Public Testimony Sign-Up Sheet

Agenda Item C-3(c) GOA pollock Trip Limit

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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.

AGENDA C-3(c)
DECEMBER 2007

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver
Executive Director

DATE: November 26, 2007

SUBJECT: Gulf of Alaska Pollock Trip Limit

ESTIMATED TIME
8 HOURS
for all C-3 issues

ACTION REQUIRED

Review the Gulf of Alaska Pollock Trip limit RIR/IRFA for consideration of final action

BACKGROUND

In October, the Council reviewed the draft analysis of the Gulf of Alaska pollock trip limit. The Council requested that the draft be updated to include trawl pollock landings throughout the Gulf of Alaska (including areas 630 and 640). The revised draft, which was mailed out on November 9 and attached as Item C-3(c)(1), incorporates that change.

New information in the analysis shows increased instances where vessels participating in the Gulf of Alaska trawl pollock fishery made landings greater than 300,000 pounds (136 mt) during a calendar day. In the previous report, where only landings from management areas 610 and 620 were included, there were 187 instances where vessels made daily landings greater than 300,000 pounds over the period 1999-2006. When the analysis was extended to be Gulf-wide (including areas 630 and 640 - consistent with the wording in current regulation), the number of instances where daily trawl pollock landings greater than 300,000 pounds in a calendar day occurred increased to 241 over the period 1999-2006.

The Alaska Board of Fisheries has been considering action in State waters on the trip limit issue. At their November 2007 meeting in Homer, the Board of Fisheries passed a motion to introduce a new regulation with language similar to Alternative 2 (a) of the proposed Council action. Details of the Board of Fisheries action will be presented in B-4, but they did not include in their action the second portion (Alternative 2 (b)) of the Council's proposed action shown below.

> *(b) The cumulative amount of pollock harvested from any GOA regulatory area landed by a trawl catcher vessel cannot exceed the daily trip limit of 136 metric tons times the numbers of calendar days the fishery is open in the respective regulatory area.*

At their November meeting, the Board of Fisheries received information from the State of Alaska Attorney General's Office expressing concern that the State would have difficulty enforcing the proposed regulation in 2 (b), since it includes both landings in State and Federal waters.

Alternative 1, the no action alternative, would continue the current trip limit regulation with no change. The language in Alternative 2 is intended to more effectively restrict trawl pollock harvests in the Gulf of

Alaska and allow enforcement of the trip limit regulation as the Council intended when the limit was initially implemented.

At the October 2007 meeting, staff advised the Council that they intended to meet the National Environmental Policy Act (NEPA) requirements for this action through a Categorical Exclusion. An application was filed with NMFS on October 16, 2007, requesting a Categorical Exclusion Determination under NEPA for the proposed action. Council staff met with NMFS staff via teleconference on October 23rd to discuss this matter, and was advised that the exclusion would be appropriate in the opinion of the NOAA General Council's office. Therefore, NEPA considerations should not be an impediment to passage of this amendment.

Public Review Draft

REGULATORY IMPACT REVIEW/REGULATORY FLEXIBILITY ANALYSIS

Gulf of Alaska Pollock Trip Limit

NPFMC
November 9, 2007

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1.0 INTRODUCTION

The Gulf of Alaska pollock trip limit has been before the Council a number of times, dating back to the late 1990s. The initial Council action was in 1999, with a corresponding action for State waters from the Alaska Board of Fisheries the same year. The Council has been advised through public testimony that a problem exists with the current trip limit regulation. This report evaluates the existing situation and analyzes two potential alternatives to resolve the problem.

The Gulf of Alaska is the focus of this proposed action. The boundaries of the proposed action are detailed in Figure 1. Management area 610 includes the entire Western Regulatory Area in the map. Management area 620 is compromised of the western half—the Chirkiof District—of the Central Regulatory area. The Kodiak area is management area 630 and West Yakutat is area 640.

