

## EXECUTIVE SUMMARY

This document is a Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIF/IRFA) whose purpose is to analyze American Fisheries Act (AFA) vessel replacement provisions as amended by the Coast Guard Authorization Act of 2010 (Coast Guard Act) and to evaluate whether the Council should recommend measures, beyond what is in the AFA amendments, to prevent increased fishing effort by replacement or rebuilt AFA vessels in the Gulf of Alaska (GOA) groundfish fisheries. Specifically, the Coast Guard Act addresses the replacement and removal of vessels eligible to participate in the Bering Sea pollock fishery under the AFA (see Appendix A for Section 602 of the Coast Guard Act and Appendix B for NMFS review of the Act). The Coast Guard Act expressly authorizes the Council to recommend for approval by the Secretary of Commerce conservation and management measures, including size limits and measures to control fishing capacity, to ensure that the Coast Guard Act does not diminish the effectiveness of the groundfish fishery management plans of the Bering Sea and Aleutian Islands (BSAI) and of the GOA. To that end, the Council developed proposed alternatives to prevent increased capacity in the GOA groundfish fisheries by replacement or rebuilt AFA vessels. The Council also concluded that removal of an AFA catcher vessel from the Bering Sea pollock fishery should extinguish the sideboard exemption of that vessel.

## Problem Statement

Passage of the Coast Guard Act necessitates updating the BSAI Groundfish Fishery Management Plan and groundfish regulations to bring the Plan and the regulations into compliance with the AFA, as amended by Coast Guard Act. Currently, the language in both the BSAI Groundfish FMP and groundfish regulations are not consistent with the AFA as amended by the Coast Guard Act. To correct this inconsistency, NMFS will adopt regulations to implement the AFA as amended by the Coast Guard Act.

In addition, Section 602 of the Coast Guard Act expressly authorizes the Council to recommend for approval by the Secretary of Commerce measures to control fishing capacity if the Council concludes that such measures are necessary to ensure that the AFA amendments do not diminish the effectiveness of groundfish management in BSAI or GOA.<sup>1</sup> The Council has analyzed a range of options for determining the eligibility for replacement and rebuilt AFA catcher vessels to operate in GOA and for limiting the potential for increased fishing capacity in GOA by AFA replacement and rebuilt vessels.

The Council at its February 2012 meeting provided the following problem statement:

*Groundfish sideboard protections are included in the AFA to prevent participating AFA vessels from increasing fishing effort beyond historical catch in the GOA. Ambiguities exist pertaining to groundfish sideboards in the AFA vessel replacement provisions of the Coast Guard Authorization Act of 2010 (Coast Guard Act). For vessels with multiple licenses, it is unclear whether the MLOA on the Bering Sea LLP or the GOA LLP applies to a replacement vessel when fishing in the GOA. Additionally, if an AFA vessel exempt from the GOA sideboards is removed from the fishery and assigns its pollock quota to another vessel, the Coast Guard Act is unclear whether the GOA exemption is transferable in addition to the pollock quota. Action is needed to clarify vessel replacement provisions of the Coast Guard Act and prevent increased capacity in the GOA groundfish fisheries by AFA vessels.*

## Description of Alternatives

**Alternative 1 (no action)** – AFA vessel owners may not rebuild or replace their vessels, except in the case of total or constructive loss—NOT COMPLIANT WITH THE COAST GUARD ACT.

<sup>1</sup> Section 602(b) of the Coast Guard Act amending AFA section 208(g)(2).

**Alternative 2 (status quo)** – AFA vessel owners are allowed to rebuild or replace their vessels, as provided in the Coast Guard Act. AFA vessel owners may participate in GOA with a replacement or rebuilt vessel as long as the replacement or rebuilt vessel does not exceed the MLOA specified on the GOA LLP groundfish license assigned to the vessel at the time of fishing in the GOA by the vessel. If an AFA vessel owner removes an AFA vessel that is exempt from sideboard limitations, the sideboard exemption is extinguished and the exemption cannot be transferred to another vessel. **The Council, at the February 2013 meeting, selected Alternative 2 as the preliminary preferred alternative (PPA).**

***For AFA non-exempt vessels to fish in the GOA, a replacement/rebuilt vessel***

**Option 2.1:** May not exceed the most restrictive MLOA specified on any GOA LLP assigned to the vessel at the time the vessel owner applies to NMFS for replacement or rebuilding. (The MLOA of any BSAI LLP assigned to the vessel to be replaced does not apply.)

**Option 2.2:** May not exceed the most restrictive MLOA specified on any GOA LLP assigned to the vessel at the time the Coast Guard Act was approved (October 15, 2010). (The MLOA of any BSAI LLP assigned to the vessel to be replaced does not apply).

**Option 2.3:** Must abide by current 10% limit on increasing the existing length, horsepower, and tonnage, at the time the Coast Guard Act was approved (October 15, 2010).

***For AFA exempt vessels to fish in the GOA, a replacement/rebuilt vessel***

**Option 2.4:** May not exceed the MLOA on the GOA endorsed LLP license assigned to the vessel to be replaced or rebuilt at the time the Coast Guard Act was approved (October 15, 2010).

***Vessel removal provisions***

Upon removal of an exempt vessel, the sideboard exemption is extinguished and cannot be transferred to another vessel.

## **Potential Effects of the Alternatives and Options**

### **Alternative 1 (no action)**

Under Alternative 1 (no action), AFA vessel replacement would be based on the original AFA provisions only (prior to the signing of the Coast Guard Act). At that time, an AFA vessel could only be replaced in the event of a total or constructive loss of the vessel, and the replacement vessel would be subject to limitations on vessel length, gross tons, and shaft horsepower (see Section 1.3.1 for greater detail). In addition, replacement vessels are limited by the MLOA of the LLP license assigned to the replacement vessel and replacement vessels are also limited by the “large vessel” restrictions of the AFA. The intent of limiting vessel replacement to only total or constructive loss and limits on the size of the replacement vessel rather than a more liberal vessel replacement provisions was to stabilize fishing and processing capacity in the BSAI pollock fishery.

