MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver
Acting Executive Director

ESTIMATED TIME
10 HOURS

DATE: September 26, 2000

SUBJECT: American Fisheries Act

ACTION REQUIRED

(a) Receive update on EIS/proposed rulemaking: consider emergency rule for necessary 2001 provisions.

(b) Take final action on groundfish processing sideboards and BSAI pollock processing excessive share caps.

(c) Receive report from industry on Pacific cod sideboard issues.

(d) Review proposal from September meeting and take action as appropriate.

BACKGROUND

(a) Update on proposed rulemaking and emergency rule

NMFS staff will provide an overview of where we are with the development of the EIS, as well as the proposed rulemaking for the AFA, including the necessity for emergency action to have certain AFA provisions in place for 2001.

(b) Groundfish processing sideboards and excessive share caps for pollock processing

In June you reviewed the draft analysis for groundfish processing sideboards, and for BSAI pollock processing excessive share caps. At that time you requested additional analysis prior to releasing the document for public review. Following incorporation of the requested analysis, we released the document on July 24, noting the Council's intent for final action at this meeting. As this package is separate from the basic AFA amendment package, these actions would not be in place for the 2001 fisheries, but should be in place for 2002. The Executive Summary is included under Item C-2(b), and we have limited copies available of the entire document. We have resurrected a familiar and welcome face to provide you a summary of the analysis.

(c) Industry report on P. cod sideboard issues

At the June meeting you heard testimony from three operators of non-AFA vessels who have been long-time participants in the Pacific cod fisheries, and who felt that the additional effort in the 2000 early season cod fisheries by AFA vessels was adversely impacting their operations. Item C-2(c) is the letter submitted last

June. At that time you requested that they meet with representatives of the AFA co-op sector to try and resolve these issues within the existing sideboard regulations and co-op structures, and report back to the Council in October. We expect to hear from them at this meeting, recognizing that pending Council action with regard to the Pacific cod/SSL amendment, to be resolved this November, may have implications for this issue and could help determine the appropriate course of action.

(d) September proposal

In September you received and approved an AP recommendation to add an item to the October C-2 agenda. Your action was to add to the October agenda consideration of a Problem Statement, relative to a proposal to allow inshore co-ops to contract with non-member inshore AFA catcher vessels to harvest co-op allocations. That Problem Statement is attached as Item C-2(d). The AFA, as reflected in NMFS regulations, does not allow for such transfers. The Council's June action to change the definition of qualified catcher vessel, while allowing leasing within co-op member vessels, also does not provide for the type of contracting suggested in this proposal. Adoption of this proposal would constitute a change to the prescribed provisions of the AFA, which could be done under the Section 213 provisions which allow the Council to make such changes to mitigate adverse effects in fisheries.

NMFS and Council staff have advised, to the proposers and to the AP, that such a proposal be pursued via the amendment process, in the context of overall staff tasking to be discussed later in this meeting. We have some potential AFA amendments already in the queue, and it is likely that additional AFA amendments will arise over the next few meetings, which could comprise an AFA 'omnibus' type amendment for development in 2001, and implementation in 2002. However, it is my understanding that you may wish to take action on this proposal at this meeting, which would require emergency action for implementation in 2001. If sufficient information is available to the Council to make such a recommendation at this time, that emergency rule would still have to be accompanied by the more formal analyses (EA/RIR/IRFA) necessary for potential approval for 2001.

In the C-2 Supplemental packet of comments is a discussion paper, submitted by MTC and other industry groups, which provides further detail on this proposal and some of the anticipated consequences.

E1 Executive Summary

This document provides an assessment of the effects of imposing limits on the amount of groundfish harvested from the Gulf of Alaska and Bering Sea and Aleutian Island that processors participating in cooperatives under the American Fisheries Act could process. The document also examines the effects of an excessive share cap on the amount of Bering Sea and Aleutian Island pollock that any given entity comprising AFA facilities could process. The document is divided into five sections, an introduction, a discussion of environmental considerations, an assessment of AFA processing limits, an assessment of an excessive share cap on the processing of pollock in the Bering Sea and Aleutian Islands, and a summary section that addresses other applicable laws.

The problem statement developed by the Council in February 2000 to address the processing sideboard and excessive share issues is presented below:

The American Fisheries Act (AFA) was passed by Congress in the fall of 1998. The AFA established non-CDQ allocations of BSAI pollock among three major sectors (offshore, inshore, and motherships), it established specific limitations on who could participate in the harvest and processing of BSAI pollock, and it facilitated the formation of fishery cooperatives in the BSAI pollock fisheries. In establishing these operating advantages for the pollock fishery participants, the AFA recognized a need for limiting their participation in other, non-pollock fisheries as necessary to prevent adverse impacts on traditional harvesters and processors of those other fisheries due to the AFA or cooperatives in the pollock fishery. Congress directed the Council to address these concerns by developing processor sideboards and excessive share caps. The problem before the Council is to develop measures that take into account the impacts on AFA and non-AFA harvesters and processors, and fishing communities.

E1.1 Processing Limits

Chapter 3 examines the impacts of establishing processing limits on non-pollock groundfish in the Bering Sea and Aleutian Islands and all groundfish in the Gulf of Alaska (including pollock) by processors eligible to participate in pollock cooperatives under the American Fisheries Act (AFA). The analysis examines the language in the AFA, shows the organizational structure of the industry, provides a detailed assessment of the status quo, and develops 10 specific options to implement processing limits, sometimes referred to as "processing sideboards". It then calculates the percent of the total allowable catch (TAC) in the GOA and BSAI that could be processed by AFA processors and associated facilities based on the structure of the industry and options specified. Conclusions are drawn regarding the efficacy of the options in fulfilling the mandates of the AFA.

E1.1.1 The Organizational Structure of the Pollock Processing Industry

The AFA directs the Council to provide protection to non-AFA processors from the AFA processors that may benefit from participation in pollock cooperative. The AFA also introduces the concept of AFA entities as follows: "Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph." Entities that are linked by this "10% Ownership Rule" to AFA-eligible processing facilities are referred to as AFA entities.

The language in the AFA regarding the 10% Ownership Rule is subject to interpretation. A preliminary analysis in June 1999 used a literal interpretation of the 10% Ownership Rule. Because of the potentially far-reaching consequences of the literal interpretation of the 10% Ownership Rule, a more limited interpretation was been developed. This interpretation known as the 10% Limited Rule was presented to the Council in October. The 10% Limited Rule recognizes the limits of the stream of benefits that could result from participation in AFA pollock cooperatives.

NMFS also recognized the far-reaching implications of a literal interpretation of the 10 % rule, and chose to develop their own interpretation for implementing processor limits for crab and harvesting limits for AFA harvesters. NMFS interpretation is based on a multiplicative algorithm that enables them to assess the level of

ownership where very complicated ownership structures exist. The language of the NMFS interpretation of the 10% Ownership Rule is as follows.

> 10-percent ownership standard. For purposes of this definition, all individuals, corporations or other entities that either directly or indirectly own a 10 percent or greater interest in the mothership, inshore processor or pollock harvesting entity, as the case may be, are considered as comprising a single AFA entity. An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's percentage of direct, or indirect interest in the mothership, inshore processor or pollock harvesting entity, as the case may be.

Outcomes using NMFS' 10 percent ownership standard mirror outcomes using the 10% Limited Rule in relatively straightforward situations, and provide more guidance than the 10% Limited Rule in more complicated situations. Therefore NMFS' 10 percent ownership standard, along with NMFS' 10 percent control standard, is used in the analysis to determine AFA entities. AFA companies are determined by using similar 50 percent ownership and control standards. Ownership interests of AFA processors in companies and entities developed in organization charts in Chapter 3. The organization charts were based on research in public databases and on interviews with owners and officers of processing firms.

The analysis of the ownership structure using the 10 percent ownership and control standards indicates that there are a total of 12 AFA entities described in Table 1. If 50 percent ownership and control standards are used to define AFA companies, only 3 AFA facilities would be directly affected—rather than a single entity comprising the *F/V Arctic Storm, F/V Arctic Fjord, and M/V Ocean Phoenix*, two separate companies would be defined, one comprising the *F/V Arctic Storm* and *F/V Arctic Fjord*, the other consisting of *M/V Ocean Phoenix*.

Table 1. Summary of AFA Entities as Defined with the 10 Percent Ownership and Control Standards

Entity	Description
Alaska Ocean LLP	The entity comprises the ***F/V Alaska Ocean***
Alaska Trawl Fisheries	The entity comprises the ***F/V Endurance***
Aleutian Spay Fisheries APICDA, CVRF, Prowler LLC, and Ocean Prowler LLC	The entity comprises the ***F/V Starbound,*** as well as 5 fixed gear catcher processors (*F/V Horizon, F/V Prowler, F/V Bering Prowler, F/V Ocean Prowler*) and shore plants in Atka, and False Pass (under construction).
American Seafoods Inc., CVRF	The entity comprises American Seafoods' **7 AFA-eligible pollock catcher processors**, 11 AFA-ineligible catcher processors, *the F/V Beagle* an H&G catcher processor, and the *F/V Ocean Prowler.*
Phoenix Processor LP, Arctic Storm Inc, Arctic Fjord Inc, and BBEDC	The entity comprises 3 AFA processing vessels ***F/V Arctic Storm, F/V Arctic Fjord, M/V Ocean Phoenix***, and the *F/V Bristol Leader,* a fixed gear catcher processor.
Glacier Fish Company, which is owned 50 percent by NSEDC.	The entity comprises the ***F/V Pacific Glacier, F/V Northern Glacier,*** *F/V Norton Sound* and 3 shore plants in small shore plants in the Nome area.
Highland Light /Yard Arm Knot Holdings	The entity comprises the ***F/V Highland Light,*** *F/V Yardarm Knot, F/V Westward Wind;* the latter are pot and fixed gear catcher processors.
Icicle Seafoods, Inc.	The entity comprises the ***M/V Northern Victor***, 4 floating processors *M/V Arctic Star, M/V Bering Star, M/V Coastal Star, M/V Discovery Star,* and shore plants in Petersburg and Seward.
Maruha Corporation and its subsidiaries, (Supreme Alaska, Westward Seafood, and Western Alaska Fisheries), and Wards Cove Packing Company	The entity comprises the ***M/V Excellence***, **2 AFA shore plants in Dutch Harbor**, a shore plant in Kodiak, two non-AFA catcher processors (*F/V Titan,* and *F/V Pacific Knight*) and 14 non-AFA processing facilities owned by Wards Cove Packing.
Nichiro Corporation, its subsidiary Peter Pan Seafoods, and Seven Sea Fishing Company	The entity comprises an AFA shore plant in **King Cove**, the ***M/V Golden Alaska***, shore plants in Valdez, Port Moller, and Dillingham, and the 2 non-AFA catcher processors *F/V Blue Wave, F/V Stellar Sea*).
Nippon Suisan, its subsidiary Unisea, Inc., and Dutch Harbor Seafoods	The entity comprises an AFA shore plant in **Dutch Harbor**, and 2 non-AFA processing barges in St. Paul (*Unisea*)vessels, and the floating processor *M/V Omnisea*
Trident Seafoods Corporations	The entity comprises 2 AFA shore plants one in **Akutan** and one in **Sand Point**, all of the processing facilities formerly owned by Tyson Seafoods, including **5 AFA catcher processors** and **1 AFA floating processor**. The entity also comprises 13 other non-AFA processing vessels, and 6 other non-AFA shore plants.

Notes: Bolded text indicates an AFA eligible processing facility.

E1.1.2 Identification of Ten Options

The analysis identifies ten different ways the processing limits could be applied. The options could be applied to the BSAI and GOA, or a different option could be selected for each area. The ten options considered in this analysis are as follows:

Option 1 **Overall Limits Applied to All Facilities within AFA Entities.** A single, overall processing limit would be set for each species. AFA entities would be defined as an organization under which all processing facilities that are associated with AFA facilities by a 10 percent ownership and control standard. Once the overall limit is reached, no additional processing of the limited species by any included facility in any of the entities would be allowed.

Option 2 **Overall Limits Applied to All Facilities within AFA Companies.** A single, overall processing limit would be set for each species. AFA companies would be defined as all processing facilities that are associated with AFA facilities by the 50 percent ownership and control standards.

Option 3 **Overall Limits Applied to All AFA-eligible Facilities.** A single, overall processing limit would be set for each species. Only AFA processing facilities would be included.

Option 4 **Sector-Level Limits Applied to All Facilities within AFA Entities.** Sector-level processing limits for each species would be imposed upon all facilities in AFA entities. Three sectors would be defined (catcher processor, mothership, and inshore) on the basis of existing inshore-offshore regulations.

Option 5 **Sector-Level Limits Applied to All Facilities within AFA Companies.** Sector level processing limits for each species would be imposed upon all facilities in AFA companies. Three sectors would be defined on the basis of existing inshore-offshore regulations.

Option 6 **Sector Level Limits Applied to AFA Facilities.** A processing limit for each species would be applied to each sector. Only AFA facilities would be included.

Option 7 **Individual Entity Limits Applied to All Entity Facilities.** Individual processing limits would be imposed on each AFA entity.

Option 8 **Individual Company Limits Applied to All Company Facilities.** Individual processing limits would be issued to each AFA company. All processing facilities owned by AFA Companies would be included.

Option 9 **Individual Company Limits Applied to AFA Facilities.** Processing limits would be imposed on each AFA company, but only AFA-eligible facilities would be included.

Option 10 **Individual Plant and Vessel Limits.** An individual facility-level processing limit would be imposed on each AFA plant or vessel.

Additionally, the following suboptions are examined:

- excluding catcher/processors from further processing sideboard limits
- determination of basis for calculation (TAC vs. tons processed)
- treatment of nine retired vessels' history
- CDQ exemption from sideboard limits

E1.1.3 Assessment of the Status Quo

Section 3.3 contains an assessment of the status quo with a focus on conditions that currently exist which may constrain the AFA processors from acting in a way that may be harmful to non-AFA processors, or conversely existing conditions that might increase the likelihood that AFA processors could harm non-AFA processors.

Subsection 3.3.1 contains an overview of existing regulations from AFA and from the groundfish FMPs that are relevant to the processing limit issue. In general it appears that for many fisheries existing regulations already provide some constraints on AFA processors. These constraints include the 2004 AFA expiration date, AFA harvesting sideboards, AFA restrictions on CPs in the GOA, the LLP program, Inshore-Offshore in the GOA, Pacific cod allocation in the BSAI and the PSC limits. In addition, the subsection summarizes non-fishery regulations such including loadline restrictions and a summary of regulations restricting anti-competitive behavior.

Subsection 3.3.2 the summarizes processing in eleven major fisheries in the BSAI and GOA including the longline, pot, and trawl fisheries for Pacific cod, the pollock fisheries, the flatfish fisheries and the Atka Mackerel fishery (BSAI only). The subsection indicates total reported tons of both AFA and non-AFA processors for the years from 1995 through 1999. Also included are lists of the top 40 processors in each fishery. The subsection continues with tables showing products, wholesale prices and product values and ends with a brief summary of global markets for flatfish.

E1.1.4 Assessment of Processing Limits

The analysis estimated the percentage of past processing by species group and area reported by AFA processors under the different options. Three historical periods were examined: 1995-1997, 1998-1999, and 1995-1999. Tables showing these percentages are included in Chapter 3.

The analysis also examines the effect of processing limits in a more qualitative manner from the perspective of AFA processors, non-AFA processors, non-AFA processors that may be restricted under the limits, catcher vessels, and NMFS. In all, eleven different objectives were listed, and are used to provide qualitative assessment of the 10 different options.

