

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver
Executive Director

ESTIMATED TIME 2 HOURS

DATE: January 26, 2004

SUBJECT: IR/IU and related amendments

ACTION REQUIRED

- (a) Receive update on Amendment 79
- (b) Receive progress report on Amendments 80a and 80b

BACKGROUND

(a) Amendment 79

In June 2003, the Council completed final action on Amendment 79, which establishes an overall minimum groundfish retention standard for non-AFA trawl catcher/processors greater than 125' starting in 2005. The Council also requested the IR/IU Technical Committee to review several issues concerning the implementation of Amendment 79. During the subsequent Committee report to the Council at the October 2003 meeting, some questions were raised concerning the implementation timing of the amendment. To assist in addressing these questions, the Council requested NMFS to provide a report on the approval issues related to Amendment 79. In December 2003, NMFS provided a report that identified three principal analytical issues that could improve the amendment package with respect to conformance with National Standard 9. Subsequently, the EA/RIR/IRFA for Amendment 79 was revised to address these analytical issues noted by NMFS. On January 12, 2004, the EA/RIR/IRFA was resubmitted to NMFS. Submittal for formal Secretary of Commerce review would occur when NMFS determines the package is adequate and complete.

(b) Amendment 80

In April 2003, the Council reviewed a discussion paper and decision tree for proposed Amendment 80 that would develop a cooperative structure for the non-AFA trawl CP sector. At that meeting, Amendment 80 was expanded to include allocation alternatives for dividing BSAI groundfish and PSC species among all BSAI fishing sectors. Since June 2003, the Council has continued to refine the components and options for Amendment 80a (sector allocations) and 80b (cooperative structure for non-AFA trawl CP sector). At the December 2003 meeting, the Council finalized the components and options for Amendment 80a and 80b for the purpose of analysis. The revised components and options for Amendment 80a and 80b are attached as Item C-3(a). Note, staff has added a clarification to Component 1, 3 and 10 for Amendment 80a.

Presented below are a number of different issues that relate to further development of Amendment 80.

Limited Time Line and 2003 Fish Ticket Data

Since the December 2003 Council meeting, the analytical team has begun preparing an EA/RIR/IRFA for Amendment 80. However, staff has some concerns on the time line. Currently, Amendment 80 is scheduled for initial review in April 2004 and final action in June 2004. Based on this schedule, there are only six weeks remaining before the April 2004 meeting. Given the complexity of the proposed amendment, the EA/RIR/IRFA is likely to be incomplete at the time of initial review. In addition, there is a potential for delays in 2003 data to further slow the work on the EA/RIR/IRFA. Given these issues, coupled with further work necessary relative to monitoring and enforcement issues, a June 2004 target for initial review is likely more realistic.

Amendment 80a and 80b Alternatives

In order to satisfy NEPA requirements, the EA portion of the analysis must have realistic and contrasting alternatives from which the Council can select their preferred alternative. Reasonable and contrasting alternatives have been crafted for Amendment 80b by the Council, but alternatives have not been fashioned for Amendment 80a. To assist in crafting these alternatives, staff has created two strawman alternatives, in addition to status quo, that are based on different configurations from among the components and options. The alternatives are for the purpose of analysis, and do not necessarily restrict the Council from selecting different options to craft their preferred alternative.

Alternative 1 - No Action/Status Quo

Under this alternative, current management of groundfish and PSC in the BSAI would continue to be managed in accordance with existing Federal management measures, including any management measures pending. One of those pending management measures is the groundfish retention standard (GRS) assuming SOC approval. This action will phase in a minimum retention standard for the non-AFA trawl catcher processors over 125 feet over a four year period starting in 2005 at 65 percent and culminating in 2008 at 85 percent.

Alternative 2 - Allocate all Groundfish

This alternative would allocate all groundfish except pollock. In addition, if an allocation of a groundfish species was an amount too small to harvest, then that species would not be allocated. ICAs along with soft caps will be used to managed those groundfish species not allocated to the sectors. This alternative would use 1995 to 2002 for the sector's catch history, but would exclude the AFA-9 catch history. This alternative would allocate Pacific cod in the same method used to allocate the other targeted species, and thus supercede all existing apportionments of Pacific cod in the BSAI. PSC allocations would be based on historic fishery group's apportionment and PSC usage by the sector. This alternative would not include a harvest threshold for underutilized species. Finally, the alternative would have a liberal eligibility requirement for vessels to qualified to participate in a sector.

Alternative 3 - Allocate only Primary Target Groundfish

This alternative would only allocate primary target groundfish species (Pacific cod, yellowfin sole, rock sole, flathead sole, Atka mackerel, Greenland turbot, and AI Pacific Ocean perch). ICAs along with hard caps would be used to manage those groundfish species not allocated to the sectors. This alternative would use 1998 to 2002 for the sector's catch history and would include the AFA-9 catch history. Pacific cod allocations would be based on apportions in the regulations as modified by Amendment 77. In addition, the

Pacific cod apportionment for the trawl CP sectors would be split between the non-AFA trawl CP at 18.3 percent and the AFA trawl catcher processors at 5.2 percent. PSC would be allocated based on the proportion of PSC harvest attributed to the fishery group and the proportion of target species harvested in the fishery group. This alternative would have a low harvest threshold for underutilized species. Finally, this alternative would have more restrictive eligibility requirements for vessels to participate in a sector.

A full description of the proposed Alternative 2 and 3 is attached as Item C-3(b).

Amendment 80a and 80b Problem Statement

In order to complete the initial analysis of Amendment 80, a problem statement will need to be drafted. Staff has drafted a strawman problem statement for Amendment 80, based on the evolution of this proposed action, and it is presented below.

Problem Statement for Amendment 80 to the BSAI FMP

The Council's primary concern is to maintain a healthy marine ecosystem to ensure the long-term conservation and abundance of the groundfish and crab resources. To this end, the Council is committed to reducing bycatch, minimizing waste, and improving utilization of fish resources to the extent practicable in order to provide the maximum benefit to present generations of fishermen, associated fishing industry sectors, communities, and the nation as a whole, while at the same time continuing to look for ways to further rationalize the fisheries. The Council also recognizes that the fishing industry is made up of participants who have a vested interest in the continued improvement in the long-term conservation of the groundfish resources, but at times could be burdened with additional costs associated with management programs that improve conservation or reduce bycatch. The problem facing the Council is two fold. First, is to fashion a management program that would mitigate the cost, to some degree, for those participants burdened with additional costs associated with management programs that improve conservation and reduce bycatch, while also continuing to reduce discards of groundfish and crab to practicable and acceptable levels. Second, is to develop programs to slow the race for fish, and reduce bycatch and its associated mortalities, while maintaining a healthy harvesting and processing industry, recognizing long term investments in the fisheries, and promoting safety, efficiency, and further rationalization in all sectors.

Amendment 80 EA or EIS

At the December Council meeting, the question was raised whether an EA is the appropriate NEPA document for Amendment 80 or whether it should be an EIS. Currently, an EA is being prepared for the action proposed. To better answer the question raised at the December meeting, staff has prepared a discussion paper outlining the more significant issues to consider, including estimated time lines for each approach. The discussion paper is attached as Item C-3(c).

Amendment 80 Monitoring and Enforcement Issues

Item C-3(d) is a discussion paper prepared for the February 3 Enforcement Committee meeting. The paper summarizes NOAA Fisheries' initial efforts to document monitoring and enforcement issues for Amendment 80. These issues will have to be further developed to complete the analytical package for Council review and action.

Amendment 80 Component and Options
January 26, 2004

The Council in December 2003 finalized Amendment 80a and 80b components and options for initial review, and are presented below. The Council is scheduled to review Amendment 80a and 80b in April 2004 and take final action in June 2004.

Components and Options for Amendment 80.a—BSAI Sector Allocations

Issue 1: Sector Allocations of Groundfish in the BSAI

The following is a list of the sectors for purposes of groundfish and PSC apportionment:

Non-AFA Trawl CPs	AFA Trawl CPs	Non-AFA Trawl CVs	AFA Trawl CVs	Longline CPs
Pot CPs	Pot CVs	Longline CVs	Jig CVs	<60' H&L/Pot CV

Component 1 Identifies which species will be included in the sector allocations

Option 1.1 Include all groundfish species except AFA allocated pollock and fixed gear sablefish.

Suboption 1.1.1 Exclude certain species to prevent allocations that are so small that they preclude sectors from harvesting their allocation of species typically taken in directed fisheries. Allocations of species that are excluded would be allocated as they are under status quo, and managed as in the following component.

Option 1.2 Include only the following target species—Pacific cod, yellowfin sole, rock sole, flathead sole, Atka mackerel, Greenland turbot, AI Pacific ocean perch. Species could be added or deleted through an amendment process. Allocations of species that are excluded would be allocated as they are under status quo, and managed as in the following component.

Suboption 1.2.1 Sectors that do not participate in target fisheries for a species in this option would not be allocated sector specific apportionments for that species. These species would be managed as in the following component.

Based on the language in Option 1.1, staff assumes that non-AFA pollock would be allocated to sectors under Option 1.1.

Component 2 Management of non-target species.

Option 2.1 Use the current management system.

Option 2.2 Use ICAs for all non-target species—ICAs would be managed as soft caps.

Option 2.3 Use ICAs for all non-target species—ICAs would be managed as hard caps.

Component 3 CDQ allocations for each species in the program (except pollock and fixed gear sablefish) shall be removed from the TACs prior to allocation to sectors at percentage amounts equal to one of the following.