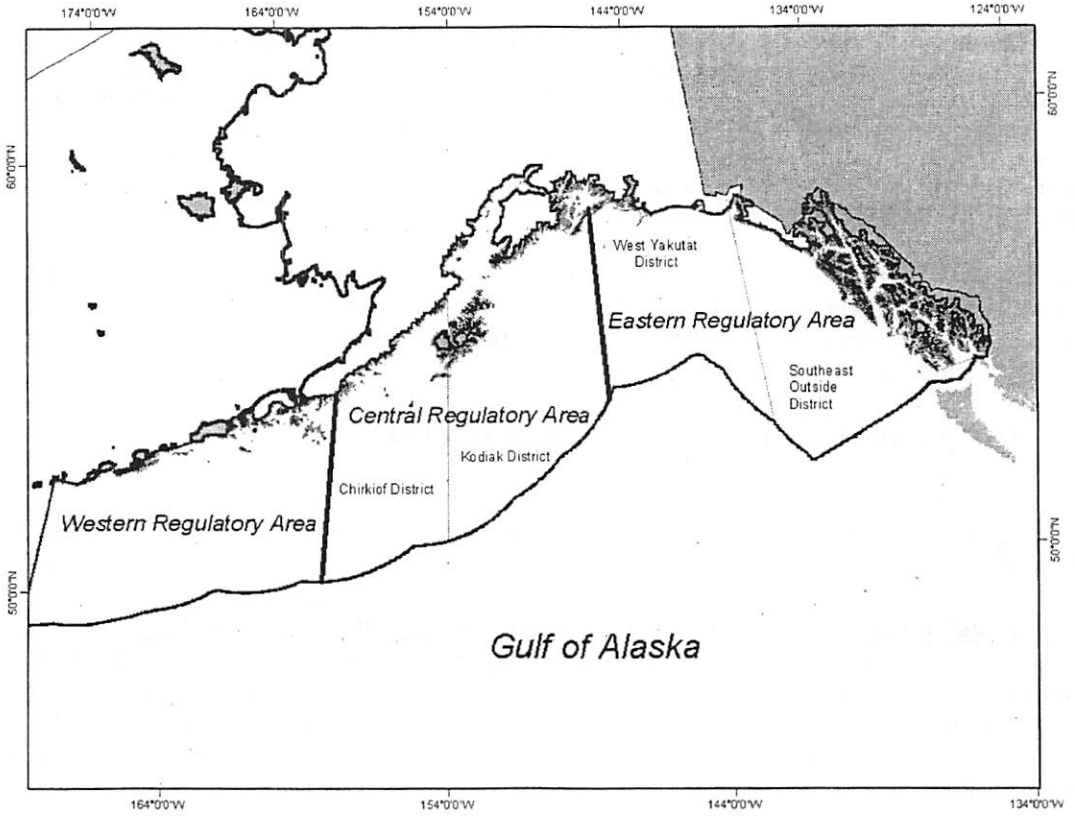

Figure 1. Management Areas in the Gulf of Alaska

Trip limits for pollock were implemented as part of a package of sea lion mitigation measures adopted in 1999 to allow the fishery to continue in the Gulf of Alaska (GOA). Alternative 4 of the Steller Sea Lion Protection Measures Final Supplemental Environmental Impact Statement (November 2001), established in the National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) process of developing protections for Steller sea lions, was determined to be the preferred alternative. When it was selected as the preferred alternative, an ESA Section 7 Consultation was reinitiated for the fisheries management measures embodied in Alternative 4 (including the GOA pollock trip limit) resulting in the 2001 Biological Opinion and Incidental Take Statement. The 2001 Biological Opinion concludes that

this suite of management measures would not likely jeopardize the continued existence of the western or eastern populations of Steller sea lions.