E1.1.4.1 Effectiveness of Limits: A Comparison of Overall, Sector, and Individual Limits

On a nominal basis, overall limits, sector-level limits, and individual limits all limit AFA processing facilities to the same percentage of each species in each area. In other words, for each species and area, the sum of the individual limits are equal to sum of the sector-level limits, which are equal to the overall limits. Therefore, on the surface, it would appear that non-AFA processors would be ambivalent between the three types of limits. However, because there are additional restrictions on catcher processor activities in the GOA within the AFA, sector-level limits would actually allow AFA processors to process less GOA groundfish than either overall limits or individual limits. With overall limits, and to a lesser extent with individual limits, AFA processors that are not restricted from participating in the GOA would be able to process the groundfish that had been processed by catcher processors during the historical period. Therefore non-AFA processors would very likely favor sector level limits over individual limits, and individual limits over overall limits.

AFA processors have indicated their preference for the status quo. But if processing limits are imposed it is unclear whether they favor overall limits or individual limits—the fact that sector-level limits would reduce the amount available to AFA shore plants in the Gulf makes it clear that sector-level limits would not be preferred.

The experience of AFA processors with individual processing limits in the BSAI opilio crab fishery in 2000 was not favorable. The very short season, the intense race for fish the lack of a real-time reporting system and the fact that NMFS placed the enforcement burden of the limits on the AFA companies made the individual processing limits difficult to accept, and the idea of overall limits more palatable.

However, an important factor for AFA processors is the specter of increased competition among AFA processors for non-pollock groundfish that could occur with overall limits. Furthermore with longer seasons and the reporting system for groundfish, the concerns of AFA processors with individual limits may be reduced. Under overall limits AFA processors will face the possibility of competing against other AFA processors to get their share before the AFA limit is reached—they will also need to compete against all non-AFA processors, who will not be restricted in any way. The intensified race for fish could be avoided if processing limits are imposed at the individual level. Although individual limits will not constitute an allocation and individual AFA processors will face continued competition from non-AFA processors, AFA processors will not need to compete with other AFA processors. In addition it is likely that individual processing limits will allow AFA processors more flexibility than with overall or sector-level limits to allocate their processing capacities and other resources, and allow them to realize more of the potential benefits of the AFA, within their historical processing shares.

Non-AFA processors have been strong supports of implementing processor sideboards. They are concerned that profits and production capacity from the rationalized BSAI pollock fishery could be used to increase the AFA processor's share in the other groundfish fisheries. They feel the increased market share could result from a variety of factors including using AFA catcher processors as motherships, or changing when they participate in various fisheries (i.e., they could focus more on processing rock sole during the roe season).

Competition appears to be the driver of catcher vessel owners' attitudes toward AFA processing limits. From the perspective of catcher vessel owners it appears that the status quo would be preferred to any limits. However, if processing limits must be imposed it appears they would favor overall limits on AFA processors. Overall limits would offer the greatest level of competition—while individual processing limits would be anathema.

Annual implementation and in-season enforcement of individual-level limits appear to be less burdensome to NMFS than overall processing limits or sector-level limits. With overall or sector level processing limits, it is likely that NMFS will have to enforce at least two types of closures in order to enforce the processing limits and to still allow the processing of limited species as bycatch. The two types of closures would be:

1. A directed processing closure when the AFA processing total reaches a pre-determined percentage of the processing limits. A closure of directed processing will allow AFA processors to retain and process limited species when they are delivered as bycatch.
2. A closure to all processing when the full processing limit is reached.

If processing limits are imposed at the sector level, NMFS may have the additional burden of determining which processing facilities belong to which sector. This additional burden will occur if sector-level limits are imposed on AFA companies or on AFA entities. If sector-level limits are imposed only on AFA-eligible facilities, then the sector definitions are predetermined.

If processing limits are imposed on individual processors, NMFS may be able to shift most of the monitoring burden onto the processors themselves. In such cases NMFS could report weekly cumulative processing totals to the processors, but the processors themselves would have the responsibility of determining when they should cease processing for directed fisheries. Under this scenario it may be possible to make enforcement a post-season process involving fines and sanctions for those processors that exceed their limits.

E1.1.4.2 Effectiveness of Limits: A Comparison of Applying Limits to Entities, Companies, or Facilities

Processing limits applied to AFA facilities will be restrictive, but less restrictive than limits applied to companies or entities. If processing limits are applied to facilities, either as a group or individually, AFA processors participating in cooperatives would not be able to increase their shares of processing of crab and groundfish species under the jurisdiction of the NPFMC. AFA facilities would, however, be able to increase their relative processing shares of species managed solely by the State of Alaska, such as salmon, herring, and other shellfish. Additionally, limiting the processing of AFA facilities would not constrain the ability of the owners of the facilities to use AFA profits to increase their non-pollock processing shares at other facilities in which the AFA owners may have an interest.

Processing limits applied to AFA companies rather than to AFA facilities will be more effective in limiting the ability of owners of AFA facilities to increase their shares of non-pollock processing. The effectiveness of processing limits on AFA companies depends largely on the ability to define AFA companies. The analysis defines AFA companies using a 50 percent ownership and control standard. Under this definition, non-AFA facilities owned by AFA companies or by subsidiaries of AFA companies are included in the processing limits. Thus if an AFA owner wishes to increase its shares of crab or groundfish other than BSAI pollock, it would have to do so as a minority partner. The processing limits would not place a constraint on AFA companies wishing to increase their processing shares of halibut or of species managed solely by the State of Alaska, such as salmon, herring, and other shellfish.

Processing limits applied to AFA entities as defined by NMFS' 10 percent ownership and control standards would appear to be more effective than limits imposed on AFA companies. With NMFS' 10 percent ownership and control standards it will be much more difficult for AFA owners to use profits resulting from the AFA to invest in greater processing capacity. If AFA owners wish to make new capital investments in non-pollock processing, they could make investments in salmon and herring fisheries or make investments at levels less than 10 percent of the capital value of the processors in which they are investing. In addition, because of the limits AFA processors would bring, existing owners may not welcome new investment associated with AFA profits.

Imposing processing limits on AFA entities will have some unintended consequences. Processing limits imposed on AFA entities will create significantly more paperwork for NMFS and the processing industry than the other options. This additional burden will be time-consuming and expensive, and may be viewed by many as a significant intrusion of government into private affairs of industry. Additionally, if limits are imposed on AFA

entities, AFA owners will be prevented from investments in groundfish processing capacity, and may choose instead to invest in additional processing capacity in species that are not limited, such as salmon, herring and halibut. Additional competition for the same processors that are calling for the limits could result.

Imposing processing limits on entities will also create other unintended consequences by limiting the activities of processors that may not be able to experience any of the benefits of the AFA. These consequences are perhaps most easily understood by using ownership interests of the APCIDA as an example. As shown in Figure 15d APICDA has minority interest in F/V *Starbound* an AFA catcher processor. Prior to buying into the Starbound, APICDA had purchased ownership interests in three freezer longliners, the *Prowler*, the *Bering Prowler*, and the *Ocean Prowler*. The other partners of these vessels do not appear to be associated in any significant way with any AFA pollock processors, and would be very unlikely to benefit from any additional profits resulting from the *Starbound's* ability to participate in a pollock cooperative. However, because of APICDA's ownership in the *Starbound*, these three freezer longliners would be limited under the AFA processing limit using a 10 percent ownership standard. This potential problem could be mitigated with the CDQ exemption discussed above.

It appears that use of a 10 percent ownership and control standard in the application of processing limits will have both positive and negative impacts. On the positive side it will provide additional protection to processors that have no links or minor links to AFA owners. On the negative side it may restrict and potentially harm processors that are unlikely to actually benefit from the AFA.

In addition, limits on AFA entities could lead to increased investments in salmon and herring processing. Finally, the paperwork and enforcement if limits are applied to AFA entities will be more burdensome and expensive for both NMFS and the industry. Therefore, there is uncertainty whether the additional protection gained by applying processing limits to AFA entities outweighs the negative impacts.

Given the possibility of ambiguous results if processing limits are applied to AFA entities, the Council may wish to approve a less restrictive option in order to fulfill its mandate to protect non-AFA processors, or examine other options for defining AFA entities.

E1.1.4.3 A Comparison of Processing Limits to the Status Quo

The processing limits will place additional constraints on AFA processors from increasing their share of non-pollock groundfish. However, it is possible that some of these constraints will not be binding. AFA harvest sideboard limits, PSC limits, Inshore-Offshore regulations in the GOA, Pacific cod regulations in the BSAI, and other enforced restrictions may be more constraining than the processing limits, particularly if the processing limits are estimated as a percentage of total harvests. If processing limits are binding, they will provide additional protections for the non-AFA processors beyond those already imposed through existing regulations.

Other constraints on AFA processor's activities may be self-imposed. AFA processors will be watched carefully in the coming years, because the AFA is scheduled to sun-set at the end of 2004. The scrutiny that can be expected during the reauthorization process may serve as a limiting factor on the actions of AFA processors. If they are perceived to be taking undue advantage of the benefits that accrue to them, then it is less likely that the AFA will be reauthorized (as the program currently exists), and it is less likely that other programs similar to AFA will be enacted. The possibility that the gains achieved through AFA can be taken away as quickly as they were obtained is likely to keep AFA processors from acting in an anti-competitive nature.

E1.1.5 Decisions, Assumptions and Issues

This section describes the decisions that will be necessary to create a final alternative for AFA processing limits. The following assumptions and issues underpin the specification of options above and the analysis, and need to be carefully considered by the Council. If the Council chooses to develop a preferred processing limit alternative that could be compared to the status quo, it is recommended that they make a decision regarding each of the following points:

1. Determine whether to create overall, sector-level, or individual processing limits.

   The aggregation level at which to create processing limits is first of the two key decision points that determine the specification of a processing limit alternative. If an overall limit is chosen, a single aggregate cap would be set for each species and area for all AFA processors. If sector-level limits are chosen, three caps (one each for catcher processors, motherships, and shore plants) would be set for each species and areas. If individual limits are set, then each AFA processor will be capped for each species and area. Determinations of which processors are included in the limit are dealt with in the next decision point.

2. Determine whether AFA processing limits will be applied to AFA facilities, companies, or entities.

   Processing limits could be applied to the processing plants and vessels that are AFA eligible to participate in BSAI pollock cooperatives. Alternatively the Council could choose to expand the number of facilities that would be constrained by the limits by including all processing facilities that are owned by companies that own AFA eligible processing facilities. If limits are applied to AFA companies, it is assumed that a 50 percent ownership and control standard would be used. Finally, the Council could choose to limit all processing facilities in AFA entities. If limits are applied to AFA entities then it is assumed that a 10 percent ownership and control standard would be used.

3. Determine whether to include catcher processors under the processing limits:

   Catcher processors are currently restricted from processing any crab in the BSAI, and have relatively strict limits on groundfish processing in the GOA. The Council could choose to exclude all catcher processors from additional processing limits as proposed here. Alternatively the Council could choose to exclude only those catcher processors which are not associated with companies or entities that own AFA motherships or AFA shore plants—this would be consistent with the BSAI processing limits on crab.

4. Determine the fisheries for which processing limits will be established. (BSAI crab processing limits have been established in separate rulemaking.)

   The analysis used five species groups to estimate limits of Non-pollock BSAI groundfish and six in the GOA rather than specific species. The species groups are: Pacific cod, Atka mackerel, flatfish, rockfish, other groundfish, and pollock (GOA only). The Council may wish to use different species or species grouping, or to exclude certain species.

5. Determine the areas in which to apply processing limits.

   The analysis assumed that processing limits would be imposed in both the GOA and the BSAI. The council could choose to impose processing limits on more detailed subareas (Eastern Gulf, Western Gulf, Central Gulf, Bering Sea, Aleutian Islands) or they could choose to exclude areas.

6. Determine method for calculating processing limits.
   The analysis uses the following generalized formula to estimates the percentage of the current year TAC of each species group in each area that AFA processors (entities, companies, or facilities) would be allowed to process:

   total reported tons from all AFA processors ÷ total reported tons from all processors

   Alternatively the Council could choose to use only retained catches in the percentage calculation. This formulation would yield lower percentages for AFA processors if AFA processors retained relatively less fish then non-AFA processors. While this formulation is not reported for each option, the effects are demonstrated in Subsection 3.4.11 for Option 4. Under this formulation, the percentages would be calculated as follows:

   total retained tons from all AFA processors ÷ total retained tons from all processors

The Council could also choose to use the historical TACs in the denominator rather than reported or retained catch. This formulation will tend to yield lower AFA percentages for species and areas where the total TAC was not harvested due, for example, to bycatch closures or a lack of markets. This formulation will yield higher AFA percentages if total reported catch was greater than the TAC, but will reduce AFA percentage if the TAC was not fully harvested. While this formulation is not reported for each option, the effects are demonstrated in Subsection 3.4.11 for Option 4. Under this formulation, the percentages would be calculated as follows:

total reported tons from all AFA processors ÷ total historical TACs

It should be noted that if the Council chooses to use total historical TACs in the denominator, it should be very careful to specify whether reported or retained catch is to be used in the numerator. While it may seem politically correct to use only retained catch in the numerator, doing so will perhaps unduly reward non-AFA processors for their own discards. This somewhat ironic outcome results from the fact that percentages by their nature sum to 100—if AFA processors do not get credit for their discarded tons, then Non-AFA processors will get that credit. A simple example will demonstrate the issue. Assume that the entire TAC of 10,000 tons was reported, and that total reported tons were split evenly between AFA and non-AFA processors. Further assume that both groups retained 4000 tons and discarded 1000 tons. If the AFA processing limit uses retained tons in the numerator and the total TAC in the denominator, then AFA processors would be limited to 40 percent of the TAC in the future, while non-AFA processors would be allowed to process at least 60 percent of the TAC. In effect, the non-AFA processors get credited with the discarded tons of the AFA processors and do not get penalized for their own discards.

There may be some confusion regarding the calculation of processing limits and on the implementation of processing limits. It is entirely feasible that the formulas used to calculate processing limits and implement processing limits are different. For example assume that the processing limits are calculated as the total reported tons by AFA entities from 1995 through 1997, divided by the total reported tons of all processors 1995 through 1997. The resulting percentage could then be applied to the TAC available for processing in 2001 or in 2002. In this case, NMFS would set an AFA apportionment equal to the TAC (after subtracting CDQ allocations) multiplied by the processing limit percentage. The result would be a limit of a fixed amount of tonnage for the current year. In other words, even though the TAC is not used in the calculation of the limit percentages, the current year TAC would be used in the calculation of tons that AFA processors would be allowed. Regardless of how the percentage is derived, implementation of that percentage would be based on the current TAC available.

7. Determine which years to include in processing history.

The AFA indicated that the historical average of the years 1995-1997 should be used to calculate processing limits. The Council can however choose to use processing history of more recent years if it chooses. The analysis estimates AFA processing limits for three sets of years as follows:

- 1995- 1997
- 1998-1999
- 1995-1999

8. Determine whether bycatch may be retained and processed after the processing limit for that species is attained.

If a processing limit for a species is reached, the processors affected by that limit, whether at the individual, sector, or overall level, could be prohibited from processing additional amounts of that species, even if delivered as bycatch. Alternatively National Marine Fisheries Service could employ a phased approach of imposing processing limits that would allow the processing of bycatch amounts of a limited species after a predetermined threshold is reached. An additional factor to consider is whether AFA processing limits will supersede retention requirements under Improved Retention and Improved Utilization (IRIU).