Option 3.1 7.5%

Option 3.2 10%

Option 3.3 15%

Option 3.4 20%

Based on the language in Component 3, staff assumes that pollock and fixed gear sablefish additions were originally intended to not be included in this component.

Component 4 Identifies the sector allocation calculation (*after deductions for CDQs*). Each of the species selected in Component 1 will be allocated to the sectors.

Option 4.1 Each sector shall be allocated the percentage of the TAC that is equal to the sector's average of the annual harvest percentages,¹ during the years specified in the following component. The sectors harvest is defined as that catch, taken by vessels when operating in the mode that defines the sector². These percentages will be calculated based on the method selected in Component 6.

Option 4.2 Each sector allocation of the TAC shall be based on a percentage rather than a set of years. (*The Council added this option at the December 2003 meeting. The intent of this option was to provide the Council with the ability to select an industry agreed percentage for allocative purposes rather than selecting a set of catch history years.*)

Component 5 Sector Catch History Years

- Option 5.1 1995–1997
 - Suboption 5.1.1 Exclude AFA-9 catch history
- Option 5.2 1995–2002
 - Suboption 5.2.1 Exclude AFA-9 catch history
 - Suboption 5.2.2 Exclude 2001 because of the biological opinion
- Option 5.3 1995–2003
 - Suboption 5.3.1 Exclude AFA-9 catch history
 - Suboption 5.3.2 Exclude 2001 because of the biological opinion
- Option 5.4 1998–2002
 - Suboption 5.4.1 Exclude AFA-9 catch history
 - Suboption 5.4.2 Exclude 2001 because of the biological opinion
- Option 5.5 1998–2003
 - Suboption 5.5.1 Exclude AFA-9 catch history
 - Suboption 5.5.2 Exclude 2001 because of the biological opinion

The Council, at the December meeting, requested staff to provide in the analysis for Amendment 80a catch by sector, CPUE, and any other relative data associated with the 2001 Stellar sea lion biological opinion and its impacts on the BSAI groundfish fisheries.

¹ The equation shown describes the allocation for a given sector, species, and year:

where:

- x is the sector,
- y is the species,
- z is the year for which the allocation is to be determined,
- n is the year used in the allocation determination (starting with year N_1 and ending with year N_2),
- $C_{n,x,y}$ is the catch of species y by vessels in sector x in year n ,
- $TAC_{y,z}$ is Total Allowable Catch for species y in year z , and
- $A(x,y,z)$ is the allocation for a given sector (x), species (y), and year (z).

$$A(x,y,z) = TAC_{y,z} \cdot \frac{\sum_{n=N_1}^{N_2} C_{n,x,y}}{\sum_{x=1}^X \sum_{n=N_1}^{N_2} C_{n,x,y}}$$

² The catch of vessels that meet the sector's definition and were operating in that mode, during the qualifying years, is assigned to the sector. This means that only the portion of a vessel's catch when it was operating in that sector, would count towards the sector's allocation. It also means that a vessel's catch history would be assigned to a sector even if they do not qualify to participate in the sector based on the criteria selected in Issue 4.

Component 6 For purposes of apportionments, annual catch percentages will be defined using one of the following:

- Option 6.1 Total catch of the sector over total catch by all sectors
- Option 6.2 Retained catch of the sector over retained catch by all sectors

Component 7 Options for determining Pacific cod allocations

Option 7.1 Pacific cod shall be allocated in the same method used to allocate the other targeted species. This option would supercede all existing apportionments of Pacific cod in the BSAI, including splits among the fixed gear sectors. Pacific cod rollovers between sectors shall administered using regulations at the time of final Council action. Further, Pacific cod rollovers will continue to be hierarchical in nature flowing from the most precise definition of a sector to the next more inclusive definition before unused Pacific cod is reallocated to a different gear type³.

Suboption 7.1.1 The <60' catcher vessels fixed gear (pot and hook-and-line) sector and jig sector combined allocation from TAC (after CDQ apportionment) is to be:

- a. 2%
- b. 3%
- c. 4%

Suboption 7.1.2 Jig sector will receive an allocation from the TAC (after CDQ apportionment).

Suboption 7.1.3 a. <60' pot and hook-and-line catcher vessel sector will receive an allocation from TAC (after CDQ apportionment).

b. <60' pot and hook-and-line catcher vessel sector will receive an allocation from the fixed gear sector TAC as is done under existing regulations.

Apportionments to the jig and <60' pot and hook-and-line sectors under Suboption 7.1.2 and 7.1.3 shall not collectively exceed:

- a. 2%
- b. 3%
- c. 4%

³Trawl CP sector (AFA and Non-AFA) Pacific cod quota that is projected to remain unused shall be reallocated to the other trawl CP sector (AFA or Non-AFA). If that trawl CP sector is not able to harvest the rollovers, it would then be reallocated to trawl CV sector (Non-AFA and AFA) proportional to their initial apportionments if both sectors can use it, or disproportionately if one sector appears less likely to use its full share. If both trawl CP and CV sectors are unable to fully utilize the rollover, then 95 percent would be reallocated to the hook-and-line CP sector and 5 percent to the pot sectors. Unused quota in the pot sector (CP and CV) would be reallocated to other pot sector before being reallocated to the hook-and-line CP sector. Hook-and-line catcher vessel sector and <60' hook-and-line/pot catcher vessel sector quota that is projected to remain unused shall be reallocated to the hook-and-line CP sector. Any jig sector quota that is projected to remain unused will first be reallocated to the <60' hook-and-line/pot catcher vessel sector before being reallocated to the hook-and-line CP sector.

Option 7.2 Pacific cod shall be allocated based on apportionments in regulation as modified by Amendment 77 with an additional split of the Trawl CP apportionment as follows:

- Non-AFA Trawl CPs will be allocated 18.3 percent of the Pacific cod TAC available after deduction for the CDQ program.
- AFA Trawl CPs will be allocated 5.2 percent of the Pacific cod TAC available after deduction for the CDQ program.

Pacific cod rollovers between sectors shall administered using regulations at the time of final Council action. Further, Pacific cod rollovers will continue to be hierarchical in nature flowing from the most precise definition of a sector to the next more inclusive definition before unused Pacific cod is reallocated to a different gear type (see footnote 3 for a description of the rollover procedures).

Note: At the December 2003 meeting, the Council removed the component that would have deducted any state water fishery allocation in the BSAI from TAC before the allocations to a specific sector were calculated. In its place, the Council requested a discussion addressing the impacts of a state water fishery in the BSAI on federal water fisheries in the BSAI be included in the Cumulative Impacts section of the NEPA analysis that is scheduled for initial analysis in April 2004.

Issue 2: Sector Allocations of Prohibited Species Catch Limits in the BSAI

Component 8 PSC is allocated to the CDQ program as PSQ reserves (except herring) equal to one of the following:

- Option 8.1 7.5% of each PSC limit
- Option 8.2 8.5% of each PSC limit
- Option 8.3 10% of each PSC limit
- Option 8.4 Proportional to the CDQ allocation under Component 3 for each PSC limit

Component 9 Sector allocations of PSC limits (Council must choose one suboption from both Option 9.1 and 9.2 in order to apportion PSC to sectors).

- Option 9.1 Apportion PSC to each fishery group that it has historically been accounted against (e.g, yellowfin sole, rockfish, rocksole/flathead sole/other, etc.).
 - Suboption 9.1.1 Through annual TAC setting process (the current method).
 - Suboption 9.1.2 In proportion to the historic fishery group's apportionment using the most recent five years.
 - Suboption 9.1.3 In proportion to a 5-year rolling average of that fishery group's PSC allocations using the most recent five years.
 - Suboption 9.1.4 In proportion to the actual amounts of PSC mortality attributed to the fishery group over a defined set of years.

- Option 9.2 Apportion PSC allotments made to fishery groups in Option 9.1 to sectors
- Suboption 9.2.1 In proportion to TAC allocated to the sector.
 - Suboption 9.2.2 In proportion to the PSC usage by the sector for the years used to determine the groundfish sector apportionments.
 - a. Reduce apportionments to 60% of calculated level.
 - b. Reduce apportionments to 75% of calculated level.
 - c. Reduce apportionments to 90% of calculated level.
 - d. Reduce apportionments to 95% of calculated level.
 - e. Do not reduce apportionments from calculated level.
 - Suboption 9.2.3 In proportion to the total groundfish harvested by the sector for each PSC fishery group for the years used to determine the groundfish sector apportionments.
 - Suboption 9.2.4 In proportion to the target species harvested by the sector in that PSC fishery group for the years used to determine the groundfish sector apportionments.