From an efficiency perspective, limitations on vessel replacement provisions constrain the economic feasibility of rebuilding and replacing vessels in the AFA sectors. One of the primary advantages of replacing a fishing vessel is to incorporate improved hull design, engine efficiency, hold design, processing plant efficiency, and other advancements in marine design. Limiting vessel replacement under this alternative relative to Alternative 2 inhibits owners from taking advantage of these improvements. Many of the existing AFA vessels were not original constructed as fishing vessels, but were converted to such use. Inherently, these vessels are less well designed for fishing compared to a newly constructed

fishing vessel. By improving efficiency vessel owners have the potential to reduce costs of production. In addition, liberalized vessel replacement rules for vessel owners may also provide opportunities to increase revenue through better use of catch.

Restricting vessel replacement to total or constructive loss also has the potential to increase financial hardship, since a loss of an AFA vessel is a sudden and unanticipated event. AFA vessel owners may face a multi-year gap between the loss of a vessel and the activation of its replacement, particularly if the replacement vessel must be built first. A lengthy gap could severely undermine the financial solvency of a company, particularly companies owning one vessel. Companies with more than one vessel can assign other vessels to harvest additional catch to compensate for the loss of vessel. A single vessel company could arrange to have another company harvest the vessel's pollock catch. However, the financial terms of such an arrangement could be unfavorable, particularly if a company is unable to replace a vessel relatively quickly.

Since this alternative relative to Alternative 2 would limit AFA vessel owners from replacing their vessels only in the event of a total or constructive loss of the vessel, and would limit the vessel size of the replacement vessel, there is less potential for replacement vessels to negatively impact other GOA groundfish participants. Continued restrictions on vessel replacement for AFA vessels will likely perpetuate similar fishing behavior of AFA sideboard limited vessels in both BSAI and GOA groundfish fisheries. From the perspective of non-AFA vessels, the continued fishing behavior likely under this alternative would likely provide continued harvesting opportunities for non-AFA vessels in the GOA groundfish fisheries.

This alternative would leave the current AFA and LLP regulations in place. The current regulations do not implement the AFA vessel replacement provisions that are contained in the AFA amendments in the Coast Guard Act.

### **Alternative 2 (status quo)**

**At the February 2013 meeting, the Council selected Alternative 2 as the preliminary preferred alternative.**

Alternative 2 is the status quo alternative. The status quo alternative is how NMFS interprets the AFA, as amended by the Coast Guard Act, and how NMFS will implement the amendments to the AFA through regulation if the Council does not adopt any of the options in Option 2.1 through Option 2.4. This alternative would allow an owner of an AFA catcher processor, catcher vessel, or mothership to rebuild or replace its vessel for improved vessel safety and operational efficiencies.

The AFA rebuilt or replacement vessel would be subject to no limitations on length, size or horsepower while participating in BSAI. The AFA replacement vessel will be eligible to participate in BSAI in the same manner as the replaced vessel and will receive the same licenses and permits that the replaced vessel held. If the replaced vessel was exempt from sideboard limitations, the replacement vessel will be exempt. If the replaced vessel was subject to sideboard limitations, the replacement vessel will be subject to the same limitations.

An AFA replacement vessel is, however, subject to a limitation on its participation outside of the North Pacific. An AFA replacement vessel may not harvest fish in any fishery other than Pacific whiting and a fishery managed under the authority of the North Pacific Fishery Management Council.

The rebuilt vessel will be eligible to participate in BSAI in the same manner as the vessel participated before rebuilding and will retain the same licenses and permits, with the same sideboard provisions, that

the vessel held before rebuilding. An AFA rebuilt vessel is also subject to the limitation on participation outside of the North Pacific that applies to an AFA replacement vessel.

Under Alternative 2, NMFS must interpret and implement a provision in the AFA amendments entitled "Gulf of Alaska Limitation."<sup>2</sup> This provision states: "Notwithstanding paragraph (1) [which allows for the rebuilding and replacement of AFA vessels], the Secretary of Commerce shall prohibit from participation in the groundfish fisheries of the Gulf of Alaska any vessel that is rebuilt or replaced under this subsection and that exceeds the maximum length overall specified on the license that authorizes fishing for groundfish pursuant to the license limitation program under part 679 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2010."

NMFS interprets this provision as meaning that notwithstanding the elimination of the limits on the length of AFA rebuilt and replacement vessels in the Bering Sea, the Secretary must enforce the limits on the length of vessels that apply to LLP licenses in the Gulf of Alaska. NMFS concludes that this provision is a savings provision, meaning that Congress intended to save or preserve the MLOA requirement that applied to LLP groundfish licenses for the Gulf of Alaska and that was in effect when Congress adopted the Coast Guard Act. Congress intended to do this "notwithstanding" that it was eliminating the MLOA requirements that applied to LLP groundfish licenses endorsed for the Bering Sea.

NMFS does not interpret this provision as requiring the Secretary to freeze participation by AFA vessels in the GOA as of October 15, 2010, the date of enactment of the Coast Guard Authorization Act, and to prohibit an AFA rebuilt or replacement vessel from participating in the GOA if the vessel exceeds the MLOA that was on an LLP groundfish license on October 15, 2010.<sup>3</sup> NMFS believes that this is the type of measure that Congress gave the Council the authority to evaluate and to recommend, if the Council concluded that such a restriction was necessary to ensure that effectiveness of the Fishery Management Plan for BSAI and GOA. NMFS does interpret this provision as prohibiting participation in GOA by all AFA rebuilt and replacement vessels unless the AFA rebuilt or replacement vessel has an GOA-endorsed LLP groundfish license and the vessel complies with the MLOA requirements of that license.

**Thus, under Alternative 2, to participate in the GOA, the AFA replacement or rebuilt vessel must have a GOA-endorsed LLP license with an MLOA that equals or exceeds the length of the replacement or rebuilt vessel at the time of GOA fishing by the rebuilt or replacement vessel. Thus, an owner of a rebuilt or replacement vessel is not limited to the MLOA on any GOA LLP groundfish license as of any specific, past date but is limited to the MLOA on the GOA LLP groundfish license on the date that the owner wishes to use the AFA vessel to fish in the GOA.**

Under Alternative 2, the MLOA on a BSAI LLP groundfish license assigned to any vessel, including an AFA replacement or rebuilt vessel, would not be relevant in determining whether the vessel could participate in the groundfish fishery in the GOA. As under current regulations, the relevant MLOA would be the MLOA on the LLP groundfish license assigned to the particular vessel at the time of fishing in GOA. A replaced vessel loses its fishery endorsement and is not eligible to obtain a new fishery endorsement with one exception. A replaced AFA vessel can be used as an AFA replacement vessel. To explain, once an AFA vessel is replaced, the replaced, or former, AFA vessel lose its fishery endorsement and NMFS transfers the AFA permit of the replaced vessel to the replacement, or new, AFA vessel. This does not prevent the replaced or former AFA vessel from at some future date **reentering** the AFA fishery as a replacement vessel for a different vessel that leaves the AFA fishery. If a replaced or former AFA vessel reenters the AFA fishery as a replacement vessel, the owner of the vessel reentering the AFA fishery must obtain a new fishery endorsement from MARAD and NMFS will transfer the AFA permit

<sup>2</sup> Section 602 (b)(1) of the Coast Guard Act *amending* AFA section 208(g)(6).

