to BSAI to determine exemption of GOA halibut sideboards
- Suboption 12.4.8 – Do you want sideboards for groundfish and PSC split between cooperative and non-cooperative holders?
- Suboption 12.4.9 – Cooperatives will not exceed its aggregate sideboard and inter-cooperative contracted enforced by third party?
- Assumption that years selected in Component 10 will also be used where referenced in sideboard options.

Component 12 – BSAI Sideboards

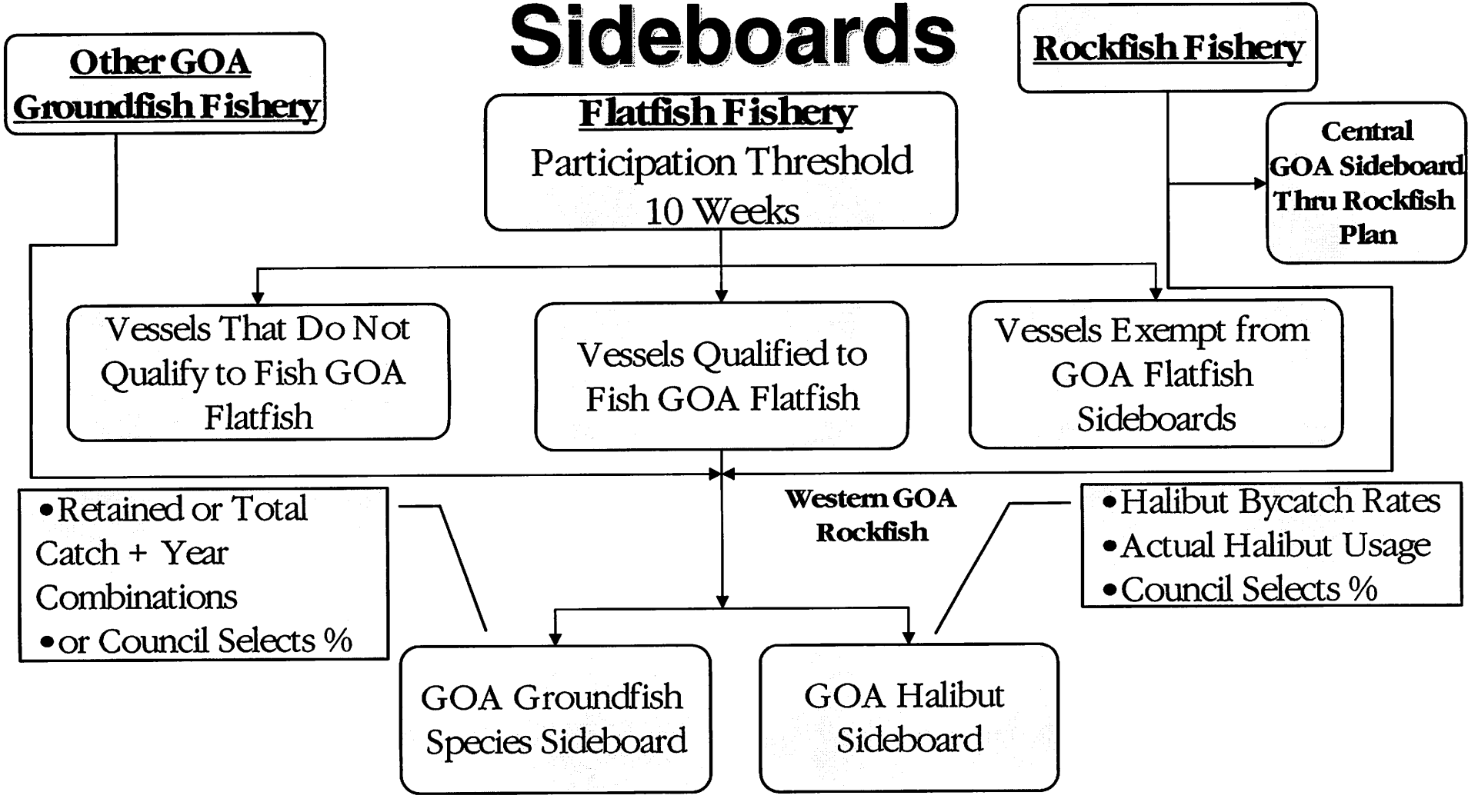
BSAI Groundfish Sideboards

- Total or Retained Catch + Year Combinations

or

- Council Selects a % of TAC

Component 12 – GOA Sideboards



Component 12 – Sideboards for GOA Flatfish Participation

1995-2003	1997-2002	1998-2002	1998-2004	1999-2003	2000-2004
4	0	0	1	1	1
9	2	2	3	3	3
10	3	3	4	4	4
12	5	3	5	4	4
16	5	4	5	5	4
17	8	6	7	6	5
17	9	6	9	6	6
19	11	8	10	8	8
19	11	10	16	14	11
21	13	13	17	14	12
23	14	14	17	16	13
23	17	15	17	17	13
28	17	16	22	18	15
45	21	19	23	20	17
64	28	26	31	29	23
84	57	48	58	46	33
84	59	55	67	55	48
91	63	55	72	58	54
172	112	88	109	91	81
178	114	95	126	106	95
188	130	108	129	109	102

Other Elements of Amendment 80

Other Elements of Amendment 80

- Transfer of Vessel and Catch History
- Economic and Socioeconomic data collection
  - Cost, Earnings and Employment Survey (Appendix 3)
  - March 28, 2006 NMFS letter requesting assistance in addressing the purpose, intent, and technical questions of the proposed survey

Other Elements of Amendment 80

- Council Guidance on Purpose and Intent of Data Collection
  - Is this data collection necessary and why?
  - What questions is it designed to address?
  - How will the information be used?
  - Is the collection intended for economic research, regulatory enforcement, program monitoring, or some other purpose?
  - Staff assumes access to the data would be granted to NOAA Fisheries, Council Staff, and ADF&G.

Other Elements of Amendment 80

- Data Verification
  - Is data verification important for Amendment 80 data collection program?
  - If so, who should do the audit?
    - The analysis assumes a third party auditor
    - This may require a more formal guidelines be developed
- Confidentiality of data
  - Assumption is that staff will do everything it can to protect the confidentiality of the data

Adjustment of the Maximum Retainable Amount Accounting Interval for Selected Groundfish Species for the Non-American Fisheries Act Trawl Catcher Processors in the Bering Sea and Aleutian Islands

NOAA Fisheries Progress Report for the North Pacific Fisheries Management Council March, 2006

In February 2006, the Council requested that NOAA Fisheries provide a discussion paper for the April 2006 meeting that describes the scope of an analysis and alternatives for a regulatory amendment to modify the current accounting period required for the maximum retainable amounts (MRAs) for selected groundfish caught by the non-American Fishery Act (AFA) trawl catcher processor (C/P) sector. Representatives from the non-AFA trawl C/P sector have requested that this regulatory amendment be implemented in 2007 to reduce regulatory discard amounts. The Council also requested that the staff describe potential regulatory changes that may be considered relevant to action on Amendment 80 to further address the MRA accounting interval for these same species.

Potential Decision Points for this Council Meeting

This discussion paper provides information on a proposal from members of the non-AFA trawl C/P sector to consider changing the current MRA accounting period for a select number of species. The report presents some decision points for the Council to review including; (1) a problem statement, (2) components and options as well as potential alternatives that may be considered for a regulatory amendment, (3) a discussion of some management, catch accounting, and accounting issues associated with the range of components and options developed, and (4) tradeoffs in program complexity and scheduling implications.

Background

Current regulations on Maximum Retainable Amounts

MRA regulations located at 50 CFR 679.20(e) establish the calculation method and MRA amounts for groundfish species that are closed to directed fishing. The MRA amount is calculated as a percentage of the retained amount of species closed to directed fishing relative to the retained amount of basis species or species groups open for directed fishing. Table 11 of 50 CFR 679 (see Table 1 in Appendix) lists retainable percentages for Bering Sea and Aleutian Island (BSAI) groundfish species. Amounts that are caught in excess of the MRA percentage must be discarded. With the exception of BSAI pollock caught by the non-AFA trawl C/P sector, current regulations limit vessels to MRA amounts at any time during a fishing trip.

A fishing trip is defined at 50 CFR 679.2 as:

> (i) With respect to retention requirements of MRA, IR/IU, and pollock roe stripping, an operator of a catcher/processor or mothership processor vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed in an area until
>
> (A) The effective date of a notification prohibiting directed fishing in the same area under § 679.20 or § 679.21;
>
> (B) The offload or transfer of all fish or fish product from that vessel;
>
> (C) The vessel enters or leaves an area where a different directed fishing prohibition applies;

(D) The vessel begins fishing with different type of authorized fishing gear; or
(E) The end of a weekly reporting period, whichever comes first.

Note: This action does not anticipate any changes to the current definition of "fishing trip" at 50 CFR 679.2

Current management function of MRAs

MRAs are the primary tool NMFS uses to regulate the catch of species closed to directed fishing. The MRA tables are a matrix of proportions. They represent a range of rates of expected or accepted incidental catch of species closed to directed fishing relative to target species. As a management tool, MRAs rely on the ability of the vessel operator to selectively catch the target species. The target species is called a basis species in regulation. The species closed to directed fishing is the incidental species. The MRA percentages are intended to slow the rate of harvest of a species when insufficient total allowable catch (TAC) or prohibited species catch (PSC) amounts are available to support a directed fishery.

NMFS prohibits directed fishing for a species to manage a specified quota for groundfish or prohibited species (e.g. salmon, crab, halibut limits). When NMFS prohibits directed fishing, retention is allowed up to an amount calculated with the MRA. The MRA tables show retainable proportions of incidental species relative to species open to directed fishing. Vessel operators calculate the MRA through three basic steps. First, they identify and calculate the round weight of the basis (or target) species on board. Next, they identify the appropriate fraction from the MRA table, and then multiply that rate against the round weight of the basis species. The calculated maximum amount limits retention of the incidental species. The vessel discards catch of the incidental species in excess of that amount to avoid violation of current regulation. The vessel operator calculates the MRA at any time for the duration of the fishing trip. The sector proposal for calculating the MRA referred to the current accounting period as 'instantaneous.'

A fishing trip begins with harvesting fish. By regulation, several conditions end a trip for a C/P (based on whichever condition occurs first): (1) NMFS prohibits directed fishing for any species in the federal reporting area where the vessel is fishing, (2) the vessel offloads, (3) the vessel moves into an area where a directed fishing closure exists, (4) the vessel switches gear, or (5) the weekly reporting period ends. A trip defines the period during which a vessel operator calculates the amount of incidental species retained relative to the basis species.

Current regulations also grant CPs not listed under the AFA special exceptions from the MRA regulations regarding the incidental catch of pollock where under some circumstances the instantaneous computation of the MRA does not apply. Instead, the MRA is calculated at the point of offload. Under these current regulations, BSAI groundfish vessels may retain pollock at any rate during a fishing trip, as long as at the end of the trip they meet the required MRA proportion and as long as improved retention and improved utilization (IR/IU) requirements are met. IRIU regulations for pollock supersede some of the retention flexibility for current MRA requirements by mandating that vessels must retain up to 100 percent of all pollock until reaching the MRA.

After NMFS prohibits directed fishing, MRAs are the predominant regulation controlling catch. The MRA rate regulates incidental species catch in other groundfish target fisheries. Ideally, the application of an MRA rate slows catch of a species so that catch depletes the TAC by the end of the year. Beyond management of a TAC to obtain optimum yield, MRA calculations perform two additional functions. First, MRAs limit retention to species' expected or accepted incidental catch rate. Alternately, the MRA functions as a trip limit for retention of incidental catch of a species. This function allows for limited targeting of a species up to the MRA amount ("topping off").

For several incidental/basis species combinations, the use of low MRA rates may reduce the incentive for topping off that would occur in the absence of this tool. In these cases, the MRAs represent the expected catch of an incidental species absent deliberate action by the vessel operator to maximize that incidental

catch. The requirement to not exceed MRA proportion at any time during a trip limits the vessel operators' ability to maximize catch. This restriction is used to limit total catch of species low in TAC amount (relative to the species caught in the directed fisheries), at greater risk of being caught in excess of the overfishing level, and high in monetary value. Some rockfish species meet these criteria.

Current regulations establish a relatively high MRA for particular species. For example, a generous rate of 35 percent was established for Greenland turbot relative to flathead sole (see Table 1 in Appendix) as a basis species. Experience demonstrated the directed trawl Greenland turbot fishery incurred high halibut bycatch rates. In response, managers closed the directed fishery for trawl gear and increased the MRA relative to flathead sole. The higher MRA allows for increased indirect targeting on Greenland turbot and slowed the bycatch of halibut. In contrast to the previous example, regulations encourage 'topping off.' The MRA functions as a management tool allowing catch of Greenland turbot and more moderate halibut bycatch. For other species where restricting catch to an incidental rate is not a consideration, regulations establish a default MRA rate of 20 percent.

Brief history of flatfish retention and discards in the BSAI

MRAs and the associated accounting intervals were developed in regulation during a period when programs to increase retention and utilization of retained catch in the North Pacific were relatively new. Prior to1997, when regulations for an IRIU program were implemented, the Council displayed interest in increasing both the rate and amount of groundfish retained in the North Pacific. While improvements have been made in the amount and rate of groundfish retention for all BSAI groundfish sectors, the non-AFA trawl C/P sector currently exceeds groundfish discard rates routinely achieved by other BSAI groundfish sectors. Catch, retention, and discard data (Table 1) identify relative amounts and rates by sector and year. Appendix Table 2 shows discards by species for the non-AFA trawl C/P sector for the years 1999-2004. Appendix Table 3 shows the same discard data as a percentage of total catch. The non-AFA trawl C/P sector discard of rock sole fluctuated between 1999 and 2004 from 8,600 metric tons in 1999 to 23,600. In 2004 discards for this sector were estimated to be18,900 mt. In the flatfish fisheries, discards from the non-AFA trawl C/P sector have fluctuated but not improved during this period varying from 11,200 mt in 1999, 7,700 mt in 2001, and 11,500 mt in 2004. "Other flatfish" and groundfish species discards varied through this period without evident trends.

A number of factors are likely to have contributed to generally higher total discards and percentage of discard between the non-AFA trawl C/P sector and other BSAI groundfish sectors. These include the type of bottom trawl gear authorized for use in this fishery; the locations that this trawl gear is deployed; mixed stock nature and distribution of the species; regulations that apply to this sector; and market and other economic tradeoffs associated with each vessel and the sector.

Surimi and fillet trawl C/P sector discards of Atka mackerel remained relatively stable from between 400 mt to nearly zero. Yellowfin sole discards varied, but show a decline from 1999 (200 mt) to 2004 (80 mt). The pot C/P sector realized little change in discard amounts while the longline catcher processing sector saw yellowfin sole discards increase in each of the three years.