Issue 3 Underutilized Species Threshold

Component 10 For species that may have TAC (amounts) available in excess of historical harvest amounts, sector allocations may apply only to the historical harvest threshold (utilization threshold). TAC amounts in excess of such thresholds would be available to sectors whose ability to harvest that TAC exceeds its sector allocation of that species. *(The intent of this language is that after a sector has harvested it's allocation of species with a threshold and if the sector has PSC available, then the sector may target the TAC in excess of the threshold.)* Council must select one suboption from each of the options below in order to establish a threshold fishery. *(Note, due to its undeveloped status, Staff recommends this component not be mandatory with sector allocations. Rather, the Council could choose to develop sector allocations without an underutilized species threshold program.)*

- Option 10.1 Species that would be assigned an utilization threshold:
- Suboption 10.1.1 Rock sole
 - Suboption 10.1.2 Yellowfin sole
 - Suboption 10.1.3 Flathead sole
 - Suboption 10.1.4 Alaska Plaice
 - Suboption 10.1.5 Rock sole, yellowfin sole, flathead sole in aggregate
 - Suboption 10.1.6 Rock sole, yellowfin sole, flathead sole, and Alaska Plaice in aggregate
- Option 10.2 Options for determining utilization threshold for each species or complex (Council must select one from each of the following suboptions in order to establish utilization threshold):

- Suboption 10.2.1 Average threshold percentage will be based on:
 - a. Total catch
 - b. Retained catch
- Suboption 10.2.2 Threshold percentage of average catch will be:
 - a. 100%
 - b. 125%
 - c. 150%
- Suboption 10.2.3 Years for determining the average catch will be:
 - a. 1995-1998
 - b. 1995-2002
 - c. 1998-2002
 - d. 2000-2003

Issue 4 Eligibility to Participate in a Sector

Component 11 Vessels will be determined to be eligible for a given sector if they meet minimum landings requirements (see the next component) in the years selected from the following:

- Option 11.1 1995-1997
- Option 11.2 1995-2002
- Option 11.3 1997-2002
- Option 11.4 1998-2002
- Option 11.5 1999-2002
- Option 11.6 2000-2002

Component 12 Vessels will be determined to be eligible for a given sector if, during the previously specified sets of years, the vessel meets the minimum landings criteria selected from the following:

- Option 12.1 At least one landing
- Option 12.2 50 MT
- Option 12.3 100 MT
- Option 12.4 250 MT
- Option 12.5 500 MT
- Option 12.6 1,000 MT

Suboption: Exclude jig vessels and <60' fixed gear catcher vessels from minimum landings requirements.

Components and Options for Amendment 80.b—Establishment of a Non-AFA Trawl CP Cooperative Program

The following “single-option” components are common for any cooperative program that might be developed.

- The Program would limit its scope to selected groundfish and prohibited species catches with trawl gear by vessels in the Non-AFA Trawl CP Sector in the BSAI. Groundfish species not included in the program as well as other non-specified fish species or marine resources would not be explicitly managed within the Program, although other regulations regarding these other marine resources would not be superseded.
- The Program will not supercede pollock and Pacific cod IRIU programs, nor will it supercede the Groundfish License Limitation Program. All vessels participating in the program will need to have trawl endorsements with general licenses for BSAI. Length limits within the license will also be enforced such that any new vessel entering the fishery may not exceed the Maximum Length Overall (MLOA) specified on the license.
- Any non-trawl or non-BSAI catches of vessel that are considered part of the non-AFA Trawl CP Sector will not be included in the Program, but would not necessarily be excluded from other rationalization programs.
- New PSC limits for the following species will be created and allocated to the non-AFA trawl catcher processor sector.
 - BSAI non-AFA trawl catcher processor multi-species halibut cap consisting of an apportionment of species identified in Component 1.
 - BSAI non-AFA trawl catcher processor multi-species red king crab cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries.
 - BSAI non-AFA trawl catcher processor multi-species snow crab (*C. opilio*) cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries (includes apportionments of the trawl sablefish/turbot/arrowtooth limits).
 - BSAI non-AFA trawl catcher processor multi-species Tanner crab (*C. bairdi*) Zone 1 cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries.
 - BSAI non-AFA trawl catcher processor multi-species Tanner crab (*C. bairdi*) Zone 2 cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries.
- Disposition of groundfish species not allocated to the Non-AFA Trawl CP sector would not change from the status quo.
- Bycatch limits for non-specified species or marine resources specifically for this program would not be established. However, should unreasonable bycatch or other interactions occur, specific regulations to minimize impacts will be considered.
- A Groundfish LLP is required for a Sector Eligibility Endorsement for the Non-AFA Trawl CP Cooperative program.
- Annual allocations to the cooperative that result from catch histories of participating vessel will be transferable among cooperative members. Such transfers would not need to be approved by NOAA Fisheries. Any member vessel of the cooperative will be eligible to use the catch history of any other member vessel regardless of vessel length.
- Permanent transfers of Sector Eligibility Endorsements would be allowed if transferred with the associated Groundfish LLP. Sector Eligibility Endorsement and associated catch histories would

not be separable or divisible. All transfers must reported to NOAA Fisheries in order to track who owns the Sector Eligibility Endorsements. The purchaser must be eligible to own a fishing vessel under MarAd regulations or any person who is currently eligible to own a vessel.

- The Groundfish Retention Standards (GRS) (Amendment 79) would be enforced on the cooperative as an aggregate and on the open access vessels as individuals. If the cooperative cannot meet the standard in the aggregate over a period of two years then the standard would be imposed on individual vessels within the cooperative.
- Vessels participating in the open access portion of the program will be subject to all the same regulations they would be without the Program including all restrictions of the LLP and the GRS if they are approved.
- A cooperative created under this program must have adequate internal rules. Evidence of binding private contracts and remedies for violations of contractual agreements are required to be provided to NOAA Fisheries. The cooperative must demonstrate an adequate mechanism for monitoring and reporting prohibited species and groundfish catch. Vessels participating in the cooperative must agree to abide by all cooperative rules and requirements.
- Specific requirements for reporting, monitoring and enforcement requirements, and observer protocols will be developed for vessels participating in the cooperative portion of the Program in rulemaking process and will not be the purview of the cooperative. The NPFMC and the Non-AFA Trawl CP Sector need to specify their goals and objectives for in-season monitoring and for program evaluation. Recordkeeping and reporting portions of the program can then be developed to ensure that goals and objectives of the program are met in a cost effective manner.
- Review of the non-Trawl CP program will be accomplished by requiring a detailed annual report from any cooperative formed. Fishery managers will review the annual report and determine if the program is functioning as desired. It is recommended that in-depth assessments of program could be undertaken under the auspices of the Council/NOAA Fisheries be undertaken periodically (every three years, for example). Such in-depth studies will report the accomplishments of the program and indicate whether any changes are necessary.
- Socioeconomic data collection programs have been included in AFA, and crab rationalization programs, and are proposed in the GOA Rationalization program. Therefore the analytical team assumes that a socioeconomic data collection initiative would be developed and implemented under the Non-AFA Trawl CP Cooperative Program. The collection would include cost, revenue, ownership and employment data on a periodic basis to provide the information necessary to study the impacts of the program. Details of the collection will be developed in the analysis of the alternatives.

Component 1 Identifies which species will be allocated among the non-AFA trawl catcher processor sector.

Option 1.1 Include all groundfish species for which trawling is allowed, except pollock already allocated to AFA fishery cooperatives.

Suboption 1.1.1 Exclude certain species to prevent allocations that are so small that they preclude persons from harvesting their allocation of species that are typically taken in directed fisheries. Allocations of groundfish species that are excluded would be regulated as they are under the status quo.

Option 1.2 Include only the following target species—Pacific cod, yellowfin sole, rock sole, flathead sole, Atka mackerel, Greenland turbot, AI Pacific Ocean perch. Species could be added or deleted through an amendment process. Allocations of groundfish species that are excluded would be regulated as they are under the status quo.

Component 2 Establishes procedures for reducing prohibited species catch limits for the non-AFA Trawl CPs Sector. *Options selected from this component would be in addition to those PSC options selected in Component 9 from Amendment 80a.*

- Option 2.1 No change in overall amount of the current PSC limits.
- Option 2.2 Reductions in the PSC limit for halibut is accomplished by taxing in-season non-permanent transfers of PSC within the cooperative. The halibut PSC limit is restored to its original level the following year
 - Suboption 2.2.1 Transfers of PSC after August 1 are not taxed .
 - Suboption 2.2.2 Only un-bundled transfers of PSC are taxed.
- Option 2.3 Reduce halibut PSC limits by 5% when PSC limits are linked to estimated biomass levels.

Component 3 Identifies the vessels that are in the non-AFA trawl CP sector which would receive Sector Eligibility Endorsements. (It may be that some vessels identified as part of the sector in Amendment 80.a, may not be issued Sector Eligibility Endorsements.) Owners of each qualified vessel would be issued a Sector Eligibility Endorsement that will be attached to that vessel's LLP identifying it as a member of the non-AFA Trawl CP Sector.

- Option 3.1 Non-AFA fishing vessels registered under MarAd regulations and any other vessels eligible to participate in fish harvesting in the Alaska EEZ are eligible for a sector endorsement to be attached to their groundfish license.
 - Suboption 3.1.1 In addition, vessels must have caught 500 mt. of groundfish with trawl gear and processed that fish between 1998-2002
 - Suboption 3.1.2 In addition, vessels must have caught 1,000 mt. of groundfish with trawl gear and processed that fish between 1998-2002
 - Suboption 3.1.3 In addition, vessels must have caught 500 mt. of groundfish with trawl gear and processed that fish between 1997-2002
 - Suboption 3.1.4 In addition, vessels must have caught 1,000 mt. of groundfish with trawl gear and processed that fish between 1997-2002

The original list included 100 mt and 150 mt, but subsequent analysis indicates that these lower levels have no impact on the number of qualified vessels.

Component 4 Establishes the percentage of eligible vessels that must join a cooperative before the cooperative is allowed to operate. No later than December 1 of each year, an application must be filed with NOAA fisheries by the cooperative with a membership list for the year. In order to operate as a cooperative, members, as a percent of eligible non-AFA Trawl CPs, must be:

- Option 4.1 At least 51 percent
- Option 4.2 At least 67 percent
- Option 4.3 At least 75 percent
- Option 4.4 At least 80 percent
- Option 4.5 At least 90 percent
- Option 4.6 All less one distinct and separate harvesters using the 10 percent threshold rule.