<sup>3</sup> If the Coast Guard Act did require the Secretary to determine whether a vessel could participate in the Gulf of Alaska based on LLP licenses held by a vessel on October 15, 2010, or any other particular date, NMFS has no reason to conclude that Congress would have intended to base participation in the Gulf of Alaska on the MLOA on an LLP groundfish license that authorized participation in BSAI.

from the vessel leaving the AFA fishery (the replaced vessel) to the vessel entering the AFA fishery (the replacement vessel).

Under Alternative 2, the AFA, as amended, allows owners of AFA catcher vessels that participate in an inshore cooperative to remove a vessel from the BS pollock fishery and assign the vessel's directed pollock fishing allowance to one or more vessels in its cooperative as selected by the vessel owner.<sup>4</sup> Those vessels selected to receive the directed pollock allowance must remain in the cooperative for a least one year after the catcher vessel is removed from the fishery. The Act prohibits the removed vessel from fishing in any fishery except as a replacement AFA vessel and except in the case of four specific AFA catcher vessels. If removed, these four vessels retain their eligibility to participate in any fishery under the authority of the New England Fishery Management Council or the Mid-Atlantic Fishery Management Council in accord with fishery management plans adopted by those councils under the Magnuson-Stevens Act.

All total, there are 118 catcher vessels, 21 catcher processors, and 3 motherships that would be directly impacted by this alternative. In 2012, 92 AFA trawl catcher vessels, 17 AFA catcher processors, and 3 motherships were active in the BSAI and GOA. Active AFA catcher vessels and catcher processors are required to have an LLP license with appropriate operation, gear, MLOA, and area endorsement. As noted in the Table 1-33, there are 137 LLP licenses currently on AFA vessels. Thirty-one of these LLP licenses are endorsed for catcher processors and 106 are endorsed for catcher vessels. One hundred and twenty-seven of the LLP licenses currently on AFA vessels are endorsed for BS, 70 are endorsed for the AI, 33 are endorsed for Central GOA, and 25 are endorsed for the Western GOA.

#### Motherships

The AFA specifically listed three eligible motherships and 19 catcher vessels eligible to deliver to these motherships, as well as criteria for eligibility of any catcher vessel not specifically listed (only one vessel so qualified). Under the AFA, the mothership sector operates as a "cooperative of the whole" that includes all eligible catcher vessels, rather than as several separate and distinct cooperatives oriented to each processor within the sectors, as is the case in the inshore sector. In certain circumstances, the AFA allows motherships to participate as members in a cooperative. To date, however, the motherships have not been members of the Mothership Fleet Cooperative.

The mothership sector currently has 19 qualified catcher vessels, all of which were members of the Mothership Fleet Cooperative in 2011. Thirteen of these vessels are 'dual qualified' for both the mothership and inshore sector fisheries. For more details on the effects of this alternative on the mothership qualified catcher vessels, see the catcher vessel section.

Under Alternative 2, AFA motherships can take advantage of new vessel designs and improved technology to increase the operational efficiency of the vessel and could increase production capacity of the vessel. AFA mothership owners, when considering replacement of their mothership vessels, are likely to take into consideration the potential gains in production and fuel efficiency, potential production throughput, capital costs associated with replacing a mothership vessel, and the availability of replacement platforms.

Overall, vessel replacement or rebuilding may allow for some improvement in operational efficiency, which could lead to some consolidation in the AFA mothership fleet. Vessel owners may choose to replace their AFA mothership vessel with a more efficient vessel that can process a greater share of the sector's 10% BSAI pollock quota. This consolidation would not be expected to result in reduced harvest

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<sup>4</sup> This provision does not apply to AFA catcher vessels that participate in a mothership cooperative. For AFA catcher vessels that deliver to inshore cooperatives, pollock quota is allocated to the inshore cooperative based on the pollock catch history of the member vessels. For AFA catcher vessels that deliver to AFA motherships, the vessel's pollock catch history is not necessary in determining the pollock allocation to the cooperative.

by the mothership catcher vessels. However, it likely will increase the effective processing capacity and production efficiency within the mothership sector.

Rebuilt or replacement AFA mothership vessels would likely have no adverse effects in other groundfish fisheries. As noted in the production efficiency section, replacement or rebuilt AFA motherships could increase operational efficiency and production capacity. However, improvements in production capacity and operational efficiency would likely not be sufficient to make processing of other groundfish species profitable for this sector. The cost of purchasing other groundfish from harvesters, the widely variable quantity of other groundfish delivered to the mothership, the variability of the different species needing to be processed, and the high costs of operating a mothership at sea likely makes processing of other groundfish species unprofitable. AFA mothership vessels will likely continue to focus on efficiently processing only BS pollock, making processing of other groundfish species less likely.

### **Catcher Processors**

There are 17 active AFA catcher processors that range in length from 190 feet to 379 feet. In 2011, 17 catcher processors harvested 542,835 mt of BS pollock. Besides BS pollock, AFA catcher processors also harvested BSAI yellowfin sole and Pacific cod. One catcher processor, that is eligible to participate in the GOA groundfish fisheries, had been active in the Western GOA.

Under Alternative 2, AFA catcher processor owners can replace or rebuild their vessels without limits to the length, horsepower, or weight restrictions, which could allow for improvement in operational efficiency. With the ability to replace AFA catcher processors with unlimited restrictions on vessel size or horsepower for purposes of safety and operational efficiencies, the AFA catcher processor fleet can take advantage of new hull designs and improved technology to increase the operational efficiency of the vessel. Examples of improved technology include hybrid diesel electric engines, which increase fuel efficiency and available power, energy efficient processing equipment, improved technology in freezing, and for smaller existing AFA catcher processors, a vessel expansion to allow for the installation of a fish meal plant.