BSAI catch accounting data from 1999 to 2004 (Table 1 and, Appendix Tables 2 and 3) highlight some additional differences in catch, retention, and discard between the diverse mix of species caught and retained by non-AFA trawl C/P sector and other BSAI sectors.

- As identified in Table 1, in 2004, the non-AFA trawl C/P sector retained catch of groundfish was approximately 67.6 percent of total catch. In comparison with all other combined BSAI groundfish sectors, retained catch in 2004 was approximately 3.3 percent of total catch of those sectors.
- Of 128.6 mt of discarded groundfish catch from all BSAI sources in 2004, 76.3 percent of reported discards are estimated to be from the non-AFA trawl C/P sector.

- Flatfish make up 55.7 percent of the catch for non-AFA trawl C/Ps in the BSAI and 55.1 percent of the discarded catch.
- In 2004, surimi and fillet trawl C/P sector's groundfish discards accounted for 0.5 percent of discarded catch. Flatfish accounted for approximately 68 percent of the surimi and fillet trawl C/P sector's discarded groundfish, but only 6 percent of this sector's total discards.
- In 2004, the longline C/P sector's total discards were 3.3 percent of total catches for that sector, and flatfish species accounted for approximately 13.5 percent of those discards.
- In 2004, the longline C/P sector's retention of non-pollock, non-Pacific cod fish accounted for 4.2 percent of total catch while discards in the same category accounted for 12.24 percent of total catch. Thus, the sector had an estimated non-pollock, non-Pacific cod retention rate of 25 percent.
- In 2004, the shore plant, floater, and mothership sector's total discards was approximately 2 percent of that sector's total catch.
- In 2004, yellowfin sole was approximately 1.3 percent of total catches for the pot C/P sector.

Table 1. Discarded catch, total catch, and percent discarded as percent of total catch in BSAI fisheries in 1999-2004, by sector, (1,000's mt)

year	1999	2000	2001	2002	2003	2004
non-AFA Trawl Catcher Processors (HT-CP)						
Total Discard	88.67	90.33	70.09	87.3	82.82	98.12
Total Catch	268	294	272	287	273	303
Percent Discarded by sector	33.1%	30.7%	25.8%	30.4%	30.3%	32.4%
Surimi and Fillet Trawl Catcher Processors (AFA)						
Total Discard	7.91	9.93	3.33	3.12	1.87	2.72
Total Catch	445	507	613	653	533	529
Percent Discarded by sector	1.8%	2.0%	0.5%	0.5%	0.4%	0.5%
Pot Catcher Processors						
Total Discard	0.1	0.2	0.18	0.06	0.04	0.04
Total Catch	4	3	3	2	2	3
Percent Discarded by sector	2.5%	6.7%	6.0%	3.0%	2.0%	1.3%
Longline Catcher Processors						
Total Discard	15.82	20.25	19.25	17.05	14.8	17.4
Total Catch	113.00	126.00	135.00	130.00	121.00	122.00
Percent Discarded by sector	14.0%	16.1%	14.3%	13.1%	12.2%	14.3%
All Shore Plants, Floaters, and Motherships						
Total Discard	21.58	11.9	6.72	12.05	12.48	10.36
Total Catch	445	507	613	653	533	529
Percent Discarded by sector	4.8%	2.3%	1.1%	1.8%	2.3%	2.0%

Source: data prepared for Amendment 79 from Northern Economics and NMFS catch accounting data.

Economic and Regulatory Discards in the non-AFA trawl C/P sector

Groundfish discards are defined in regulation as either "economic" or "regulatory." Economic discards are targeted fish that are not retained because the harvester doesn't want them (undesirable size, sex, quality, etc.). Regulatory discards are fish (targeted or not) required by regulation to be discarded, retained not exceeding a specified amount/rate, or to be retained but not sold. When MRA regulations require catch of an incidental species to be discarded, the decision to discard incidental catches may be influenced by many factors. Compliance with regulation as catch of an incidental species is approaching some retention limit may be one factor, but other variables related to profit seeking may influence a decision to not retain catch. In the non-AFA trawl C/P fleet, data on retention of flatfish species during periods where directed fisheries are open versus periods when retention is restricted through an MRA, suggests that this policy may have impacted retention decisions. As shown in Table 2, closures of the rock sole, flathead sole, and "other flatfish" fisheries to directed fishing occurred regularly from 1999-2002. While some discards during these closures may be economic discards, no discards that occur during open periods are likely to be regulatory discards. Table 3 shows retained catch and discards of rock sole, flathead sole, and "other flatfish" during periods open and closed to directed fishing from 1999-2002. Over the four year period, 22 percent of total discards of these species may have been regulatory discards.

Table 2. Rock sole/flathead sole/"other flatfish" fishery closures 1999-2002

Year	1999		2000		2001		2002	
Period	From	To	From	To	From	To	From	To
Closure #1	1-Jan	20-Jan	1-Jan	20-Jan	1-Jan	20-Jan	1-Jan	20-Jan
Closure #2	26-Feb	30-Mar	4-Mar	1-Apr	20-Mar	1-Apr	1-Mar	1-Apr
Closure #3	27-Apr	4-Jul	30-Apr	4-Jul	27-Apr	1-Jul	20-Apr	30-Jun
Closure #4	31-Aug	31-Dec	25-Aug	31-Dec	24-Aug	31-Dec	29-Jul	31-Dec

Source: NOAA Fisheries Trawl Closure Tables, 2003.

Table 3. Retention and discard amounts of rock sole, flathead sole, and "other flatfish" in open and closed flatfish fisheries in the non-AFA trawl C/P Sector from 1999-2003

Year	1999		2000		2001		2002		2003	
Status	Retained	Discarded	Retained	Discarded	Retained	Discarded	Retained	Discarded	Retained	Discarded
Open (mt)	19,534	23,095	25,420	30,165	12,496	26,737	13,168	23,213	17,048	8,382
Open (%)	30.2	35.7	33.2	39.4	23.9	51.2	20.0	35.3	36.3	17.8
Closed (mt)	16,018	6,074	14,378	6,551	7,217	5,728	18,072	11,333	12,031	9,500
Closed (%)	24.7	9.4	18.8	8.6	13.8	11.0	27.5	17.2	25.6	20.2

Source: NOAA Fisheries Trawl Closure Tables, 2003.

Other regulatory discards also contribute to total discards by the non-AFA trawl C/P sector. The non-AFA trawl C/P sector is not allowed to conduct directed fishing for many high value species, including sablefish and Greenland turbot, and some rockfish. In addition, many discards of yellowfin sole are regulatory discards. In 2002, the non-AFA trawl C/P sector discarded over 15,800 mt of pollock, 20,000 mt of rock sole, yellowfin sole, flathead sole, and "other flatfish", as well as over 800 mt of sablefish and Greenland turbot during periods for which directed fishing for those species was closed. In short, approximately 36,000 mt (44 percent) of the 81,000 mt of groundfish discarded by the non-AFA trawl C/P sector may be regulatory discards. Cumulative discards by species groups are shown in Figure 1, along with total retained catch. Figure 2 is similar to Figure 1 except that economic discards and possible regulatory discards are shown separately.

Figure 1. Cumulative discarded and retained catch of non-AFA trawl C/Ps in 2002, byspecies group
(Source: Developed by Northern Economics using Blend Data provided by NOAA Fisheries-AFSC, 2002.)

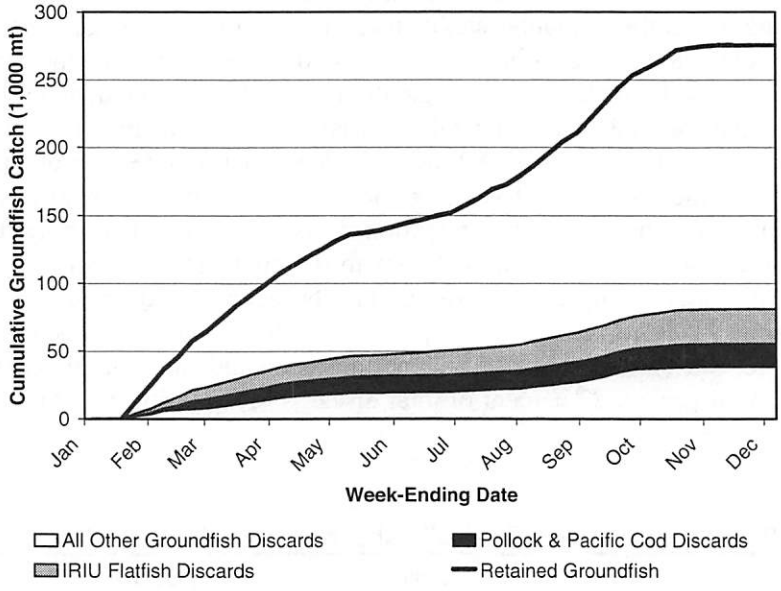
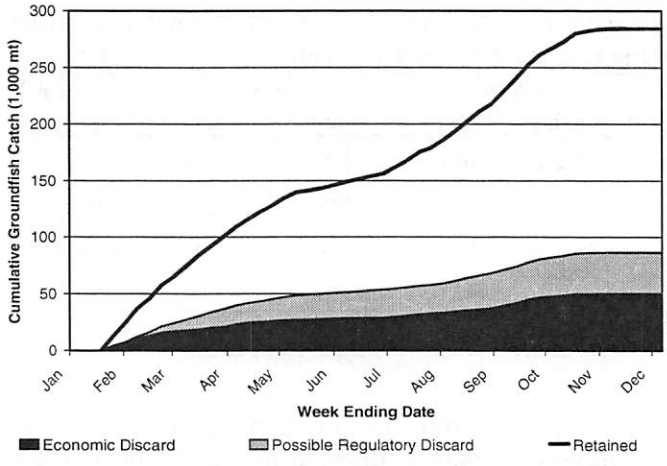


Figure 2. Cumulative discarded and retained catch of non-AFA trawl C/Ps in 2002, by discard type
(Source: Developed by Northern Economics using Blend Data provided by NOAA Fisheries-AFSC, 2002.)



While regulatory discards account for a considerable proportion of the non-AFA trawl C/P sector's discards, the regulations requiring these discards were implemented to meet specific objectives. For example, one objective has been to ensure that participants in trawl flatfish fisheries do not take more than an annually specified share of halibut, pollock, and sablefish that are reserved for competing sectors through cooperatives and/or individual fishing quota (IFQ) programs. The proposed regulatory amendment explores changing the accounting accounting interval for MRAs of selected species as a tool to reduce regulatory discards.

Review of Draft Problem Statement

NMFS has drafted a problem statement for Council review with some key features. The problem statement identifies the non-AFA trawl C/P sector as the intended group for adjusting MRA accounting. The MRA accounting adjustment is proposed for this sector because of its history of groundfish retention and utilization challenges resulting from specialized gear and multi-species fisheries this sector participates in. The non-AFA trawl C/P sector includes all of the vessels defined by Congress in the 2005 BSAI vessel buyback program. The Council could consider adding other sectors to the analysis, however, expanding the scope to additional sectors could also impact the time required to complete an analysis. The problem statement also focuses on evaluation of two MRA accounting periods, weekly and offload, although others could be considered.

The problem statement also assumes that for species considered in this proposal, the current MRA calculation that occurs throughout the trip instantaneously compels vessels to discard incidental catch in excess of the MRA. Opportunity for increased retention would be provided if the calculation is performed at the end of the trip or at the time of offload. This could be accomplished by allowing for more efficient use of basis species caught during the trip to increase total retention by the end of the trip. Where market conditions and other economic factors are favorable for retaining incidental species, vessel operators could have greater flexibility, to retain for incidental species caught early in the fishing trip with an increase in the MRA accounting interval.

> Problem Statement (draft): The non-AFA trawl C/P sector (authorized under the BSAI groundfish buyback program in the Consolidated Appropriations Act of 2005) participates in multispecies bottom trawl fisheries with naturally occurring incidental catch rates of nontarget groundfish, that are higher than many other BSAI sectors. Efforts to improve retention of many groundfish species utilized by this sector may be restrained by regulations at 50 CFR 679.20(e) that establish maximum retainable allowances (MRA) that are enforced at any time during a fishing trip. The sector has reported that the current instantaneous MRA accounting period forces the discard of incidentally caught species that otherwise would be retained. MRAs are a widely used groundfish management tool to reduce targeting on a species and slow harvest rates as an allocation is approached. However, sometimes species managed with MRAs must be discarded when incidental catch at anytime during a fishing trip exceed the MRA, even though economic incentives exist to retain that species and overall catch at the end of a fishing trip would not exceeded the MRA. Thus, the instantaneous period of MRA accounting requires discard of some species, particularly at the beginning of a fishing trip, that might otherwise be retained without undermining the intent of the MRA as a tool to slow overall harvest rates. This regulatory amendment would evaluate an extension of the MRA accounting period for multiple groundfish species to provide increased opportunity for retention of species harvested by the non-AFA trawl C/P sector and, while not subjecting incidentally caught species to increased conservation concerns.

Review Components for changing MRA Accounting

NMFS has identified the following components that could be addressed in a proposed MRA regulatory amendment, subject to review and revision by the Council:

Component 1: Define Species – Modify the accounting interval for all groundfish species (excluding pollock, sablefish, Alaska plaice, other species, and squid). This includes the following species: yellowfin sole, rock sole, flathead sole, Atka mackerel, Pacific Ocean perch, "Other flatfish", arrowtooth flounder, Greenland turbot, and rockfish.

> **Option 1:** Applies to yellowfin sole, rock sole, flathead sole, "Other flatfish" and arrowtooth flounder.

Option 2: Applies to Amendment 80 species (yellowfin sole, rock sole, flathead sole, Atka mackerel, Aleutian Islands Pacific Ocean perch) as well as "Other flatfish", and arrowtooth flounder.

Component 2: Define Sector – Any change in the current MRA accounting interval applies only to the non-AFA trawl catcher processor sector (authorized under the BSAI groundfish buyback program in the Consolidated Appropriations Act of 2005)

Component 3: Define Time Period – The MRA accounting period for species defined in Component 1 would be changed from any time during a fishing trip to:

Option 1: the end of a reporting week[1], or
Option 2: at the time of product offload.

Review of Potential Alternatives for MRA accounting period of selected species

Alternative 1. No action, and no change in MRA accounting period.

Alternative 2. In the BSAI, allow the calculation of the MRA of yellowfin sole, rock sole, flathead sole, "other flatfish", and arrowtooth flounder to occur at *the end of a reporting week*, for the non-AFA trawl catcher processor sector. [1]

Option: Include Aleutian Islands Pacific Ocean perch and Atka mackerel.