Component 5 Determines the method of allocation of PSC limits and groundfish between the cooperative and open access pools.

- Option 5.1 Catch history is based on total catch

Option 5.2 Catch history is based on total retained catch

Component 6 Determines which years of catch history are used in the calculation. The allocation of groundfish between the cooperative and open access pool is proportional to the catch history of groundfish in the vessels included in each pool. Applicable PSC limits are allocated between the cooperative and open access pool in same proportions as those species that have associated PSC limits. The catch history as determined by the option selected under this component will be indicated on the Sector Eligibility Endorsement which indicates the vessel's membership in the Non-AFA Trawl CP Sector. The aggregate histories will then applied to whichever either the cooperative or the open access pool.

Option 6.1 1995-2002, but each vessel drops its lowest annual catch during this period

Option 6.2 1995-2003, but each vessel drops its lowest annual catch during this period

Option 6.3 1998-2002, but each vessel drops its lowest annual catch during this period

Option 6.4 1998-2003, but each vessel drops its lowest annual catch during this period

Option 6.5 1999-2002, but each vessel drops its lowest annual catch during this period

Option 6.6 1999-2003, but each vessel drops its lowest annual catch during this period

Component 7 Determines if excessive share limits are established in the non-AFA trawl catcher processor sector.

Option 7.1 There is no limit on the consolidation in the non-AFA trawl catcher processor sector.

Option 7.2 Consolidation in the non-AFA trawl CP sector is limited such that no single company can harvest more than a fixed percentage of the overall sector apportionment. Companies that exceed the cap in the initial allocation would be grandfathered.

Component 8 Establishes measures to mitigate negative impacts of the cooperative on fisheries not included in the cooperative program (e.g. fisheries in the GOA).

Option 8.1 Sideboards for cooperative members would be established by regulation using the same years used to calculate the apportionment of PSC and groundfish between the cooperative and open access pool until such time as these other fisheries are rationalized, when the allocations determined in these newly rationalized fisheries.

Option 8.2 The cooperative is required to prohibit members in the aggregate from exceeding their maximum percent of harvests in other target fisheries. Sideboards would not be established by regulation. This restriction would be discussed in the annual report of the cooperative submitted to the Council and NOAA Fisheries.

**Amendment 80a Alternatives
Alternative 2 - Allocate all Groundfish**

Component	Option	Description
1	1.1	Allocate all groundfish except pollock
1	1.1.1	Exclude certain species to prevent allocations too small for sectors to harvest
2	2.2	Use ICAs for all non-target species (<i>non-allocated species</i>) and manage using soft caps (<i>bycatch and PSC status</i>)
3	3.1	7.5% CDQ allocation
4	4.1	Allocate the percentage of the TAC that is equal to the sector's average of the annual harvest percentages during the specified years.
5	5.2	Sector catch history years are 1995-2002
5	5.2.1	Exclude AFA-9 catch history
6	6.1	For purposes of apportionments, annual catch percentages will be defined using total catch of the sector over total catch by all sectors
7	7.1	Pacific cod shall be allocated in the same method used to allocate the other groundfish species. Pacific cod rollovers between sectors shall be administered using regulations at the time of final Council action.
7	7.1.1	<60' fixed gear CV (pot and H&L) sector and jig sector combined allocation from TAC of 3%
8	8.4	PSC allocated to CDQ program as PSQ reserves (except herring) in proportion to the CDQ allocation
9	9.1.2	Apportion PSC to each fishery group in proportion to the historic fishery group's apportionment using the most recent five years
9	9.2.2	Apportion PSC allotments made to fishery groups to sectors in proportion to the PSC usage by the sector for the years used to determine the groundfish sector allocation with no reduction in apportionments from calculated level.
10	10.1	No underutilized threshold species program
11	11.2	Years for determine eligibility to participate in a sector will be 1995-2002
12	12.1	The vessel must have at least one landing in the years noted in Option 11.2 to be eligible to participate for a given sector.

Amendment 80a Alternatives
Alternative 3 - Allocate only Primary Target Groundfish

Component	Option	Description
1	1.2	Allocate only Pacific cod, yellowfin sole, rock sole, flathead sole, Atka mackerel, Greenland turbot, and Al Pacific ocean perch.
1	1.2.1	For sectors that do not participate in the allocated fisheries would not receive an allocation. Use ICAs for all non-target (<i>non-allocated</i>) species and manage using hard caps (<i>bycatch, PSC and eventually fishery closures</i>)
2	2.3	
3	3.2	10% CDQ allocation Allocate the percentage of the TAC that is equal to the sector's average of the annual harvest percentages during the specified years.
4	4.1	
5	5.4	Sector catch history years are 1998-2002 (include AFA-9 catch history) For purposes of apportionments, annual catch percentages will be defined using retained catch of the sector over retained catch by all sectors
6	6.2	
7	7.2	Pacific cod shall be allocated based on the apportions in regulation as modified by Amendment 77 with an additional split of the trawl CP apportion. Non-AFA trawl CP will be allocated 18.3% and AFA trawl CPs will be allocated 5.2%. Pcod rollovers between sectors shall administered using regulations at the time of final Council action.
8	8.1	PSC allocated to CDQ program as PSQ reserves (except herring) will be 7.5% of each PSC limit. Apportion PSC to each fishery group in proportion to the actual amounts of PSC mortality attributed to the fishery group over the 1998-2002 period.
9	9.1.4	Apportion PSC allotments made to fishery groups to sectors in proportion to the target species harvested by the sector in the PSC fishery group for the years 1998-2002.
9	9.2.4	
10	10.1.1 thru 10.1.4	Species assigned a utilization threshold are rock sole, yellowfin sole, flathead sole, and Alaska Plaice.
10	10.2.1b	Average threshold percentage will be based on retained catch
10	10.2.2a	Threshold percentage of average catch will be 100%
10	10.2.3c	Years for determining the average catch will be 1998-2002
11	11.4	Years for determine eligibility to participate in a sector will be 1998-2002 The vessel must have 250MT in minimum landings in the years noted in Option 11.4 to be eligible to participate for a given sector.
12	12.4	

Amendment 80: EA or EIS?

An Environmental Assessment (EA) is currently being prepared for Amendment 80, which proposes sector allocations for BSAI groundfish fisheries and a non-AFA trawl catcher-processor cooperative. The question has been raised whether an EA is the appropriate NEPA document for this action, or whether we should be preparing an Environmental Impact Statement (EIS). Based on all the input to date, we recommend continuing the EA analysis, and evaluate in June, once the initial analysis is completed, whether we need to do an EIS. If we conclude there are no significant impacts to the physical and biological environment (FONSI), we finalize the EA and are able to implement the program more expeditiously. If we conclude that we do in fact need to do an EIS, we will not have lost very much time compared to making that decision today.

1. What triggers an EIS?

NEPA requires an EIS on proposed federal actions "significantly affecting the quality of the human environment" (CEQ 1502.3).

Although in the analysis the "human environment" includes the interrelationship of economic, social, natural, and physical environmental effects, "economic or social effects are not intended by themselves to require preparation of an EIS," (§1508.14).

An Agency may, however, choose to do an EIS on any proposed action, regardless of whether it is required.

2. What effects of Amendment 80 can we predict which may significantly affect the physical or biological environment?

In a preliminary assessment of the proposed action and its potential impacts, the analysts have highlighted one primary issue that could potentially rise to the level of a significant impact on the physical or biological environment. If sector allocations or the non-AFA trawl catcher processor cooperative create an increased incentive for fishers to underreport their bycatch in order to avoid fishery closures on small quotas, this may result in a risk to the sustainability of some stocks. These issues are further detailed in a separate discussion paper that initially addresses monitoring and enforcement issues for the proposed action prepared by NMFS (see Item C-3(d)).

3. How much additional work does it take to turn an EA into an EIS?

In general, the EAs that we prepare contain a sufficiently comprehensive analysis that they can easily be rolled into an EIS. There are certain procedural requirements of an EIS, which include a Notice of Intent to prepare an EIS, the publishing of the Draft and Final documents and public comment periods, and the preparation of a Record of Decision to justify the choice of alternative. Additionally, the EA would need to be reformatted somewhat to fit an EIS format, and the Agency would need to respond to comments on the Draft EIS.

None of the work that goes into preparing the EA would be wasted should the action end up requiring an EIS. Some additional procedural steps would need to be taken, and should the public bring forward any new concerns during scoping (particularly the 30 days following the Notice of Intent), or the comment period on

the Draft or Final EISs, these would need to be taken into consideration. The time spent by the Council, committees, and the analysts to develop elements and options, alternatives, a purpose and need statement, and the analysis itself, would all be the basis for the EIS.

4. So what do we do?

(see attachment for timelines)

Option A. Continue preparing the EA, and decide in June whether to prepare an EIS.

Pros:

- The EA is the appropriate NEPA mechanism to determine whether the impacts of an action may be significant; we are following the appropriate process.
- If there are no significant impacts to the physical or biological environment, Final Action could potentially occur in October 04, which would allow the program to be implemented in the most expeditious manner; if an EIS must be prepared, the timeline would be nearly the same as if an EIS decision were made in February 04.
- If an EA is sufficient, this option provides reduces staff workload and use of resources; if an EIS is required, the workload will be only minimally greater than if an EIS is prepared as of February

Cons:

- Much of the analysis will have been completed before the public is notified that an EIS is being prepared; the public may raise important considerations at that time that require additional work

Option B. Do not prepare an EA; instead, begin immediately to prepare an EIS.