The language in the Steller sea lion regulations describing the effects of the trip limit measure is shown below:

> *The 300,000 lb (136 mt) trip limit for catcher vessels harvesting pollock in the directed pollock fisheries of the GOA at § 679.7 supports temporal distribution objectives and is maintained by this rule. A catcher vessel fishing for groundfish in the GOA will be prohibited from retaining on board more than 300,000 lb (136 mt) of pollock harvested in the GOA any time during a trip. This trip limit will not exempt vessels from existing regulations that require 100 percent retention of pollock when directed fishing for pollock is open. A vessel would have to stop fishing for pollock during a fishing trip before the 300,000 lb (136 mt) trip limit is reached to avoid a violation of either the 300,000 lb (136 mt) trip limit or the 100 percent retention requirement for pollock.*
>
> *In addition, § 679.7 continues to prohibit vessels from operating as pollock tenders in the GOA east of 157°00' west longitude to prevent the large scale use of tender vessels to avoid the trip limit restriction. Vessels operating as tenders in the GOA west of 157° 00' west longitude will be prohibited from retaining on board more than 600,000 lb (272 mt) of unprocessed pollock or the equivalent of two fishing trips. Tendering west of 157° 00' west longitude is allowed because smaller vessels delivering to Sand Point and King Cove are more dependent on tenders than the larger vessels that operate east of 157° 00' west longitude and deliver primarily to Kodiak* [1]

At present, the existing GOA trip limit measure, together with the other Steller sea lion protection measures, is believed to be an appropriate mitigation measure to avoid jeopardy to the western Steller sea lion population. Since the proposed alternative is more restrictive than the existing trip limit measure, any effect on the temporal distribution of catch of this action would be beneficial.

1.1 Background for Initial Action in 1998 and 1999

In December 1998, the Council took emergency actions to implement measures consistent with NMFS' proposed Reasonable and Prudent Alternatives (RPAs) to reduce impacts to Steller sea lions. For the Gulf of Alaska, the Council's action included: creating four seasons with limits on the percentage of the TAC which could be taken from any one season; expanding the closure areas around rookery and haul-out sites; **and establishing a 300,000 pound trip limit for pollock in the western and central Gulf areas**[2]. As noted in the text box below, the regulation implemented by NMFS translated the Council's recommended trip limit of 300,000 pounds to the nearest whole metric equivalent, which is 136 metric tons. Throughout the report, the limit is referred to as the 300,000 pound limit, since that was the management action, but the regulation is set at 136 metric tons, which is slightly less than 300,000 pounds (299,829 pounds).

In response to the Council recommendation, on January 22, 1999, NMFS implemented an emergency action to apply Steller sea lion protection measures, including the action described above, to the 1999 fishing season[3]. The wording for the emergency rule, as it relates to the Gulf of Alaska trip limits is as follows:

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[1] Federal Register/Vol 67, No. 5, Tuesday, January 8, 2002/Rules and Regulations, page 964.
[2] North Pacific Fishery Management Council newsletter, December 1998 (*emphasis added*).
[3] Federal Register/Volume 64, No. 14/Friday, January 22/Rules and Regulations – page 3441.

> *"The emergency rule prohibits the operator of a catcher vessel fishing for groundfish in the W/C GOA from retaining on board more than 136 mt of pollock harvested in the W/C GOA. In addition, to prevent the large scale use of tender vessels to avoid the trip limit restriction, this rule also prohibits vessels operating as tenders from retaining on board more than 272 mt (the equivalent of 2 fishing trips) of unprocessed pollock that was harvested in the W/C GOA. This 136 mt trip limit does not exempt vessels from existing regulations that require 100 percent retention of pollock when directed fishing for pollock is open. A vessel operator must cease fishing for pollock during a fishing trip before the 136 mt limit is reached in order to avoid a violation of either the 136 mt trip limit or the 100 percent retention requirement for pollock."* [4]

The reason for the emergency trip limit action was clearly spelled out in the Federal Register notice to temporally or spatially disperse pollock harvests in the GOA. The rule was implemented as of January 22, 1999 and has been in effect since then. The NMFS intent from the wording of the supporting text for the emergency regulation specifically uses the phrase "trip limit" and the intent is clear[4]. However, the language in regulation is less clear[5]. The language in the regulation prohibits retaining on board a catcher vessel at any one time during a trip more than 300,000 pounds of pollock. However, the regulation does not define 'trip' in a manner that prevents daily landings above the 300,000 pound limit. Participants can potentially bypass the intent of the regulation through actions such as multiple deliveries per day to a tender or transferring cod ends to the tender or processor, thereby not taking the pollock on board or partially offloading the fish in the hold, thus extending the trip. The existing regulation allows vessels to land well in excess of 300,000 pounds per day, without incurring a fisheries violation.