Alternative 3. In the BSAI, calculate the period of accounting for MRA of yellowfin sole, rock sole, flathead sole, "other flatfish", arrowtooth flounder, Atka mackerel and Aleutian Islands Pacific Ocean perch at *the time of an offload*, for the non-AFA trawl catcher processing sector.[1]

Option: Include Greenland turbot and rockfish species in offload accounting.

Structure of analysis and major issues

Analysis for the MRA accounting adjustment proposal

If the Council chooses to proceed with a regulatory amendment for the MRA accounting interval an EA/RIR/IRFA evaluating some environmental and economic effects of the proposed action would be developed. NMFS does not have access to sufficient data on market prices of products, sector and vessel cost data, or management and sector behavioral models to explain or project the change in retention or economic consequences of any of the proposed alternatives. Thus, the analysis for this proposed regulatory amendment would be largely a qualitative exercise.

The analysis would be organized to evaluate the components and alternatives compared with the status quo. Under the current set of components and three alternatives, the analysis could focus on the selection tradeoffs for the two alternative accounting intervals, and the optimum combination of species to include in the MRA accounting adjustment program. In addition to any components the Council requests, the tradeoffs to be explored would include the species mix most likely to be helpful to the sector for increasing retention versus in-season management catch accounting risk or other conservation concerns.

[1] The following regulation defining a fishing trip in current regulations would still apply to Component 2 and 3 and Alternative 2 and 3:
(A) or on the effective date of a notification prohibiting directed fishing in the same area under § 679.20 or § 679.21;
(B) or the vessel enters or leaves an area where a different directed fishing prohibition applies. For example, when a vessel engages in directed fishing in the AI from the BS (or BS to the AI).

While much of the analysis would be qualitative, some data would be drawn from Amendment 80 and the pollock MRA analysis, while additional data reports may need to be generated to evaluate management implications for species in the "Other flatfish" category. Effects analyses may include discussion of tradeoffs between the two or more MRA accounting intervals and the factors affecting them, and the expectation for a given accounting interval and species to achieve increased retention. Also, discussion of conservation, management risk, and accounting issues associated with any given accounting interval/species combination would be included.

Factors effecting whether a weekly or offload accounting interval will increase retention of a corresponding incidental species.

The analysis for this action would present a qualitative discussion of the potential for Alternative 2 or Alternative 3 to increase retention of a given incidentally caught species. Under Alternative 3, extending MRA accounting to the point of offload would, by definition, effectively increase the length of a fishing trip. Under Alternatives 2 and 3, three (rather than five) conditions would define the end of a fishing trip: (1) vessel offloads, (2) NMFS prohibits directed fishing, and (3) vessel movement to an area where a different directed fishing closure applies. The two eliminated conditions are that the vessel switches gear and a weekly reporting period ends. The elimination of gear switching has little impact on trip status. Trawl C/Ps rarely switch gear within the trawl category (between non-pelagic and pelagic gear), but never switch between trawl, hook-and-line, pot, or jig gear.

Under Alternative 3, extending MRA accounting beyond a weekly reporting period to a point of offload, changes the application of the definition of a trip and may increase the amount of retained incidental species. Typically, vessels offload every 20 to 25 days. Absent any other trip ending events, a trip increases from a maximum of seven to as many as 25 days. Especially in combination with elimination of the instantaneous calculation requirement, increased trip time is likely to allow vessels more opportunity to encounter incidental species and accumulate basis species. NMFS and the Council created the weekly reporting period trip limit to deliberately reduce the opportunity to directly or indirectly target incidental species.

Improvements in pollock retention following recent changes to pollock MRA accounting interval regulations.

While many economic and biological factors may impact the vessel operator's decision to retain a species, the 2004 regulations that extend the accounting interval for the BSAI pollock fishery provide some insight to retention practices with respect to adjustments to the MRA accounting period. The EA/RIR/IRFA for the pollock MRA projected that under conditions where retention of pollock could increase profitability of non-AFA trawl C/P sector deliveries, the policy of extending the accounting period was likely to increase retention of pollock. This program was implemented on June 14, 2004, and during 2005, retention of pollock has increased in some months (Figure 3). While the reported 2005 increases in non-AFA trawl C/P sector pollock retention may not be directly transferred to the species considered in Alternatives 2 and 3, they suggest a potential connection between relaxed MRA accounting intervals and improved retention.

The incidental catch of pollock through May 7, 2005 was 22,600 mt which was less than the same time period in 2004 (26,300 mt; Figure 3). The total groundfish catch in the non-pollock fisheries for January through April is about 236,000 mt for both 2004 and 2005, indicating an average incidental catch rate of pollock in those fisheries of about 10 percent. Roughly 40 percent of the pollock incidental catch occurs in the Pacific cod target and the remainder in the yellowfin sole, rock sole, and flathead sole fisheries (in descending order).

The current exception for MRA accounting of pollock allows a trip to be defined solely at the point of offload. Under AFA, NMFS closes pollock to directed fishing for all vessels except those authorized under the AFA and the Community Development Quota program. The two additional trip conditions are

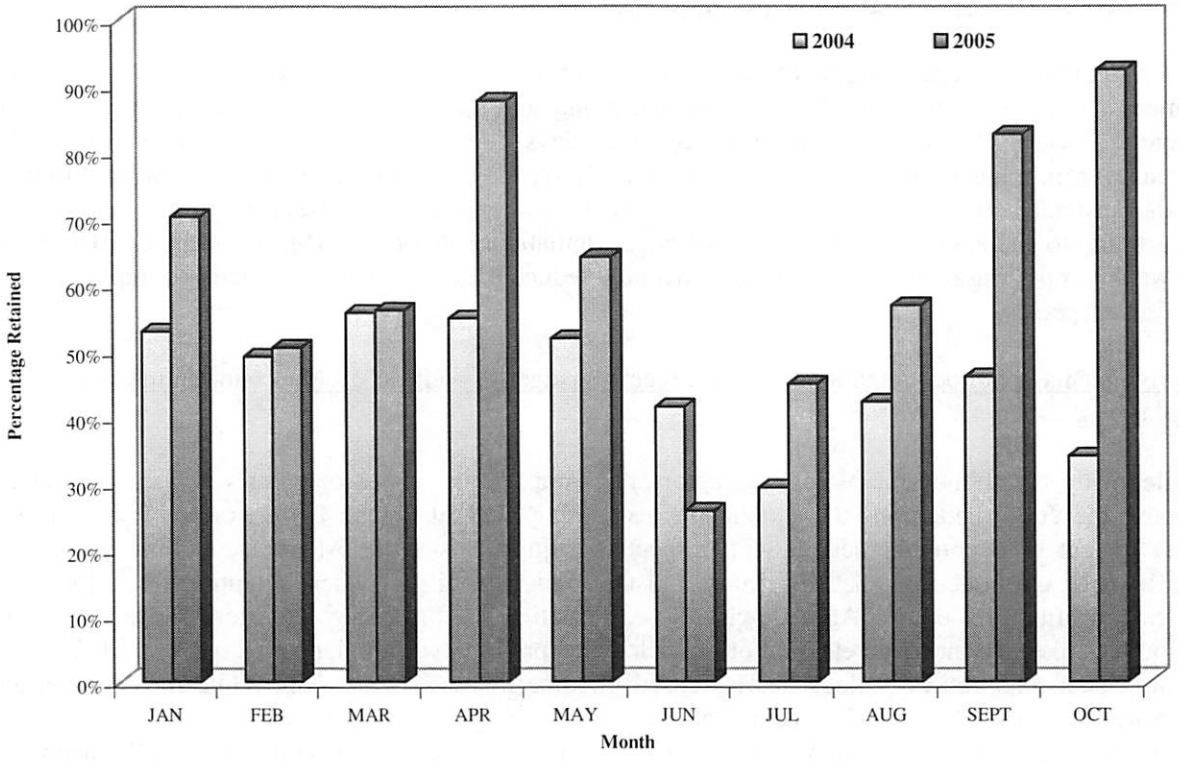
not relevant because pollock is closed to directed fishing the entire year. The two relevant conditions are directed fishing prohibitions and vessel movement into an area with a different directed fishing closure. When either condition is invoked, trip length is limited relative to the offload definition.

If the MRA is calculated at the time of offload, vessel operators have the option to retain and utilize additional pollock. Choosing to retain incidental species at an early point in a trip could increase the probability that a maximum amount of incidental species could eventually be caught for each trip. Front loading assumes enough basis species are required to be caught by the trip end date, otherwise, incidental species are discarded.

In the non-pollock fisheries, pollock retention rates (i.e., of the total incidental pollock caught, the proportion that was retained) are highest in the hook-and-line C/P Pacific cod target (87%) with a total catch of 1,453 mt of pollock. Within the flatfish targets, total catch of pollock from January to May dropped by 14 percent from 23,448 mt in 2004 to 20,143 mt in 2005. However, retention rates increased from 54 percent in 2004 to 60 percent in 2005 during the same period. Fewer pollock were caught but retention rates were higher.

Figure 3. Monthly

2004/2005 Retention of Pollock by the H&G Fleet



For non-pollock species, the current status of instantaneous accounting limits the amount of indirect targeting of highly valued incidental species. The proportions that constitute many MRAs were designed to reflect the upper end of expected incidental catch rates.

Effect of changing MRA accounting on retention of species closed to directed fishery.

MRA accounting changes may cause the current MRA to be less limiting to retention of incidental catch, particularly when its calculation occurs at the end of a trip (Alternative 3). Vessel operators have an economic incentive to maximize the value of each trip or aggregation of trips. For example, if Alternative 3 were to include certain rockfish species (e.g. shortraker rockfish) it would provide increased opportunity to top-off on higher valued incidental species early in the trip rather than accumulating them

in an incidental manner. Intentional indirect target behavior could increase the overall catch of species that have closed other target groundfish fisheries due to overfishing concerns in the past. While the proposal accomplishes discard reduction and accounting simplification, depending upon which species are included, the relaxed accounting regulations could encourage greater catch of incidental species that require protection.

In 2005, Bering Sea rockfish were closed to directed fishing for the entire year. Catch for most rockfish species was moderate relative to the TAC. Catch did not approach overfishing. However, the status of groundfish stocks changes each year, sometimes dramatically. The thrust of rockfish management is to disassociate species complexes into their constituent species. A greater number of species categories with smaller allowable biological catches and overfishing levels increases the potential for a species to reach overfishing levels. Thus, it will be important to carefully consider which species are good candidates for increased MRA accounting based upon management risk and uncertainty.

Historically, indirect targeting of rockfish species has driven catch levels high enough to approach overfishing levels. When fisheries are closed to prevent overfishing, some annual revenues in this sector are likely foregone as the sector substitutes effort into the next best target alternative. In the BSAI, shortraker rockfish are incidentally caught in several directed fisheries. Those fisheries include AFA pollock; IFQ sablefish and halibut, CDQ sablefish and halibut; non-pelagic trawl Pacific cod, Atka mackerel, Pacific Ocean perch, and arrowtooth flounder; hook-and-line Pacific cod, and Greenland turbot. An action to prevent overfishing of shortraker rockfish considers curtailing or closing of some or all of these fisheries. Alternative 2 along with Option 1 are intended to ameliorate conservation risks of targeting on species such as rockfish, which is at risk of overfishing or reaching a TAC.

Effect of Amendment 80 on modification of MRA accounting period for the non-AFA trawl C/P sector

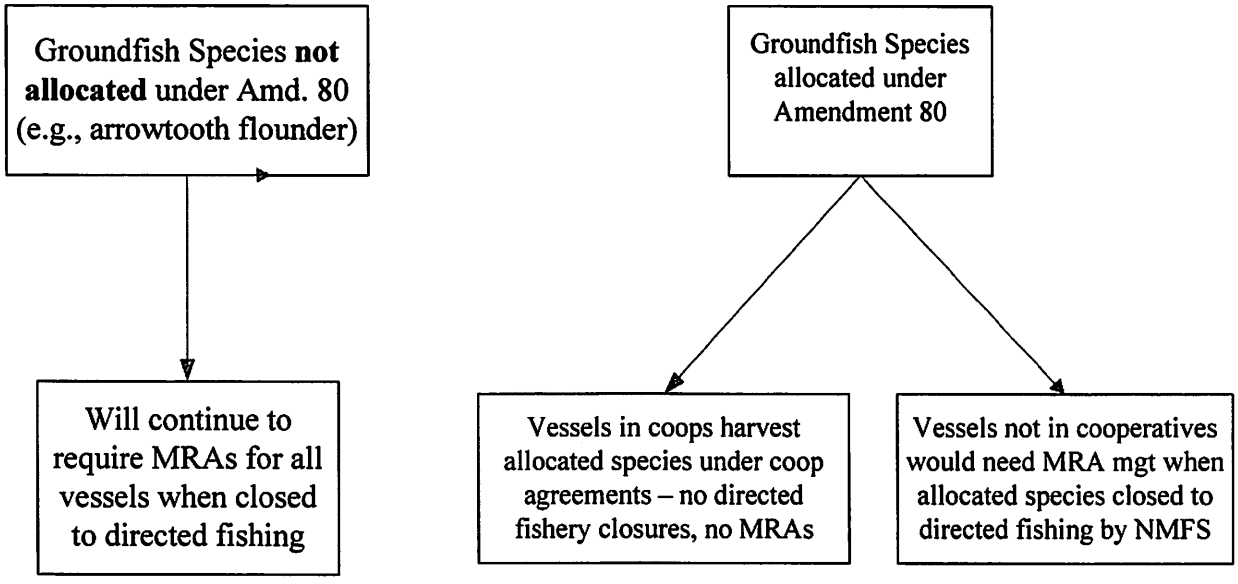
Depending on the preferred alternative adopted by the Council for Amendment 80, MRAs would be moot for the groundfish species allocated to the non-AFA trawl C/P sector and subsequently to cooperatives (Figure 4). However, MRAs still would be applicable for all non-allocated and groundfish allocated to the sector, but fished outside of cooperatives. This premise assumes that co-op allocations of groundfish allocated to the non-AFA trawl C/P sector would be managed as "hard caps" by cooperatives under contractual agreements and that NMFS would not directly manage co-op allocations using directed fishery closures. Cooperatives would be expected to mange their respective allocations to meet both directed and incidental catch needs and cease fishing when an allocation is reached. *Thus, the rulemaking that would implement Amendment 80 would remove the applicability of MRAs to vessels participating in a cooperative for the species allocated under Amendment 80 (yellowfin sole, rock sole, flathead sole, Atka mackerel, and Aleutian Islands Pacific Ocean perch). This action would be necessary regardless of any change to the MRA accounting period now under consideration by the Council.* MRAs for co-op participants would continue to be applied for non-allocated species (e.g., arrowtooth flounder, "Other flatfish", Greenland turbot) and any change to the MRA accounting period under consideration by the Council for these species would continue under Amendment 80 for *all vessels* in the non-AFA trawl C/P sector, whether or not they participate in a co-op.