Pros:

- The public is notified as early as possible in the process that an EIS will be prepared, and their input is taken into account before the formal analysis is prepared.

Cons:

- If the public, following the NOI, raises an important consideration, then Final Action could not occur in October 04, and the program would therefore take a little longer to implement.
- If there are no significant impacts to the physical and biological environment, the additional work and time required by an EIS was unnecessary.

Key Point: Even if timelines for analysis and rulemaking are overly optimistic, the program could not be implemented until 2006 (mid to late 2005 is possible but not likely practical to implement this type of program mid-season). And, there is little or no difference between proceeding with an EA vs. initiating an EIS now.

		Option A		Option B			
		EA only	EA and EIS	EIS only			
		proceed with EA in Feb	proceed with EA in Feb, switch to EIS in June after analysis determines whether there are significant impacts to the human environment	proceed with EIS in Feb			
		(FONSI possible)	(FONSI not possible)	(whether or not FONSI possible)			
2004	Feb	Council creates problem statement and chooses alternatives		Council creates problem statement, and chooses alternatives; Notice of Intent to complete EIS	Feb	2004	
	Mar				Mar		
	Apr				Apr		
	May				May		
	Jun	Initial Review of EA; Council may choose Preferred Alternative EA analysis complete, no significant impacts EA is released for public review	EA analysis complete but significant impacts; Council adjusts analysis for EIS Notice of Intent to complete EIS Scoping report prepared Draft EIS is released for public review**	Initial Review of Draft EIS Council makes any changes to amendment framework to respond to public comments from scoping Council may choose Preferred Alternative Draft EIS is released for public review	Jun		
	Jul				Jul		
	Aug				Aug		
	Sep			Close of comment period; staff summarize public comments	Close of comment period; staff summarize public comments		Sep
	Oct	Council Final Action (chooses Preferred Alternative)	Council Final Action (reviews comments, selects a Preferred Alternative)	Council Final Action (reviews comments, selects a Preferred Alternative)	Oct		
	Nov	Staff revises analysis as needed			Nov		
	Dec	NMFS prepares FMP amendment package including finalizing the EA, FONSI, and proposed regs	NMFS prepares FMP amendment package including finalizing the EIS and proposed regs		Dec		
	2005	Jan	Based on assumption that NMFS will take 6 months to prepare amendment package; actual timing may be shorter.	Final EIS is filed between Jan 05 and April 05;			Jan
	Feb	ROD is filed between Feb 05 and May 05, but minimum 30 days after Final EIS;		Feb			
	Mar	Based on assumption that NMFS will take 6 months to prepare amendment package; actual timing may be shorter.					
	Apr			Apr			
	May			May			
	Jun	Amendment package submitted to the Secretary of Commerce		Jun			
	Jul			Jul			
	Aug	Amendment approved, program implemented		Aug			

** Based on assumption that the public does not raise an important consideration following the NOI. If significant changes are needed to the EIS, then the release date for the DEIS would be October 04 followed by Final Action in December 04. Program implementation would be October 2005.

Status Report for the NPFMC Enforcement Committee on the Development of
Enforcement/Monitoring Objectives and Issues for Sector Allocations
Under BSAI Amendment 80

Prepared by NMFS Alaska Region Staff
January 2004

Although final alternatives for sector allocations under Amendment 80 to the BSAI FMP still are being refined by the Council, options may range from the allocation of select target species to allocation of all target/non target groundfish and PSC species to up to 10 different sectors. One implementation challenge under Amendment 80 will be to determine how to monitor the allocation of PSC and other non-target catch that is discarded. Retained catch in a multi-species fishery generally can be verified based on landed catch or product.

Amendment 80 sector allocations could allow sectors to exercise market trades of PSC or other discarded species that pose potential harvest limitations. These trades could occur within a cooperative or, potentially between cooperatives. Tradable or constraining quotas of non-retained species may create incentives to misreport, because in some cases no record exists of a physical good that has been exchanged or caught. The monitoring issues associated with this type of system, have not been fully addressed in existing BSAI monitoring programs. Under the AFA, for example, only pollock is allocated and it is required to be fully retained. The CDQ monitoring program attempts to monitor all catch, however catcher vessels less than 60 ft LOA are not required to carry an observer based on the requirement and presumption that all catch, with the exception of PSC, be retained until it is landed. The amount of groundfish harvested by these vessels is a small percentage of the CDQ harvest and the total groundfish TAC. This approach for Amendment 80 may raise monitoring issues due to the magnitude of sector allocations being considered under this amendment relative to CDQ harvest amounts by small vessels.

This progress report summarizes NOAA Fisheries initial effort to document monitoring and enforcement issues for Amendment 80. For guidance, we have reviewed other monitoring programs used for target fishery and non-target fishery allocation, as well as recent prosecution of cases addressing presorting of catch and attendant corruption of catch data. We will be working to complete an assessment of enforcement and monitoring issues that eventually would be included in the analysis of alternatives for Amendment 80. We would like to share our preliminary work with the Enforcement Committee for initial review and input.

A general objective for catch enumeration and monitoring in groundfish programs that are similar to Amendment 80, such as the CDQ and AFA programs, has been to establish clear

standards for catch monitoring. The Amendment 80 sector allocation program has some similar features to these other sector and community allocation programs, yet may present some new challenges for fishery managers that we identify below. We are proposing a data quality standard for the sector allocations under Amendment 80 and have posed questions on associated enforcement, compliance and monitoring issues. These standards were derived, in part, from the expectation that for some BSAI groundfish fisheries, our current monitoring may not have (1) sufficiently representative samples taken from observed hauls, and/or (2) have a normal distribution in fishing locations and practices between hauls that are observed and unobserved.

We propose that catch monitoring programs should adhere to two basic standards:

Standard 1: Catch data (amounts by species) must be accurate. Sources of bias should be understood and controlled.

Standard 2: Systems for collecting data and determining catch amounts by species should incorporate checks and balances, produce verifiable documentation, be monitored in near real-time, and resolve problems quickly to minimize the extent of substandard data collected.

Issue 1: The methods and tools applied to monitor the BSAI groundfish fisheries are rigorous and we believe them to be the best in the nation. However, we also recognize that the accuracy of reported catch can be problematic. This issue is of increasing concerns as we become more aware of strategies employed by some fishing operations to corrupt catch data and influence catch estimates in their favor. The incentives that drive this behavior likely would be aggravated under Amendment 80 where an increased number of sector allocations could pose increasing constraints to a sector's ability to continue fishing.

We recognize that other sources of error and bias in catch data exist that are independent of industry influence and that are inherent in the catch data sampling environment present in the Alaska groundfish fisheries. Some issues associated with these inherent sources of error along with industry controlled sources of bias are described below. We note that this list does not convey information on the frequency or magnitude of the bias or error caused by industry techniques used to influence catch estimates. We will be in a better position to present additional insight on these factors to the Enforcement Committee in April.

Data issue Type A: Potential Sources of industry biasing of catch data

- Pre-sorting of catch before weighing, affecting the accuracy of observer samples:

The accuracy of catch estimates can be compromised either by the strategic or systematic biasing of observer samples or by controlling the distribution of species on a delivery belt. One specific enforcement case involves a crew that intentionally removed PSC species prior to catch passing through the observer sampling point.

- Altered fishing behavior with and without observer sampling:

Fishing behavior in mixed stock fisheries may be differentially altered by vessels without observers, in comparison those vessels that are observed. For vessels with 100% observer coverage, it is possible for fishing behavior to be strategically or systematically altered during the periods that hauls are not observed.

- Potential for scale tampering:

Total catch weights at scales may be altered on a vessel by unauthorized adjustments to flow scales or other types of scales critical to sampling.

- Vessel operator influence and potential intimidation of observers to influence accuracy of catch estimates (MRAG comment):

Accuracy of catch data may be impacted by the economic relationship between the vessel operators and observers. Observers are essentially compensated by the vessel operator. Vessel operators may exert some control over the well-being of observers that indirectly influence efforts to obtain representative samples.

- Incentives for Skippers to under-report.

When target species are allocated, incentives exist to under report catch weights. If at-sea scale weight of catch are not required and vessels have less than 100 percent of the hauls observed, skippers may have incentives to under-report total weight.

- Misreporting of product weight by species:

Round weights by species are estimated using PRRs and product weights recorded from buying operations. Incentives may exist to misreport product weight, because this may allow for additional harvests under a specific allocation for target or non-target species catch than intended.

Data Issue Type B: Sources of sample bias in catch data (not industry generated)

- Competition between Observer providers (based on MRAG report comment).

Competition between observer providers for supply of observers may optimize observer behavior that is more sympathetic with the interest of fishing operations rather than behavior and practices that would lead to unbiased sampling.

- Incentives for Observers to under report PSC (based on MRAG report comment)

Observers may have incentives to under report PSC as it may prolong the fishing season, and increase observer compensation due to influence on the duration of the fishing season. If PSC limits are reached early, seasons could be closed at an earlier date.

Data Issue Type C: Potential Source of natural uncertainty in catch data

- Within haul variability in observer sampling:

Systematic differences may exist in the accuracy of sampling accuracy between observers. For example species ID skills may vary between observers.