Given the current level of efficiency of most AFA catcher processors and the high cost of replacing these vessels, most owners of large AFA catcher processors would likely not replace their vessels in the immediate future.<sup>5</sup> Owners of smaller and older AFA catcher processors, lacking a fish meal plant, are potentially more inclined to replace or rebuild their vessels in the immediate future. Lacking the ability to produce fish meal and fish oil leaves these smaller vessels at a competitive disadvantage relative to larger AFA catcher processors. With a fish meal plant, the vessel owner would generate higher rates of return on their harvest by selling fish meal and fish oil. Fish oil can also be utilized as fuel in hybrid diesel electric engines, thereby reducing variable costs associated with purchasing fuel.

There is likely limited opportunity for adverse effects in other BSAI fisheries from liberalizing vessel replacement for AFA catcher processors, as most other available target fisheries for this fleet are already constrained by sector allocations and sideboards. Other than pollock and Pacific cod, which are allocated via sector allocations, the remaining groundfish fisheries in the BSAI are restricted by sideboard limits and with the exception of yellowfin sole and Atka mackerel, are closed to directed fishing because the sideboard is insufficient to support a directed fishery.

In addition to impacts in the BSAI groundfish fisheries, one AFA catcher processor is eligible to fish in the GOA and is also named on an LLP license. This vessel's LLP license has a Western GOA area endorsement. Under Alternative 2, this vessel would be limited to the MLOA on the GOA LLP license that is assigned to this vessel on the date of fishing or processing by the vessel. NMFS would not prevent the owner of this vessel from obtaining a GOA LLP license with a higher MLOA and from naming this vessel on that LLP license, if the vessel owner could obtain a GOA groundfish LLP license with a higher

<sup>5</sup> The cost of replacing an AFA catcher processor will likely exceed \$100 million (C. Cross, personal communication on 8/29/2012).

MLOA. Whether the owner of this catcher processor will replace or rebuild this vessel is not known, but there is a potential that a replacement or rebuilt vessel will have greater harvesting and processing capacity.

The AFA sideboard limits provide some protection for Western GOA non-AFA participants from this AFA catcher processor. Although the vessel is exempt from AFA sideboards in the GOA based on the vessel's dependence on GOA groundfish, the vessel is restricted by Amendment 80 sideboard limits and Central GOA Rockfish Program sideboard limits (see Table 1-35, Table 1-36, and Table 1-37 for 2012 sideboard limits). As seen from these sideboard limits, this AFA catcher processor is severely restricted in the GOA pollock fishery and shallow-water targets, which include shallow-water flatfish, flathead sole, pollock, and Pacific cod. Sideboard limits that would allow increased harvest include Western GOA Pacific Ocean perch, pelagic shelf rockfish, northern rockfish and deep-water targets, which include sablefish, deep-water flatfish, rex sole, rockfish, and arrowtooth flounder. As seen in Table 1-40 and Table 1-41, activity by non-AFA vessels is primarily limited to the shallow-water target, which reduces the potential for negative impacts to non-AFA vessels if the owner of the GOA eligible AFA catcher processor replaces or rebuilds the vessel.

### Catcher Vessels

There are 92 active AFA catcher vessels of which 15 are exempt from GOA sideboard limits and nine are exempt from BSAI Pacific cod sideboard limits. Thirty AFA catcher vessels are named on Central GOA endorsed LLP licenses and 20 AFA catcher vessels are named on Western GOA endorsed LLP licenses. Nearly all of the sideboard exempt vessels are less than 100 feet in length, and a large portion of the vessels with GOA endorsed LLP licenses are also less than 100 feet in length. The primary fishing effort of the active AFA catcher vessels is in the BS pollock fishery. In 2011, 92 catcher vessels harvested 626,703 mt of BS pollock. Besides BS pollock, AFA catch vessels also harvested BSAI Pacific cod and GOA groundfish fisheries. In the Central GOA groundfish fisheries, 30 AFA catcher vessels participated in 2011. Of those 30 AFA catcher vessels, 15 were restricted by GOA sideboards and 15 were exempt from GOA sideboards. In 2011, only two AFA vessels participate in the Western GOA groundfish fisheries.

Under the status quo alternative, replacement or rebuilt AFA catcher vessels could use new molded hull designs that are more fuel efficient than old chine hulls. These new hull designs allow vessels to travel faster and with less wave resistance in rough seas. Advances in propulsion systems when paired with improved hull forms, can result in fuel efficiency gains of up to 25 percent or more per pound of fish products delivered (Hockema, 2012).

Under the status quo alternative, to participate in the groundfish fishery in GOA with a replacement or rebuilt AFA vessel, a vessel owner must hold an LLP groundfish license which is assigned to the replacement or rebuilt AFA vessel and which authorizes the participation desired by the owner.<sup>6</sup> First, the LLP groundfish license must have an area endorsement that authorizes fishing in the area where the replacement or rebuilt vessel will be fishing. A GOA LLP groundfish license can have up to three area endorsements: a Western Gulf area endorsement, a Central Gulf area endorsement and a Southeast outside area endorsement. For example, to conduct directed fishing for groundfish in the Western Gulf, a vessel must have an LLP groundfish license with an area endorsement for the Western Gulf. Second, the LLP groundfish license must have an MLOA that equals or exceeds the length of the replacement or rebuilt vessel.

The limitation on vessel length for participation in the groundfish fishery in the GOA could limit the gains in operational efficiency for AFA catcher vessels. When deciding whether to rebuild or replace their

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<sup>6</sup> Pursuant to 50 CFR § 679.4(k), an LLP license is necessary to conduct directed fishing for license limitation groundfish, not groundfish. The differences between license limitation groundfish and groundfish, as defined in 50 C.F.R. § 679.2 are minor, and do not have any consequence for this Analysis. The Analysis uses the term groundfish rather than license limitation groundfish.

AFA catcher vessels, owners would likely take into consideration the costs and benefits of participating in both the BSAI and GOA groundfish fisheries while including the potential reduction in efficiency gains from a limitation in vessel length. In general, AFA vessels with extensive GOA groundfish history could be deterred from building beyond the MLOA on the LLP license that currently names that vessel or on an LLP license that they could reasonably expect to obtain by transfer. AFA vessels with little or no GOA groundfish history would likely discount the potential benefits of future GOA groundfish activity relative to the potential benefits gained from a more efficient operation in the BSAI from using a larger vessel. It is also possible that the improved operating efficiency resulting from vessel replacement may alter the economics, such that operating in both the BS and GOA becomes viable.

