

Executive Summary

This Regulatory Impact Review (RIR) is prepared for a proposed action that would allocate the ABC surplus (i.e., the difference between acceptable biological catch (ABC) and total allowable catch (TAC)) for flathead sole, rock sole, and/or yellowfin sole, among the Amendment 80 cooperatives and CDQ groups, using the same formulas that are used in the annual harvest specifications process. These entities would be able to exchange their quota share of one of the three species (flathead sole, rock sole, and/or yellowfin sole) for an equivalent amount of their allocation of the ABC surplus for another (flathead sole, rock sole, and/or yellowfin sole). The approach is intended to increase the opportunity for maximizing the harvest of these species, while ensuring that the overall 2 million mt optimum yield, and ABCs for each individual species, are not exceeded. The analysis also includes options to restrict flexibility in the exchange of yellowfin sole, if the analysis shows that there is a potential negative impact of the approach on users of yellowfin sole in the Bering Sea Aleutian Islands trawl limited access sector. The proposed action would amend the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and Federal regulations related to the Bering Sea / Aleutian Islands (BSAI).

Purpose and Need

This analysis identifies a mechanism to increase flexibility in the use of three target flatfish species, within the confines of existing conservation thresholds. Flatfish TACs are consistently underharvested, due to various economic, regulatory, and environmental constraints. Under the Magnuson-Stevens Act and the Council's BSAI FMP, there is a need to promote conservation while providing for optimum yield for the BSAI groundfish fishery. The purpose of this action is to identify a flexible approach that creates additional harvest opportunities to maximize total allowable catches, but still (1) maintain catch below acceptable biological catch limits and (2) ensure that the 2 million mt maximum limit of the BSAI groundfish optimum yield range will not be exceeded.

To originate this action in June 2012, the Council adopted the following problem statement:

Typically, the Amendment 80 sector is unable to fully harvest the TACs for flathead sole, rock sole, and yellowfin sole due to market limitations and limitations associated with allocations of certain species harvested incidentally in the directed flatfish fisheries. In an effort to create additional harvest opportunities for the above species, a new harvest and accounting methodology is needed that would provide the Amendment 80 sector and CDQ groups increased flexibility in using yellowfin sole, rock sole, or flathead sole allocations. A new harvest and accounting methodology would enable Amendment 80 cooperatives and CDQ groups to maximize their harvest of these three species under various regulatory, economic, and environmental constraints while also ensuring that the ABC for each individual species is not exceeded in order to avoid any biological or conservation concerns.

Description of the Alternatives

The alternatives and options adopted by the Council in June 2012, and modified in February 2013, are listed below, and discussed further in the sections that follow.

Alternative 1: No Action.

Alternative 2: Allocate ABC surplus (the difference between ABC and TAC) for flathead sole, rock sole, and yellowfin sole among the Amendment 80 cooperatives and the CDQ Program, using the same formulas as are used in the annual harvest specifications process. Entities may exchange their yellowfin sole, flathead sole, and/or rock sole quota share for an equivalent amount of their allocation of the ABC surplus for these species. Quota share that is exchanged for ABC surplus may be credited back to the entity's allocation of the surplus if unused.

Alternative 3: For flathead sole, rock sole, and yellowfin sole, the Council shall annually establish a harvest limit that is equal to ABC, or reduced from ABC for social, economic, or ecological considerations, and allocate the harvest limit surplus¹ (the difference between the harvest limit and TAC) for flathead sole, rock sole, and yellowfin sole, among the Amendment 80 cooperatives and the CDQ Program, using the same formulas as are used in the annual harvest specifications process. Entities may exchange their yellowfin sole, flathead sole, and/or rock sole quota share for an equivalent amount of their allocation of the harvest limit surplus for these species. Quota share that is exchanged for harvest limit surplus may be credited back to the entity's allocation of the surplus if unused.

Option 1: Each entity is limited to 3 exchanges per calendar year.

Option 2: Only allocate the ABC (or harvest limit) surplus for flathead sole and rock sole. Entities may, however, still exchange their yellowfin sole quota share to access their allocation of the rock sole or flathead sole ABC (or harvest limit) surplus.

Option 3: No entity may access more than [5,000 mt to 25,000 mt] of additional yellowfin sole.

Note: The three options may apply either to Alternative 2 or Alternative 3. Options 2 and 3 are mutually exclusive.

Summary of the Potential Effects of the Alternatives

Under **Alternative 1**, the status quo alternative, the flatfish fleet has had difficulty fully utilizing the flatfish resource, even though since the implementation of Amendment 80, in 2008, catch and utilization rates have improved substantially. The implementation of the Amendment 80 program, however, has also precipitated a situation where there is an incentive to set artificially high TACs for the species for which participants are hard capped, in order to account for an environment in which the sector is operating under multiple and unpredictable catch constraints. The harvest specifications process and pre-season incidental catch planning may not be able to relieve constraints that arise midseason, in response to changes in incidental catch conditions. In some instances, this situation may inhibit the achievement of optimum yield.