The second part of the regulation 679.7 (b) (3) stipulated that tenders cannot retain on board at any one time more than 272 mt (600,000 pounds) of pollock. However, since deliveries to tenders are not identified as such on fish tickets, it is not possible to track the amount of pollock delivered to tenders to see if companies utilizing tenders in the western Gulf pollock fishery are abiding by the regulation. Enforcement of the tender regulation appears dependent upon on-grounds enforcement. Based on this review, it appears as if 679.7 (b) (3) is a difficult regulation to enforce.

The Alaska Board of Fisheries, following the action of the Council, implemented similar regulations within State waters on July 27, 1999. The State trip limit regulation is worded similarly to the NMFS regulation above (see 5 AAC 28.073). The area incorporated into the State trip limit regulation includes State waters adjacent to the Federal management areas 610, 620 and 630, between 147 and 170 degrees west longitude. It should be noted that there is a small discrepancy between the State and Federal regulations. The Federal regulations include management area 640 (between 140 and 147 degrees W. Longitude) whereas the State regulation cited above extends to the eastward boundary of management area 630 at 147 degrees W. longitude. Therefore, State regulations do not currently include management area 640. There is a small pollock fishery in the West Yakutat area, but it is currently managed by the State to include the 300,000 trip limit, so the regulation discrepancy is not reflected in a difference in management approach between State and Federal management.

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[4] Federal Register/Volume 64, No. 14/Friday January 22, 1999.
[5] 50 CFR 679.7 (b) & (c)

1.2 Council/NMFS Action in 2000

On January 25, 2000, NMFS, implementing recommendations from the Council, published an emergency interim rule to continue protection measures for Steller sea lions. The pollock trip limit was included in the package, continuing the rule in regulation.

1.3 Council/NMFS Action in 2002

On January 8, 2002, NMFS published the final rules and regulations to implement the Steller sea lion protection measures, including in final action the pollock trip limits in the GOA. This regulation is still in effect as passed in 2002.

1.4 Council Action in 2004/2005

In December 2004, the Council requested staff to prepare a discussion paper for the 300,000 pound trip limit, prompted by a proposed motion submitted by western Alaska groundfish fishermen. The Council record shows a motion submitted to the Council for consideration (copy attached as Appendix 1) recommending an action to resolve the landing pattern that the proponents of the motion believed to be a 'loophole' to ignore Council intent with the 300,000 pound trip limit. The discussion paper was prepared and presented to the Council at the February 2005 meeting.

The notes from the meeting indicate the following action by the Council:

> In December 2004, the Council requested that staff develop a discussion paper of recommended changes to the 300,000 lb pollock trip for catcher vessels. Multiple trips and offloading to tenders have allowed a faster catch rate by catcher vessels than if they were delivering to plants on shore or if only one trip was allowed per day. The faster paced fishery led to a 2,000 mt overage of the 5,000 mt seasonal pollock quota in the 2005 'A' season in Area 610. The Council expressed concern, but tabled further action indefinitely after receiving assurances from industry representatives that the pace of future fishing would be slower, and from NMFS that the 2006 'A' season would be more closely managed. If the problem is not addressed voluntarily, the Council may reschedule further discussion and possible regulatory action in the future.

The link between the Council action initial action in 1999 and the Council discussion and proposed motion in December 2004 is the common theme to slow down the fishery.

1.5 Council Action in 2007

At the April 2007 meeting, the Council directed the staff to initiate the process for an amendment to resolve this issue. This report is the results of that request.

The following sections provide a Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Act (IRFA) review. Requirements for National Environmental Policy Act (NEPA) compliance will be addressed separately. An application has been submitted to NMFS for a Categorical Exclusion Determination under National Environmental Policy Act (NEPA) for the Gulf of Alaska Pollock Trip Limit proposed amendment and regulation change. Initial discussions between the staffs of the Council and NMFS have indicated that this approach is appropriate for this application.