Species allocated under Amendment 80, but fished outside of cooperatives, would continue to be directly managed by NMFS using directed fishing closures and species-specific MRA restrictions. Thus, vessels in the non-AFA trawl C/P sector that do not participate in a cooperative during a fishing year would not be exempt from any MRA restrictions. Further, any change to the accounting period for all species-specific MRAs now being considered by the Council would continue under Amendment 80 for vessels not participating in a cooperative.

In summary, Amendment 80 by itself would drive changes to the existing MRA regulations to exempt co-op allocations from MRA restrictions that the Council should recognize in its final action on this amendment. Any change to the existing MRA accounting period for a species to enhance the opportunity

for retention, whether or not that species would be allocated under Amendment 80, is a separate regulatory action that can be independently developed and implemented at any time.

Figure 4. Diagram showing when MRAs apply to vessels in the non-AFA trawl C/P sector under Amendment 80, assuming allocated species are managed under "hard caps."



Additional elements and effects to evaluate in an EA/RIR/IRFA

- Provide a management-based evaluation for including sensitive species such as Greenland turbot and rockfish in preferred alternative and how they differ by type of accounting requirement. Describe which of the species may be more amenable to weekly versus offload accounting.
- Evaluate tradeoffs for each species in the "Other flatfish" category. Some species in the "Other flatfish" category could be overfished with relaxed MRA accounting.
- Update tables showing retention and discards of candidate MRA species by management component. This would include yellowfin sole, Arrowtooth, rock sole, rex sole, Pacific Ocean perch, Atka mackerel, "Other flatfish," and others.
- Evaluate applicability of existing regulatory text for pollock MRA as it applies to MRA accounting adjustment for the non-AFA trawl C/P sector, noting any changes to regulatory text.

Scheduling for Analysis and Amendment Package

The non-AFA trawl C/P sector has expressed considerable interest in having this MRA regulatory amendment implemented as soon as possible to provide another tool to reduce bycatch. The action does not need to be implemented on the start date of the fishing year to be of assistance to the fleet. If, however, the Council would like to relieve these restrictions as quickly as possible, implementation would be influenced by the following factors.

1. Keep the scope of the sectors included in the final action limited to the non-AFA trawl C/P fleet.
2. Simplify the proposed regulatory amendment by limiting the number of species affected (for example to the species identified in Component 1 - Option 1).
3. Choose an MRA accounting period (such as weekly) that is not demanding for NMFS to evaluate from a management and accounting perspective.

Optimistic case schedule for proposed regulatory amendment for change to MRA accounting for selected species in non-AFA trawl C/P fisheries:

2006	
June 8	Council initial review
October 5	Council final action
October 20	Begin regional review of EA/RIR/IRFA
October 30	Proposed rule starts making rounds around the Region
November 24	Proposed rule sent to DC
December 22	Publish proposed rule in FR (45-day comment period) pending secretarial approval
2007	
February 8	Comment period ends
February 28	Revisions to the EA/RIR IRFA and construction of FRFA complete.
March 13	Final rule starts making rounds around the Region
March 30	Final rule to D.C.
April 28	Publish final rule
May 31	Effective date

Appendix Table 1. Table 11 to Part 679–BSAI Retainable Percentages *(Updated 10/18/02)*

BASIS SPECIES		INCIDENTAL CATCH SPECIES[5]															
		Pollock	Pacific cod	Atka mackerel	Alaska plaice	Arrow-tooth	Yellow-fin sole	Other flatfish[2]	Rock sole	Flathead sole	Green-land turbot	Sable-fish[1]	Short-raker/ rougheye	Aggregated rockfish[6]	Squid	Aggregated forage fish[7]	Other species[4]
110	Pacific cod	20	na[5]	20	20	35	20	20	20	20	1	1	2	5	20	2	20
121	Arrowtooth flounder	0	0	0	0	na[5]	0	0	0	0	0	0	0	0	0	2	0
122	Flathead sole	20	20	20	35	35	35	35	35	na[5]	35	15	7	15	20	2	20
123	Rock sole	20	20	20	35	35	35	35	na[5]	35	1	1	2	15	20	2	20
127	Yellowfin sole	20	20	20	35	35	na[5]	35	35	35	1	1	2	5	20	2	20
133	Alaska Plaice	20	20	20	na[5]	35	35	35	35	35	1	1	2	5	20	2	20
134	Greenland turbot	20	20	20	20	35	20	20	20	20	na[5]	15	7	15	20	2	20
136	Northern	20	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
141	Pacific Ocean perch	20	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
152/ 151	Shortraker/ Rougheye	20	20	20	20	35	20	20	20	20	35	15	na[5]	5	20	2	20
193	Atka mackerel	20	20	na[5]	20	35	20	20	20	20	1	1	2	5	20	2	20
270	Pollock	na[5]	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20
710	Sablefish[1]	20	20	20	20	35	20	20	20	20	35	na[5]	7	15	20	2	20
875	Squid	20	20	20	20	35	20	20	20	20	1	1	2	5	na[5]	2	20
Other flatfish[2]		20	20	20	35	35	35	na[5]	35	35	1	1	2	5	20	2	20
Other rockfish[3]		20	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Other species[4]		20	20	20	20	35	20	20	20	20	1	1	2	5	20	2	na[5]
Aggregated amount non-groundfish species		20	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20

1 Sablefish: for fixed gear restrictions, see 50 CFR 679.7(f)(3)(ii) and 679.7(f)(11).

2 Other flatfish includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Alaska plaice, and arrowtooth flounder.

3 Other rockfish includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch; and northern, shortraker, and rougheye rockfish. The CDQ reserves for shortraker, rougheye, and northern rockfish will continue to be managed as the "other red rockfish" complex for the BS.

4 Other species includes sculpins, sharks, skates and octopus.
Forage fish, as defined at Table 2 to this part are not included in the "other species" category.

5 na = not applicable

6 Aggregated rockfish includes all of the genera *Sebastes* and *Sebastolobus*, except shortraker and rougheye rockfish.

7 Forage fish are defined at Table 2 to this part.

Appendix Table 2. Discarded catch in BSAI fisheries in 1999-2004, by species and processing component

Species & Sector	1999	2000	2001	2002	2003	2004
	Discarded Catch (1,000 mt)					
Non-AFA Trawl Catcher Processors						
Atka Mackerel	4.70	2.60	4.31	7.4	11.73	10.67
Arrowtooth Flounder	6.80	5.50	6.68	5.5	6.54	11.38
Flathead Sole	2.70	3.30	2.13	2.6	2.68	3.52
"other flatfish"	12.50	12.77	8.86	14.2	10.79	9.88
Other Groundfish	7.30	8.80	8.54	9.7	5.90	6.20
Pacific Cod	1.30	0.70	0.79	1.1	0.72	0.45
Pollock	14.95	14.60	14.45	15.9	13.24	19.36
Rockfish	6.80	5.50	7.59	5.1	6.69	6.00
Rock Sole	20.00	23.56	8.60	15.3	13.83	18.91
Turbot/Sablefish	0.40	0.28	0.49	0.3	0.21	0.30
Yellowfin Sole	11.22	12.72	7.65	10.2	10.49	11.45
Surimi and Fillet Trawl Catcher Processors (AFA)						
Atka Mackerel	0.60	0.00	0.00	0.00	0.18	0.01
"other flatfish"	1.50	1.65	0.77	0.75	0.42	0.71
Other Groundfish	0.78	4.20	1.04	0.84	0.29	0.63
Pacific Cod	0.40	0.10	0.08	0.02	0.01	0.03
Pollock	2.76	1.34	0.32	0.19	0.19	0.14
Rockfish	0.10	0.10	0.37	0.24	0.30	0.05
Rock Sole	0.90	1.80	0.62	0.76	0.35	0.77
Turbot/Sablefish	0.00	0.00	0.03	0.01	0.01	0.00
Yellowfin Sole	0.87	0.74	0.10	0.31	0.12	0.38
Pot Catcher Processors						
Atka Mackerel	0.00	0.00	0.00	0.00	0.00	0.00
"Other flatfish"	0.00	0.00	0.10	0.00	0.00	0.00
Other Groundfish	0.10	0.10	0.04	0.02	0.02	0.01
Pacific Cod	0.00	0.00	0.02	0.02	0.00	0.00
Pollock	0.00	0.00	0.01	0.00	0.00	0.00
Rockfish	0.00	0.00	0.00	0.00	0.00	0.00
Rock Sole	0.00	0.00	0.00	0.00	0.00	0.00
Turbot/Sablefish	0.00	0.00	0.00	0.00	0.00	0.00
Yellowfin Sole	0.00	0.10	0.01	0.02	0.02	0.03
Longline Catcher Processors						
Atka Mackerel	0.07	0.15	0.14	0.04	0.01	0.04
"other flatfish"	1.50	2.10	1.78	1.49	1.35	1.86
Other Groundfish	11.40	13.23	13.34	11.40	9.84	12.55
Pacific Cod	1.43	2.70	1.76	2.14	1.81	1.62
Pollock	0.60	1.00	0.99	0.85	0.79	0.58
Rockfish	0.24	0.35	0.40	0.18	0.15	0.18
Rock Sole	0.06	0.03	0.03	0.04	0.04	0.03
Turbot/Sablefish	0.34	0.41	0.18	0.30	0.25	0.08
Yellowfin Sole	0.18	0.28	0.63	0.61	0.56	0.46
All Shore Plants, Floaters, and Motherships						
Atka Mackerel	0.10	0.01	0.07	0.12	1.56	0.75
"other flatfish"	1.43	1.59	1.01	1.86	2.14	2.57
Other Groundfish	3.46	1.74	1.83	2.11	2.28	1.52
Pacific Cod	0.41	0.49	0.26	0.87	0.58	0.35
Pollock	11.20	5.49	1.97	4.37	2.76	3.17
Rockfish	0.06	0.15	0.18	0.35	0.35	0.16
Rock Sole	4.62	1.91	0.78	1.85	1.87	1.61
Turbot/Sablefish	0.10	0.22	0.36	0.28	0.72	0.08
Yellowfin Sole	0.20	0.30	0.26	0.24	0.22	0.15

Source: NPFMC Sector Profiles and Catch Accounting Database, 1999-2004

Appendix Table 2 continued. Discarded catch as percent of total catch in BSAI fisheries in 1999-2004, by species and processing component

Species & Sector	1999	2000	2001	2002	2003	2004
	Discarded Catch as Percent of Total Groundfish Catch					
Non-AFA Trawl Catcher Processors						
Atka Mackerel	1.78	0.89	1.60	2.60	4.32	3.55
Arrowtooth Flounder	2.53	1.88	2.47	1.96	2.38	3.77
Flathead Sole	1.04	1.13	0.79	0.93	0.99	1.17
"other flatfish"	4.67	4.35	3.28	4.63	3.98	3.29
Other Groundfish	2.75	3.00	3.16	3.43	2.16	2.05
Pacific Cod	0.50	0.22	0.29	0.42	0.26	0.14
Pollock	5.57	4.97	5.35	5.58	4.83	6.42
Rockfish	2.52	1.87	2.81	1.79	2.45	1.98
Rock Sole	7.48	8.02	3.18	5.37	5.08	6.29
Turbot/Sablefish	0.16	0.10	0.18	0.11	0.07	0.10
Yellowfin Sole	4.19	4.33	2.83	3.57	3.87	3.80
Surimi and Fillet Trawl Catcher Processors (AFA)						
Atka Mackerel	0.00	0.00	0.00	0.00	0.04	0.01
"other flatfish"	0.34	0.32	0.13	0.13	0.10	0.15
Other Groundfish	0.17	0.85	0.17	0.14	0.07	0.13
Pacific Cod	0.09	0.02	0.01	0.01	0.00	0.01
Pollock	0.62	0.27	0.05	0.09	0.07	0.05
Rockfish	0.02	0.03	0.06	0.04	0.07	0.01
Rock Sole	0.20	0.36	0.10	0.14	0.08	0.16
Turbot/Sablefish	0.00	0.01	0.00	0.00	0.00	0.00
Yellowfin Sole	0.20	0.15	0.02	0.05	0.02	0.08
Pot Catcher Processors						
Atka Mackerel	0.00	0.00	0.03	0.04	0.10	0.00
"other flatfish"	0.00	0.00	0.01	0.00	0.00	0.01
Other Groundfish	0.02	0.16	1.30	1.13	0.97	0.29
Pacific Cod	0.10	0.16	0.80	1.01	0.00	0.02
Pollock	0.00	0.02	0.17	0.05	0.00	0.00
Rockfish	0.00	0.00	0.01	0.00	0.00	0.00
Rock Sole	0.00	0.03	0.01	0.00	0.01	0.01
Turbot/Sablefish	0.00	0.00	0.02	0.00	0.00	0.00
Yellowfin Sole	0.00	1.97	0.46	0.82	1.21	1.01
Longline Catcher Processors						
Atka Mackerel	0.06	0.12	0.10	0.03	0.01	0.03
"other flatfish"	1.36	1.69	1.31	1.15	1.11	1.52
Other Groundfish	10.10	10.52	9.86	8.79	8.11	10.27
Pacific Cod	1.27	2.16	1.30	1.65	1.49	1.33
Pollock	0.50	0.80	0.73	0.66	0.65	0.48
Rockfish	0.21	0.27	0.29	0.14	0.12	0.15
Rock Sole	0.05	0.03	0.02	0.03	0.03	0.02
Turbot/Sablefish	0.33	0.33	0.13	0.23	0.21	0.07
Yellowfin Sole	0.16	0.22	0.46	0.47	0.46	0.37
All Shore Plants, Floaters, and Motherships						
Atka Mackerel	0.02	0.00	0.01	0.01	0.18	0.09
"other flatfish"	0.24	0.23	0.13	0.21	0.25	0.31
Other Groundfish	0.29	0.51	0.23	0.24	0.26	0.18
Pacific Cod	0.07	0.07	0.03	0.10	0.07	0.04
Pollock	1.87	0.80	0.25	0.51	0.32	0.38
Rockfish	0.01	0.02	0.02	0.04	0.04	0.02
Rock Sole	0.77	0.28	0.10	0.21	0.22	0.19
Turbot/Sablefish	0.02	0.03	0.05	0.03	0.08	0.01
Yellowfin Sole	0.04	0.04	0.03	0.03	0.03	0.02

Source: NPFMC Sector Profiles and Catch Accounting Database, 1999-2004

FISHING VESSEL OWNERS' ASSOCIATION
INCOPORATED

ROOM 232, WEST WALL BUILDING • 4005 20TH AVE. W.
SEATTLE, WASHINGTON 98199-1290
PHONE (206) 284-4720 • FAX (206) 283-3341

SINCE 1914

C-2

March 28, 2006

Ms. Stephanie Madsen
Chairwoman
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

RE: Amendment 80

Dear Ms. Madsen:

These comments are relative to Amendment 80 to the Bering Sea and Aleutian Island Management Plan. The members of the Fishing Vessel Owners' Association (FVOA) are concerned about how the Council deals with the reduction in the Halibut PSC cap for the BSAI. The members of the FVOA have significant holdings of halibut in the Bering Sea and their potential harvest is affected by the size of the PSC halibut cap.