9. Determine the treatment of non-pollock processing histories of the nine removed catcher processors. (This decision is not necessary if catcher processors are excluded from the limits.)

   The processing histories of the nine catcher processors listed in section 209 are treated differently depending on how the processing limit is configured. For an overall limit, the histories will be included in that overall limit. For sector limits, the histories are included in the offshore catcher processor limit. If individual limits are used, the histories will go to American Seafoods as a whole or be apportioned equally among its seven remaining catcher processors. Alternatively, the Council could choose to exclude the 9 ineligible vessels. This is considered a sub-option and is examined in subsection 3.4.11.3.

10. Determine whether to include processing history of the 20 AFA catcher processors in the GOA Groundfish processing limits. (This decision is not necessary if catcher processors are excluded from the limits.)

    The GOA groundfish processing limits of the 20 catcher processors listed in section 208 of AFA are included in the overall, sector, or individual catcher processors' limits, depending on options chosen. However, the AFA prohibits those 20 vessels from processing any GOA pollock, any groundfish in GOA Area 630, or more than 10% of the Pacific cod in Areas 610, 620, and 640. Non-AFA catcher processors included within AFA companies or entities will be allowed to process up to whatever limits are established. In other words the Council could choose to keep catcher processors under the AFA processing limits, and insure that the processing facilities owned by AFA companies in the GOA do not get the benefit of the history that cannot be used by AFA eligible catcher processors.

11. Determine the treatment of non-pollock processing histories of facilities that qualify under §208(e)(21) and §208(f)(1)(B) of the AFA.

    It appears that two processing facilities, the *Ocean Peace*, and the shore plant in Kodiak owned by International Seafoods of Alaska, would qualify under these sections. Discussions with members of industry indicated that references to these facilities in the AFA were included to allow these facilities to continue to process pollock in directed fisheries as part of the allocations in §206 of the AFA, but that it was not intended that they would be limited unless they participated in cooperatives. Because it is not anticipated that these facilities will participate in cooperatives, their processing histories have not been included as AFA (in the numerator) in the calculation of processing limits—the processing of these plants is included in the denominator of the calculations.

12. Determine the treatment of processing histories of AFA-eligible facilities that choose not to participate in cooperatives.

    It is possible that some AFA eligible companies may choose not to participate in AFA cooperatives, in which case the Council may choose to remove them from the processing limit calculations. Currently all eligible processors have been issued AFA permits.

13. Determine whether processing limits are fixed or are adjusted to account for changes in ownership.

    If a non-AFA processing company purchases an AFA-eligible facility the new owner becomes an AFA company. If the limits are intended to preclude AFA companies from expanding their processing in non-pollock species, then it stands to reason that the new owner's processing in its non-AFA plants would be added into the AFA processing total for that species.

    The Council may also wish to address the question of how to treat the processing history of new facilities (relative to the historical period used in the limits) of potential buyers. Assume for example that the new processing plant on Adak, which began operating in 1999, is a success and it owners buy an AFA catcher processor in 2001. If the historical period for determining the AFA processing limits ends in 1997, the processing history of the new Adak facility would not be included in the AFA limits, and the new owner of the AFA catcher processor would have to cut back its production at Adak in order to stay within the limits.

14. Determine whether processing are adjusted if AFA processors purchase non-AFA facilities after the date of final Council action.

    It is possible that owners of AFA processors may purchase non-AFAF facilities after the date of the Council's final action on AFA processing limits. The Council should indicate whether the processing histories of the newly purchased facilities are added into the calculation of limits. It should be noted that if the Council chooses to add these histories into the limits the potential effectiveness of the limits would be greatly reduced.

15. Determine the treatment of processing histories of vessels or plants that have been destroyed or replaced.

    Since 1995, there have been several vessels or plants that have been destroyed or replaced. In some of those cases, catch and processing histories have been transferred to new owners who have built new vessels or processing facilities to replace the old. It is possible that AFA companies or members of AFA entities own the catch and processing histories of some of the destroyed or replaced facilities. The analysis assumes that the catch and processing histories of such destroyed or replaced facilities will be included in the calculation of AFA processing limits.

    The Council should also determine the how they wish to handle processing histories of vessels or processing facilities that may be lost or destroyed after the date of final Council action.

16. Determine how to treat the processing totals of vessels that have been removed from U.S. documentation.

    It is possible that some vessels that are no longer U.S.-documented fishing vessels (in addition to the nine vessels removed in the AFA) may contribute to the AFA processing limits. In some cases, the processing histories of those vessels may be sufficient to qualify replacement vessels under the LLP, and it is possible that the owners of those fishing histories have already built replacement vessels. Because of the difficulties of confirming current U.S. documentation of all vessels, the analysis includes the catch and processing of all vessels that participated in the fisheries between 1995 and 1997. If the Council chooses to exclude these vessels, then processing histories of all vessels that have given up their documentation should be removed from both the numerator and the denominator of the calculation for calculating limits. It should be noted that at least five vessels that are no longer documented are included in the calculation of the limits in the analysis. These vessels include the *Endurance* and four catcher processors that were at one time owned by American Seafoods.

17. Determine whether or not processing histories are transferable.

    It is possible that an AFA processor may wish to consolidate its processing at a single facility rather than have it spread over several facilities. In this case, it may wish to sell the facility that it is no longer utilizing to a non-AFA processor and retain the applicable processing history so that the AFA processing limits remain unchanged.

18. Determine the annual process of defining AFA facilities, companies, and entities. (This decision is not necessary if limits are applied only to AFA facilities.)

    The Council should indicate whether National Marine Fisheries Service should use the same methodology for defining the facilities that will be included under the AFA processing limits as it currently uses for the BSAI crab processing limits. The Council should an alternative method if desired.

E1.2 Excessive Share Caps on Pollock

Chapter 4 examines an excessive share cap for pollock in the BSAI on AFA processors. The AFA directs the Council to establish a cap on AFA processors, as a means to ensure competition in the pollock fisheries. This chapter examines the goals and objectives of an excessive processing share cap for BSAI pollock, and examines the impacts of setting the cap at levels ranging from 10 percent to 30 percent. The examination also includes 3 sub-options:

1) apply the cap to AFA companies using a 50 percent ownership and control standard rather than to entities defined with a 10 percent ownership and control standard
2) include CDQ pollock within the excessive share cap
3) allow processors that exceed the cap in the past to continue at previous levels (a grandfather clause)

E1.2.1 Goals and Objectives of Excessive Processing Share Caps for Pollock

Language in the AFA implies that the goal of excessive share caps is to preserve competition in the fishing and processing industry of the BSAI. Market share has often been used as an indicator of markets that are less than competitive, and it is a very useful indicator. However, a disproportionate market share by itself does not always indicate that an anti-competitive situation exists. Barriers to entry into a particular market are perhaps a more important factor in market control. With a high market share and barriers to entry, it is more likely that company will be able to influence prices paid for input such as raw fish, as well as prices paid for finished products to produce abnormally high profits.

The AFA erected significant barriers to entry into the pollock processing and harvesting markets. Therefore it appears reasonable to set policies that regulate how much of the pollock processing and harvesting markets individual firms or entities can control. Since there are several substitutes for pollock products in world market it is less likely that AFA processors will be able to significantly influence the prices of finished products. However, the supply of raw pollock is relatively localized, and therefore the effectiveness of excessive share caps on pollock are judged according to whether or not the cap increases or reduces the likelihood that a given processor will be able to influence the prices it pays for raw pollock.

E1.2.2 Impacts of Setting the Cap at Various Levels

The Council requested that an excessive share cap on pollock processing be examined at three levels: 10 percent, 20 percent and 30 percent. The Council has also stated that these levels represent a range and that the Council may choose any level between 10 and 30 percent. The effects of the cap at any given level depend on two factors:

1) How many entities would be constrained by the cap
2) How much would the constrained entities have to cut back production in order to stay within the cap

Table 2 shows the percentage point difference of the three cap levels and the percentage processed in 1999 by the AFA pollock entities as defined in Table 1. Entities are given a code to protect the confidential nature of the data. The code does not correspond to the order of the entities in Table 1. A plus sign (+) indicates how much the entity could increase its processing and still remain under the cap. A shaded cell with a minus sign (-) indicates that the entity exceeded the cap in 1999 and would have to reduce its processing by the amount shown to come under compliance of the cap. If the cap were set at 10 percent four entities would have to cut back their processing. With a 20 percent cap only one entity would have to cut back, and with a 30 percent no entity would be constrained.

Table 2. Cap Levels Compared to 1999 BSAI Pollock Processing Percentages

	Percentage Points Above (+) or Below (-) the Cap in 1999		
Entity #	10 percent cap	20 percent cap	30 percent cap
1	+6.6	+16.6	+26.6
2	-12.3	-2.3	+7.7
3	+7.8	+17.8	+27.8
4	+7.8	+17.8	+27.8
5	+0.6	+10.6	+20.6
6	+7.3	+17.3	+27.3
7	-8.0	+2.0	+12.0
8	+9.4	+19.4	+29.4
9	-6.8	+3.2	+13.2
10	-3.1	+6.9	+16.9
11	+6.7	+16.7	+26.7
12	+7.6	+17.6	+27.6

Notes:

1) Processing shares do not include CDQ pollock, which has been excluded from both the numerator and the denominator in the calculations.
2) Plus signs (+) indicate the percentage points the entity could gain and still remain under the cap.
3) Shaded cells with minus signs (-) show entities that were above the cap in 1999, and how many percentage points they would have to cut to be in compliance with the cap.

E1.2.3 Impacts on Competition of Excessive Share Caps

If the cap is set at a level that requires entities to scale back their processing, there could be impacts on competition particularly in the market for raw fish. The impacts will depend on malleability of the processing capacity of the particular entity. An entity that consist of a single pollock shorebased processing plant has much less malleable processing capacity than an entity that consists of several processing vessels. If an entity that consists of several vessels must cut back processing, it will likely to try to sell one or more of it vessels. If an entity consists of a single shorebased processing plant, then it is likely that the entity will be forced to reduce the throughput through its existing plant. The latter situation is more likely than the former to create a reduction in the price of raw fish.

The four large AFA shore plants in Dutch Harbor and Akutan averaged 10.2 percent of the non-CDQ pollock in 1999. Therefore, if the excessive share cap for AFA pollock processing was set at 10 percent, then even if each shore plant was the only pollock facility in an entity, at least some of those four would have to cut back on production, creating the potential for lower ex-vessel prices for raw fish.

If the cap were set at 20 percent, only one entity would be constrained. While the analysts cannot predict exactly how this entity would behave, it is likely that it would wish to divest itself of less efficient and more malleable processing capacity to get below the cap. Divestiture is probably less likely to create downside pressures on raw pollock prices. Furthermore if the caps are set at 20 percent it appears unlikely, given the average percentages of the large shore plants, that there would be additional aggregations of these facilities.

If the excessive share cap for BSAI pollock processing is set at 30 percent, none of the entities as they currently exist would have to cut back on processing. A 30 percent cap would, however, allow an entity to be formed consisting of three of the four larger shorebased processors without forcing the entity to dramatically cut back on throughput. If such an entity were formed, it is likely that at least 90 percent of the inshore pollock allocation would be processed within two AFA entities. This would tend to create downward pressures on ex-vessel prices.

For the catcher processor sector the issue of excessive share caps that allows existing entities to expand may be less of an issue than for entities that control motherships and shorebased plants. This is because in general catcher

processors do not purchase raw fish from delivery vessels, and therefore localized competitive concerns are less likely.

In summary, the analysts conclude that if caps are set too low there is likely to be downward pressure on ex-vessel prices for pollock. If caps are set too high it is possible that the inshore pollock allocations could be controlled by as few as two entities—a situation that is also likely be put downward pressure on ex-vessel prices. Therefore the analysts would recommend a cap at or near levels of the leading processors.

E1.2.4 Impacts of Options to the Excessive Share Cap

Apply Caps to Companies Rather than to Entities: There does not appear to be any significant impact of setting a BSAI pollock processing excessive share cap on AFA companies rather than on AFA entities under the current ownership patterns. However, setting excessive share caps on companies rather than on entities would allow a greater level of concentration of ownership of pollock processing facilities in the future. This greater concentration of ownership might make it more likely that AFA processors would be able to act in non-competitive ways that might influence prices for delivered pollock or for finished products. Furthermore a consistent definition of ownership and control between excessive share caps and AFA processing limits will be easier to implement, monitor and enforce.

Inclusion of CDQ Processing within the Cap: If the excessive share cap includes CDQ processing of pollock then it is likely that incentives to form partnerships with CDQ organizations may be reduced, which could translate to fewer benefits coming to CDQ organizations.

Grandfather Clause: It does not appear that a grandfather clause that allows processors over the cap to continue to process at that level would negatively affect competition. However, it is recommended that if the Council chooses to include a grandfather provision, they also specify the circumstances under which the grandfathered processors can continue to operate above the excessive share cap.

E1.2.5 Summary and Conclusions on BSAI Pollock Processing Excessive Share Cap

If a BSAI pollock processing excessive share cap is set too low there is likely to be downward pressure on ex-vessel prices for pollock. If a cap is set too high then it is possible that the inshore pollock allocations could be controlled by as few as two entities—a situation that is also likely be put downward pressure on ex-vessel prices. Therefore the analysts would recommend a cap at or near those of the leading processors.

It does not appear that a grandfather clause that allows processors that exceed the cap in 1999 to continue to process at that level would negatively affect competition. However, the circumstances in which a processor is allowed to continue to operate above the cap should be specified.

If a BSAI pollock processing excessive share cap includes CDQ processing then it is likely that incentives to form partnerships with CDQ organizations may be reduced, particularly with processors that are at or near the cap. This could translate to fewer benefits coming to CDQ organizations.

There does not appear to be any significant impact of setting a BSAI pollock processing excessive share cap on AFA companies rather than on AFA entities under the current ownership patterns. However, setting excessive share caps on companies rather than on entities would allow a greater level of concentration of ownership of pollock processing facilities in the future. This greater concentration of ownership could make it more likely that AFA processors would be able to act in non-competitive ways that might influence prices for delivered prices for delivered pollock or for finished products. Furthermore a consistent definition of ownership and control between excessive share caps and AFA processing limits will be easier to implement, monitor and enforce.

E1.2.6 Decisions for the BSAI Pollock Excessive Share Cap

In order to develop a complete program for the BSAI pollock excessive share cap, the Council should address the following decision points.

1) Determine the level at which to set the BSAI pollock processing excessive share cap.

   The Council has selected a range of alternative from 10 to 30 percent of the BSAI pollock TAC. The Council has indicated that they will consider any percentage within that range. Data for 1999 indicated that one AFA company processed approximately 23 percent of the BSAI pollock available for non-CDQ harvests.

2) Determine whether to apply the cap to AFA Companies using the 50 percent ownership and control standard, to AFA entities using the 10 percent ownership and control standard, or whether to use a different ownership and control standard.

   Under current ownership patterns in the industry there would be no significant impact of using a 50 percent standard rather than a 10 percent standard—only the entity comprising the *Ocean Phoenix*, the *Arctic Storm*, and the *Arctic Fjord* would be directly affected, and this entity is currently well below all the but lowest cap levels.

3) Determine whether to include the processing of CDQ pollock within the cap

   The analysts concluded that if CDQ processing is included under the BSAI pollock processing excessive share cap it could reduce the importance of CDQ pollock to AFA processors that would be near the level of the cap without CDQ processing.

4) Determine whether to require processors that exceeded the cap in the most recent year of processing to reduce their processing down to the level of the cap, or to allow them to continue to process at the level attained in the most recent year prior to the establishment of the cap—this is the commonly referred to as the excessive share cap grandfather clause.