2.0 REGULATORY IMPACT REVIEW

2.1 Introduction

This chapter provides information on the economic and socioeconomic impacts of the alternatives, as required under Executive Order 12866 (E.O. 12866). This chapter includes a description of the purpose and need for the action and the management objectives, a description of the alternatives proposed to meet those objectives, identification of the individuals or groups that may be affected by the action, the nature of those impacts (quantifying the economic impacts where possible), and discussion of the tradeoffs. The economic impacts of the alternatives under consideration, including the Council's preferred alternative, are summarized in Section 3.4.

The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

> *In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.*

This section addresses the requirements of E.O. 12866 to provide adequate information to determine whether an action is "significant" under E.O. 12866. The order requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant." A "significant regulatory action" is one that is likely to:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

As will be presented in the following sections, it is not anticipated that selection of any alternative under consideration for this amendment would trigger any of the above considerations to be a "significant regulatory action".

2.2 Purpose and Need for the Action

2.2.1 Draft Problem Statement

This regulation was implemented in 1999. The trip limit of 136 mt (300,000 pounds) was established to provide temporal dispersion in pollock fishing, through slowing the fishery. As shown by the analyses presented in this report, the measure has not been fully effective due to avoidance of the trip limit by some of the participants in the fishery. It cannot be determined from the available data whether the

avoidance has been a result of the use of tenders, making multiple landings per day, or through disregard of the regulation, but the effect is the same. The issue addressed by this proposed amendment is not one of enforcement. Rather, it is whether or not the existing regulation meets the initial goal of temporally dispersing pollock harvests in the GOA. The Council may decide whether or not the existing regulation reflects their intent for regulation of the GOA pollock fishery, but the relevant comparison is whether they agree with the problem statement, and agree on an appropriate action to change the existing situation.

The April 2007 staff discussion paper (included in Appendix 1) presented a draft problems statement. However, the draft problem statement was revised by the Council at their October 2007 meeting as noted below:

> *Section 679.7(b) (2) placed a 136 mt (300,000 lb) limit for the amount of pollock that can be aboard a catcher vessel in the Gulf of Alaska to meet the objectives of Steller sea lion protection measures, but it places no limit on the number of trips per day, and does not place a limit on the total amount of pollock that can be harvested and landed by a catcher vessel in a day. The trip limit was intended to slow down the race for fish in the pollock fishery by limiting harvests on catcher vessels to 300,000 lb of unprocessed pollock per fishing trip.*
>
> *Catcher trawl vessels may be circumventing the intent of the trip limit by making multiple 300,000 deliveries in a day. It was generally believed that only one trip per vessel would occur per day when the Council made its recommendation, but the regulation, as written, does not impose a daily limit. Multiple offloadings in a day allows a faster catch rate by those vessels than if only one trip was allowed per day.*

Clearly, the regulation may not be having the full effect because of fishermen's ability to land greater than 300,000 pounds per day without incurring a violation under the existing regulation. The most straightforward way to fix this situation would be to adjust the regulation, so that an effective and enforceable trip limit would be in place.

While the genesis of the trip limit regulation resulted from the need to implement Steller sea lion protection measures, the need for the current alternative is predominantly due to problems with the current regulation that have exacerbated conflicts between small trawl pollock vessels and larger trawl pollock vessels operating in the GOA. The trip limit issue, as noted in the discussion below, has served to promote continuing conflict between the larger trawl vessels fishing pollock and the smaller trawl vessels fishing pollock. The Council has heard testimony by pollock fishermen in the region, that their fishing opportunities to fish in the pollock fishery are truncated to some extent, by avoidance of the 300,000 pound trip limit. The extent of the 'overage' problem is described in the following sections. Taking action to correct the trip limit regulation would have the effect of extending the number of days the pollock fisheries was open in the GOA by reducing the daily harvest per vessel to 300,000 pounds per day or less.