Currently, the trawl cap in the Bering Sea is at 3400 mt. The option to reduce this cap with rationalization of the non-pollock fleet ranges from 0 to 40%.

The Council has attempted several times to address the halibut and other PSC caps. The first time was with Amendment 3 to the BSAI Management Plan. Council documents report the following with respect to the regulation action of Amendment 3.

> "Regulation Summary: Amendment 3 reduced bycatch of prohibited species in foreign groundfish fisheries. Essentially, total PSC allocations for foreign nations were based on bycatch rates multiplied by the nations TALFF allocation. Bycatch rate reductions to be met by 1986 from status quo base years (1977-80) were as follows: halibut, 50%; king and Tanner crab, 25%; salmon, 75%. The target level of salmon bycatch was 17,473 fish. If bycatch apportionments for any PSC species were met or exceeded, that nation's fleet was prohibited from fishing in the entire BSAI area, unless exempted by the NMFS Regional Director."

The council reports the following as to the results of the action taken on the foreign fleets operating under TALFF.

Results: The foreign fleet successfully reduced bycatch in their fisheries (of course part of this reduction is attributable to reduced TALFF). However, bycatch savings were offset by the growing joint venture (JV) fisheries. The adjacent table illustrates these results.

Bycatch in foreign and JV groundfish fisheries in the BSAI 1983-1986.
Source: Guttormsen et al. 1990.

	Halibut (mt)		Salmon (#)		King crab (#)	
Year	Foreign	JV	Foreign	JV	Foreign	JV
1983	1,872	438	18,173	24,493	404,013	630,144
1984	2,128	617	16,516	67,622	292,223	398,865
1985	1,789	1,026	10,003	10,420	219,783	1,005,290
1986	1,192	1,711	1,643	19,340	14,631	260,435

LATITUDE: 47° 39' 36" NORTH
LONGITUDE: 120° 22' 58" WEST

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From the US halibut fishermen's perspective, the foreign restrictions seemed to work and were a form of co-op-style operation now suggested as an option under Amendment 80. The foreign fleet's success was significantly accomplished by self-imposed restrictions in order to make the most of this PSC Cap. These successes were short-lived as the domestic fleet soon took over phasing all foreign fishing out by 1988.

The problems that seemed to be addressed with a market-based incentive program on the foreign fleet were not automatically transferred to US operations. The result was a very high bycatch of Bering Sea juvenile halibut stocks by the US fleet during the late 1980's and early 1990's. This is verified in the Council and IPHC historical documents. The current trawl PSC Cap for halibut is 3400 Mt.

In order to look at alternatives to reduce the trawl cap further, the Council set up the Halibut bycatch working group (HBWG). There were nine recommendations of the working group. The first three focused on Alaska fisheries. Those recommendations were as follows (IPHC Technical Report 25):

"U.S. Fisheries

(1) Bring all groundfish fisheries off Alaska under existing caps in 1992 and ensure that all fisheries adhere to specified bycatch controls.
(2) Support development and expansion of incentive programs in 1992.
(3) Promote a downwards ratcheting of caps starting in 1993 at 10 percent per year based on a rate or vessel quota incentive program. The goal would be to reduce mortality as far as possible over time consistent with the need to harvest the groundfish resources. The foreign fishery levels achieved in the mid-1980's shall provide an initial yardstick for monitoring success."

The Council eventually adopted a Bering Sea and Aleutian Island halibut cap as well as a cap for the Gulf of Alaska. The second and third proposals have evolved into options now contained in Amendment 80, which has taken better than a decade to mature from the HBWG's original recommendations. It is clear, however, based on the HBWG recommendations, that it was believed a significant reduction could be realized with proper incentives. The HBWG suggested starting off with a 10% ratcheting down of the Cap. They did not give an annual goal.

In attempting to review the current bycatch rate of PSC halibut in the CDQ Bering Sea fisheries, apparently their rock sole activity is limited to the point that the data is restricted due to confidentiality limitations. The yellowfin sole activity has been limited to about 5,000 to 6,000 Mt., with the use of about 40 Mt of halibut. It is therefore difficult to look at these prototype-co-op operations and see how the market forces will encourage different fisheries behavior.

In fact the non-CDQ fleet, in 2005, had quotas of rock sole and yellowfin sole of 35,502 Mt and 87,784 Mt respectively. They harvested 100% of each quota in 2005. In 2004, the non-CDQ fleet harvested 113% of their rock sole quota and 94% of their yellowfin sole catch. The halibut PSC Caps were obviously not very restraining on either one of these

fisheries in 2004 and 2005. It is our opinion that renewed economic incentive practices stimulated with the proposed co-ops will result in lower over catches of halibut PSC.

FVOA therefore requests a 15% initial reduction in halibut PSC limits with an additional 15% reduction over the next three years following implementation of Amendment 80. This could result in a 30% reduction in the PSC cap for the BSAI trawl activities. We further recommend that the co-ops be able to use or assign their Pacific cod to be harvested with fixed gear in order to extend the use of their PSC Caps.

Sincerely,

Robert D. Alverson
Manager

RDA:cmb

Rationale for Intra-Sector mackerel allocation method

- Acknowledges "non-mackerel" boats need to receive 541/EBS atka mackerel to cover bycatch needs in other target fisheries.
- Provide flexibility for "atka mackerel" boats if TAC shifts between areas.

C-2
Karl Haflinger

Steps in mackerel area apportionment process

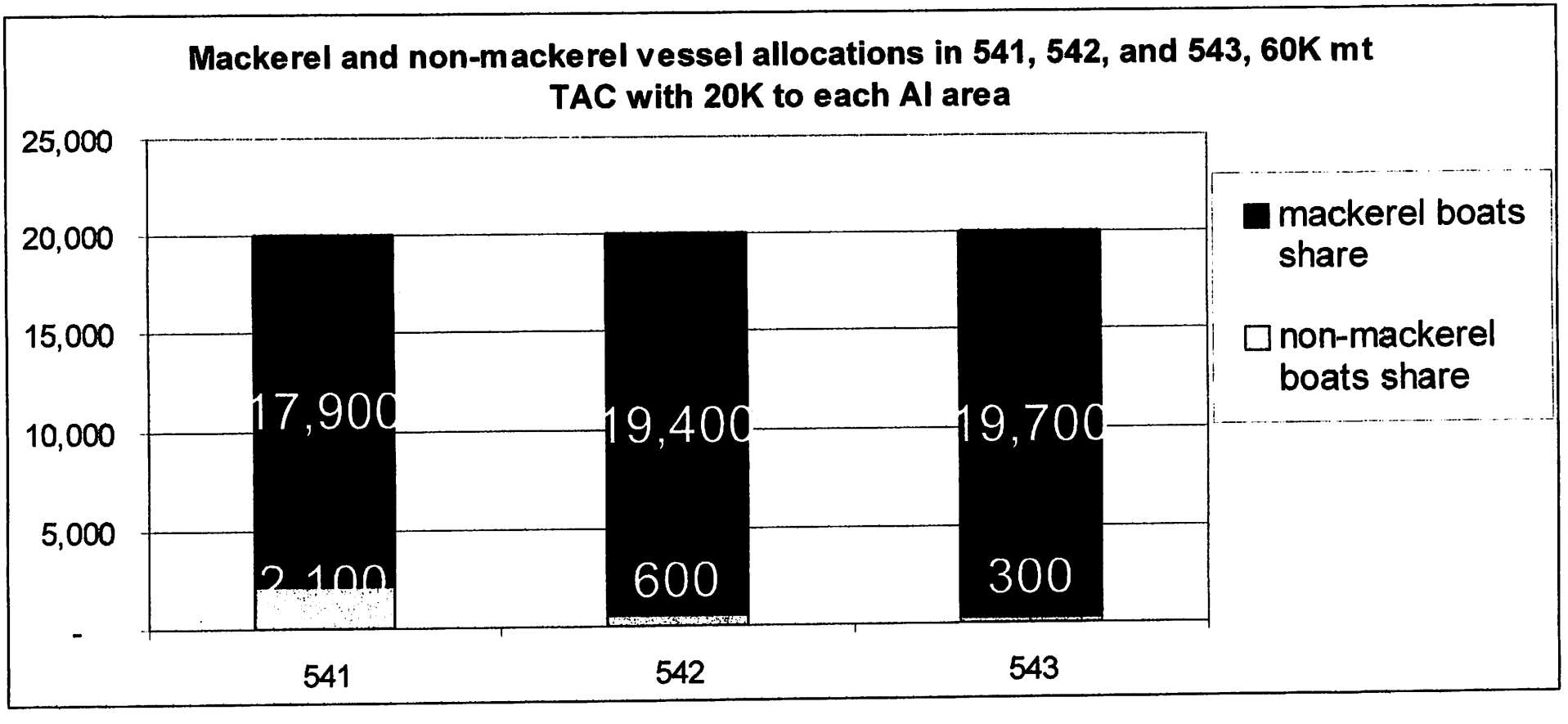
- For each vessel, determine percentage of overall mackerel catch history, regardless of area.
- For non-mackerel vessels, determine percentage of each vessels catch that came from 541, 542, and 543. For example, one boat may have 100% in 541, another may have 80%, 15%, 10% in 541, 542, 543 respectively
- Each year, allocate to each non-mackerel vessel its percentage of the overall mackerel TAC, and make subarea allocations based on 541/542/543 historical vessel percentages above.
- Spec process defines TAC for 541, 542 and 543. Remove subarea allocations from overall 541/542/543 TACs. Remainder is divided among mackerel boats according to their percentage of catch history, with mackerel vessels receiving their allocation in proportion to their overall share of the catch history. (Take mackerel boats overall shares from step 1 above, and then adjust up proportionally to 100%)

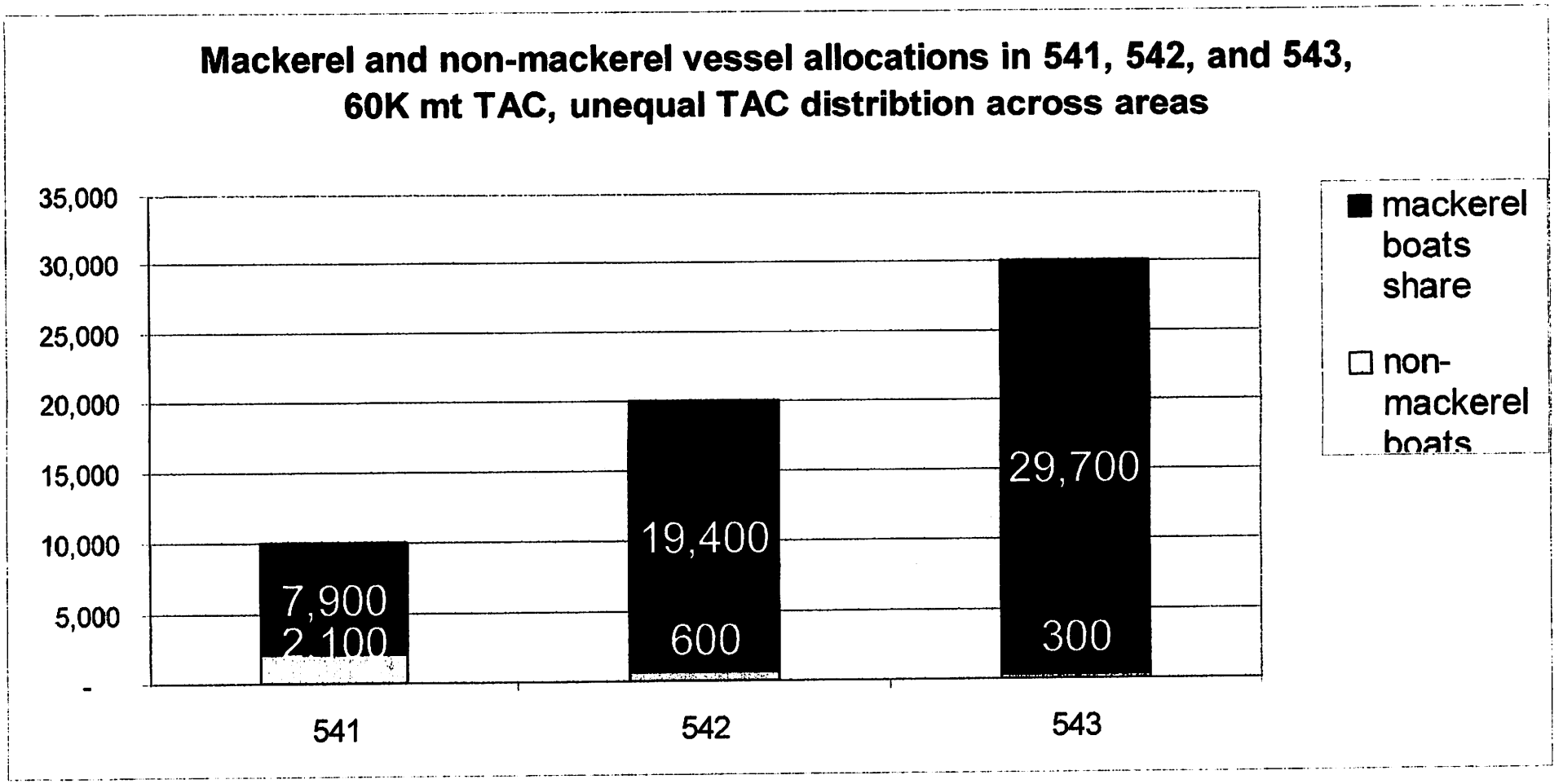
60K TAC, equally apportioned to 541, 542, 543

Examples:	Percentages	Allocation (mt) based on 60K mt TAC		
% from 541	3.50%	2,100		
% from 542	1.00%	600		
% from 543	0.50%	300		
Total share non-mackerel boats	5.00%	3,000		
Areas	541	542	543	Totals
TACs	20,000	20,000	20,000	60000
non-mackerel boats share	2,100	600	300	3,000
mackerel boats share	17,900	19,400	19,700	57,000