5) Determine whether processors that are grandfathered in above the excessive share cap have a fixed limit or whether that limit is adjusted downward if processing in a future year represents a smaller percentage of the total than the grandfathered level. In other words, are grandfathered processors limited to the minimum of: 1) the percentage obtained in the most recent year, or 2) the level at which they were initially grandfathered?

6) Determine whether grandfathered processors may continue to process above the excessive share cap if they choose to consolidate their processing at fewer facilities than contributed to their initial level.

7) Determine whether grandfathered processors may continue to process above the excessive share cap if one of its BSAI pollock processing facilities is lost or destroyed, or should their grandfathered level be reduced by the amount processed by the lost facility.

8) Determine whether grandfathered processors may continue to process above the excessive share cap if they choose to sell a facility that contributed to their initial level, or should their grandfathered amount be reduced by the amount processed by the facility that was sold.

9) If CDQ processing of pollock is included under the excessive share cap (decision point 3), determine whether grandfathered processors that used CDQs to attain their initial level can continue to process at the grandfather percentage if they choose to reduce the amount of CDQ pollock they process.

RECEIVED
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Chairman Rick Lauber
North Pacific Fishery Management Council
605 West 4th Ave. suite 306
Anchorage, Alaska 99501-2252

May 19, 2000

Chairman Rick Lauber

This letter is in reference to the protections that were suppose to be provided to non AFA vessels. The owners of the fishing vessels Miss Leona, Lone Star and Windjammer have been fishing in the Bering Sea since 1986. These three vessels are not AFA qualified. These three vessels have been targeting pacific cod for well over 14 years and delivering to shore based facilities in the Dutch Harbor and Akutan areas. These three vessels typically hire a three person crew and are owner operated. The owners believe that the Council would like to know how these three vessels have been affected during the 2000 season with the current AFA side boards in place.

The Council established side boards on those AFA vessels that used to fish pacific cod and also fished pollock. Those AFA vessels that met certain landing limits for pollock and pacific cod have been permitted to now have access to pacific cod. Prior to the 2000 season there were perhaps 5 to 9 vessels that began the trawl directed pacific cod fish fishery in January. Those vessels that became AFA qualified and also fished some pacific cod were fishing for pollock in January and February. After the A season for pollock ended these vessels would begin to enter the pacific cod fish fishery in March.

In the 2000 season there were approximately 40 vessels that began fishing for pacific cod in January, not 9 or less as in previous years. The AFA qualified vessels that have an exemption to fish pacific cod typically are over 100 feet in length and have horsepower in the 1200 to 2500 range. There are a few AFA qualified vessels that had a history of fishing pacific

cod in January, these were smaller vessels like the three vessels above. The three vessels above have 400 to 600 horsepower engines. The collective fishing power and concentration of these additional vessel on the limited fishing grounds, put non AFA vessels at a distinct disadvantages.

The AFA vessels that have been given pacific cod privileges have been selling, leasing and combining their quotas to be fished by the co-ops. In order to maximize the income on these vessels, that used to fish pollock, they have now entered the direct pacific cod fish fishery in January. The side boards established by the Council have not helped those that historically have been dedicated to harvesting predominately pacific cod. The owners of the three vessels above therefore petition the Council to consider management options that would provide protection to the non AFA vessels . The following considerations are provided to the Council for consideration.

1. AFA vessels that are permitted to fish pacific cod will not be allowed to begin a directed fishery on pacific cod until mid March, unless the AFA qualified vessel had a history of entering the directed pacific cod fishery prior to this date.

2. Develop a pacific cod quota that is specific to those vessels that are not AFA qualified.

Consideration of these new side board protections would be greatly appreciated.

Sincerely

Steve Aarvik
F/V Windjammer

Steve Aarvik

425 776 9618

Sincerely

Charles Burrece
F/V Lone Star

Charles Burrece

360 671 2878

Sincerely,

Omar Allinson
F/V Miss Leona

Omar Allinson

260-722-7104

Excerpted from September 2000 Advisory Panel minutes:

Action to allow inshore coops to contract with non-member inshore AFA CVs to harvest coop allocation.

1. Problem Statement: NMFS' current Emergency Rule implementing AFA and its proposed Final Rule allow only those CVs that are members of an inshore coop to harvest and deliver pollock allocated to that coop. It is not permissible under current NMFS regulations for a CV that is a member of a coop to assign its right to harvest its coop shares to another inshore AFA vessel that is not also a member of the same coop, nor is it possible for a coop to contract with non-member AFA CVs to assist in harvesting its coop allocation.

The following are some of the adverse results under status quo:

A. If a coop CV is unable to harvest its coop shares, the universe of available CVs to take its place is very limited under existing regulation and as a practical matter may make it very difficult or impossible for the CV owner to make reasonable arrangements for the harvest of its coop shares. In some coops there may only be processor-owned vessels available that have enough capacity to harvest the member's share which will place the independent catcher vessel owner at a substantial disadvantage. In addition, in some coops, the remaining member vessels simply may not have the capacity to harvest the coop shares of the member vessel that is not able to harvest its own share for the season in question.

B. In some cases it may not just be that it is impossible for a coop catcher vessel to harvest its share, but it may be very inefficient for it to do so. Some CVs have a relatively small amount of pollock quota and for them to travel to the Bering Sea from the Gulf or west coast to fish in every season, for example, in a Summer/Fall season where the price is low, is extremely inefficient. It would be beneficial to the catcher vessel owner to have the maximum flexibility to allow other CVs already on the grounds to harvest their quota. This would also be consistent with reducing gear and effort on the grounds.

C. Small CVs are particularly at a disadvantage with the SCA now closed even to CVs under 99 feet. For these vessels to now be forced outside the SCA to harvest their own coop shares will increase safety risks. In addition, there may be times that safety could be improved for CVs that are not included within the 99 foot rule. For example, during certain seasons or times of the year, safety could possibly be improved in situations where midsize vessels could have additional flexibility to allow other larger CVs to harvest their shares. This flexibility is not always available within the coop under the existing regulation.

D. Independent CVs that are unable to make reasonable arrangements for other coop members' CVs to harvest their shares are essentially permanently damaged because of the lack of flexibility in being able to switch to coops where more harvest flexibility may exist. This is because the Council decided under Dooley-Hall that CVs may not switch coops without first fishing open access for a year. As a result, there is no practical solution for a CV to find another harvesting solution for its vessel except within the captive market of its own coop.

C - 2(a) ?
OCT 2000
(ORAL PRESENTATION)

American Fisheries Act Rulemaking Update

NMFS-Alaska Region

October 2000

Status of AFA Rulemaking

- ✓ AFA proposed rule (Amendments 61/61/13/8) scheduled for publication December 2000
- ✓ Draft EIS for Amendments 61/61/13/8 scheduled for publication December 2000
- ✓ Final rule and final EIS scheduled for publication spring 2001 to be effective for C/D season
- ✓ Need for January 2000 emergency rule to make previously adopted changes for A/B season?

Rationale for Emergency Rule

- ✓ The Council has recently approved several changes to the inshore co-op program and crab processing caps that would supersede the AFA and existing regulations.
- ✓ Industry has been operating with the expectation that such changes will be in effect for the 2001 A/B season.
- ✓ Failure to implement these changes will disrupt existing co-op agreements and could result in a very large open-access fishery for 2001.

Proposed elements of the emergency rule

- ✓ Revise "qualified catcher vessel" definition to allow inactive vessels to remain in inshore co-ops
- ✓ Revise inshore co-op allocation formula to eliminate catch history from non-AFA vessels (eliminates open access windfall)
- ✓ Revise crab processing cap amounts by adding 1998 processing history and giving it double-weight
- ✓ Eliminate requirement that second observer on AFA C/Ps and motherships be a level 2 (CDQ) observer
- ✓ Revise inseason management procedures for C/P and CV sideboard closures and rollovers

AFA proposed rule (Amendments 61/61/13/8)

- ✓ Will include all provisions in the two emergency rules currently in effect, and include all Council actions through September 2000, plus...
- ✓ VMS requirement for all AFA C/Ps and CVs.
- ✓ Revised observer coverage requirements for C/Ps and motherships operating in AFA and CDQ pollock fisheries.
- ✓ New catch weighing and monitoring requirements for AFA inshore processors.

Rationale for VMS program for AFA vessels

- ✓ Track compliance with Steller sea lion closures
- ✓ Improve inseason management of harvests inside and outside the SCA
  - Haul-by-haul accounting of catch location on C/Ps
  - Haul-by-haul accounting of catch location on mothership CVs and observed inshore CVs
  - Trip-by-trip accounting of catch location on unobserved inshore CVs
- ✓ Improve tracking of sideboard fishing activity

Observer coverage for AFA C/Ps and AFA motherships

- ✓ AFA and CDQ requirements currently inconsistent
  - AFA: One lead level 2 (CDQ) observer, one regular observer
  - CDQ: One lead level 2 observer, one level 2 observer
- ✓ Monitoring demands are identical in AFA and CDQ pollock fisheries
- ✓ Potential for level 2 observer shortage due to lack of C/P deployment opportunities.
- ✓ Proposed rule will reduce CDQ pollock coverage requirements to match current AFA coverage requirements

Catch measurement and monitoring in AFA fisheries

- ✓ Catch measurement and monitoring of BSAI pollock fishery under review in EIS and BiOp
- ✓ Co-op fisheries are functionally equivalent to IFQ fisheries (co-ops are a privately-operated IFQ program)
- ✓ Worldwide experience indicates that quota-based fisheries (IFQ/co-op) require more rigorous catch weighing and monitoring programs than open access fisheries

AFA catch monitoring program objectives

- ✓ Must verify that catch is sorted and weighted
- ✓ Must verify that scales are accurate
- ✓ Must verify catch location (i.e inside/outside SCA)
- ✓ Must verify that information is reported accurately
- ✓ Should be functionally equivalent across sectors
- ✓ Must be coordinated with existing State programs

Monitoring of AFA C/Ps and motherships

- ✓ Existing CDQ catch monitoring and scale requirements currently meet all AFA catch monitoring objectives
- ✓ Proposed rule will apply CDQ catch monitoring and scale requirements to the AFA C/P and mothership sector fisheries
- ✓ Additional offshore catch weighing and monitoring requirements are unnecessary

Monitoring of AFA inshore processors

- ✓ Current program cannot effectively verify whether all catch is being weighed
- ✓ Current program has no requirement for inseason testing and verification of scale accuracy
- ✓ Current program cannot effectively verify whether delivery weights are being reported accurately
- ✓ Level of monitoring is not functionally equivalent across sectors

AFA inshore catch monitoring alternatives examined in EIS

- ✓ Government-operated weigh stations at plants (Iceland model)
- ✓ At-sea scales on catcher boats (Norway model)
- ✓ Offshore-type system with technological standards and certification of scales (at-sea CDQ model)
- ✓ Performance based catch monitoring program integrated with State scale certification and fish ticket system

Development of performance based monitoring program

- ✓ Plant visits to observe catch sorting and weighing procedures at all AFA inshore processors
- ✓ Conclusion: Dramatic differences in how different processors sort and weigh catch (no one-size fits all solution)
- ✓ NMFS has reviewed scale testing certification procedures with Alaska Division of Measurement Standards (DMS)
- ✓ Performance-based monitoring proposal has been developed in coordination with DMS

Proposed catch monitoring and control plan (CMCP) system

- ✓ Each processor would be required to prepare an individual CMCP to address performance standards related to:
  - Flow and sorting of fish from delivery point to scales
  - Inseason testing of scales
  - Scale printouts and retention of records
  - Observer sampling stations
- ✓ NMFS would review CMCPs and inspect plants for compliance. CMCPs meeting performance standards would be approved and reviewed annually

Integration with existing State programs

- ✓ NMFS is coordinating with Alaska State Division of Measurement Standards (DMS) to avoid duplication and inconsistencies
- ✓ Exploring possible Federal funding for additional DMS scale inspector dedicated to groundfish scale inspections
- ✓ ADF&G fish tickets would continue to be official record of inshore catch

Opportunities for industry and public input

- ✓ NMFS is scheduling a public workshop to present CMCP proposal and receive input from industry and public (November 16-17 at Fisherman's Terminal in Seattle).
- ✓ Additional workshops may be scheduled if necessary

Additional AFA-related deadlines and reminders

- ✓ December 1 deadline for submission of preliminary co-op reports to Council
- ✓ December 1 deadline for submission of inshore co-op contracts and permit applications
- ✓ December 1 final deadline for submission of AFA vessel and processor permits

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AGENDA C-2
OCTOBER 2000
Supplemental

MIDWATER TRAWLERS COOPERATIVE

P. O. BOX 2352 * NEWPORT, OREGON 97365
Captain R. Barry Fisher, President
Phone: (541) 265-9317 Fax: (541) 265-4557

September 26, 2000

Chris Oliver
Acting Executive Director
North Pacific Fishery Management Council
604 West 4th Avenue, Suite 306
Anchorage, AK 99501

VIA FAX: (907) 271-2817

Hi Chris:

I am faxing to you a five page document entitled *DISCUSSION PAPER* to be included in the October Council meeting materials under Agenda Item C-2(d).

Please call me at (808) 324-4056 if any portion of this is not clear or if you have any questions.

Thank you.

Fred Yeck

DISCUSSION PAPER

1. **Subject: Proposal for NPFMC and NMFS Action to Allow Inshore Coops to Contract With Non-Member Inshore AFA CVs to Harvest Coop Allocation.**

2. **Nature of the Problem.**

A. **Current Regulation.** NMFS' current Emergency Rule implementing AFA and its proposed Final Rule, allow only those catcher vessels that are members of an inshore coop to harvest and deliver pollock allocated to that coop. It is not permissible under current NMFS regs for a catcher vessel that is a member of a coop to assign its right to harvest its coop shares to another inshore AFA vessel that is not also a member of the same coop, nor is it possible for a coop to contract with non-member AFA CVs to assist in harvesting the coop's allocation. It is NMFS current legal interpretation of AFA that for it to change these regulations, that the NPFMC must also recommend that the regulation supercede the current statutory provisions of AFA, which authority the NPFMC does have pursuant to AFA Section 213(c).

B. **Status Quo.** Under status quo, if an inshore coop CV is unable to harvest its coop shares, the universe of available catcher vessels to take its place is limited to the other members of the coop, which as a practical matter may make it very difficult or impossible for the catcher vessel owner to make reasonable arrangements for the harvest of its coop shares. In some coops there may only be processor owned vessels available that have enough capacity to harvest the member's share which will place the independent catcher vessel owner at a substantial disadvantage. In addition, in some coops the remaining member catcher vessels simply may not have the capacity to harvest the coop shares of the member vessel that is not able to harvest its own shares for the season in question.

Circumstances under which an inshore coop CV may not be able to harvest its coop shares include the following:

1. Mechanical failure or physical loss of the vessel. Some coops are dependent upon one or more very large catcher vessels. If one of these vessels is unavailable during a given season because of mechanical failure or other casualty, there are some coops that are believed to simply not have sufficient capacity of member catcher vessels to harvest the coop's seasonal share, which will damage both the processor and the harvester.

2. There are a number of small catcher vessels that have a relatively small amount of pollock quota that may result in it being very inefficient for them to travel to the Bering Sea to harvest their coop share in every season, especially in a season such as this current Summer/Fall season, where the ex-vessel price is very low and the cost of fuel is very high. It is perceived as being beneficial to the catcher vessel owner to have the maximum flexibility to allow other catcher vessels already on the grounds to harvest this quota. This would be consistent with reducing gear and effort on the grounds.