The ability to remove inshore-eligible AFA catcher vessels would likely improve operational efficiency of the fleet by eliminating unnecessary storage of inactive, obsolete vessels. With the introduction of cooperative fishing in 1999, some owners of inefficient inshore-eligible AFA catcher vessels have leased the vessel's pollock quota to more efficient inshore-eligible AFA catcher vessels. Since the AFA, as originally adopted, prevented owners from permanently transferring pollock quota, the owners of these inefficient inshore-eligible AFA catcher vessels either placed them into storage or used them in other maritime activities.

However, the AFA amendments in the Coast Guard Act allow vessel owners of inshore-eligible AFA catcher vessels to permanently retire inshore-eligible AFA catcher vessels by transferring the vessel's pollock quota to other AFA catcher vessels in the inshore cooperative. This approach allows the owners of inshore-eligible AFA catcher vessels to take advantage of the efficiency gains from stacking pollock quota from removed vessels on more efficient AFA catcher vessels. In addition, the ability to replace or rebuild vessels without limitations (except GOA vessels) may complement the efficiency gains from removing vessels by allowing the larger replacement vessels to be designed to accommodate the additional pollock quota.

Given that all AFA catcher vessel owners with an LLP groundfish license can now replace or rebuild their vessels while still maintaining their ability to fish in the GOA, there is the potential these replacement or rebuilt vessels could impact other GOA groundfish participants, particularly trawlers, although current sideboards, standdowns, exclusive fishing seasons, and pollock trip limits in the GOA could limit those impacts. There are a number of non-AFA trawl vessels that are active in the pollock, Pacific cod, flatfish, and rockfish fisheries in the Central GOA and slightly fewer vessels in the Western GOA. GOA sideboards in the AFA were designed to limit the impact of AFA vessels on other GOA groundfish participants, but there is still the potential for replaced or rebuilt sideboarded AFA catcher vessels to impact non-AFA trawl vessels.

Due to limited AFA sideboard activity by AFA catcher vessels in the GOA groundfish fisheries, the non-AFA trawlers have increased their dependency on these GOA groundfish fisheries. For most GOA groundfish fisheries, the increased dependency by the non-AFA vessels is not an issue. However, for the Central and Western GOA pollock fishery, the increased dependency combined with the potential for AFA replacement and rebuilt vessels to increase fishing effort in these fisheries could create a race for fish in the future. Reducing these impacts are the existing regulations requiring standdowns, exclusive fishing seasons, and GOA pollock trip limits. With the exception of Pacific cod, replacement and rebuilt AFA vessels in other groundfish fisheries are not likely to create negative impacts on non-AFA vessels. Sideboard limits for these fisheries are significantly smaller than the TACs, and the level of catch by non-AFA vessels in these fisheries relative to the TACs is significantly smaller. For Pacific cod, the sector allocations, implemented in 2012, reduced the available TAC for the trawl CV sectors, while maintaining the existing AFA non-exempt sideboard limits. As a result, the sideboard limit in both Central and Western GOA make up a larger proportion of the available Pacific cod TAC for the trawl CV sectors, which could increase the potential for negative impacts to AFA exempt vessels and non-AFA vessels if



the sideboard limits are fully utilized and other trawl CV sectors continue their harvesting trend for Pacific cod.

### **Vessel removal provision in Alternative 2 (status quo)**

The Coast Guard Act added to the AFA a provision entitled, "Fishery Cooperative Exit Provisions."<sup>7</sup> The AFA, as amended, allows the owner of a catcher vessel to remove its vessel from an AFA cooperative. The AFA, as amended, expressly allows the vessel owner to assign the vessel's directed fishing allowance for pollock among other catcher vessels in the AFA cooperative provided that the vessel or vessels receiving the pollock allowance remain in the fishery cooperative for at least one year after the owner removed the vessel. The AFA, as amended, does not make any reference to the vessel owner assigning the sideboard exemptions, a provision that allows harvesting of non-pollock species.

Further, the AFA, as amended, expressly states that removing a vessel extinguishes "any claim ( including relating to catch history) associated with such vessel."<sup>8</sup> A sideboard exemption is a claim to be able to harvest fish and it is a claim associated with the removed vessel. NMFS interprets "any claim" in the AFA amendments to include a claim to exemptions from sideboard limitations that were held by the removed vessel. Thus, when a vessel owner removes a vessel under the Fishery Cooperative Exit Provisions in the AFA, as amended, NMFS concludes that AFA requires the extinguishment of any sideboard exemptions associated with the removed vessel.

NMFS acknowledges that after a vessel is removed, the removed vessel may reenter the AFA fishery as a replacement vessel for another AFA vessel. But NMFS does not believe that the reentry of a removed vessel revives the sideboard exemption of a removed vessel. NMFS concludes that the AFA, as amended, requires the permanent extinguishment of the sideboard exemption of a removed vessel. Therefore under Alternative 2, if the owner of an AFA catcher vessel removes a vessel from an AFA fishery cooperative, and that vessel was exempt from any AFA sideboard limits, the removal of the vessel extinguishes the AFA exemption permanently.

Under Alternative 2, a removed vessel is permanently ineligible for a fishery endorsement, unless the removed vessel reenters the AFA fishery as a replacement vessel or the removed vessel is one of four vessels specified in the AFA amendments.<sup>9</sup> If any of those four vessels are removed, they may still obtain the fishery endorsements and permits necessary to participate in any fishery under the authority of the New England Fishery Management Council or the Mid-Atlantic Fishery Management Council.

### **Options for Non-Exempt AFA Catcher Vessels**

#### **Option 2.1:**

Option 2.1 would prohibit a replacement or rebuilt non-exempt AFA catcher vessel that exceeds the most restrictive MLOA on a GOA LLP license assigned to the vessel at the time of replacement or rebuilding from participating in the GOA groundfish fisheries. Vessels that do not have a GOA- endorsed license at the time of the replacement or rebuilding would not be permitted to fish in the GOA fisheries. This option would allow an owner of a AFA non-exempt catcher vessel to assign a GOA- endorsed LLP groundfish license to a vessel up to the date that the owner of the vessel applies to NMFS for replacement or rebuilding, provided that the MLOA on the LLP groundfish license is at least as large as the length of the rebuilt or replacement vessel. The vessel owner could not obtain an LLP license with a greater MLOA after the date of the application for replacement or rebuilding.