60K TAC, unequally apportioned to 541, 542, 543

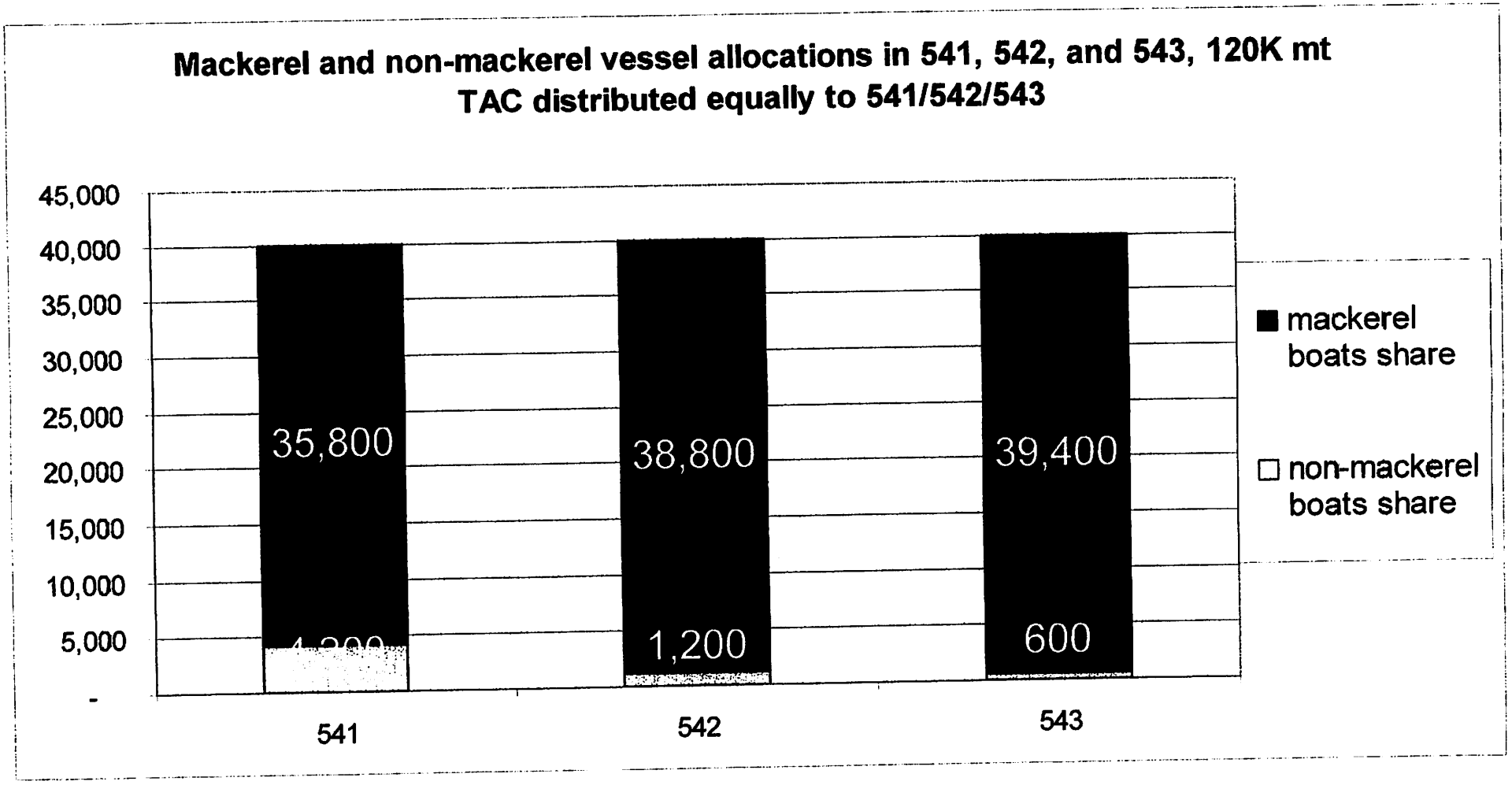
Examples:	Percentages	Allocation (mt) based on 60K mt TAC		
% from 541	3.50%	2,100		
% from 542	1.00%	600		
% from 543	0.50%	300		
Total share non-mackerel boats	5.00%	3,000		
Areas	541	542	543	Totals
TACs	10,000	20,000	30,000	60000
non-mackerel boats share	2,100	600	300	3,000
mackerel boats share	7,900	19,400	29,700	57,000


Mackerel and non-mackerel vessel allocations in 541, 542, and 543, 60K mt
TAC with 20K to each AI area
25,000
20,000
15,000
10,000
5,000
-
17,900
2,100
19,400
600
19,700
300
541
542
543
mackerel boats share
non-mackerel boats share


Mackerel and non-mackerel vessel allocations in 541, 542, and 543, 60K mt TAC, unequal TAC distribtion across areas
35,000
30,000
25,000
20,000
15,000
10,000
5,000
-
7,900
2,100
19,400
600
29,700
300
541
542
543
mackerel boats share
non-mackerel boats

120K TAC, equally apportioned to 541, 542, 543

Examples:	Percentages	Allocation (mt) based on 120K mt TAC		
% from 541	3.50%	4,200		
% from 542	1.00%	1,200		
% from 543	0.50%	600		
Total share non-mackerel boats	5.00%	6,000		
Areas	541	542	543	Totals
TACs	40,000	40,000	40,000	60000
non-mackerel boats share	4,200	1,200	600	6,000
mackerel boats share	35,800	38,800	39,400	114,000


Mackerel and non-mackerel vessel allocations in 541, 542, and 543, 120K mt
TAC distributed equally to 541/542/543
45,000
40,000
35,000
30,000
25,000
20,000
15,000
10,000
5,000
-
35,800
38,800
39,400
1,200
600
541
542
543
mackerel boats share
non-mackerel boats share

60K TAC, equally apportioned to 541, 542, 543

Examples:	Percentages	Allocation (mt) based on 60K mt TAC		
% from	4%	2,100		
% from	1%	600		
% from	1%	300		
non-mackerel boats	5%	3,000		
Areas	541	542	543	Totals
TACs	20,000	20,000	20,000	60000
non-mackerel boats share	2,100	600	300	3,000
mackerel boats share	17,900	19,400	19,700	57,000

		Percent	Share of 541/5	541 allocations	542 allocations	543 allocations
Mackerel boats	Vessel 1	20%	21.05%	3,768	4,084	4,147
	Vessel 2	15%	15.79%	2,826	3,063	3,111
	Vessel 3	15%	15.79%	2,826	3,063	3,111
	Vessel 4	12%	12.63%	2,261	2,451	2,488
	Vessel 5	13%	13.68%	2,449	2,655	2,696
	Vessel 6	15%	15.79%	2,826	3,063	3,111
	Vessel 7	5%	5.26%	942	1,021	1,037
	Total	95%	100%	17,900	19,400	19,700
Non-mackerel	(all together)	5%		2,100	600	300
Sector total		100%		20,000	20,000	20,000

Impacts

- Number of vessels qualifying as "non-mackerel" vessels: 14-15
- Amount of sector's total atka mackerel allocation allocated to non-mackerel vessels in 541: less than 5%; or about 40% of the 2006 ITAC in 541/EBS

Each vessel will receive its historic share of the sector's atka mackerel allocation based on component 10 (all areas combined). Vessels less than 200' in length having less than 2% of the sector's atka mackerel history ("'Non-mackerel vessels") will receive their allocation distributed by area according to each individual vessel's catch distribution during the component 10 years. The remainder of BS/541, 542 and 543 TACs after "non-mackerel vessel" allocations have been removed will be allocated to vessels that are greater than 200' in length or have more than 2% of the sector's atka mackerel allocation ("mackerel vessels"). Mackerel vessels will receive their respective percentages (adjusted to 100%) equally in each area.

City of Adak
Adak, Alaska

Resolution No. 2006-02

A RESOLUTION SUPPORTING LETTER RE: AMENDMENT 80 – ALTERNATIVE FOR ALEUTION ISLAND SPECIES.

WHEREAS, the community of Adak depends upon the fishing industry to provide jobs to local residents, and income tax for a stable economic base; and,

WHEREAS, the successful operation of the seafood industry is critical to the survival of Adak as a viable community; as stated in Am 80: *"To this end the Council is committed to reducing bycatch, minimizing waste, and improving utilization of fish resources to the extent practicable in order to provide the maximum benefit to present generations of fishermen, associated fishing industry sectors, including the CDQ sector,* **communities,** *and the nation as a whole, while at the same time continuing to look for ways to further rationalize the fisheries"* and,

WHEREAS, Adak can't survive as a fishery based community on a single species; and,

WHEREAS, Pollock remains out of reach due to sea lion restrictions for now; and,

WHEREAS, Adak must have access to the range of species that are in our local area; and,

WHEREAS, AI mackerel and POP are species that are in our local area; and,

WHEREAS, rationalization is 'forever' and we need recognition of our position as stakeholders of the resource at our doorstep now.

NOW THEREFORE BE IT RESOLVED, by the City of Adak, that the City of Adak supports Adak Fisheries letter dated March 28, 2006 to the North Pacific Fishery Management Council RE: Amendment 80 - Alternative for Aleutian Island Species and that some % must be made available to the general limited access fishery to provide opportunity for Adak's involvement:

Passed and adopted by Adak City Council this 1ST **day of** APR. **, 2006.**

William Tillion, Mayor

Attest:

FOR

Chrissy Dushlin, City Clerk

STEVEN L HINES, City MANAGER

Fishermen 's Finest, Inc.

1532 NW 56th Street — Seattle, WA 98107
TEL: 206.283.1137 * FAX: 206.281.8681

April 6, 2006

Stephanie Madsen, Chairwoman
NPFMC
605 W. 4th, Ste. 306
Anchorage, AK 99501

Madame Chair:

The last time I testified I used the metaphor of "missing the forest for the trees" to urge the Council to uphold the law to protect non-AFA participants as mandated by Sect. 211 of the AFA, for the equal protection assured us under the 5th and the 14th Amendment, and for the fair and equitable distribution of resources as based upon National Standard 4. Today, I would like to bring your attention to yet another factor that should be given serious consideration in making a decision under Amendment 80.

When the Council takes up an allocation issue, the burden of fairly assessing the ramifications of such an allocation scheme falls to the Council, which ultimately presents its recommendations to NOAA and the Department of Commerce. Should there be a conflict regarding the allocation, the Department of Justice will review and analyze how the Council ultimately made its recommendation as well as examine the ramifications of the final allocation. I would like to address how a decision to allocate an amount of fish significantly less than the recent catch history of the multi-species fishery to the H & G, non-AFA, sector, and give the majority of the differential to the AFA sector could lead to substantial anti-competitive consequences that may ultimately wipe out the H&G sector entirely, leaving the market under the control of the AFA sector's monopoly. I would urge the Council to give careful and thorough attention to its probable effect on competition, and to give weight to the pro-competition policies embodied by our federal anti-trust laws.

One market reality that should play a critical role in the consideration of potential consequences is the fact that the participants of the AFA sector have been granted a

government monopoly over the pollock harvest. This allocation virtually guarantees profitable returns and ensures that the AFA sector's costs of participation in the shared fishery will be covered. What this means is that the costs incurred by the AFA sector from harvesting an allocated share of the multi-species fishery would be tiny. In other words, revenue from the pollock allocation assures the AFA sector that their costs of participation in the harvest of other species are already covered.

This creates a significant risk that the AFA will be able to sell any allocated share of the multi-species at prices far lower than the prices the H&G sector would be able to – not because the AFA sector is more efficient - but because government mandated pollock allocation provides a substantial subsidy to the expenses of the AFA sector. Alternatively, the AFA sector may not choose to use their built-in cost advantage to undercut the H&G sector's prices in the short term, but would instead simply reap vastly greater profits from their fish – profits they could later use to provide themselves with an unfair advantage over the H & G sector.

A reduction in the harvest by the H & G sector would compound the problem. It would mean that the H & G sector's fixed costs in the fishery would be spread across a smaller volume of fish thereby escalating the average costs of production per pound of fish.

So, while the AFA sector's costs of harvest would be artificially reduced through the pollock subsidy, the H&G sector's average costs of production would be driven up. The combination of these effects would place the H&G sector in an untenable competitive position. Again, this would occur not because the H&G sector is less efficient than the AFA sector, but because of the impact government actions have had by tipping the scales out of balance and inhibiting an efficient, competitive market.

In time, as this situation plays out, it is inevitable that the AFA sector will leverage its pollock monopoly beyond pollock and into the markets for other species. Additionally, by eliminating or severely restricting competition from the H&G sector, it will obtain power over pricing and the ability to deter or prevent entry by new competitors in those markets as well. The end result will be substantially higher prices in downstream markets for processed and value-added products in these species.

I would like to illustrate these points by using, as an example, the Benefit Analysis (Exhibit A) & Windfall Profit of Anti-competitive Dumping Analysis (Exhibit B) for one ton of fish produced by the AFA sector as compared to that produced by the H&G sector. I hope to demonstrate the fact that the H & G sector would be severely disadvantaged by an AFA sector that holds all the cards (i.e. the pollock monopoly). For the purpose of this analysis, I will be using Yellowfin Sole since it seems to be the primary source of

contention between the sectors. A similar analysis can be performed for Cod species under Amendment 85.

From these analyses, one can reasonably assume the following:

a) The F/T sector can sell YFS to our customers at the same price we do and make a 523% greater profit than that of the H & G sector,

b) The F/T sector can sell YFS to our customers for a far cheaper price, $525 less by this example, and make the same profit as the H & G sector does,

c) As the size of the catch and the revenue from the sale of YFS is taken from the H & G sector, the average per unit costs for the H&G sector increases, putting a tremendous squeeze on profit margins and, eventually, putting the H & G sector out of business. This is true especially where there is no reciprocity between YFS and Pollock.

The anti-competitive risks inherent to this situation are significant:

- "Dumping" or "Predatory Pricing"- the risk that products will be sold into the market at anti-competitive prices, will not reflect a fair allocation of costs, and are designed to eliminate competition,

- "Limit pricing" – the risk that the AFA sector will ultimately be able to set prices in a manner that discourages new entrants or deters competitive activity by existing entities within a marketplace,

- "Tying" – the risk that the AFA sector will be able to link together, causing different products (such as pollock) to hinder their H&G competitors and prevent customers from having a choice of suppliers.

Additionally, from a conservation and management perspective, saturating the market with poor quality products itself hinders our objective of achieving the Optimum Yield of the resource.

These are all anti-competitive practices that will render competition by the H & G sector impossible. When you take fish from the H & G sector and give it to the AFA sector, you are not just introducing a new competitor but one with no fixed costs and complete subsidization by an existing monopoly.