3. Safety. Small catcher vessels are particularly at a disadvantage with the SCA now closed even to catcher vessels under 99 feet. In addition, the total closure of the SCA, also now potentially adds safety risks to midsize trawlers, especially in the winter months, based upon current weather conditions. Providing maximum flexibility to a coop to harvest its coop share is believed to be likely to increase safety for catcher vessels so, if necessary, each CV will potentially have reasonable harvest alternatives available to it so as not to force the vessel to fish in hazardous conditions because of regulatory restrictions.

3. **Alternative Solutions.** Under status quo, if an inshore coop CV is unable to harvest its coop shares, that catcher vessel owner may attempt to make arrangements with other members of its coop to harvest its share of the coop's allocation. As previously indicated, the physical capacity in some coops to harvest the member CVs vessel share may not exist and, additionally, in some coops the number of coop members eligible to harvest the quota may be very limited to the extent that the independent catcher vessel owner will find itself in a very captive economic market.

In a free market situation an independent catcher vessel could remedy its situation by making arrangements to change coops where reasonable arrangements could more readily be made. However, because of the Council's decision, under Dooley-Hall the catcher vessels may not switch coops without fishing open access for a year resulting in there being no practical solution for a catcher vessel to find another harvesting situation for its vessel except within the captive market of its coop.

4. **Necessity.** The necessity of this proposed action has been raised to the level which meets the requirements for an emergency rule. The basis for the necessity, as well as the immediacy, involves the following:

A. Catcher Vessel Safety. As a result of the current sea lion RPAs and the legal impediments of the injunction to fishing within critical habitat, there is an immediate safety risk to catcher vessels as a result of limiting their flexibility to arrange for other vessels to harvest their coop shares.

B. Economic Harm. In the event of a mechanical failure or casualty to one or more catcher vessels within a coop that would prevent the coop from having the physical capacity of harvesting its coop share within a given season, the owner of the impaired CV and the coop's processor would incur immediate and irreparable financial harm. This is a real economic risk that can only be relieved by this proposed action.

5. **Proposed Council Action.** Specific language for consideration to solve the problems outlined by this discussion paper is as follows:

If an inshore AFA coop CV owner notifies its coop that the coop member's CV will be unavailable to harvest pollock during all or any portion of a pollock season, the coop may contract with other AFA eligible inshore CVs, that are members of another inshore coop, to harvest pollock to which the coop is entitled.

Pollock delivered by a CV pursuant to this provision shall not affect the coop eligibility of the CV.

6. **Anticipated Consequences of the Proposed Action if Implemented.**

A. Coop Level. If the regulations and the AFA are amended to incorporate the recommend language, the immediate result would be to allow inshore coops to contract with other inshore CVs, that are members of another inshore coop, to harvest a portion of the coop's AFA pollock quota if and to the extent determined by the coop as necessary. It is the coop that will have the legal authority to allow a non-member to harvest coop quota, not an individual coop member. Therefore, if an individual coop member desires to take advantage of this regulatory flexibility it must make application through the coop to arrange for a non-member CV to harvest the member's coop share.

Since it is the coop entity that must contract with a non-member CV, that structure will thereby require that before a coop can legally enter into such a contract that it must be authorized by and be consistent with its Articles, Bylaws and Membership Agreements which will protect coop members. By authorizing the contracts only at the coop level, the coop will be able to assure that any non-member CV will first be required to contractually agree to all the rules of the coop and subject itself to the same penalties as coop members if it should over-harvest and violate any other coop rule. Each coop and the members thereof will be able to determine for themselves, as a coop, the conditions and rules under which non-member CVs may be used to harvest coop quota so as to protect the coop and members from liability or damage.

The proposed regulation provides the legal possibility to use non-member CVs to harvest a coop's share, however, it will still be up to each individual coop within the guidelines of its own coop structure to determine the manner in which this flexibility will or could be used by its members. This procedure will protect the coop and the harvesting rights of its member, who are all jointly and severally liable. It will also assure full and complete regulatory compliance.

B. Processor Level. The pollock delivered by a non-member CV pursuant to this proposed regulatory change, must still be delivered to the coop's processor (subject to the existing 10% rule). Therefore, this proposed regulatory change is believed to be of substantial advantage to the AFA processors to provide additional assurance that the coop's share will, in fact, be harvested and made available for the processor to process. Additionally, this regulatory change is not anticipated to alter in any manner the contractual provisions between the coop and the processor and to the extent the coop and the processor have entered into harvesting and processing plans or delivery schedule arrangements, those contractual provisions would continue to apply.

The proposed regulatory change specifically provides that pollock delivered pursuant to this regulatory flexibility will not affect the coop eligibility of the CV. Therefore, catcher vessels will not be able to arrange activities under this provision or use its benefits to change inshore coops.

C. Who, if any, is disadvantaged by the proposed regulatory action? This proposal has received widespread formal support by both processors and harvesters in the industry. However, as in any proposed action there are still those who may see the proposal as being to their disadvantage. Inshore CVs that are not members of an inshore coop will not be eligible to harvest pollock pursuant to this regulatory change. The reason for their exclusion is because it was perceived that if they would become eligible it would only work to potentially encourage CVs with limited inshore catch history to continue in open access by providing additional economic opportunity rather than encouraging all inshore CVs to join an inshore coop. The purpose of the AFA and the Council action pursuant thereto, have been to encourage CVs to participate in coops to rationalize the pollock fishery and, therefore, allowing catcher vessels in open access to receive economic advantage of this regulation (thereby making the open access fishery more economically viable) would be inconsistent with those policies. All inshore CVs will be eligible to participate in harvesting pollock pursuant to this proposed regulation, but they must be a member of an inshore coop to do so. Additionally, there may be some members of coops that feel it is to their economic advantage to limit the market of other members that might need assistance in harvesting their coop share. To the extent that there is any legitimate concern with regard to the issue of constraining CVs within a coop, that issue can be addressed on a coop by coop basis internally as the coops develop contractual language to address implementation of this proposed regulatory change once it becomes effective.

7. **Monitoring.** There has been concern raised within NMFS as to implementing an adequate reporting and monitoring system to assure enforcement of coop allocations. It is believed that the proposed regulatory change can be accommodated within the existing NMFS reporting system with a minimum of modifications.

Currently, the processor logbook reports have a category for the AFA account number. It appears this entry is used to identify which coop the catch is attributed to. The current entries in this field have been vessel AFA permit numbers and/or coop I.D. numbers. Apparently, either works. The current regulation allows NMFS to assume each and every delivery a coop vessel makes is only attributed to a single coop and it seems the vessel AFA permit number or coop I.D. number can be used interchangeably. It is believed that the solution lies in tying the two numbers together for each report. If the "AFA account number" entry required both the vessel AFA permit number *and* the coop I.D. number, NMFS could easily adjust the database to make the correct catch accounting work out.

Example: Assume an individual Unisea coop CV AFA permit number is 2059 and the Unisea coop I.D. number is 106. Assume the Akutan coop I.D. number is 101. If the Unisea member CV delivers Unisea coop fish to Unisea or to any plant under the 10% rule, the code used would be 2059-106. If the Unisea member CV delivered fish allocated to the Akutan coop under this proposed regulatory flexibility to Trident (or to any other processor under the 10% rule), the code used would be 2059-101.

8. **Conclusion.** This proposal has received widespread industry support from both the Associations representing most of the AFA harvesters, as well as the majority of the AFA processors. Given the nature of the problem and the necessity outlined herein, as well as the lack of controversy within the industry, it is believed that provision for this harvesting flexibility

should be adopted immediately as an emergency rule for implementation for the beginning of the year 2001. Given all the uncertainties currently facing the Industry, especially in light of the Endangered Species Act issues currently relating to the Stellar Sea lion issue, providing maximum flexibility to the harvesters and processors involved is paramount.

Submitted By:

UNITED CATCH BOATS (UCB)

MIDWATER TRAWLERS COOPERATIVE (MTC)

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Sept. 25, 2000

RE: AFA Processor Sideboard Limits for Groundfish

Dear Dave,

This letter is to provide comment on the proposed AFA Processor Sideboard Limits for Groundfish scheduled for final action at the October meeting in Sitka. Arctic Storm, Inc. manages two AFA catcher processors that participate in the pollock and yellowfin sole fisheries in the BSAI. The processor sideboard limits under consideration would impact our participation in the yellowfin sole fishery.

When the American Fisheries Act (AFA) facilitated the formation of pollock fishery coops, it recognized a potential need to implement protective measures to prevent adverse impacts on traditional non-AFA harvesters and processors. The EA/RIR/IRFA provides an assessment of the effects of imposing limits on the amount of groundfish harvested from the GOA and BSAI that AFA processors can process. The document looks at ten protective options for consideration when discussing processing sideboards and concludes the following:

"It does not appear that any of the options that have been analyzed will fully address the concerns of the non-AFA processors without placing potentially harsh restrictions on processors that do not appear to be able to benefit directly from AFA, and without imposing burdensome paperwork and enforcement costs on NMFS and on the industry as a whole. This conclusion applies whether the processing limits are overall, sector limits or individual limits. Furthermore, existing regulations, other Federal regulations, and other non-regulatory restraints within status quo may provide sufficient protection for many of the non-pollock fisheries."

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However, the Act, in Sec. 211 (c) (1)(B), directs the Council/Secretary to develop appropriate protective groundfish measures for non-AFA processors. These provisions do not prescribe any particular protective measures. They leave this to the Council and Secretary.

In 1999 the Council requested a legal opinion from NOAA GC that would provide guidance on whether and to what extent the Council may elect not to implement processing sideboard limitations under Section 211. NOAA GC reviewed the provisions and determined that the Council had significant latitude in determining what provisions are necessary and appropriate, *including no protective measures*. However, NOAA GC cautioned the Council that such a recommendation must establish a record that no protective measures are necessary and or feasible. It further states that if proposed protective measures would have unavoidable and unacceptable adverse conservation or other impacts and could not be imposed fairly and equitably among sectors, the Council could recommend measures superseding them under Section 213.

Arctic Storm supports the intent of the protective language of AFA, however, we agree with the conclusion of the EA/RIR/IRFA that other regulations sufficiently protect non-AFA processors and that the imposition of processing limits would have negative consequences to other non-AFA participants as well as adverse conservation and other impacts. In it's public comments, Arctic Storm would like to specifically address the conclusions of the EA/RIR/IRFA with particular focus on the issues raised by NOAA GC in this regard.

1)Existing regulatory constraints within status quo provide protection for non-AFA processors.

- AFA already includes protective provisions that substantially limit the catcher processor sector in Sec. 211 (b). Section 211 (c) (1) (B) which prompted current proposals, directs the Council to develop shoreside processor restrictions which, unlike AFA catcher processor limits, were not specifically addressed in the Act. In it's report to the Council, the consensus of the Processor Sideboard Committee was that any processing sideboards should not include the catcher processor sector since they have existing sideboards contained in the Act. The report concluded that one set or another should apply, but not both. To impose additional sideboards on the catcher processor sector would not meet the Act's requirement that measures be imposed fairly and equitably among sectors of the pollock fishery.
- AFA harvesting sideboards sufficiently constrain processors. The only way AFA catcher processors can exceed their historical market share would be to purchase fish over the side from catcher vessels. The AFA catcher processor sector will be further constrained by harvesting sideboards based on retained rather than total catch. This would reduce our yellowfin sole sideboards by 20%. If this feature of the harvesting sideboards is approved by the Secretary, AFA catcher processor sector would have to purchase 20% of its fish from catcher vessels to meet historical market share of yellowfin sole.

- Steller Sea Lion (SSL) pollock RPAs provide additional protections to non-AFA processors by spreading out the pollock fishery spatially and temporally. In the pollock RFRPAs, cooperatives are recognized as an important tool in accomplishing these twin goals which spread the fishery over four seasons and require the fleet to catch most of its fish in waters outside SSL critical habitat where fish are often less aggregated. These measures lengthen the pollock season, now double it's pre-AFA duration. In doing so, these measures constrain access of the AFA fleet to non-pollock species. This has caused some AFA participants to reduce participation in non-pollock fisheries at this time, especially fisheries like yellowfin sole where the market suffered from the collapse of the Korean economy in 1998. This reduced participation by AFA processors has increased the non-AFA sectors market share of non-pollock species. (See Attachment 1 - BSAI Yellowfin Sole Fishery 1995-2000.) The reduced amount of flatfish on the market, together with a revived Korean economy, has helped boost by 30% the value of yellowfin sole, from FOB prices as low as $400./mt in 1998 to current levels of about $600./mt for frozen round product. Current yellowfin prices are in line with values reflective of 1995-97 when the total catch of yellowfin sole was nearly double current levels but Asian markets much more robust.
- LLP and P. cod allocations. The analysis discusses in detail the impact of other fishery regulations including the LLP program and P. cod allocations in the BSAI. The analysis concludes that the overlay of LLP and the AFA harvest limits reduces the ability of AFA processors to increase their non-pollock processing and that BSAI P. cod allocations for fixed gear endorsements put additional limits on harvesters and catcher processors that will be allowed to participate in the fishery.
- Inshore/Offshore in the GOA. The inshore-offshore regulations effectively limit the ability of AFA catcher processors and motherships from increasing their share of GOA groundfish that take pollock or P.cod as bycatch. AFA sideboards on catcher processors also constrain processing of groundfish in the GOA.
- Prohibited Species Caps. The analysis recognizes that the best protection to non-AFA participants in non-pollock fisheries that are closed by PSC caps, is allocation of PSC to the non-AFA sectors as an alternate means to reduce the possibility of AFA processors bringing harm to non-AFA processors. AFA processors have been supportive of this concept not only as a protective measure for non-AFA processors, but because it could provide an effective incentive to reduce bycatch. The only way AFA participants could increase their share of non-pollock species would be to reduce their historical use of PSC so that they stay beneath their sector allocation of PSC. Non-AFA processors of underutilized species such as flatfish would be allocated their historical share of PSC so they could not be harmed by PSC usage of either AFA or non-AFA harvesters. However, as the analysis notes, the non-AFA processor fleet opposes the concept of using PSC allocations as a replacement for processor sideboards.

2)Imposition of processing limits would have negative consequences to other non-AFA participants and catcher vessels.

- Non-AFA catcher vessels would be the biggest losers if processing sideboards are imposed. Because harvesting limits have been imposed on AFA catcher vessels, the only way AFA processors can meet or expand their historical processing share is to buy fish from non-AFA catcher vessels. Since most groundfish and flatfish processors that purchase fish from catcher vessels in the BSAI are AFA processors, processor sideboard limits would severely limit this market opportunity to non-AFA catcher vessels. It would also impose an additional burden on AFA catcher vessels. Already limited by harvesting sideboards, processing sideboards would decrease buyer competition, and could lower prices for their catch of non-pollock species. Additionally, if processors are not allowed to take deliveries of non-pollock species once their cap is reached, catcher vessels delivering pollock would be required to find another processor that is still within its cap or a non-AFA processor to take delivery of its cod bycatch in the pollock fishery.

3) Non-AFA processors are protected by restrictions against anti-competitive behavior.

- One issue of concern arising from the AFA is the extent to which AFA entities could use their market power to reduce competition in non-pollock fisheries. The analysis notes thee major federal anti-trust laws: the Sherman Antitrust Act, the Clayton Act and the Federal Trade Commission Act which protect and promote competitive practices. They prohibit a variety of practices that restrain trade. The Department of Justice, Antitrust Division has ruled that AFA cooperatives comply with these laws.

4) Imposition of processing limits would have adverse conservation impacts.