2.2.2 Draft Alternatives

In the April 2007 staff discussion paper, two draft alternatives were presented for the Council's consideration. The alternatives are:

2.2.2.1 Alternative 1: No Action.

If this alternative were selected, the status quo would not change. The pattern of using multiple tender deliveries in the area 610 and 620 pollock trawl fishery and/or other practices throughout the GOA that allow greater than 300,000 pounds of pollock to be landed per day without incurring a fisheries violation would not change. However, NMFS enforcement indicated an expectation that taking no action on the

problem would amount to tacit approval of the practices that have been employed by portions of the GOA trawl fleet in making trip landings or daily landings over 136 mt (300,000 pounds) in recent years. It could be expected that selecting the no action alternative would legitimize these practices, resulting in a likely future increase in average landing size.

2.2.2.2 Alternative 2: Additions to Existing Regulation (as follows):

a) *Limit trawl catcher vessels in the Gulf of Alaska (GOA) pollock fishery to landing no more than 136 metric tons, through any delivery means, in a calendar day - 12 AM to 12 AM (or 0001 hrs to 2400 hrs); and*

b) *The cumulative amount of pollock harvested from any GOA regulatory area landed by a trawl catcher vessel cannot exceed the daily trip limit of 136 metric tons times the numbers of calendar days the fishery is open in the respective regulatory area.*

The Council revised this alternative at the October 2007 meeting, incorporating recommendations from the Council's Enforcement Committee. It is the opinion of Council staff and NMFS enforcement personnel [6], that the proposed regulation change will be most effective if the existing regulations §679.7 (b)(2) and (b)(3) are retained. In the opinion of NMFS enforcement and other staff, as well as the Council staff, the combined effect of the new restrictions selected by the Council in Alternative 2 and the existing regulation will result in a clear and enforceable regulation that will prevent trawl catcher vessel landings of pollock in the GOA greater than 300,000 pounds per day, consistent with the Council's initial intent for this regulation.

2.2.3 Description of the Pollock Trawl Fishery

Table 1 below shows the recent history of the GOA pollock harvests for management areas 610 (Shumagin), 620 (Chirikof), 630 (Kodiak) and 640 (West Yakutat) from 1999 through 2007. One of the most noticeable features of this table is the radical decrease in the quota in area 620 for the years 2000 and 2001 and the return in 2002 to previous levels. The reason for this change during 2000 and 2001 was the recording of harvests to the Shelikof area during those two years. In 2000 and 2001, the Shelikof area, which is comprised of portions of both 620 and 630, had pollock landings of 25,853 mt and 18,895 respectively. Beginning in 2002, the Shelikof harvests have not been accounted for separately.

An important aspect of the pollock fishery in the GOA is that it occurs partially within State waters (0 to 3 miles) and partially within Federal waters (3-200 miles). With the fishery split between the State and Federal waters, management problems cannot be resolved in one jurisdiction without also addressing the problem in the other. In 1999, following the NMFS implementation of the 136 mt limit, the State of Alaska, through action by the Alaska Board of Fisheries, implemented a similar regulation to mirror the Federal regulations in State waters. To be fully effective, the new regulation proposed in Amendment 2 will need to be adopted by the Alaska Board of Fisheries to become effective in State waters. The Board of Fisheries has placed the issue of the GOA trawl fishery pollock trip limit on their agenda for November 2007, and may take action at that time.

[6] Ken Hansen, Alaska Enforcement Division, personal communication, October 10, 2007.

Table 1. Basic Information on the GOA Pollock Fishery: TACs & Landings 1999-2006

	610-Shumagin		620-Chirikof		630-Kodiak		640-W. Yakutat	
year	total catch	quota	total catch	quota	total catch	quota	total catch	quota
1999	23,384	23,120	38,142	38,840	30,133	30,520	1,759	2,110
2000	22,074	26,378	699	7,815	25,853	20,987	2,108	2,340
2001	30,471	31,056	1,742	8,059	17,026	23,583	2,351	2,235
2002	17,455	17,840	20,535	25,233	10,902	6,995	1,818	1,165
2003	16,510	16,788	19,642	19,685	12,435	10,339	943	1,078
2004	23,455	22,930	24,661	26,490	14,444	14,040	226	1,280
2005	30,973	30,380	27,904	34,404	19,329	18,718	1,880	1,688
2005	24,738	28,918	27,156	30,492	17,056	18,448	1,572	1,792
2007	16,159	25,012	19,332	20,980	12,217	14,850	86	1,398

source: NMFS Gulf of Alaska Seasonal Catch Reports (catch in metric tons).
2007 harvest is through 10/20/2007.