Alternative 3 differs from Alternative 2 only in that the Council would have the ability to reduce the ABC surplus by some specified amount for socioeconomic and/or biological considerations. The resulting ABC reserve would be available to eligible entities exactly as described in Alternative 2. As a result, the

¹ Note, this is the terminology that was adopted by the Council at initial review, in February 2013. While the alternative remains functionally unaltered, in the remainder of the document, the term "harvest limit surplus" has been redefined as the ABC reserve amount, to make the language consistent with the process that would be used to implement the alternative. The ABC reserve amount is equivalent to ABC minus TAC minus a Council buffer amount, which could be set aside for social, economic and/or biological considerations. This is described in further detail in Section 3.3.

discussion of the impacts of these two alternatives is identical, except that Alternative 3 potentially provides reduced flexibility to the eligible entities, while preserving the Council's ability to recommend maximum harvestable amounts of flathead sole, rock sole, and yellowfin sole.

Alternatives 2 and 3, relative to status quo, could be of benefit for maximizing flatfish TAC utilization, to the extent that additional constraints in targeting flatfish can be resolved through inseason flexibility in the choice of a flatfish target. The flexibility to exchange quota among target species allows the fleet to shift between targets when unexpected changes occur. The ability to respond inseason may also benefit the fleet with respect to changing environmental and/or market conditions.

The CDQ groups would have the same opportunity as the Amendment 80 cooperatives to access the ABC surplus or ABC reserve, and consequently would also be able to benefit from the flexibility in choice of target flatfish afforded by Alternatives 2 and 3. The CDQ program as a whole is not yet approaching full utilization of any of the three target flatfish species, however, so any benefits of this flexibility may not be apparent until the program comes closer to fully utilizing its existing allocations, as the groups could first utilize their ability to transfer quota share among themselves. At the program level, the CDQ groups as a whole have had greater difficulty in fully utilizing their Amendment 80 target species since the implementation of Amendment 80, particularly in 2008 to 2010. Anecdotal evidence suggests that leasing CDQ species is desirable², however, and as Amendment 80 vessels increase their efficiency, they will continue to seek other fishing opportunities, such as CDQ harvest.

Other BSAI groundfish fishery participants may benefit from the increased flexibility proposed under Alternatives 2 and 3 by a relief of pressure on the annual TAC negotiations. The Amendment 80 sector, in managing their multiple hard caps, has to factor in considerable uncertainty in order to ensure that they can successfully prosecute their multispecies fisheries. If the sector has access to an additional tool, there may be more room for compromise with respect to balancing TACs under the 2 million mt optimum yield limit, especially in years where the pollock and/or Pacific cod biomasses are high.

It is possible that this alternative may change interactions with the BSAI trawl limited access sector with respect to TAC negotiations on yellowfin sole; this interaction could work in either direction, to raise or lower the yellowfin sole TAC set at the beginning of the year. However, the Council makes final recommendations on TAC setting, and it is likely that any attempts at gaming by either sector would be apparent to the Council, or brought out in public testimony. In reality, the Council has habitually set the yellowfin sole TAC close to or at the ABC in most years.

Alternatives 2 and 3 would have no effect on stock assessments or on annual catch limit accounting. The approach proposed in Alternatives 2 and 3 would add a level of complexity both to NMFS management and the annual harvest specifications process, however, such changes should be feasible. On an annual basis, the Council and NMFS would likely need to acknowledge, as part of the harvest specifications process, that the TAC that is set for the three flatfish species could increase, although the overall constraint of the 2 million mt optimum yield limit would still be maintained.

If an inseason adjustment and Federal Register notice is required for each exchange, then having some limit on the number of exchanges per year, as in Option 1, would reduce the potential administrative burden of Alternatives 2 and 3 for NMFS. A limit of three exchanges should provide sufficient opportunity for the sectors.

² Jason Anderson, Alaska Seafood Cooperative, personal communication, 1/22/2013; Everette Anderson, Aleutian Pribilof Islands Community Development Association, personal communication, 1/22/2013.

It is speculative whether there is likely to be an adverse impact on the BSAI limited trawl access sector as a result of Alternatives 2 and 3 (see discussion above). Nonetheless, the Council has identified two possible options that could mitigate any adverse effect on the BSAI limited trawl access sector. **Option 2** would eliminate any possible adverse effect on the BSAI limited trawl access sector. However, the ability to exchange excess quota share of other flatfish species for yellowfin sole TAC, particularly towards the end of the year when yellowfin sole is the primary flatfish target, could be an important element of the flexibility envisioned in Alternatives 2 and 3. Under **Option 3**, the Council would limit the amount of additional yellowfin sole that could be accessed or 'created' through ABC surplus or ABC reserve exchange, by entity. To the extent that the limit set in Option 3 is constraining for Amendment 80 cooperatives, it reduces the flexibility afforded by Alternatives 2 and 3, but still provides more flexibility than Option 2.