<sup>7</sup> Section 602 (b)(3) of the Coast Guard Act adding AFA section 210(b)(7).

<sup>8</sup> Section 602 (b)(3) of the Coast Guard Act adding AFA section 210(b)(7).

<sup>9</sup> Section 602 (b)(3) of the Coast Guard Act adding AFA section 210(b)(7)(C). The four vessels are the AJ (US official number 905625), DONA MARTITA (US official number 651751), NORDIC EXPLORER (US official number 678234) and PROVIDIAN (UN official number 1062183).

In assessing this option, the Council should consider an aspect of the provision that could be inequitable to some vessel owners, particularly those with current activity in the GOA fisheries. A vessel that has historically fished with a license endorsed for both the GOA and BS might later acquire a larger second GOA license to assign to the vessel to allow for replacement or rebuilding to a length greater than its BS/GOA license MLOA. This vessel would be precluded from fishing in the GOA under this option, despite its second GOA license because it is limited by the most restrictive MLOA of the GOA licenses. Compare this to a vessel that is replaced or rebuilt that has a BS only license with the same MLOA as the other vessel's original license. This vessel could acquire the same larger MLOA GOA license prior to replacement or rebuilding and would be allowed to fish in the GOA fisheries because it did not have a GOA endorsement on its original BS license. A cleaner option would allow a vessel to participate in any GOA management area (CGOA or WGOA) provided the replacement or rebuilt vessel does not exceed the MLOA on the least restrictive license for that area at the time of replacement or rebuilding. This provision would allow the vessel to continue any GOA fishing provided they meet the requirements of their LLPs for the respective areas at the time of vessel replacement or rebuilding. Any other option would create an environment in which vessels have an incentive to move licenses on and off vessels prior to replacement or rebuilding to maximize fishing opportunities in the GOA fisheries.

This option could reduce efficiency gains slightly from Alternative 2 by limiting replacement and rebuilt AFA non-exempt catcher vessels to the most restrictive MLOA of the GOA endorsed LLP licenses, at the time of replacement. In 2011, there were 92 AFA non-exempt catcher vessels active, of which 30 of these vessels had a LLP license that were endorsed for the Central GOA and 20 vessels were endorsed for the Western GOA (Table 1-52). The largest group of AFA non-exempt catcher vessels range between 90 feet through 124 feet. The ability to use an AFA non-exempt catcher vessel greater than 124 feet in the GOA is curtailed to a large degree by the limited number of LLP licenses endorsed for the GOA with a MLOA greater than 124 feet. As noted in Table 1-51, nearly all trawl LLP licenses with GOA endorsements are less than 125 feet. In total, 64 active AFA non-exempt catcher vessels are less than 125 feet in length, while there are 96 LLP licenses with Central GOA endorsements and 78 LLP licenses with Western GOA endorsements that have MLOAs less than 125 feet. Given the number of LLP licenses with Central GOA and Western GOA endorsements, there appears to be opportunity for greater gains in efficiency for the 64 AFA non-exempt catcher vessels, but relative to Alternative 2, that opportunity appears less under this option due to the slightly more restrictive GOA LLP requirement.

Potential implications to GOA groundfish fisheries exist when an AFA catcher vessel owner wants to build a replacement or rebuilt vessel that is longer than vessel's MLOA. Under this option, the vessel owner could purchase a GOA endorsed LLP license with a MLOA that can accommodate the new vessel length at the time of replacement or rebuilding. Although it is not possible to determine if any AFA catcher vessel owners will purchase a GOA endorsed LLP license with a MLOA that can accommodate larger replacement or rebuilt vessel, the number of LLP licenses with Central GOA endorsement and Western GOA endorsement indicated that this is a distinct possibility.

The more likely effect, however, arises from the entry of AFA vessels that have not increased in size, but instead are freed up by other AFA vessels increasing their harvest capacity in the BS. For example, if a few vessels in a cooperative are replaced by vessels with substantially greater harvest capacity, it is possible that other vessels in that cooperative that have not been replaced or rebuilt may enter the GOA fisheries with either their own GOA endorsed license or possibly with a transferred license from either another AFA vessel or a non-AFA vessel. The effects of this type of entry will be limited by GOA sideboards, natural constraints on efficiency gains that might deter this practice and by the availability of licenses needed to qualify the various vessels for the BS and GOA fisheries.

To help protect exempt and non-AFA vessels, the Council developed sideboards to prevent AFA non-exempt vessels from increasing their catch in other fisheries. Other factors that could limit the impacts to

these vessels are standdowns, exclusive fishing seasons, and GOA pollock trip limits. The degree to which these factors limit the impact of non-exempt vessels is unknown.

Although GOA groundfish sideboards were designed to limit the impacts of AFA non-exempt vessels on other GOA groundfish participants, there is a potential for replaced or rebuilt AFA non-exempt catcher vessels to impact exempt and non-AFA vessels in the GOA. The most likely GOA fishery impacted by this option is the GOA pollock. Although a sideboard limit is not a specific allocation, if the AFA non-exempt vessels doubled their sideboard harvest in the Central GOA pollock fishery, both AFA exempt vessels and non-AFA trawl vessels would see a reduced pollock harvest. In the Western GOA pollock, a fully harvested sideboard limit (60% of the TAC) would reduce pollock harvest significantly for non-AFA trawl vessels. With the exception of Pacific cod, the sideboard limits for other groundfish fisheries are significantly less than the TACs, so there is little change of negative impacts to AFA exempt vessels and non-AFA trawl vessels. For Pacific cod, the recent implementation of sector allocations in the GOA has increased the potential for non-exempt vessels to impact exempt and non-AFA vessels, if sideboard limits are fully utilized and other trawl CV sectors continue their harvesting trend in the Pacific cod fishery.