Our government should prevent, not create, a situation where a single conglomerate of economic resources obtains the power to harm the small and powerless, either by taking little resources left for the smaller group or by obtaining the power to control prices. By allotting this conglomerate with more fish than their current participation, the Council threatens to create a situation in which the AFA sector will eventually absorb the remaining operations and their subsidiaries, putting those people desperately trying to hold onto their life's work out of business. This type of situation has indeed surfaced as a harsh reality in recent cases of rationalizations gone awry.

We saw a similar battle fought throughout the 1970s and 80s in the telecommunications industry. The United States government made it clear that it was unacceptable for the regulated AT&T monopoly to use revenue gleaned from its monopoly to penetrate or predatorily explore smaller telecommunications markets. In one of the United States' most recognized antitrust cases, the Department of Justice made its point clear by breaking up AT&T. MCI made its point equally clear by winning 3 Billion dollars in another widely regarded private antitrust case. With Amendment 80, we revisit comparable issues.

One would think that having near total control of the most lucrative fishing in the North Pacific would be good enough; but, as portrayed by the Chairman of American Seafoods in their recent prospectus, "we plan to continue *opportunistically* expanding into these and other fisheries." They are opportunistically asking for a tool that would enable them to gain ground in other fisheries by leveraging their domination in the pollock monopoly.

The H & G sector is not seeking to gain unfair advantage at the expense of others. I urge the Council to make its allocation decision based on the principles of economic dependence and upon the recent catch history presented to you as the consensus of the H & G sector.

Thank you.

Sincerely,

Helena Park
Fishermen's Finest, Inc.

Benefit Analysis
Pollock Subsidy to the YFS Sales

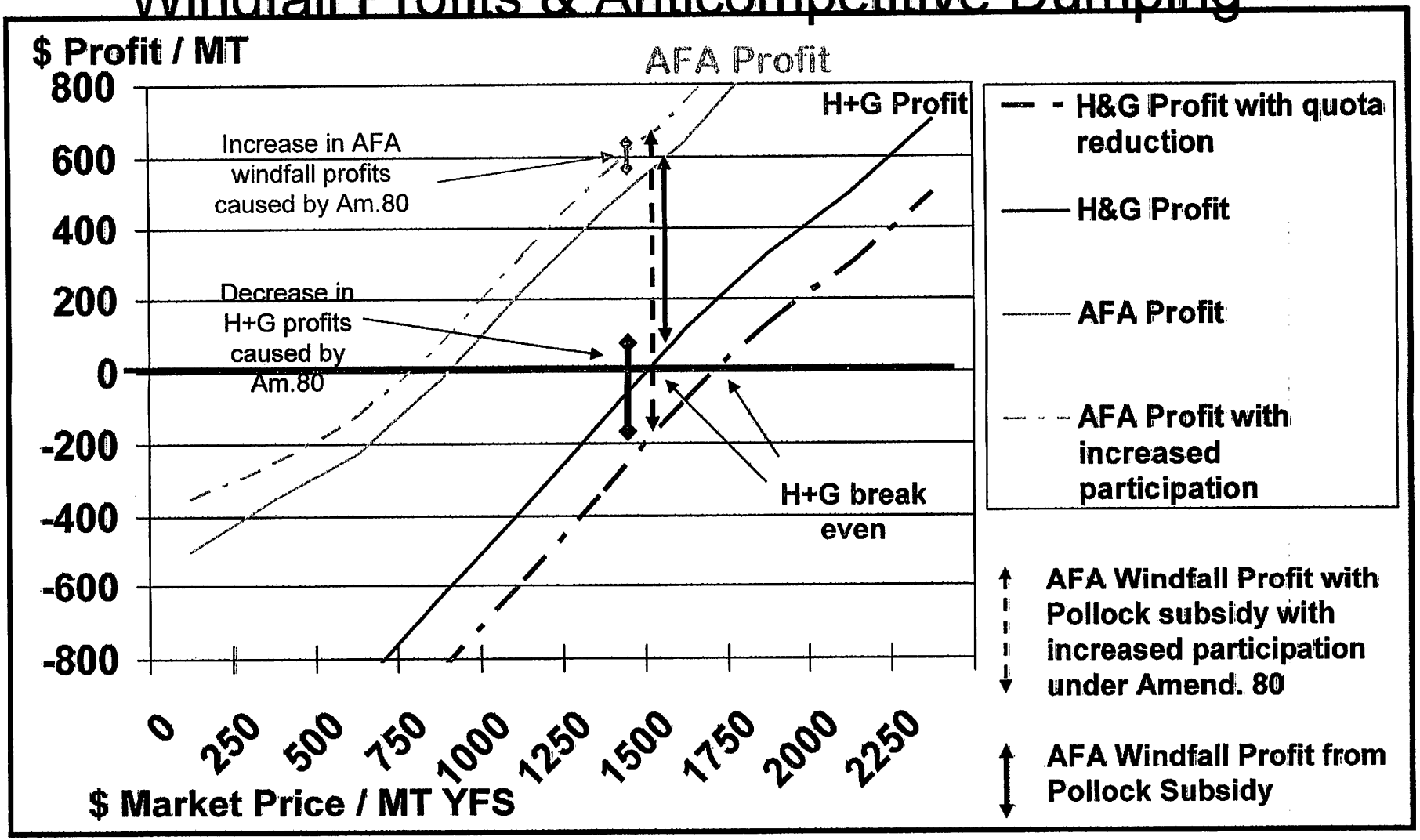
	H & G (non-AFA) Sector		AFA Sector - F/T	
	%	$/MT	%	$/MT
Net Revenue/MT for YFS	100	1500		1500
Variable Cost (such as crew wages, fuel, packaging material, & etc.)	57*1	855	57	855*2
Gross Margin	43*1	645	43	645
Fixed Cost (such as maintenace & repair, insurance, G & A expenses, debt service, etc.)	35*1	525	0	0*3
Net Profit	8*1	120	43	645

*1 Figure derived from 2005, which was an exceptionally good year for the H&G sector: 1) price/MT for YFS was at the historical high 2) the H&G sector harvested 102% of the ICA 3) profit margin for the H&G sector was higher than we could reasonably expect as on-going basis.

*2 Actual variable Cost % for the F/T would be a lot less in terms of an overall financial picture, inclusive of the pollock revenue.

*3 It is 0 because the fixed cost is entirely absorbed by the pollock operation.

Windfall Profits & Anticompetitive Dumping



Alaska Crab Coalition
3901 Leary Way N.W. Suite #6
Seattle, Washington 98107
206.547.7560
Fax 206.547.0130
accrabak@earthlink.net

Testimony of the Alaska Crab Coalition (ACC) to the North Pacific Fishery Management Council on Amendment 80 EA/RIR/IRFA
Arni Thomson, Executive Director
Anchorage, Alaska
April 6, 2006

Introduction:
The ACC represents the owners and operators of forty Bering Sea crab vessels and thirty service and supply companies based in the States of Washington and Alaska. The focus of our comments and concerns in the proposed Amendment 80 analysis are on the reduction of king, tanner and snow crab bycatch in the multi-species non-pollock groundfish fisheries rationalization program.

The ACC has provided numerous comments during the development of the analysis, most recently we filed comprehensive written comments for the administrative record of the NPFMC on September 28th, 2005, and again on February 9, 2006, noting the need to base bycatch allocations and reductions on historic usage, as distinguished from total allowances (or Caps) for the Initial Review of the Amendment 80, EA/RIR/IRFU. Failure to use historic usage as the basis for determining reduction of bycatch will result in no reduction of bycatch, since the cap levels are much higher than historic or current usage.

ACC has also requested Council consideration of the use of Section 313(g) of the M-S Act for guidance on the development of a PSC bycatch reduction program for H & G cooperatives. Concern that the use of 313(g) is appropriate under Amendment 80 continues in light of NOAA correspondence, Robert D. Mecum to Stephanie Madsen, Chair, NPFMC dated February 2, 2006, regarding notification to the Council of NOAA consideration of M-S Act legal, policy and operational issues and application of cost recovery fees for Amendment 80 cooperatives if they are classified as IFQs under the M-S Act definition.

The ACC also notes once again, that the Problem Statement that motivates action on Amendment 80 prioritizes the reduction of bycatch and discards in the non-pollock groundfish fisheries (Analysis, March 16, 2006, page 1).

General recommendations:

- Preferred alternative: ACC supports adoption of the Council preferred alternative #4.
- Option 3.2: Retained legal catch of the sector over retained legal catch by all sectors. (Supports Advisory Panel motion)

Recommendations on Component 6, PSC allowances and reductions for crab to the Non-AFA Trawl CP sector.

- **Option 6.3: PSC allocations to the sector, to be based on historic usage, using a select percentage for each species that approximates the mid-point of ranges from the February Council motion (based on tables 3-42 to 3-45 in the January analysis).**

- **Option 6.2: Suboption 6.2.2 Reduce apportionments to 75% of calculated level.**

Comments on the Advisory Panel recommendations:

- **ACC recommends an explicit provision stating : AFA CV/CP PSC sideboards be maintained, including for the yellowfin sole threshold fishery.** The AP motion implies this recommendation in their comments on Component 13 in the statement "AFA target sideboards do not apply to the YFS threshold fishery." An explicit provision noting that AFA PSC sideboards remain in place will insure that PSC savings from the reductions in PSC usage in the non-AFA trawl CP sector will not be reallocated to the AFA sector.

- ACC opposes the Advisory Panel recommendations for non-halibut PSC species and for no further reductions in these PSCs for the non-AFA trawl CP sector to be implemented in the program. The first recommendation is ambiguous and difficult to interpret. The second statement is totally contrary to the priority goals of the Problem Statement for Amendment 80.

- ACC supports the Advisory Panel Minority Report which notes that "the PSC allowances adopted under component 6 do not adequately address the problem statement goals for bycatch reduction in the non-AFA trawl CP sector." Etc.

Collier Shannon Scott, PLLC
Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007
202.342.8400 TEL
202.342.8451 FAX

Collier Shannon Scott

Shaun M. Gehan
Associate
202.342.8469
SGehan@colliershannon.com

April 5, 2006

Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W. 4th Ave., Suite 306
Anchorage, Alaska 99501

Re: Amendment 80 to the BSAI Groundfish FMP (Agenda Item C-2)

Dear Chairwoman Madsen:

Legacy Fishing Company submits this letter on behalf of itself and a majority of the other members of the Bering Sea/Aleutian Islands ("BSAI") head-and-gut ("H&G") catcher processor fleet in relation to the decisions the North Pacific Fishery Management Council will be making this week on Amendment 80 to the BSAI Groundfish Fishery Management Plan ("FMP"). We appreciate the enormous amount of effort and time the Council and, especially, staff have put into developing this plan for the H&G catcher processor ("CP") sector. In order to protect the Council's investment of effort and to insure that end product both benefits the H&G fleet and protects the legal rights of non-American Fisheries Act ("AFA")[1] vessels, we submit these comments for your consideration.

This letter focuses solely on the issues of allocation of fishing opportunities and access to the resource between the non-AFA H&G fleet and the AFA-protected vessels, particularly those that are the subjects of Components 3 and 4. The proposed alternatives are, unfortunately, set up so as to pit those vessels which were favored by the American Fisheries Act with exclusive rights to the directed harvest of Eastern Bering Sea pollock, the world's largest fishery, against the H&G groundfish fleet, which depends solely on the limited variety of non-pollock groundfish that are still available to it. On balance, the law and the equities strongly favor an allocation to the non-AFA BSAI groundfish fleet that resembles, as nearly as possible, status quo levels.

The Council should follow the Magnuson-Stevens Fishery Conservation and Management Act ("MSA"), 16 U.S.C. § 1801 *et seq.*, and weigh and balance the statutory factors bearing on decisions to allocate fishing privileges under a limited access system.[2] These factors, explained in greater depth below, include consideration of present participation in the fishery, historical fishing practices and dependence on the fishery, and economic alternatives, among

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[1] P.L. 105-277, Division C, Title II, Subtitle I, 112 Stat. 2681-616, codified at 46 U.S.C. App. note.

[2] *See id.* § 1853(b)(6)(A); *see also id.* § 1851(a)(4) (National Standard 4 which requires that when a Council allocates fishing privileges, such allocations or assignments be "fair and equitable").

others. The Council is also bound to uphold not only the letter of Section 211 of the AFA, which mandates the protection of participants in non-AFA fisheries, but the spirit of this remedial provision as well.

While these authorities do not lead to any specific outcome as to appropriate baseline periods or any particular distribution of initial total allowable catch above some specific threshold, they do lead to certain clear decision rules. For instance, options that turn AFA Section 211(b) harvest caps designed to protect the rest of the fleet from intensive competition by fishing capacity freed-up by the Act into guaranteed allocations for AFA-qualified vessels stand the purpose of Section 211 on its head. Such options transform a measure meant to protect the H&G fleet into one that actually reduces their allowable harvest from recent levels – a result strongly at odds with both the AFA and the MSA.

Another general proposition, firmly rooted in the language of the MSA and in line with the remedial purposes of Section 211, is that whatever allocation scheme the Council chooses, it should not be based on effort and history established relatively long ago in a starkly different competitive environment over current patterns of landings and dependence. This principle is particularly apt when the choice is between taking fishing opportunities from vessels that have no alternative fisheries and redistributing them to an AFA pollock fleet which currently has harvest rights to nearly 75 percent of the optimum yield cap and very little interest in the species that are the H&G sector's life blood. Such is the definition of arbitrary decisionmaking.

To date, the Council has rightly given the bulk of fishing rights in rationalized fisheries to those for whom the fishery has been their mainstay and target. It would be a step backward at this juncture to initiate a rationalization plan which actually cost directed fishermen harvesting opportunities.

These issues shall be discussed in depth below. First, however, is a brief recitation of the alternatives that we think treat all sectors fairly and align with the requirements of law.

I. Preferred Alternatives

Legacy Fishing and the other members of the H&G sector who join us in this letter have submitted much more detailed comments specific to the myriad of decisions and alternatives necessitated by Amendment 80. We will neither revisit nor opine on them here. Rather, we focus on the major allocation decisions, specifically Components 3, 4, 6, and 13. The common thread is that the choices advocated for reflect a fair representation of current effort and dependence on the Amendment 80 stocks, while providing more than fair access opportunities for AFA vessels and others.

For Component 4, we are requesting Option 4.6, 2000-2004, which ideally should be calculated from the H&G sector's retained catch over total retained catch (Option 3.2). This is the most recent period, and as such best reflects the current fishery, an important factor, particularly under the MSA. As to the issue of allocations of prohibited species catch ("PSC"), we advocate Option 6.1.1 of Component 6, historical usage, for the very same reasons as with

Component 4. Additionally, allocation based on usage rather than turning a cap into an allocation prevents the AFA Section 211 from turning from a protective measure into a basis for doing real economic harm to the non-AFA fleet.