- In the section of the analysis that discusses calculation of processing limits, the document notes that if the Council chooses to use historical TACs as the denominator, it should be very careful to specify whether reported or retained catch is to be used as the numerator. Specifically, it says, "*While it may seem politically correct to use only retained catch in the numerator, doing so will perhaps unduly reward non-AFA processors for their own discards. In effect, the non-AFA processors get credited with the discarded tons of the AFA processors and do not get penalized for their own discards*" The non-AFA catcher processors already received this reward when AFA catcher processors were limited to retained harvest levels. Because the non-AFA catcher processors discard and bycatch rates (See Attachment 2, Table 6.20 from AFA Harvesting Sideboard Analysis) are substantially higher than AFA catcher processors, processor sideboard limits that promote increased access to the fishery by the non-AFA fleet at the expense of the AFA fleet are counter to the conservation goals of the Sustainable Fisheries Act.

5) Other considerations. Non-AFA flatfish processors have voiced concern about the ability of AFA processors to make use of the advantages afforded by cooperatives, specifically the ability to redirect timing of participation in a fishery that might give AFA processors market advantage. While this might be of concern in a vacuum, it is not when viewed in the context of world markets, bycatch rates, operating costs and crew changes. For example, though yellowfin sole prices are up now, the cost of crew changes and fuel (up 50% from last year's price), make this a poor option. A choice to fish for yellowfin sole in January, in an effort to gain market advantage, would be additionally constrained by halibut bycatch which is higher at that time of year. So while cooperatives can provide advantages in the pollock fishery, those advantages are quickly diminished in high cost, low value fisheries such as the BSAI flatfish fisheries.

In closing, Arctic Storm supports protection of non-AFA processors, however, we believe that other fishery regulations adequately protect non-AFA processors and that processing sideboard limits would have negative consequences to the fishing industry and the resource. Finally, enforcement of processing limits would be burdensome and costly to the National Marine Fisheries Service and highly intrusive to the private sector while providing little or no added protection to non-AFA processors.

Thank you for considering our comments on this important issue.

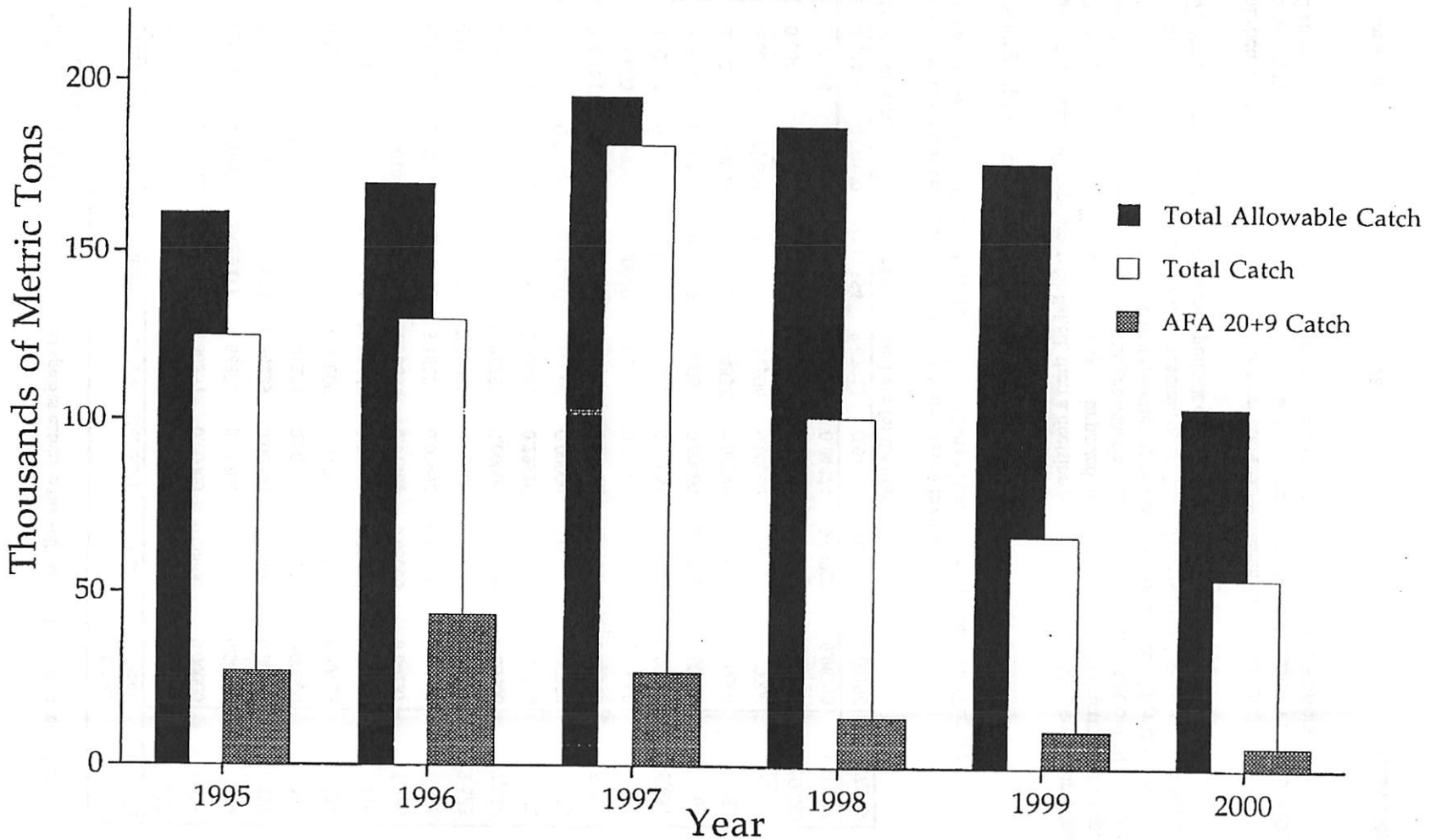
Sincerely,

Donna Parker

Attachment 1

BSAI Yellowfin Sole Fishery 1995-2000

Total Allowable Catch, Total Catch, and Catch by the AFA 20+9 Vessels



Source: Total allowable catch and total catch from NMFS Bering Sea and Aleutian Islands groundfish quotas and preliminary catch; catches of AFA 20+9 vessels from SeaState, Inc. (2000 catches through mid-September).

Attachment 2

Table 6.20: PSC bycatch rates (PSC bycatch/target species catch) in the yellowfin sole fishery from 1995-97, by catcher/processor vessels

Vessel	Halibut	Herring	Opilio	Tanner	Red King	Chinook	Other Salmon	Yellowfin
9-1	**0.02249**	0.00022	**30.21579**	8.41740	**0.09530**	0.00000	0.00000	543
9-2	0.00069	0.00002	**60.05706**	8.30551	0.00000	0.00000	0.00000	1,018
9-3	**0.03302**	0.00000	**38.35211**	4.68335	**0.13498**	0.00000	0.00000	499
9-5	0.00000	0.00005	**91.88153**	0.34229	0.00000	0.00000	0.00000	237
9-6	**0.00607**	0.00005	0.83059	3.01231	0.00000	0.00000	0.00000	267
9-7	**0.02389**	0.00031	12.78647	0.00000	0.03335	0.00000	**0.00765**	131
9-8	**0.02015**	0.00000	**45.20464**	**22.11648**	0.00000	0.00000	0.00000	116
9-9	0.00346	**0.00140**	1.26613	1.36635	0.01562	0.00000	**0.00287**	7,990
20-2	**0.00825**	0.00007	5.43106	3.16128	0.01998	0.00000	0.00000	11,556
20-4	0.00115	0.00003	**36.29686**	7.29047	0.00000	0.00000	0.00000	2,883
20-7	0.00304	0.00045	**55.83229**	**18.95755**	0.00000	0.00000	0.00000	7,024
20-8	**0.00855**	0.00000	3.90634	2.43461	**0.29519**	0.00000	0.00000	572
20-10	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	26
20-12	0.00121	0.00017	12.76300	2.66505	0.01048	0.00000	0.00000	5,833
20-14	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	53
20-15	0.00252	0.00001	2.51559	1.88193	0.03941	0.00000	0.00000	6,851
20-18	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	67
20-19	0.00287	0.00002	5.21463	5.44358	**0.05789**	0.00000	0.00000	6,589
20-20	0.00279	0.00002	8.32658	4.51906	0.00000	0.00000	0.00000	8,442
AFA	0.00421	0.00028	14.72575	5.34276	0.02241	0.00000	0.00039	60,693
Non-AFA	**0.00516**	**0.00135**	**24.89908**	**10.26026**	**0.04874**	**0.00022**	**0.00270**	127,237
All CPs	0.00485	0.00100	21.61354	8.67212	0.04024	0.00015	0.00196	187,929

Source: Observed hauls in the NORPAC Observer Data Base for the years 1995-97

Notes:

1) A bolded number means that vessel was above the catcher/processor fleet's average.

2) Herring and halibut rates are PSC (mt)./Target catch (mt). Crab and salmon are PSC (animals)/Target catch (mt).

6.6 Reaching caps will close which fisheries

Once the groundfish and PSC caps are established, then a decision must be made regarding the closures that occur when the caps are reached. This decision may be impacted by the method used to determine the caps. For example, if only the catch in the non-pollock target fisheries isincluded in the cap, the Council may feel it is appropriate to only close the non-pollock target fisheries upon attainment of the cap. After the closure in this scenario, only the pelagic pollock fishery would remain open. The pelagic pollock fishery would then close once the AFA catcher/processors harvested their pollock quota.

Caps established for the 1999 fisheries were based on the 1995-97 catch history of all 29 listed AFA catcher/processors in the non-pollock target fisheries. Once a species cap is reached by these vessels in 1999, NMFS will close all but the pelagic pollock fishery for the 20 eligible AFA catcher/processors.

Groundfish Forum

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September 25, 2000

RE: Processor sideboards and other approaches to protecting non-AFA processors

Dear Dave:

The comments that follow outline our thoughts on existing and alternative options for protecting processors not qualified to participate in the directed pollock fishery from the effects of cooperatives or other aspects of the American Fisheries Act. As you may recall, recognizing some of the acknowledged problems with "processor sideboards", the Council invited comment on alternative ways to provide adequate protection for non-AFA processors.

At this point, we feel that one alternative approach (a modification to the IR/IU regulations for flatfish as described in "potential solution #3" below), while somewhat afield of the approaches described in the current E.A., may effectively achieve adequate "protection" or at least "preservation" of our overall ability to compete with AFA-qualified processors, while avoiding inherent problems with existing alternatives described in the E.A. Should the Council want to explore this alternative direction, we would hope that consideration of processor sideboards be put on hold and the Council would direct further analysis to focus on a modification to the IR/IU plan as described in "potential solution #3" below. That solution works from the perspective of combined effects of the AFA, cooperatives, and IR/IU on non-AFA processors. We thank the Council in advance for considering our ideas on this matter.

<u>The need for protection:</u>
Section 211c(1)(B) of the American Fisheries Act states that the North Pacific Council must "protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of this Act or fishery cooperatives in the directed pollock fishery". The Council's current (July 14th version) analysis of "groundfish processor sideboards" provides credible evidence for the possibility that AFA processors could make use of the advantages afforded by cooperatives and the ability to redirect processing capacity under a rationalized fishery to increase their proportional amount of processing of non-pollock species. While to date there has not been an influx of AFA processing capital into flatfish fisheries and some people think that current markets for existing product forms do not portend such an increase, Groundfish Forum members do

not share this view. Time and again, we have seen that capital in the fishing business always flows to its next best alternative within the groundfish sector off Alaska. In our view, flatfish fisheries are clearly the next best alternative and we need to have proactive measures in place to prevent negative impacts on non-AFA sector processors.

While the Act's mandate for protection of non-AFA processors suggests remedies that reach all the way to the possibility of the prevention of operation of cooperatives if adequate protections are not in place, the Act does not actually state in any way that processing sideboards are the only approach to protection. While AFA processor sideboards could be used to hold AFA-qualified processors to some measure of their current percentage of non-pollock species (paralleling past Council actions on catch sideboards), there may be alternative approaches that avoid the unintended consequences and implementation hurdles detailed in the analysis. In its June 2000 motion to send the modified analysis out to public comment, the Council invited alternatives for providing protection to non-AFA processors while avoiding some of the problems identified with processing sideboards.

Background information on the problem facing non-AFA processors

When considering the existing structure of the non-pollock groundfish fisheries, flatfish fisheries are probably the only remaining fisheries where growth of the AFA processing sector can occur. While flatfish fisheries are not currently achieving their entire harvest allowances, therefore not achieving full processing of the catch, flatfish fisheries are greatly constrained by bycatch caps for halibut and crab as well as markets that are sensitive to quantity produced. The class of non-AFA processors equates generally to the "head and gut" catcher processor vessels that depend on flatfish fisheries for most of their annual income. While head and gut vessels normally have some fishing and processing cost advantages in the low-volume flatfish fisheries, an unfettered AFA sector would have considerable new advantages over existing non-AFA players under coops and especially once IR/IU is implemented.

Coops in pollock will undoubtedly provide AFA processors the ability to time their access to the market for flatfish more effectively. From our experience, we know that markets for yellowfin sole and other flatfish are significantly affected by the quantity of product supplied during the year. Groundfish Forum members went to great lengths this spring to provide audited sales data to the Council to help your staff quantify this price effect, but the unfortunate lack of full cooperation in providing data by some companies outside our group basically thwarted this analytical exercise. Even if we cannot quantify the price effect, there is no reason to dismiss its potential importance. Further, the AFA sector under coops for pollock can delegate pollock fishing and processing to a portion of its boats and plants. Through delegation, operations within the AFA sector designated for flatfish can effectively start processing flatfish earlier in the year to garner a larger piece of the market prior to the market's inevitable downward response to quantity. In our opinion, this alone is a big gain and yet no attempt has been made in the analysis to elucidate this type of advantage.

The next area where we see large potential for economic effects as a result of measures in the Act stems from the combination of IR/IU regulations on flatfish retention and excess processing capacity from AFA plants. Excess processing capacity was effectively liberated from the pollock fishery when the Act became effective because that capacity was no longer needed in the pollock fishery once the race for fish ended. That capacity is now available and we are concerned about our ability to compete with it given the difference in the way upcoming regulations for IR/IU affect our sector compared to the AFA sector. While the IR/IU retention rules for flatfish were admittedly going to be a significant challenge for our fleet to accommodate, the magnitude of that challenge has increased many fold with the downstream effects of the American Fisheries Act. This is because AFA-sector processing capital is now available to come into flatfish and nearly all of the vessels and plants in the AFA sector can accommodate full retention of flatfish by sending unmarketable fish to the fish meal plant.

Our sector has been actively engaged in devising a gear solution to reduce catches of unmarketable fish for several years. That same challenge does not exist for most of the AFA sector engaged in flatfish fisheries due to their access to fish meal production capacity. Since head and gut vessels cannot make fish meal, lacking some sort of protection, AFA processors, who formerly had very limited access to flatfish due to the past necessity to tie plants up with competitive pollock fishing, now actually hold a considerable advantage in flatfish processing. Some industry spokesmen claim not to see the inextricable link between these issues, but to the existing flatfish-dependent processing sector, the connection is crystal clear.