### **Option 2.2:**

**Under Option 2.2, a replacement or rebuilt AFA non-exempt catcher vessel is prohibited from operating in the GOA if the vessel's LOA exceeds the most restrictive MLOA specified on any GOA LLP license assigned to the AFA vessel at the time the Coast Guard Act was approved (October 15, 2010). LLP licenses endorsed only for the BS are not considered in determining the constraining MLOA. By applying the license requirement on October 15, 2010, it is assumed this option defines vessels that are and are not eligible to continue in the GOA, if those vessels are replaced or rebuilt. Based on this assumption, replacement or rebuilt AFA non-exempt catcher vessels not specified on a GOA endorsed LLP license at the time the Coast Guard Act was approved are prohibited from participating in the GOA. Vessels that are not replaced or rebuilt are free to enter the GOA fisheries, provided they carry the requisite LLP license and endorsements.**

On October 15, 2010, there were a total of 20 AFA non-exempt catcher vessels that were active in the GOA groundfish fisheries (Table 1-53 and Table 1-56). Of the 20 AFA non-exempt catcher vessels with GOA endorsed LLP licenses, 12 vessels are within 10 feet of their MLOA, 5 vessels are within 10 feet and 20 feet of their MLOA, and 4 vessels are within 20 feet and 50 feet of their MLOA. 15 of the AFA non-exempt catcher vessels have a Central GOA endorsement and 9 vessels have Western GOA endorsement.

This option reduces production efficiency gains slightly from Alternative 2 and the other options. Similar to Alternative 2 and other options, owners of AFA non-exempt catcher vessels may replace or rebuild their vessels in order to improve production efficiency through more efficient hull forms or more efficient propulsion systems. However, this option limits participation in the GOA for rebuilt or replacement AFA non-exempt vessels. As of October 15, 2010, there were 20 AFA non-exempt catcher vessels with GOA-endorsed LLP groundfish licenses. As a result, these 20 vessels are the only vessels that can be rebuilt or replaced and still continue to participate in the GOA. In addition, to preserve their ability to participate in the GOA groundfish fishery, these 20 AFA non-exempt catcher vessels can only be replaced by a vessel that does not exceed the shortest MLOA on any GOA LLP license assigned to the vessel on October 15, 2010. And to preserve their ability to participate in the GOA groundfish fishery, these 20 AFA non-exempt catcher vessels can only be rebuilt up to the shortest MLOA of any GOA LLP license assigned to the vessel on October 15, 2010.

Option 2.2 is likely to result in less chance of economic spillover to non-AFA GOA groundfish participants than Alternative 2 or other AFA non-exempt catcher vessel options. This alternative specifies 20 specific GOA eligible AFA non-exempt catcher vessels that can be replaced or rebuilt and participate

in the GOA. This limitation on vessel replacement and rebuilding for GOA active AFA vessels could limit negative impacts on AFA exempt and non-AFA vessels active in the GOA groundfish fisheries relative to Alternative 2 and the other options. Nevertheless, there is some potential for impacts to AFA exempt and non-AFA vessels. The value of the foregone GOA sideboard fisheries could provide an incentive for the owners of the 20 AFA non-exempt catcher vessels that are able to rebuild or replace with larger vessels to consolidate BS pollock quota on other AFA vessels so as to increase their fishing effort in the GOA. GOA fisheries most likely to be impacted from increasing fishing effort by these 20 AFA non-exempt catcher vessels would be Central and Western GOA pollock. With the exemption of Pacific cod, other groundfish fisheries are not likely impacted by this option since the GOA sideboard limits are significantly lower than the TACs, and catch by AFA exempt and non-AFA vessels are modest. For Pacific cod, the recent implementation of sector allocations has increased the potential for impacts to exempt vessels and non-AFA vessels, if sideboard limits are fully utilized and the other trawl CV sectors continue their harvesting trend in the Pacific cod fishery.

In considering the effects of this option, it should be noted that any vessel that is not replaced or rebuilt could still enter the GOA fishery, provided the vessel carries an LLP license that qualifies it for the fishery. As a result, AFA vessels replaced or rebuilt could still impact AFA exempt and non-AFA vessels in the GOA fisheries by participants entering with licenses from current participants who choose to exit after replacement or rebuilding. If AFA participants choose to take advantage of these opportunities to enter vessels that have not be rebuilt or replaced, the differences between this option and the other options for non-exempt vessels are limited.

### **Option 2.3:**

Option 2.3, in contrast to the previous two options and Alternative 2, takes a different approach to limiting AFA replacement or rebuilt vessels operating in the GOA. Unlike Alternative 2 and Options 2.1 and 2.2, which are based on the MLOA of the LLP, this option is a vessel replacement limitation based on the registered length, tons, and horsepower of the existing AFA catcher vessel. Under this option, a **replacement or rebuilt AFA vessel cannot exceed by more than 10 percent the original registered length (LOA), gross registered tons, or shaft horsepower of the replaced AFA catcher vessel active on October 15, 2010.** The replacement or rebuilt vessel would still require a LLP license with the appropriate GOA endorsement and MLOA.

On October 15, 2010, there were a total of 77 non-exempt AFA catcher vessels that had LLP licenses with BSAI or GOA endorsements that were active in the BSAI and GOA groundfish fisheries. Table 1-56 shows the vessel length (feet), gross tons, and horsepower of these AFA catcher vessels that were active in 2010 as well as the maximum vessel length, gross tons and horsepower based on an increase of 10%.

The restriction to not exceed 10 percent of the original vessel's registered length, gross registered tons, and shaft horsepower will limit the scope of efficiency gains for replaced or rebuilt non-exempt AFA catcher vessels active in the GOA groundfish fisheries. Restricting a replacement or rebuilt AFA non-exempt catcher vessel by its lengths, tons, and horsepower limits could limit the available choices on hull designs and propulsion systems thereby potentially reducing operational efficiency of replacement or rebuilt vessels. Relative to Alternative 2 and Option 2.1, the overall production efficiency gains under this option are likely less. However, relative to Option 2.2, the gains in production efficiency on the whole from Option 2.3 are likely higher since this option does permit any rebuilt and replacement AFA non-exempt catcher vessel to participate in the GOA as long as the vessel is named on a GOA endorsed LLP license with a permissible MLOA.

Since this option restricts the length, gross tons, and horsepower of rebuilt or replacement AFA vessels that participate in the GOA groundfish fishery compared to Alternative 2 and Option 2.1, it is likely to have less economic spillover in GOA groundfish fisheries. However, this option, relative to Option 2.2, is likely to have a greater potential for economic spillover in the GOA groundfish fisheries since this option

would permit any rebuilt or replacement AFA non-exempt catcher vessel with a GOA endorsed LLP license and the appropriate MLOA to participate in the GOA groundfish fisheries. Option 2.2 limits participation in the GOA groundfish fisheries for rebuilt or replacement AFA non-exempt vessels to those 20 vessels with GOA endorsed LLP licenses on October 15, 2010.