- Natural sources of error in random samples

Error is associated with our assumption of random sampling of catch because species are not necessarily distributed in each haul in a random manner. They stratify by vessel type, tow speed, location at capture, depth of haul, etc. Some species have different flow characteristics and may systematically distribute themselves in the cod end in a manner that we do not capture in our effort to collect a random sample.

- Natural error in product recovery rates.

Product recovery rates are derived from highly aggregated data from multiple vessels fishing under varying conditions, and introduce some error to estimates of retained catch.

Issue 2: For sector allocations of discarded species to be enforceable, we assume that a high level of compliance in accurate reporting of PSC, other discard amounts, retained directed catch, and incidental catch is necessary. While 100% compliance is a default goal for any regulation, identifying how Amendment 80 could increase incentives to misreport or increase demands upon NMFS for collecting higher quality catch data is a fundamental step in developing a recommended strategy for monitoring and enforcing sector allocations under this amendment.

Often, insufficient resources exist in managed fisheries to assure that operators will be 100% compliant with regulations that require reported information on catch. Two general approaches have been developed to compel compliance catch reporting. One approach is to rely on self reporting systems. These may have some value if powerful economic incentives exist to influence participants to accurately report all components of catch. The design features of given sectoral allocation may be a key factor in inducing compliant reporting. An entirely different approach is to require more intensive inseason monitoring such as observer coverage, possible

improvements in electronic monitoring technology, and devices for weighing all catch. The benefits of a given monitoring and enforcement requirement in compelling a high level of compliance may be greater in some fisheries than in others.

Issue 3: Some additional data may be required to identify and prosecute a probable violation of pre-sorting of PSC or other non-retained catch before an observer is able to sample a haul.

For some regulatory violations, data for prosecution are often sparse or of limited quality to withstand the test of judicial review. Given that the Enforcement community would like to have better data to successfully prosecute suspected violations that could arise from Amendment 80, improvements in the collection and verification of data on discards is needed.

Issue 4: If misreporting incentives under Amendment 80 change the accuracy of catch data, this may influence management error. Chronic misreporting poses an increased risk to the conservation and management of different species.

To the extent that a catch monitoring system designed for status quo fisheries did not produce accurate data under a new sector allocation program, the resulting error in management likely would *not* fall uniformly across all fisheries and species. Testimony in a recent enforcement case indicated that presorting occurred for both halibut and red rockfish, with the intent of reducing the probability of an over fishing closure for these rockfish species. This level of bias could have a significant adverse impact on a rockfish stock, even in small amounts, because the overfishing level for these species is so small relative to harvest levels of target species that catch them incidentally.

Issue 5: Creating smaller management units under Amendment 80 may impact the number of observers necessary to monitor a sector allocation. A new sector that is smaller in size than a previously managed fishery unit, could, without any concerted intent by the participants to form a cooperative, be under-sampled compared with the larger fishery unit that it previously was in.

Issue 6: The formation of voluntary cooperatives could create incentives to misreport discards for a given sector. Reasons for concern also exist about collaborative efforts among participants in a cooperative to under report some species, especially if a free exchange of PSC quota between cooperatives is not an option. Understanding the magnitude of these concerns will aid in the development of an optimal monitoring program for Amendment 80.

Concluding Comment: The CDQ and AFA catch monitoring programs could serve as a model for sector allocations under Amendment 80. Both monitoring programs were designed with data quality standards in mind. We recognize that these programs may not meet all standards for data quality that we would propose now. However, to the extent possible, we hope to pursue an evaluation of these programs and describe how effectively and efficiently they meet proposed data quality standards before using them as de facto template programs for sector allocations under Amendment 80.

UNITED STATES SEAFOODS, L.L.C.

January 27, 2004

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99601.

Re: C-3 IR/IU -- Amendments 80A and 80B

Dear Madam Chair:

I am writing on behalf of United States Seafoods, LLC ("USSF") to comment on Amendment 80 which was streamlined at the last Council meeting and sent forward for analysis. USSF manages three catcher processors and three catcher vessels participating in the BSAI non-pollock trawl groundfish fisheries. We are concerned that some essential options were removed from the IR/IU package at the December meeting.

Specifically, we believe that the removal of all of the post-AFA catch history options from the Amendment 80 package ignores the current status of the non-pollock groundfish fisheries. If the analysis goes forward as is without any status quo options, you will not have all the information necessary to make a fully informed decision. Moreover, without any post-AFA catch history years the Amendment 80 analysis will not be consistent with the Magnuson-Stevens Act ("MSA"). Additionally, we believe that a number of important options are missing from Amendment 80B.

Therefore, we ask that you add the following options back into the IR/IU analytical package:

- To 80A Issue 1 Component 5. Add sector catch history years from 2000-2003;
- To 80B Component 4. Add 100%;
- To 80B Component 6. Add 1998-2003, but each vessel drops its two lowest annual catch years during this period; and
- To 80B Component 6. Add 2000-2003, but each vessel drops its lowest annual catch during this period.

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Also, we request that you direct staff to analyze and address a number of legal and management issues raised by Amendment 80B. Specifically, we are concerned that Amendment 80B has the potential to permanently engineer controversy into to the H&G sector. Also, in our view Amendment 80B sets the bar too low in addressing environmental and community concerns. Accordingly, we ask that you direct the Amendment 80B analysis to consider the following:

- **Formation requirements for the H&G cooperative that protect the interests of minority stakeholders and will make the cooperative more responsive to broader concerns; and**
 - **Protections for open access or an appeals process to equitably balance allocations between the H&G cooperative and open access fisheries.**
1. **Without post-AFA catch history options Amendment 80 is inconsistent with the MSA.**

IR/IU which began as a retention and utilization program has been transformed under Amendment 80 into a comprehensive rationalization program for the non-pollock groundfish fisheries of the BSAI.¹ The MSA requires that when the Council and Secretary of Commerce develop such programs restricting access to fisheries, they "take into account" the following:

- (A) present participation in the fishery,
- (B) historical fishing practices in, and dependence on, the fishery,
- (C) the economics of the fishery,
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries,
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities, and
- (F) any other relevant considerations.²

The MSA is clear, the Council has discretion to limit access under a rationalization program, but it must "take into account" the section 1853(b)(6) factors when doing so. These factors weigh heavily towards recency, economic dependence on the fisheries, whether the vessels participating in the fisheries in question have alternative fisheries available to them, and communities.

¹ The scope and significance of this program warrants the highest level of NEPA review.

² 18 USC § 1853 (b)(6).

In terms of the BSAI groundfish fisheries, the section 1853 factors simply cannot be "taken into account" without looking at a post-AFA snapshot. First, the non-AFA sectors are presently participating in the BSAI non-pollock groundfish fisheries to an extent that the AFA sectors are not (the obvious exception to this general rule is the AFA catcher-vessel sector's continued participation in the Pacific cod fishery). The H&G sector for example, is presently participating in each of the six groundfish species potentially allocated under Amendment 80, while the AFA trawl sectors are presently participating in only two. Also, because of the economics of the pollock fishery relative to the non-pollock fisheries, the AFA sectors cannot be said to be dependant upon the BSAI non-pollock fisheries. On the other hand, because non-AFA vessels are prohibited under the AFA from participating in the directed pollock fishery they are completely dependent on the non-pollock groundfish fisheries, and incapable of engaging in the BSAI's single largest and most valuable fishery.³

The lack of any post-AFA options represents a material defect in the Amendment 80 analytical package. Amendment 80A in particular, runs contrary to the section 1853(b)(6) direction by including the pre-AFA catch history years of 1995-1997 as a stand alone option, without including any post-AFA options. The Council simply cannot "take into account" the section 1853(b)(6) factors if a post-AFA snapshot is not analyzed as part of the Amendment 80 package. Therefore, we ask that the 2000-2003 options be added back into 80A and 80B, and that 1998-2003 drop 2 be added to 80B.

2. A 100% formation option should be added to 80B.

All of the catcher processor cooperatives that we are aware of require the participation of all of the eligible vessels. The success of the Pollock Conservation Cooperative, the Whiting Coop, and the Scallop Coop suggests that the 100% voluntary cooperative model works and is appropriate for the H&G cooperative. The 100% voluntary coop model also has important management and due process benefits, and will likely lead to a more responsive and proactive H&G coop.

³ As an example, one of the vessels under USSF management is the SEAFREEZE ALASKA, ("SFA"). The SFA was built in 1967 as this nation's first factory trawler, and it was the first such U.S. vessel operating the North Pacific. The vessel has participated in the pollock and non-pollock groundfish fisheries of the BSAI since the early 1980's. However, it did not qualify under the AFA because it did not participate in the directed pollock fishery during one year (1997). Because of this the SFA is unable to continue its participation in the directed pollock fishery. It is now an H&G vessel and completely dependant on the non-pollock groundfish fisheries of the BSAI.