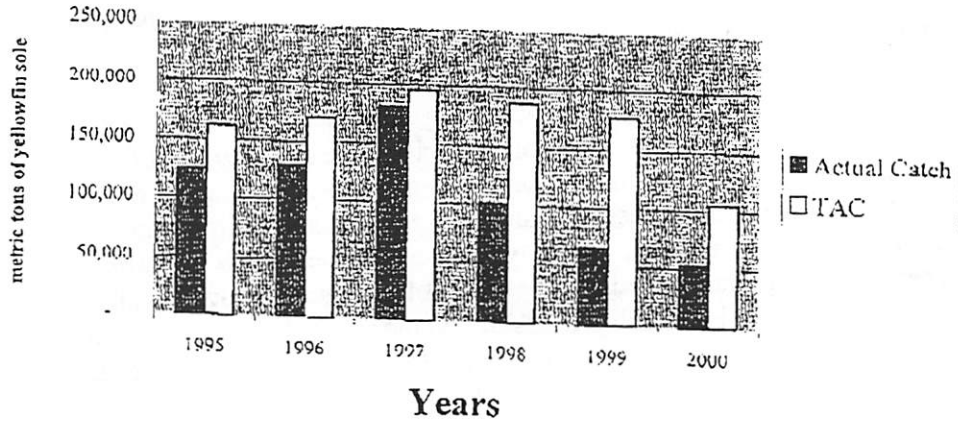
Potential solutions:
Given that the form of "protections" is not specified in Section 211 of the Act, we feel that the Council has wide latitude to modify elements of the overall suite of regulations affecting AFA and non-AFA sectors to address this matter. We see three possible solutions, which would provide the protection mandated in the Act. Our preference, as you will see, is for the third potential solution described below:

Potential Solution 1: Processing sideboards that apply to the total amount of flatfish processed by the AFA sector as a whole or by individual sub-sector within the AFA categories of CPs, motherships, and shoreside. Note: this limit would only be enforced on a sector or sub-sector level and would not constrain individual companies or entities to their actual historical processing history unless the AFA sector(s) set up those kinds of constraints in their internal contracting.

Given that we feel our market for flatfish products (round, kirimi, H&G, and including fish that are sold to companies that cut fillets for the once frozen (refreshed) or twice frozen fillet markets) has already been affected by the quantities of flatfish produced in years when AFA sector processors were rather active in flatfish fisheries, we believe that if the Council is going to move forward with this approach to protection, they should consider basing processing limits on the period from 1998-1999. That quantity of processing by AFA sector processors has not seemed to have as much effect on prices compared to the quantity of product produced from 1995-1997 (see chart below). We

preface this statement with the caveat that it appears to be accurate, given the degree to which we understand the market and can attribute price effects without a quantitative analysis. The table below illustrates the large increase in catch of yellowfin sole in 1995-1997. We feel that basing aggregate AFA processor limits on the years 1995-1997 would actually lock in AFA processing shares at a level that already can cause significant price effects. This is particularly true if the AFA sector continues to produce products that compete directly with ours, instead of producing surimi, for example.

TAC vs. Actual Catch for Yellowfin Sole in the BSAI from 1995 to 2000 YTD



Potential Solution 2: Consider a prohibition on making IR/IU flatfish species into fishmeal as a primary product. The intent of this would be to require that IR/IU flatfish species be made into primary products other than fish meal so that processors would not be able to simply make small, unmarketable flatfish into fishmeal. This would effectively eliminate the fish meal advantage in flatfish fisheries. While the AFA sector would still have the ability to direct redundant processing capital into flatfish, and the ability to time the market more effectively, flatfish harvesting, whether shoreside or at-sea, would at least have to face the same constraints and costs associated with having to use large mesh to reduce catch of flatfish that are unmarketable for human consumption.

Regarding our efforts to date to find ways of reducing catch of unmarketable flatfish, we have unfortunately experienced a disproportionately high loss of marketable size flatfish when using nets that exclude some of the small flatfish. We believe this is due in part to the "hydrodynamic" effects of large diamond mesh in conjunction with the lower swimming capacity of smaller flatfish vis a vis larger ones. We have also experienced troubling reductions in the effectiveness of our pollock exclusion devices with the use of large mesh panels that are designed to reduce some of the catch of small flatfish. The problem appears to be that square mesh reduces pollock catches while diamond mesh is more effective at flatfish reduction, but catches more pollock.

Based on our experience, under this alternative, reductions in catch of small flatfish will be at a high cost to everyone (bordering on infeasibility at many times of the year) and gains made in reduction of pollock bycatch could be squandered. While we have brought this option forward in our comments, given its high cost in lost efficiency for everyone, we are not currently advocating for this approach and view it as "lowering" the playing field rather than leveling it.

Potential Solution 3: Modifications to IR/IU for flatfish to continue to promote reduction in catch of small flatfish without crushing the economics of flatfish fisheries. We feel an adjustment to the IR/IU regulations for flatfish, which are scheduled to go into effect in 2003, may be the best way to allow the non-AFA sector to compete with the AFA sector on a reasonably fair and level playing field while avoiding the unintended consequences of processor sideboards as described in the analysis. Such an approach would also prevent the necessity of considering a prohibition of production of fish meal as a primary product from flatfish. According to NMFS' Alaska Region data, average retention of yellowfin sole and rock sole in recent years has been approximately 80% and 40% respectively. We propose that the requirement be 85% and 50% respectively, which amounts to a fleet-wide increase of six percent for yellowfin sole (where discard is already considerably lower), and a 25% increase in retention for rocksole. For head and gut boats, which currently attain less than the fleet-wide average, the actual increase in retention percentage for those boats may be as high as 25% and 40% for yellowfin and rocksole respectively. The overall reduction in discard percentage under this scenario would be more than the percentage increase that occurred in the pollock fishery under IR/IU (where discard rates were approximately 5% prior to IR/IU).

We feel this modification to IR/IU regulations set to go into effect in 2003 would institute tangible and achievable progress toward the goal of increased utilization in flatfish while allowing those who do not have fishmeal plants to have some chance to continue to stay in business. While somewhat afield of the original form of "protection" contemplated by the Council, our view is that this modification under proposed solution 3 is likely to be superior because it avoids some of the negative effects inherent in the processor sideboard proposal and the proposed solution 2 above. We feel under this alternative, an IR/IU modification would be adequate as a stand alone measure instead of processor sideboards and that the playing field would be sufficiently returned to the balance that existed prior to the creation of AFA.

Thank you for the opportunity to comment on measures to protect non-AFA processors from the effects of the Act.

Best regards,

John R. Gauvin

Brent C. Paine
Executive Director

Steve E. Hughes
Technical Director

Jeffrey R. Pike
Washington D.C. Representative

September 26, 2000

Mr. David Benton, Chairman,
North Pacific Fishery Management Council
605 W. 4th Ave., Suite 306
Anchorage, Alaska 99501

RE: Agenda Item C-2(b) AFA Groundfish Processing Sideboards & Excessive Shares

Dear Chairman Benton,

United Catcher Boats would like to go on record opposing any additional measures relative to AFA sideboards. We believe that the current level of protections via the harvester sideboards presently in place ensure no adverse impacts to non-AFA entities.

The problem with placing processing limits on AFA processors is that the pain associated with such caps eventually gets borne by either AFA or non-AFA fishermen. As seen in this year's crab fishery, processor caps place an undue burden in terms of logistics and market price concerns, on the fishermen.

More importantly, many of the non-pollock groundfish fisheries in the Bering Sea are very much under utilized. Any type of AFA processor cap will result in limited to zero additional expansion of shoreside participation in these under utilized fisheries. If processor caps go into effect, this, coupled with existing AFA harvester caps will allow that only the non-AFA, catcher/processor sector of the industry to participate in these under utilized fisheries.

Any constraints placed on our markets (AFA or non-AFA processors) will have the direct effect of limiting competition among buyers thereby resulting in lower than possible ex-level prices. This is even more true when you set processing limits at the individual processor level.

Lastly, UCB does not support any excessive share caps for BSAI pollock processing, as the current AFA coop structure for the mothership, shoreside and at-sea sectors provide adequate protections for the existing AFA processors.

Thank you for your consideration of our comments on this issue.

Sincerely,

Brent Paine

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KENT LIND

Proposed American Fisheries Act Catch Monitoring and Scale Requirements for the BSAI Pollock Fishery

NMFS-Alaska Region
September 29, 2000

The American Fisheries Act (AFA) authorizes eligible vessels and processors to form cooperatives in all sectors of the Bering Sea and Aleutian Islands (BSAI) pollock fishery. Inshore cooperatives will be eligible to receive an inshore cooperative fishing permit authorizing the member vessels in the cooperative to harvest a specific allocation of the BSAI pollock TAC and the members of the cooperative may decide among themselves how to share the allocation made to that cooperative. While not an individual fishing quota (IFQ) program *per se*, the inshore cooperative quota program established by the AFA does share many characteristics with traditional IFQ programs in terms of how the program will operate. In effect, fishery cooperatives in the BSAI pollock fishery are privately-operated IFQ programs under which the cooperative rather than NMFS makes individual allocations to vessels.

Fishing patterns and behaviors under the inshore cooperative program are expected to be similar to those that would be seen under a traditional IFQ program, and the management demands are much the same. Just as with IFQ programs, individual cooperative members and the cooperative as a whole will have a strong incentive to maximize the amount of pollock harvested and processed in any given year within the constraints of a fixed quota of pollock granted to the cooperative. While catcher/processor and mothership sector cooperatives do not receive individual allocations of pollock from NMFS, they function in the same manner as inshore cooperatives because NMFS makes allocations of pollock to each sector and the cooperatives include all eligible participants in each sector.

To manage the AFA pollock fishery properly, NMFS must have data that will provide acceptable independent estimates of the total catch by species and area for each cooperative. Because pollock cooperatives are operating under their own individual quotas, they have a vested interest in ensuring that catch data do not overestimate the pollock harvest by that cooperative. Based on experience gained under the CDQ program, NMFS anticipates that observer or NMFS estimates of catch will be routinely challenged by industry. Under a system of fishery cooperatives, a processor stands to benefit directly if catch is underweighed because that processor is operating under an individual allocation. By contrast, processors operating in open access fisheries do not stand to benefit as directly by underweighing catch because mis-reporting by one processor is unlikely to affect the closure date

for a fishery. For these reasons, NMFS is proposing a catch-weighing system for AFA pollock that is more rigorous than the catch-weighing requirements in effect for other open access groundfish fisheries.

In the EIS under preparation for Amendments 61/61/13/8 (AFA amendments) NMFS identified two primary objectives for monitoring catch in the AFA fisheries. First, NMFS must be able to ensure that the total weight, species composition, and catch location for each delivery are reported accurately. An acceptable catch-monitoring system based on this objective must allow for independent verification of catch weight, species composition and haul location data; ensure that all catch is weighed accurately; and provide a record of the weight of each delivery that may be audited by NMFS. Second, the level of catch-monitoring should be functionally equivalent between sectors. This objective recognizes that a catch-monitoring approach that is appropriate for one sector of the industry may not be appropriate for all sectors while, at the same time, acknowledging that the overall quality of catch data should be equivalent, and no sector should be given a competitive advantage because of differences in catch monitoring standards. Based on these objectives, NMFS has developed the following catch monitoring requirements for the AFA pollock fishery

Proposed requirements for AFA catcher/processors and AFA motherships

Subaragraph 211(b)(6)(B) of the AFA requires that all listed AFA catcher/processors "weigh [their] catch on a scale onboard approved by the National Marine Fisheries Service while harvesting groundfish in fisheries under the authority of the North Pacific Council." To implement this requirement of the AFA, NMFS proposes to extend the existing catch-weighing and observer sampling station requirements for catcher/processors participating in the CDQ fisheries, found at 50 CFR 679.28, to AFA catcher/processors. These catch-weighing requirements include the following:

1. Scales must meet the performance and technical requirements specified in appendix A to 50 CFR 679. At this time, Marel hf and Skanvaegt International A/S produce scales that have been approved by NMFS for weighing total catch. Marel hf, Skanvaegt International A/S and Pols hf manufacture scales that have been approved for use in observer sampling stations.

2. Each scale must be inspected and approved annually by a NMFS-approved scale inspector.

3. Each observer sampling station scale must be accurate within 0.5 percent when its use is required.

4. The observer sampling station scale must be accompanied by accurate test weights sufficient to test the scale at 10, 25 and 50 kg.

5. Each scale used to weigh total-catch must be tested daily by weighing at least 400 kg of fish or test material on the total catch weighing scale and then weighing it again on an approved observer-sampling station scale.

5. When tested, the total catch weighing scale and the observer sampling station scale must agree within 3 percent.

Observer sampling stations provide a location where observers can work safely and effectively. On June 4, 1998, NMFS published a final rule that established requirements for observer sampling stations and required their use on specified vessels participating in CDQ fisheries (63 FR 30381). Further information on, and the rationale for, observer sampling stations may be found in that rule. Observer sampling stations must meet specifications for size and location and be equipped with an observer sampling station scale, a table, adequate lighting and running water. Each observer sampling station must be inspected and approved by NMFS annually.

AFA listed catcher/processors (those listed in paragraphs 208(e)(1) through (20) of the AFA) would be required to comply with the regulations for additional observer coverage, scales, observer sampling stations, and an approved vessel monitoring system (VMS) when participating in any groundfish fishery off Alaska. Unless other regulations require them to do so, unlisted AFA catcher/processors (those eligible under paragraph 208(e)(21) of the AFA) would only be required to comply with these regulations when engaged in directed fishing for BSAI pollock or when processing pollock harvested in the BSAI directed pollock fishery. Because unlisted AFA catcher/processors are not bound by sideboard limits when participating in other groundfish fisheries, NMFS does not believe it is necessary to impose this more rigorous catch-weighing and monitoring regime on such vessels when they are not engaged in directed fishing for pollock. Unlisted AFA catcher/processors are, of course, bound by all catch-weighing and monitoring requirements that are in effect for any fishery in which they participate.

Proposed Scale and Catch-weighing Requirements for AFA Motherships

The AFA does not require that motherships weigh all catch or provide additional observer coverage. However, because motherships receive and process groundfish in a manner similar to catcher/processors, NMFS proposes that similar regulations be implemented for AFA motherships. Requirements for catch weighing, observer sampling stations and observer coverage would be identical to those described above for AFA listed catcher/processors and would apply at all times that the AFA mothership is receiving or processing groundfish harvested in the BSAI or GOA.

Proposed Scale and Catch-Weighing Requirements for AFA Inshore Processors

NMFS is proposing a new catch monitoring system for shoreside processors. The catch-management goals established by NMFS for the AFA pollock fishery are the same for the inshore and offshore sectors. However, NMFS does not believe that the regulations developed for catcher/processors and motherships are appropriate for shoreside processors for two reasons. First, shoreside processors vary more in size, facilities and layout than do catcher/processors or motherships. Second, the State is responsible for approving scales inside its territory and has developed an effective program for their inspection and approval.

Catch monitoring and control plans. The catch weighing and monitoring system developed by NMFS for catcher/processors and motherships is based on the vessel meeting a series of design criteria. Because of the wide variations in factory layout, NMFS believes that a performance based catch monitoring system is more appropriate for shoreside processors. Under this system, each plant would be required to submit a Catch Monitoring and Control Plan (CMCP) to NMFS for approval. The CMCP will detail how the plant will meet the following standards:

1. All catch delivered to the plant must be sorted and weighed by species. The CMCP must detail the amount and location of space for sorting catch, the number of staff devoted to catch sorting and the maximum rate that catch will flow through the sorting area.

2. Each processor must designate an "observation point" which is the location designated in the CMCP where an individual may monitor the flow of fish during a delivery. From the observation point, an individual must be able to monitor the

entire flow of fish and ensure that no removals of catch have occurred between the delivery point and a location where all sorting has taken place and each species has been weighed.