### **Option for Sideboard Exempt Vessels**

#### **Option 2.4:**

This option applies specifically to GOA sideboard exempt AFA catcher vessels. Under Option 2.4, an AFA sideboard exempt catcher vessel may not exceed its MLOA of the GOA LLP license assigned to the vessel on the date the Coast Guard Act was approved (i.e., October 15, 2010) and continue to participate in the GOA fisheries. Although this option allows an AFA sideboard-exempt catcher vessels participating in the GOA groundfish fisheries to be replaced or rebuilt and continue to participate in the GOA fisheries, it is more restrictive than Alternative 2, which only requires a GOA-endorsed LLP license with an MLOA that does not exceed the length of the replacement or rebuilt vessel. In any case, vessels subject to this provision would be permitted to replace or rebuild the vessel beyond the MLOA of the GOA LLP license assigned to the vessel on October 15, 2010, but would then be prohibited from participating in GOA fisheries.

As noted in Table 1-39, there were 15 active AFA catcher vessels that are exempt from the GOA groundfish sideboards. Of the 15 active AFA exempt vessels, 3 are within 10 feet of the MLOA on their GOA endorsed LLP license, so these 3 vessels could only increase their vessel length by at most 10 feet and maintain their ability to fish in the GOA. Of the remaining sideboard exempt AFA catcher vessels, 10 are between 10 feet and 20 feet shorter than the MLOAs on their GOA endorsed LLP license, and 2 are between 20 feet and 50 feet shorter than their GOA endorsed LLP license. Each of the 15 exempt vessels has a Central GOA endorsement and 11 have Western GOA endorsements. Despite the flexibility provided by the MLOAs of the LLP licenses assigned to the AFA sideboard exempt vessels, these vessels will be constrained by this option from increasing in length beyond the MLOA.

In general, this option provides the owners of AFA sideboard exempt catcher vessels with the ability to replace or rebuild their vessels, which could provide improved production efficiency relative to the current regulations. Examples of the types of changes that could increase potential operational efficiency might include a more efficient hull form or a more proficient propulsion system. Combined, these two changes alone could increase the fuel efficiency of a vessel.

However, this option would limit the potential for greater efficiency gains relative to Alternative 2 since the option prohibits replacement or rebuilt AFA sideboard exempt catcher vessels from participating in the GOA if the vessel length exceeds the MLOA of the LLP license. In general, given the importance of the GOA groundfish fisheries for these AFA sideboard exempt catcher vessels (Table 1-20 and Table 1-21), these vessels are likely not to replace or rebuild their vessels beyond the MLOA so they can continue to participate in the GOA groundfish fisheries.

Since this option allows for AFA vessel owners to replace or rebuild their vessels for purposes of improving operational efficiency and safety, which could provide an increased opportunity for gains in harvest capacity that could be used in the GOA groundfish fisheries. However, the effect of this option, relative to Alternative 2, is not anticipated to have a substantial effect on non-AFA trawl vessels in the GOA groundfish fisheries since the proposed option prohibits replacement or rebuilt vessels that exceed the reported MLOA of the GOA LLP license assigned to the vessel from participating in these fisheries. Some efficiency gains from replaced or rebuilt vessels could allow these vessels to be more competitive in the GOA fisheries, but non-AFA vessels in those fisheries can maintain their competitiveness by similarly replacing or rebuilding their vessels (as is permitted by their LLPs). Owners of these non-AFA

vessels, in some cases, may have fewer resources relative to AFA vessels, as the AFA allocations provide some financial security to their holders.

### **Vessel Removal Provision**

**At the February 2013 meeting, the Council selected this provision as part of the preliminary preferred alternative.**

The Council reached the same conclusion as NMFS, namely that under the AFA as amended by the Coast Guard Act, the sideboard exemption of a removed vessel should be extinguished upon removal of that vessel from the AFA fishery.<sup>10</sup> The Council believes this is the proper interpretation of the AFA as amended by the Coast Guard Act. Additionally, if this was not the proper interpretation of the AFA as amended by the Coast Guard Act, the Council has concluded that this result – extinguishment of the sideboard exemption of a removed vessel -- would be a necessary measure to ensure that the implementation of the AFA amendments did not diminish the effectiveness of the Groundfish Fishery Management Plan for the GOA. Specifically, the Coast Guard Act enables an owner of an AFA catcher vessel that delivers to a shoreside processor to remove the vessel from the Bering Sea pollock fishery and assign the vessel's directed pollock fishing allowance to other vessels in the cooperative.<sup>11</sup> The Council concluded that the GOA sideboard exemption status should be extinguished when an AFA catcher vessel is removed and not replaced.

The ability to remove an inshore-eligible AFA catcher vessel would not result in an increase AFA participation in other groundfish fisheries. When the AFA catcher vessel is removed from the pollock fishery, NMFS will assign the vessel's portion of the directed pollock fishing allowance to the vessel chosen by the owner(s) participating in the fishery cooperative. The removed vessel can be designated to replace another AFA vessel (in which case it would be characterized as a replacement vessel). Otherwise, the removed vessel is permanently ineligible for a fishery endorsement and cannot participate in any fishery within the exclusive economic zone of the U.S., and therefore could not affect other fisheries.

To comply with these removal provisions, NMFS will need to: 1) receive notice of an inshore catcher vessel's removal; 2) receive notice of an inshore catcher vessel's desired assignment of its directed pollock fishing allowance and transfer that allowance; and 3) track the recipient vessel to ensure that it remains in the cooperative for a least one year following receipt of the directed pollock fishing allowance.

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<sup>10</sup> This is the Fishery Cooperative Exit Provision: Section 602 (b)(3) of the Coast Guard Act *adding* AFA section 210(b)(7).

<sup>11</sup> This provision does not apply to AFA catcher vessels that participate in a mothership cooperative. For AFA catcher vessels that deliver to inshore cooperatives, pollock quota is allocated to the inshore cooperative based on the pollock catch history of the member vessels. For AFA catcher vessels that deliver to AFA motherships, the vessel's pollock catch history is not necessary in determining the pollock allocation to the cooperative.