The 100% requirement insures that all of the stakeholders have a role in creating the rationalized fishery. While you will no doubt hear that the diversity of the H&G sector will make coops difficult to achieve under the 100% rule, the small number of H&G management entities (7-9 depending on the criteria used) suggests otherwise. Under the 100% participation model minority interests cannot be trampled by the majority and individual stakeholders will not feel that they have been disenfranchised by Amendment 80. As is evidenced by the Chignik salmon cooperative, a rationalized fishery co-existing with an open access fishery (as is possible under 80B) is very likely to exacerbate the controversies surrounding rationalization. We believe that a coop formation percentage that is less than 100%, increases the likelihood that minority stakeholders will be disenfranchised, engineers conflict into the rationalization scheme, and greatly increases the possibility that the Council action on Amendment 80B will be challenged.⁴

Furthermore, the percentage required to form a coop will also determine how responsive the cooperative will be to a broad range of environmental and community concerns. If the percentage is less than 100% (and as it moves lower) the cooperative becomes by definition less responsive to broader concerns. In short, the lower the percentage required to create the cooperative the more likely it is that the lowest common denominator within the coop will govern and that the cooperative will develop a business as usual approach. [For example, assume that the coop formation percentage is set at 80%, and that 80% of the vessels are already in agreement regarding the cooperative rules. The remaining vessels have no ability to affect the cooperative rules because they are not necessary for the formation of the coop. Those vessels have no way to get their concerns heard by the cooperative whether they want the coop to recognize higher retention rates, to be responsive to the Pribilof Island communities' concerns regarding localized halibut depletion, or to develop equitable reporting rules for the <125 foot vessels. The vessels with the minority viewpoint simply must accept the majority's views on these and other issues -- or go into open access. In contrast, in a coop created under the 100% rule those minority vessels can get the cooperative to be proactive and responsive.] We hope that Amendment 80B will lead to an H&G cooperative that will become a vehicle for change, and that Amendment 80B does not become just another entitlement program that rewards past performance. Therefore, we ask that a 100% option be added to 80B component 4.

⁴ For the above reasons we believe that there is some merit in exploring protections for the open access fishery and an appeals process to balance the cooperative and open access fisheries.

3. 1998-2003 drop 2 should be added to 80B Component 4.

The variety and complexity of issues in play within the H&G sector make individual vessel catch history inherently problematic. Accordingly, we believe that allocating H&G sector catch history down to the individual vessel level makes for bad policy and is inappropriate for Amendment 80B.

However, if you decide that less than 100% of the eligible vessels should be allowed to form a cooperative, you will also need to make a decision regarding a methodology to determine the cooperative and open access allocations.⁵ As with the rest of Amendment 80 this decision must be consistent with MSA direction on allocations, limiting access to fisheries, and bycatch. We believe that post-AFA catch history years (2000-2003 drop 1) are the most appropriate set of years for determining the allocations between the H&G cooperative and open access fisheries. As you can imagine there are a variety of opinions on this particular issue. As we understand things there is general consensus within the rest of the sector that catch history years since 1998 should be used in this determination (see attached Groundfish Forum Resolution). While we cannot support this rather narrow view of cooperative management, we believe that a reasonable compromise is attainable. A reasonable compromise position would be to allocate between the H&G cooperative and open access fisheries according to vessel catch history from 1998-2003 allowing each vessel to drop two years.

The 1998-2003 drop 2 option was originally proposed by the IR/IU Technical Committee and was removed at the December Council meeting. This option is an equitable compromise that is consistent with previous Council actions, meets industry concerns, and complies with applicable law. Using 1998 as a starting point makes some sense given that 1998 was the year that the H&G sector appeared to wake up to the issue of discards and started to make some steps towards higher retention. Given that we are deciding this issue within the context of IR/IU, it is imperative that any 80B allocations reflect a post IR/IU reality. In order to be fully consistent with IR/IU, however, any allocations within the H&G sector would ideally be based on vessel performance under the Amendment 79 groundfish retention standard.⁶

⁵ In response to the problems associated with multi-species trawl catch history the British Columbia Multi-Species program went part ways and allocated 30% of its allocations according to vessel length.

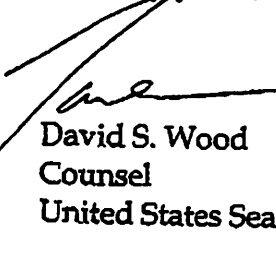
⁶ A possible approach is to have a phased-in formation percentage that makes coop formation easier as the GRS retention targets increase.

The drop 2 years option is an important piece of the allocation methodology that builds flexibility into the allocation process, reflects the issues in play in the non-pollock groundfish fisheries, and complies with the MSA. National Standard 6 in particular requires that, "conservation and management measures take into account variations among and contingencies in ... catches."⁷ Building flexibility into the process allows for individual vessels to account for the changing circumstances of the H&G participants and the ever changing nature of the multi-species trawl fisheries. It also allows responsible vessels to mitigate the punitive impacts of other vessel's fishing behavior on their catch history. The responsible vessel has in many cases already paid an economic price - allowing them to drop a few years when someone else's fishing practices stunted their production is only fair and is consistent with applicable law.

In conclusion, we ask that the 2000-2003 option be added back into Amendment 80A. And, that 2000-2003 drop one, 1998-2003 drop two, and the 100% formation requirement be added to Amendment 80B. We also ask that you consider some of the other issues raised in this letter.

Thank you for the opportunity to submit these comments. If you or any other Council members have any questions regarding U.S. Seafoods' position on these issues we will be happy to address them at the upcoming meeting in Anchorage. We also look forward to working with you on Amendment 80 as this process moves forward.

Sincerely yours,



David S. Wood
Counsel
United States Seafoods

⁷ 16 USC § 1851 (a)(6). (It is worth noting that both this Council and Congress have a long history of dropping years in allocation formulas, even in fisheries that do not have complex catch history issues. For example: opilio, BBRKC, PRKC, PBKC, black cod, and the AFA catcher vessel cooperatives all dropped a year; bairdi, the GOA rock fish program and halibut dropped all dropped two years. The Pacific Conservation Cooperative, the High Seas Catcher Cooperative, the Whiting Cooperative, and the Scallop Cooperative notably do not require any allocation formula as they operate under the 100% participation model.)

Alaska Crab Coalition

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JAN 28 2004

N.P.F.M.C.

DATE: January 28, 2004

TO: Stephanie Madsen, Chair
NPFMC
Anchorage, AlaskaFROM: Arni Thomson, Executive Director RE: DECEMBER NPFMC IR/IU MOTION CLARIFICATIONS ON
BYCATCH REDUCTION OPTIONS IN AMENDMENT 80B

Although the NPFMC Newsletter and the IR/IU motion on state that bycatch reduction options for Amendment 80b, component 2—now include by reference, the bycatch reduction options from Amendment 80a, component 9, 5% to 40% reduction options—they are not explicitly listed in Amendment 80b.

Without the bycatch reduction options being explicitly listed in Amendment 80b, it is confusing and difficult for not only uninformed readers but others from industry to clearly see what the options are. Since the amendments are separate and not linked, as discussed at the December meeting, there is even more reason to clearly list the options in Amendment 80b as well as in Amendment 80a.

The ACC is simply requesting the NPFMC list the above mentioned bycatch reduction options from Amendment 80a, in Amendment 80b as part of the analysis.

Groundfish Forum

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Seattle, WA 98199
(206) 213-5270 Fax (206) 213-5272
www.groundfishforum.org

January 28, 2004

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

Re: Agenda Item C-3: IR/IU

Dear Madam Chair,

Groundfish Forum is a consortium of 'head and gut' factory trawlers operating in the Bering Sea, Aleutian Islands and Gulf of Alaska. Our members are among those most strongly impacted by 'Improved Retention/Improved Utilization' (IR/IU) regulations. We would like to take this opportunity to comment on changes made to the elements and options for Amendments 80a (sector allocations) and 80b (non-AFA coops) at the December Council meeting.

We have two major concerns: the changes made to Components 6 of Amendment 80b (years used for history calculations) and the crafting of the TAC Threshold in Amendment 80a (Issue 3, Component 10).

Years used for non-AFA coop catch history calculations

The Components and Options for Amendment 80b which came out of the October 2003 Council meeting included a wide range of alternatives for determining catch history for the non-AFA Trawl CP coops, based on recommendations by the IRIU Technical Committee and prior Council action. The range was intentionally large; this is a very diverse sector with flexible fishing plans on multi-species targets, so any vessel's catch can vary widely from year to year.

At the December meeting, the Council voted to reduce the number of alternatives in this component from 16 to 6 in the interest of streamlining the analysis. While we appreciate the need to do this, we are extremely concerned that the non-AFA Trawl CP sector (the ONLY sector affected by this section) was not consulted prior to deleting alternatives. Further, the analysts have told us that once the initial program is set up, it is very little work to add alternative year sets. With this in mind, we request the Council to add the option of the years 1998 - 2002 back into the analysis.

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TAC Thresholds

At the December 2003 meeting, the Council added Component 10 ('Underutilized Species Threshold') to Amendment 80a to allow fishers with little or no history to enter certain fisheries (so-called 'underutilized') which do not reach TAC by the end of the year.

Before addressing this topic, it is important to remember that the primary motivation for rationalization is IRIU: to improve retention and utilization so as to achieve the OY (National Standard 1) and reduce bycatch (National Standard 9). The IRIU process is *not* intended to reserve fish for other sectors who might one day want to enter a different fishery. The full benefits of rationalization – better retention, better utilization, more efficient operations and improved safety – should be awarded to the traditional participants at any level of TAC before considering opening the fishery up to new entrants.

The term 'underutilized' is actually not appropriate in the Bering Sea. All TACs in the Bering Sea/Aleutian Islands are essentially arbitrary (except that they must not exceed ABCs) because they are interdependent under the 2.0 million ton cap. Whether a fishery reaches TAC or not depends only on how high or low the TAC is set, which in turn depends directly on the size of other TACs. Further, fisheries that do not reach TAC generally close due to some other limiting factor such as PSCs, not because the participants lose interest.