3. Each processor must designate a "delivery point." The delivery point is the first location where fish removed from a delivering catcher vessel can be sorted or diverted to more than one location. The delivery point would normally be the location where the pump first discharges the catch. If catch is removed from a vessel by brailing, this would normally be the bin or belt where the brailer discharges the catch.

4. The observation point must be located where it is convenient to the observer work station. An individual in average physical condition must be able to walk between the observer work station and the observation point in less than 20 seconds without encountering safety hazards.

5. An observer work station, for the exclusive use of the observer, must provide: a platform scale of at least 50 kg capacity; an indoor working area of at least 4.5 square, meters, a table, and a secure and lockable cabinet.

6. The observer workstation must be located where the observer has access to unsorted catch.

7. A plant liaison, designated by name, that would be responsible for orienting new observers to the plant, ensuring that the CMCP is implemented, and assisting in the resolution of observer concerns.

The plant would be inspected by NMFS to ensure that the plant layout conforms to the elements of the plan. A CMCP that meets all of the performance standards would be approved by NMFS for one year, unless changes are made in plant operations or layout that do not conform to the CMCP. After one year, NMFS would review the CMCP with plant management to ensure that the CMCP has been implemented and that the performance standards continue to be met.

It is not currently possible for a single individual to effectively monitor the flow of fish from the delivery point to where they have been completely sorted and weighed at any of the existing AFA inshore processors. Thus, none of the AFA shoreside processors would meet the proposed performance standards without modifying the layout of the plant or developing alternative methods of monitoring catch flow. As a consequence, the process of developing the CMCP may be fairly complex and NMFS anticipates

that plant management will wish to work closely with NMFS staff before making any modifications to the plant layout or purchasing equipment. NMFS staff will review draft CMCPs and will pre-inspect shoreside processors as requested by plant management.

Scale requirements for AFA inshore processors. Catch weighing for catcher/processors and motherships is based on the use of scales approved by NMFS. Because NMFS and the State use different standards when approving scales, most NMFS-approved scales are not legal for trade in Alaska and visa versa. NMFS believes that the State should be the primary authority responsible for approving and testing scales in shoreplants and that it is unnecessary for all catch to also be weighed on scales approved by NMFS. Shoreside processors are required, under State regulations, to weigh all catch that is being bought or sold on State-approved scales. These scales must be inspected annually by inspectors authorized by the Division of Measurement Standards and Commercial Vehicle Enforcement.

However, State regulations do not provide for inseason testing of scales nor do they require that scales produce a printed record of each delivery. NMFS believes that these are essential features of an acceptable catch-weighing system. In cooperation with the State, NMFS has developed a catch-weighing system that implements these additional features within the existing framework of State scale inspection and approval. This action would implement the following catch weighing requirements for AFA shoreside processors:

1. Each scale used to weigh catch and its intended use would have to be identified by serial number in the CMCP. Each scale would have to be inspected and approved by the State annually.

2. As part of the CMCP, each plant would submit a scale testing plan that gives the procedure the plant would use to test each scale identified in the CMCP. The testing plan would list: the test weights and equipment required to test the scale; where the test weights and equipment are stored; and, the plant personnel responsible for testing the scale. Test amounts for various scale types are shown in Table 1.

3. Test weights would have to be certified at least biannually by a metrology laboratory approved by the National Institute of Standards and Technology.

4. NMFS-authorized personnel could request that any scale be tested in accordance with the testing plan, provided that the scale had not been tested and found accurate within the past 24 hours.

5. Each scale would have to be accurate within the limits specified in Table 2 (maximum permissible errors and test weight amounts) when tested by the plant staff.

6. Each scale used to weigh catch would have to be equipped with a printer, and a printout or printouts showing the total weight of each delivery would have to be generated after each delivery had been weighed. The printouts would have to be retained by the plant and made available to NMFS-authorized personnel.

Table 1. Scale types and test weight amounts (proposed)

Scale Type	*Capacity*[1]	*Test Weights*[2]	*Test Loads*[3]
Automatic Hopper	0 to 150 kg	Minimum Weighment[1] or 10 kg, whichever is greater	Minimum[1]
		Maximum[1]	Maximum[1]
Automatic Hopper	> 150 kg	Minimum weighment[1] or 10 kg, whichever is greater	Minimum[1]
		25 percent of Maximum[1] or 150 kg, whichever is greater.	Maximum[1]
Platform or flatbed	0 to 150 kg	10 kg	Not Acceptable
		Midpoint[4]	
		Maximum[1]	
Platform or flatbed	>150 kg	10 kg	Not Acceptable
		12.5 percent of Maximum[1] or 75 kg, whichever is greater	50 percent of Maximum[1] or 75 kg, whichever is greater
		25 percent of Maximum[1] or 150 kg, whichever is greater	75 percent of Maximum[1] or 150 kg, whichever is greater
Observer sampling scale	≥50 kg	10 kg 25 kg 50 kg	Not Acceptable

[1]These amounts will be shown on the scale marking plate.

[2]Test Weights are weights that have been approved by a NIST-approved laboratory.

[3]Test load is any combination of approved test weights and other material that is specified in the scale testing plan. Test material other than test weights must be weighed on an accurate observer platform scale at the time of each use.

Table 2. Maximum permissible errors for inseason scale testing[1] (proposed)

	Maximum Error in Scale Divisions[2]			
	1	2	3	5
Accuracy Class[3]	*Test Load in Scale Divisions[2]*			
III	0-500	501-2,000	2,001-4,000	>4,000
IIII	0-50	51-200	201-400	>400
IIIL	0-500	501-1,000	Add 1 d for each additional 500d or fraction thereof.	

[1]Maximum permissible errors and testing procedure for inseason testing are not the same as for State scale approval. A scale that is accurate for the purposes of inseason testing may or may not be accurate enough to be approved by the State.

[2]Division size is shown on the scale's marking plate.

[3]Scales are divided into accuracy classes according to the number and value of scale divisions. The accuracy class is shown on the scale's marking plate.

Draft proposed regulatory language for AFA inshore pollock catch monitoring

The following draft regulatory language has been developed to implement the AFA inshore pollock catch monitoring requirements outlined above.

Amendatory instruction. In section 679.28, paragraphs (c)(4) through (c)(7) are added, paragraph (c), introductory text is amended, and a new paragraph (g) is added to read as follows:

679.28 Equipment and operational requirements

* * * * *

(c) Scales approved by the State of Alaska

Scale requirements in this paragraph are in addition to those requirements set forth by the State of Alaska, and nothing in this paragraph may be construed to reduce or supercede the authority of the State to regulate, test, or approve scales within the State of Alaska or its territorial sea. Scales used to weigh groundfish catch that are also required to be approved by the State of Alaska under Alaska Statute 45.75 must meet the following requirements:

(1) Verification of approval. The scale must display a valid State of Alaska sticker indicating that the scale was inspected and approved by the State of Alaska within the previous 12 months.

(2) Visibility. The scale and scale display must be visible simultaneously to the observer. Observers, NMFS personnel, or an authorized officer must be allowed to observe the weighing of fish on the scale and be allowed to read the scale at all times.

(3) Printed scale weights. Printouts of the scale weight of each haul, set, or delivery must be made available to observers, NMFS personnel, or an authorized officer at the time printouts are generated and thereafter upon

request for the duration of the fishing year. Printouts must be retained by the operator or manager as specified in § 679.5(a)(13).

(4) AFA inshore processors. In addition to the requirements set out in paragraphs (c)(1) through (c)(3) above, scales used by AFA inshore processors to weigh pollock must be meet the following additional requirements.

(i) Indicators and printers. Scales must be equipped with an indicator and a printer that indicates and prints the weight of each load and a no-load reference value; and a printer that prints the total weight of fish in each delivery and other material weighted on the scale between annual inspections ("the cumulative weight"). The indications and printed information must be clear, definite, accurate, and easily read under all conditions of normal operation. Provision must be made so that all weight values are indicated until the completion of the printing of the indicated values.

(ii) Printed information. The information printed must include:

(A) The processor name

(B) The total weight of each load in the weighing cycle

(C) The total weight of fish in each delivery

(D) The date and time the information is printed

(E) The name and ADF&G number of the vessel making the delivery. This information may be written on the scale printout in pen by the scale operator at the time of delivery.

(5) Inseason scale testing. Scales identified in an approved CMCP (see paragraph (g) of this section) must be tested by plant personnel in accordance with the CMCP when testing is requested by NMFS-staff or NMFS-authorized personnel. Plant personnel must be given no less than 20 minutes notice that a scale is to be tested and no testing may be requested if the scale has been tested and found to be accurate within the last 24 hours.

(i) How accurate does the scale have to be? To pass an inseason test, the scale must not exceed the maximum permissible errors specified below:

Test Load in Scale Divisions	Maximum Error in Scale Divisions
0-500	1
501-2,000	2
2,001-4,000	3
>4,000	5

(ii) How much weight is required to do an inseason scale test? Scales must be tested with the amount and type of weight specified below.

Scale Type	Capacity	Certified Test Weights	Other test material
Automatic Hopper	0 to 150 kg	Minimum Weighment or 10 kg, whichever is greater	Minimum
		Maximum	Maximum
Automatic Hopper	> 150 kg	Minimum weighment or 10 kg, whichever is greater	Minimum
		25 percent of Maximum[1] or 150 kg, whichever is greater.	Maximum
Platform or flatbed	0 to 150 kg	10 kg	Not Acceptable
		Midpoint	
		Maximum	
Platform or flatbed	>150 kg	10 kg	Not Acceptable
		12.5 percent of Maximum or 75 kg, whichever is greater	50 percent of Maximum or 75 kg, whichever is greater
		25 percent of Maximum or 150 kg, whichever is greater	75 percent of Maximum[1] or 150 kg, whichever is greater
Observer sampling scale	≥50 kg	10 kg 25 kg 50 kg	Not Acceptable

(6) Certified test weights. Each test weight must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be biannually certified by a National Institute of Standards and Technology approved metrology laboratory. An observer platform scale must be provided with sufficient test weights to test the scale at 10 kg, 25 kg and 50 kg. All other scales identified in an approved CMCP must be provided with sufficient test weights to test the scale as described in paragraph (c)(5) of this section.

(6) Other test material. When permitted in paragraph (c)(5)(ii) a scale may be tested with test material other than certified test weights. This material must be weighed on an accurate observer platform scale at the time of each use.

(7) Observer sampling scales. Platform scales used as observer sampling scales must:

(i) Have a capacity of no less than 50 kg;

(ii) Have a division size of no less than 5 g;

(iii) Indicate weight in kilograms and decimal subdivisions;

(iv) Be accurate within plus or minus 0.5 percent when tested at 10 kg, 25 kg and 50 kg by NMFS staff or a NMFS-certified observer.

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(g) Catch monitoring and control plan (CMCP)

(1) What is a Catch Monitoring and Control Plan (CMCP)?

A CMCP is a plan submitted by a processing plant, and approved by NMFS, detailing how the plant will meet the catch monitoring and control standards detailed in paragraph (6) of this section.

(2) How do I get a CMCP approved?

NMFS will approve a CMCP if it meets all of the performance standards specified in paragraph (g)(6) of this section. The processing plant must be inspected by NMFS prior to approval of the plan to ensure that the plant conforms to the elements addressed in the CMCP. NMFS will complete its review

of the CMCP within 14 working days of receiving a complete CMCP and conducting a CMCP inspection.

(3) How do I arrange for a CMCP inspection?

The time and place of a CMCP inspection may be arranged by submitting a written request for an inspection to NMFS. Inspections will be scheduled within 10 working days after NMFS receives a complete application for an inspection. The inspection request must include:

(A) Name and signature of the person submitting the application and the date of the application;

(B) Address, telephone number, fax number, and email address (if available) of the person submitting the application;

(C) A proposed CMCP detailing how each of the performance standards in paragraph (g)(6) of this section will be met.

(4) For how long is a CMCP approved?

A CMCP will be approved for one year unless changes are made in plant operations or layout that do not conform to the CMCP. If such changes are made, the CMCP will no longer be valid and it must be reapproved by NMFS.

(5) How do I make changes to my CMCP?

If you wish to change an approved CMCP, you must submit a CMCP addendum to NMFS. The modified CMCP will be approved if it continues to meet the performance standards specified in paragraph (e)(2) of this section. Depending on the magnitude of the change requested, NMFS may require a CMCP inspection as described in paragraph (4) of this section. A CMCP addendum must contain:

(A) Name and signature of the person submitting the addendum;

(B) Address, telephone number, fax number and email address (if available) of the person submitting the addendum;

(C) A complete description of the proposed CMCP change.

(6) Catch Monitoring and Control Standards.

(i) Catch sorting and weighing requirements. All catch delivered to the plant by a vessel engaged in directed fishing for pollock must be sorted and

weighed by species. The CMCP must detail the amount and location of space for sorting catch, the number of staff devoted to catch sorting and the maximum rate that catch will flow through the sorting area.

(ii) Scales used for weighing groundfish. Each scale used by the processor to weigh groundfish must be identified by serial number in the CMCP and the rational for its use must be described.

(iii) Scale testing procedures. Scales identified in the CMCP must be accurate within the limits specified in paragraph (c)(5)(I). For each scale identified in the CMCP a testing plan must be developed that:

(A) gives the procedure the plant will use to test the scale;

(B) lists the test weights and equipment required to test the scale;

(C) lists where the test weights and equipment will be stored;

(D) lists the plant personnel responsible for conducting the scale testing.

(iv) Delivery Point. Each CMCP must identify a single delivery point. The delivery point is the first location where fish removed from a delivering catcher vessel can be sorted or diverted to more than one location. Where catch is pumped from the hold of a catcher vessel or a codend, this will normally be the location where the pump first discharges the catch. Where catch is removed from a vessel by brailing, this will normally be the bin or belt where the brailer discharges the catch.

(v) Observation point. Each CMCP must identify and include an observation point. The observation point is a location designated on the CMCP where an individual may monitor the flow of fish during a delivery. The observation point must meet the following standards.

(A) Access to the observation point. NMFS staff or NMFS-authorized personnel must be allowed free access to the observation point at any time a valid CMCP is required.

(B) Monitoring the flow of fish. From the observation point, an individual must be able to monitor the entire flow of fish and ensure that no

removals of catch have occurred between the delivery point and a location where all sorting has taken place and each species has been weighed.

(B) Proximity to observer work station. The observation point must be located where it is convenient to the observer work station. An individual in average physical condition must be able to walk between the work station and the observation point in less than 20 seconds without encountering safety hazards.

(vi) Observer work station. Each CMCP must identify and include an observer work station for the exclusive use of NMFS-certified observers.

(A) Location of observer work station. The observer work station must be located in an indoor location where the observer has access to unsorted catch.

(B) Platform scale. The observer work station must provide a platform scale as described in paragraph (c)(4) of this section;

(C) Observer workspace. The observer work station must provide a working area of at least 4.5 square meters, be equipped with a table as specified in paragraph (d)(4) of this section, and meet the other requirements as specified in paragraph (d)(5) of this section.

(D) Observer cabinet. The observer work station must provide a secure and lockable cabinet or locker of at least 0.5 cubic meters.

(vii) Plant liason. The CMCP must designate a plant liason. The plant liason is responsible for:

(A) orienting new observers to the plant;

(B) assisting in the resolution of observer concerns;

(C) informing NMFS if changes must be made to the CMCP

(xii) Scale drawing of plant. The CMCP must be accompanied by a scale drawing of the plant showing:

(A) the delivery point;

(B) the observation point;

(C) the observer work station;

(D) the location of each scale used to weigh catch;

(E) each location where catch is sorted.

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