Finally, for Component 13, our strong preference is a threshold of 175,000 metric tons ("mt"), noting that for all other rationalized fisheries, such as halibut and sablefish, crab, and, of course, pollock itself, the directed sector gets 100 percent of the upside of increases in total allowable catch. Why the Amendment 80 groundfish species should be treated any differently is not immediately apparent. However, assuming that the AFA sector is limited to its recent history, and with an understanding that the statutory Section 211(b) caps still apply, we could support a threshold of 125,000 mt.

While these positions have been conveyed to the Council in the past, we would like to take this opportunity to explain in greater depth than we have done in the past, why we believe that these choices are legally supportable, if not legally compelled.

II. Turning the Full Measure of Sideboards for Non-Pollock Groundfish into Allocations for AFA Vessels Violates the American Fisheries Act's Protections for Non-AFA Vessels

Section 211(a) of the AFA states:

> The North Pacific Council shall recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.

The immediate next subsection provides certain initial statutory recommendations for such protections, including, among others, caps on the amount of BSAI non-pollock groundfish and prohibited species catch AFA vessels could harvest, based on those vessels' three-year qualifying period of 1995-97. *Id.* (b)(2)(A), (B). Congress provided the Council and the National Marine Fisheries Service the authority to "supercede[]" these specific measures with otherwise AFA- and MSA-compliant regulations, *id.* (b)(1), but not to ignore the mandate "to protect other fisheries under its jurisdiction and the participants in those fisheries."[3]

As such, Section 211(a) requires the Council to justify any allocation decision it makes regarding the harvest of fixed amounts of non-AFA groundfish in terms of how that allocation protects the non-AFA fleet. By contrast, a decision which has the effect of reducing the amount

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[3] *Id.* § (a). Congress's use of the term "shall" in relation to the Council's and Secretary's duty to protect the non-AFA sector is important and telling. As a general matter, "shall" has the same meaning as "must," rather than indicating the future tense. *See, e.g.,* 50 C.F.R. § 600.305(c).

of actual, or even potential, harvest of species other than pollock by non-AFA fleet, and reallocating the rights to that catch to the vessels protected under the Act is consistent with neither the plain language nor the intent of Section 211.

This position is supported by a recent opinion by the National Oceanic and Atmospheric Administration ("NOAA") Office of General Counsel in response to an inquiry on this matter by the Council itself.[4] In that opinion, NOAA General Counsel, Alaska Region, examined not only the words of the statute, but the legislative history as well, which states that the purpose of AFA Section 211(b)(2)(A) and (B) was to "prohibit the catcher/processors eligible to participate in the BSAI directed pollock fishery from exceeding the aggregate amounts of targeted species and bycatch in other fisheries" beyond the sideboards that the law provided. *Id.* at 3 (quoting 144 Cong. Rec, S12781).

The congressional analysis of the Act provided by Senator Stevens goes on to explain that the caps are just that – an upper limit on the AFA's ability to catch these stocks, *not* a guarantee that AFA-qualified vessels "will be able to harvest *any* amount of fish." *Id.* at 4 (quoting 144 Cong. Rec, S12781) (emphasis added). Senator Steven's report concluded that Section 211(a) of the AFA "requires the Council to recommend conservation and management measures *to protect* the participants in non-pollock fisheries." *Id.* at 5 (emphasis added). It is well nigh impossible to reconcile this duty to defend this class with decisions to limit access of non-AFA groundfish to those for whom it is their primary target, and increasing opportunities and guaranteed access for AFA vessels.

Section 211 is, furthermore, what is known as a remedial provision, *i.e.*, a law which extends protection to an identified class – here non-AFA vessels and other stakeholders in the various BSAI fisheries. The Council would not protect the H&G sector by bestowing further competitive advantage on the AFA fleet by allocating groundfish under Amendment 80 based on the percentages established during the AFA-baseline period (1995-97) landings, in derogation of far more recent history. The plain language of Section 211(a) alone suggests that providing the AFA fleet – which already has access to the lion's share of the total available BSAI resource – with a maximally favorable allocation to their full pre-AFA share of the other groundfish as an insurance policy is not supportable.

More importantly, rules of statutory construction require that a remedial statute be liberally construed so as to give full effect to its purpose.[5] As noted in the *Ocean Spray* decision:

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[4] Memo from R. Babson to C. Oliver (June 4, 2004) (quoting 144 Cong. Rec. S12781 (daily ed. Oct. 21, 1998)).

[5] For a discussion of the statutory construction principles described here, see *In re Application of Ocean Spray Partnership*, NMFS Alaska Region, Office of Administrative Appeals No. 01-0002 at 5-6 (June 15, 2001).

> Remedial statutes are liberally construed to suppress the evil and advance the remedy. The policy that a remedial statute should be liberally construed in order to effectuate the remedial purpose for which it was enacted is firmly established. Expressions of that rule appear over and over in judicial opinions.[6]

As appertains the decision facing the Council, this means that one should not look for ambiguities or "loopholes" in the wording of the Act if the effect of those would be to harm the protected class. Given this command, it would be difficult to devise even a colorable rationale for limiting the fishing opportunities for the H&G fleet and other non-AFA vessels in order to insure that the AFA sector had rights in perpetuity to an allocation of fish to which they have no right to today. Further, this sector has had opportunities to harvest Amendment 80 species during the 2000-2004 period – a period which included the second lowest pollock TAC in the past 20 years[7] – and they have largely chosen not to.

In sum, Section 211, in its most generous reading, strongly cautions the Council against making the current caps on AFA vessel harvests into outright allocations. Indeed, it can be read to prohibit such, particularly under the facts of this situation. The next section shows that a similar result obtains under a Magnuson-Stevens Act analysis.

III. Legal Requirements Applying to Limited Access Programs Do Not Support Turning Back the Clock to the 1995-97 Baseline Period and Disenfranchising Current Participants

In establishing a limited access allocation scheme for a fishery, the Magnuson-Stevens Fishery Conservation and Management Act requires the Council and Secretary of Commerce to "take into account" the following factors:

- present participation in the fishery,
- historical fishing practices in, and dependence on, the fishery,
- the economics of the fishery,
- the capability of fishing vessels used in the fishery to engage in other fisheries,
- the cultural and social framework relevant to the fishery, and

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6 *Id.* at 11 (quoting 3 SUTHERLAND ON STATUTORY CONSTRUCTION § 60.01 at 147 (Norman Singer, ed., 5th ed. 1992 rev.)(footnotes omitted)).

7 The year with the lowest TAC was 1999, and in that year the AFA sector retained a small percentage of the cap.

- any other relevant considerations.

16 U.S.C. § 1853(b)(6)(A). As explained below, application of these principles to the decisions which must be made with respect to Amendment 80 conclusively favors status quo allocations. This applies equally to decisions involving future allocations if and when BSAI groundfish TACs increase above threshold levels, as well as decisions as to just where those thresholds should be set.

The first factor, present participation, speaks for itself. It is a choice made by Congress that Councils give strong weight to settled expectations and current business practices. This is sensible as a matter of public policy, because people have ordered their operations – and made investments – in response to current conditions. Businesses also require stable regulatory environments. Absent extraordinary factors or equitable considerations not present in this instance, therefore, this first consideration suggests that the status quo be maintained to the extent consistent with wise conservation and management.

This factor clearly weighs in favor of use of the most recent qualifying periods and maintenance of roughly the current split. No equitable considerations exist that should lead this Council to upset this distribution of "present participation" in the fishery. On the contrary, public policy and legal considerations weigh strongly in favor of protecting the H&G fleet's access to this fishery on levels achieved in recent years. Since the advent of the AFA, all the sectors have settled into new patterns which have served everyone's interests well, and, under the specific terms of the MSA, must be considered and respected.

The second factor, which ties historical participation to dependence on the resource being allocated, also strongly favors supporting the H&G sector's current share of Amendment 80 species from erosion. Generally speaking, patterns of historical participation may, in certain instances, be more reflective of dependence than current participation. For instance, overfishing may deprive certain sectors or communities of access to traditional resources, and it would be inequitable to deny such past participants future access for a problem for which they may, at most, be only partially responsible.

On the other hand, this element cannot be read as a command to reach into the past and restore some balance that existed at some earlier point, in a never-to-be repeated pre-AFA paradigm. There are no equitable factors like the one described above at play here. Moreover, the linking of historical patterns with dependence still leads to the conclusion that the H&G sector's current share of non-pollock groundfish should be protected because of the AFA's sector's relatively marginal interest in these fisheries even in the mid-1990s. Since then, the AFA itself has intervened to make that historical period a particularly inapt analogue for today.

The third factor, which deals with pure economic realities, also favors our position. In the BSAI groundfish fisheries, the present situation is one in which the AFA vessels have a protected share in a large and lucrative fishery, and all other major fisheries are subject to limited or controlled access and most have also been rationalized. Although AFA boats have had opportunities to fish Amendment 80 species, they have chosen not to do so in any material way.

Meanwhile, the non-AFA H&G sector captures over 90 percent of the species being allocated by Amendment 80,[8] and their ability to enter different fisheries should their groundfish allocations be reduced below sufficient levels is virtually non-existent. In short, the present situation is one where the non-AFA trawl sector is solely dependent upon its ability to harvest the maximum share of Amendment 80 species, whereas today the AFA sector has created an incredibly successful business model that takes only very small non-pollock groundfish catches.

In short, there is no economic justification for handing over 30 percent of the yellowfin sole allocation, or 20 percent of the other species, simply because those were the levels of harvest this AFA qualified vessels achieved in 1995, 1996, and 1997. There is even less reason to give the existing AFA fleet the share of history attributable to the nine vessels retired by the Act.

The fourth statutory factor governing a limited access regime, ability of vessels to engage in other fisheries, likewise favor the non-AFA sector. Limited access schemes are the norm in North Pacific, as elsewhere across the country, and the vessels in the H&G CP fleet simply have no alternative fisheries should their allocation be short-changed in this amendment. Courts have taken note of this fact when judging the economic impacts of conservation restrictions. *See Southern Offshore Fishing Ass'n v. Daley*, 995 F. Supp 1411, 1435 (M.D. Fla 1998).

And, finally, the last two factors relate to the cultural, social, and "other factors" relevant to the decision to limit entry and how best to accomplish that objective. As to the "other factors" a council should consider, the guidelines state:

> In designing an allocation scheme, a Council should consider other factors relevant to the FMP's objectives. Examples are economic and social consequences of the scheme, food production, consumer interest, dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

50 C.F.R. § 600.325(c)(3)(iv). In other words, these factors include the vast array of integrated impacts and effects, including those that extend beyond the directly affected participants and go to the large local, regional, and national interests. In the balance, it is likely that each group with an interest in these issues can argue that the factors favor their position. Taking all the factors as a whole, however, we believe equities favor an allocation scheme which protects the non-AFA sector by establishing a cooperative program that largely mirrors the current configuration.

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[8] *See* Amendment 80 Public Review Draft, Tables 3-32-33, at 90-92.

National Standard 4,[9] which requires fairness and equity in allocation decisions, and its implementing guidelines also bear on the issues in Amendment 80. For example, the guidelines prescribe that allocations of fishing privileges for "conservation and management" purposes "may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product." 50 C.F.R. § 600.325(c)(3)(ii). Nothing in the Amendment 80 analysis suggests that there any conservation or other exigencies which would weigh in the direction of reducing the harvest opportunities for the non-AFA sector.

More importantly, however, there are serious questions as to whether *any* limited access scheme that reduces fishing opportunities for the most active current participants at the expense of participants with little demonstrated current interest in the fishery meets the basic National Standard 4 test. Such "unfairness" would be compounded when, as here, the class benefiting from the allocation has statutorily-guaranteed access to what amounts to about 75 percent of the total optimum yield cap. Without a solid, record-based justification for favoring this sector, such a redistribution of fishing rights could be characterized as involving more local-based interests than legally required consideration of the relevant factors, and may be seen as a violation of principles of reasoned decision-making as interpreted by the courts.

For example, a recent decision invalidating a limited access scheme for the Atlantic tilefish fishery reaffirmed a long- standing principle that decisions on whom to include and exclude from a fishery cannot be made on the basis of "political compromise." *Hadaja, Inc. v. Evans,* 263 F. Supp.2d 346 (D.R.I. 2003) (holding that the tilefish limited access scheme violated the "best science" standard). This decision flowed in the footsteps of a long line of such rulings.[10] These cases highlight the importance of basing allocation decisions on appropriate, statute-based considerations.

A final factor to consider, for purposes of the National Standard 4 analysis, is that how the Council has handled similar decisions in other rationalization plans is part of the "fairness and equity" calculus. And generally speaking, in those other fisheries, such as halibut and sablefish, crab, and certainly pollock, the bulk of the fishing rights and all the future upside to

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[9] Which states: "Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges."

[10] *See Hall v. Evans,* 165 F. Supp. 2d 114, 133 (D.R.I. 2001); *The Fishing Company of Alaska v. United States,* 195 F. Supp. 2d 1239, 1248 (W.D. Wash. 2002); *Parravano v. Babbitt,* 837 F. Supp. 1034, 1047 (N.D. Cal. 1993); *Midwater Trawlers Co-Operative v. Dept. of Commerce,* 282 F.3d 710, 720-21 (9th Cir. 2002).

potential TAC increases, has gone to the current, active fleet. The same should hold true with Amendment 80.

In conclusion, looking at the relevant statutory elements of the MSA, it is our opinion that relevant law convincingly favors the status quo in terms of allocation of the Amendment 80, particularly vis-à-vis options that redirect harvest rights based on a pre-AFA fishery.

IV. Conclusion

The businesses that make up the H&G CP fleet appreciate your leadership and the Council's hard work in helping to bring rationalization to this sector. These efforts will pay off in terms of a much more efficiently prosecuted fishery, improved retention and reduced bycatch, and an overall fleet that better matches the available resources. However, Legacy Fishing and others do not favor rationalization at the cost of having recent participation in the fishery cast aside.

We are confident, however, that the North Pacific Fishery Management Council will adhere to the both the spirit and overwhelming weight of the authorities cited above when making the allocative decisions it must as Amendment 80 is finalized. Such decisions must, consistent with applicable law, be protective of the non-AFA groundfish fleet and reflective of current levels of harvest and dependence on the fishery.

Thank you for considering these remarks. We remain available to answer questions you and the other members of the of Council may have regarding their content.

Sincerely,

David E. Frulla
Shaun M. Gehan

Attorneys for Legacy Fishing Co.

cc: Members of the North Pacific Fishery Management Council
Sue Salveson, Regional Director, NMFS
Chris Oliver, Executive Director, NPFMC
NOAA General Counsel, Alaska Region