For any fishery, it is possible to set a TAC that remains within the 2.0 million ton cap and yet exceeds the ability of that fishery to harvest it. In this situation, the goal should be to establish a fair and equitable threshold that does not take away the benefits of rationalization from the existing fishery, but allows the responsible, managed entrance of other fishers, who have the appropriate PSC, to harvest above the threshold point.

We believe that Component 10 does not accomplish this goal. It has critical flaws which will make it unreasonable and untenable. Among these; 1) it includes non-target species (Alaska plaice), 2) it includes species which are currently harvested at or above ITAC (TAC – CDQ) (yellowfin sole and Alaska plaice), 3) it includes an option to base the threshold on retained catch rather than total catch, and 4) it includes an option (10.2.2a) which would set the threshold at historic catch, preventing current participants from increasing their harvest of these species before opening the fishery up to other sectors.

To illustrate our concern with this component, consider the following hypothetical situation:

A particular species has a historic total catch of 100,000 mt, 80% (80,000 tons) of which has been taken by Sector A while the remaining 20% (20,000 tons) is discarded as bycatch in other sectors. If Sector A has a 75% retention rate, the actual amount it retains is 60,000 tons. Since Sector A is the only group which retains this species, 60,000 tons represents all of the retained catch.

Component 10 states that the 'utilization threshold' used as a basis for threshold calculations may be based on either total catch or retained catch (Suboption 10.2.1). If retained catch is used, 60,000 tons is the 'utilization threshold' for this species. The component also states that 'sector allocations may apply only to the historical harvest threshold (utilization threshold)'; in other words, the total allocation to all sectors could not exceed 60,000 tons; any TAC above this amount would be unallocated.

If sector allocations are based on historic catch (Amendment 80a, option 4.1), Sector A (which targets the species) would receive 48,000 mt (80%) and other sectors would receive 12,000 mt (20%).

As a result, the sector which has historically caught 80,000 tons and retained 60,000 tons will be allocated only 48,000 tons. Other sectors, which have historically needed 20,000 tons for bycatch, will be allocated only 12,000 tons.

The unallocated portion of the catch becomes available to other sectors (even those with no historic catch) when the TAC reaches a given percentage of the utilization threshold. For example, if Option 10.2.2a (100%) is chosen, the threshold is triggered whenever the TAC exceeds 60,000 mt. – even though the historic total catch has been 100,000 mt.

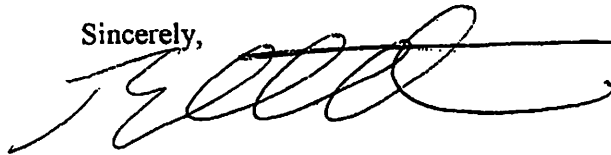
There are various combinations of options in this component which could change the absolute amounts, e.g., the utilization threshold could be based on the total catch rather than the retained catch, or sector allocations could be determined by a different formula. In the end, however, it is very likely that the sector most dependent on this species will not see any benefit from 'rationalization' because its allocation will be less than its historic and/or potential catch, and there is no assurance that it will be able to harvest enough of the unallocated portion of the TAC to make up the difference. Furthermore, the 'race for fish' will continue in this sector, and will be joined by participants of other sectors who (because of the benefits of rationalization in their sectors) are now able to pursue the unallocated TAC.

Finally, the fishery described above is *exactly* the type which IRIU was designed to address. Rationalization, growing out of IRIU, is intended to give fishermen the tools to improve retention and utilization of these types of species because their allocations are secure and they no longer have to race to catch them. These are also the fishermen who will be subject to the Groundfish Retention Standard (Amendment 79) and will, more than any others, need the tools and benefits of rationalization to meet that regulation.

As written, Component 10 could completely subvert the intent of rationalization by leaving the fisheries which most need it in even worse conditions than at present. This is unconscionable.

Thank you for the opportunity to offer our concerns and recommendations for Amendments 80a and 80b. The structure of these amendments is extremely important to our members, who have a long history in the fisheries which will be impacted the most. We stress again the absolute necessity of keeping these amendments linked so that our sector will have the ability to coop and, with this tool, be able to continue to improve both the retention and utilization of our catch.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Luttrell', written over a horizontal line.

T. Edward Luttrell
Executive Director

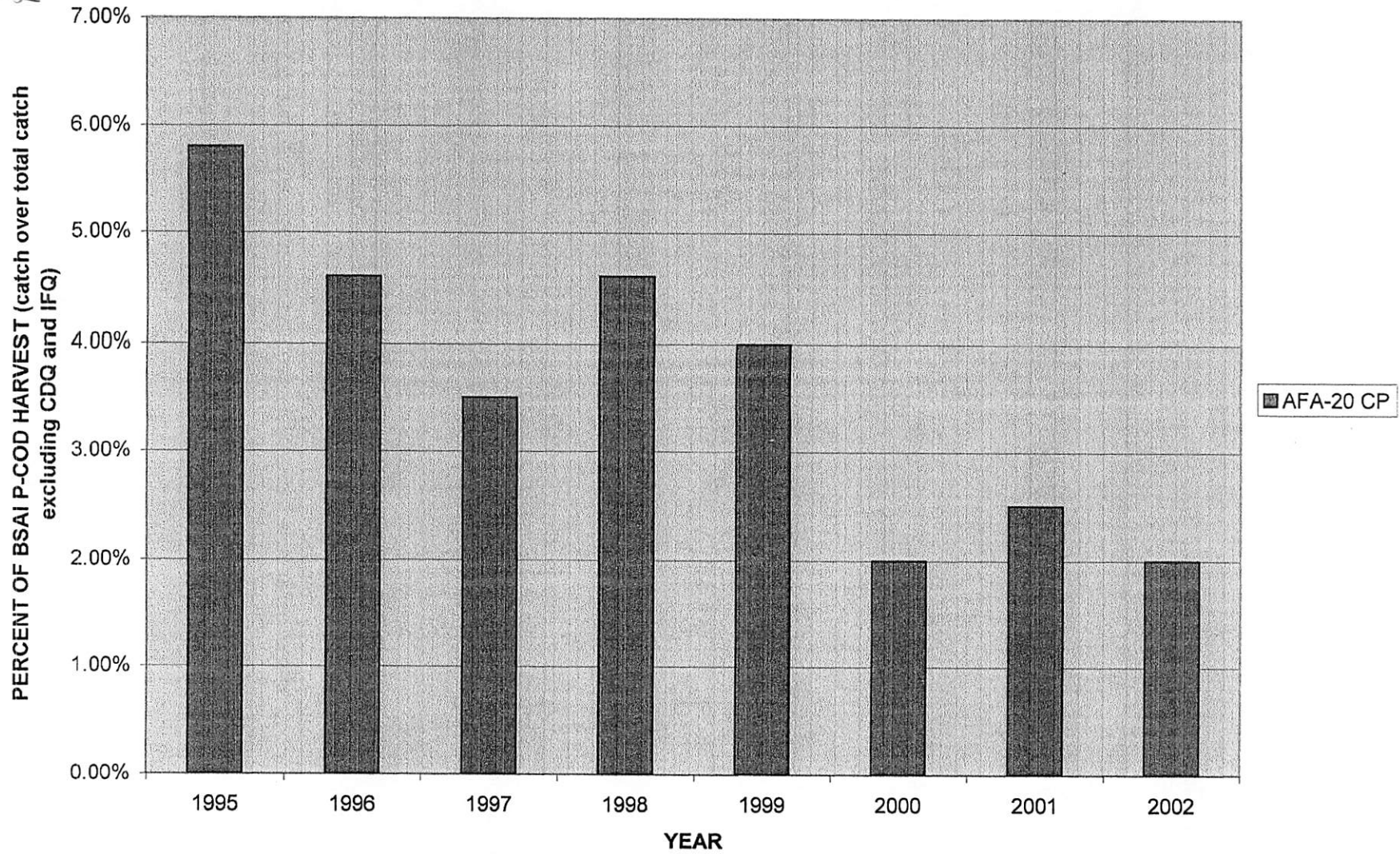
**PUBLIC TESTIMONY SIGN-UP SHEET FOR
AGENDA ITEM C-3 RIRU**

	NAME (PLEASE PRINT)	AFFILIATION
1	Dave Wood	US Seafoods
2	Mike Szymanski	Fishing Cap Alaska
3	GERRY MERRIGAN	PROWLER FISHERIES
4	TERESSA Kandianis	Kodiak Fish Co.
5	Donna Parker	Arctic Storm
6	Susan Robinson Ed Wittrell, Lori Swanson, Szymanski	Ground Fish Forum + Friends
7	THORN SMITH	MPLA
8	Paul Mac Gryn	At-Sea Processors
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

C-3
Gerry Morigan
Proctor Fisheries

BSAI P-COD HARVEST BY AFA-20 CP SECTOR



AFA 9

Section 209 extinguishes any claims related to catch history for the AFA 9.

16 USCS 1851, Section 209 “*List of ineligible vessels*”.

“Effective December 31, 1998, the following vessels shall be permanently ineligible for fishery endorsements, and any claims (including related to catch history) associated with such vessels that could qualify any owners of such vessels for any present or future limited access system permit in any fishery within the exclusive economic zone of the United States (including a vessel moratorium permit or license limitation program permit under the authority of the North Pacific Council) are hereby extinguished:” [This section is followed by a list of nine named vessels, aka the “AFA 9”].

BSAI P-COD HARVEST BY FREEZER-LONGLINE SECTOR