Table 2 shown below shows the respective split of pollock harvests between State and Federal waters. The far right hand side of the table shows the respective proportion, by year and in total over the period from 1999-2006, that was harvested in State waters and in Federal waters. The respective proportions shift considerably from year to year. Based on the data in Table 2, it appears as if fishermen may be shifting effort from year to year in response to changes in resource abundance. The total at the bottom of Table 2 shows the overall proportions harvested over the 8 year period (1999-2006) for all GOA trawl pollock. The overall proportions for the years 1999-2006 are 36.9 percent of the harvest from State waters and 63.1 percent from Federal waters. The conclusion to be drawn from Table 2 is that action in both State and Federal waters is important if the trip limit is to be successfully enforced. If the regulation were just to be administered only in Federal waters, for example, the unintended result would likely be a shift in effort by those wishing to make larger landings into State waters.

Over the 1999 to 2006 period, the GOA trawl pollock fishery harvested 1,169,942,350 pounds (530,586 mt) with a gross harvest value of $113 million.

In understanding the patterns of the fishery, it is important to also look at the change in fishing effort by vessels of different sizes to see of there has been a recognizable trend over the period since the trip limit regulation has been implemented. Table 3 shows the pattern of days with landings (defined as a vessel landing pollock in the GOA during a calendar day) for the years 1999–2006. The days with landings are divided by vessel length category: those vessels less than 60 feet compared with those vessels 60 feet or greater. These data represent an admittedly gross measure of effort, since the there is no measure of catch associated with the days with landings. Nevertheless, this table does allow perspective on the participation trends for smaller and larger vessels in the trawl pollock fishery in areas 610 and 620. While there is some variation in the number of landing days for the groupings in Table 3, there is not a remarkable trend to indicate that vessels less than 60 feet or 60 feet and over had had a steady increase or decrease in the number of days where landings have been made in the trawl pollock fishery.

Table 2. Proportional Harvests of Pollock in GOA State and Federal Waters, 1999–2006

Year	Area	Inside/Outside Harvest	Inside/Outside Proportion
1999	I	67,374,058	33.8%
	O	131,914,709	66.2%
	Total	199,288,767	100.0%
2000	I	41,731,901	26.5%
	O	115,559,810	73.5%
	Total	157,291,711	100.0%
2001	I	66,923,075	42.4%
	O	90,762,639	57.6%
	Total	157,685,714	100.0%
2002	I	49,324,866	43.8%
	O	63,221,178	56.2%
	Total	112,546,044	100.0%
2003	I	36,664,513	33.9%
	O	71,624,448	66.1%
	Total	108,288,961	100.0%
2004	I	62,429,708	45.6%
	O	74,626,730	54.4%
	Total	137,056,438	100.0%
2005	I	57,473,726	33.0%
	O	116,549,573	67.0%
	Total	174,023,299	100.0%
2006	I	59,834,311	39.5%
	O	91,724,075	60.5%
	Total	151,558,386	100.0%
Total	I	441,756,158	36.9%
	O	755,983,162	63.1%
	Total	1,197,739,320	100.0%

Source: NPFMC data files, October 2007. Landings in 1999 are from the date of implementation of the trip limit regulation on January 22, 1999. Harvests are in pounds.

key: I equals inside (State) waters
O represents outside (Federal) waters

Table 3. Landing Days for Pollock Trawl CVs in the GOA, 1999–2006

year	landing days for vessels < 60 ft.	landing days for vessels ≥ 60 ft.	total days w/landings
1999	359	1,276	1,635
2000	324	1,174	1,498
2001	531	1,139	1,670
2002	259	873	1,132
2003	194	762	956
2004	231	809	1,040
2005	379	886	1,265
2006	312	1,095	1,407

Source: NPFMC data file based upon ADF&G fish tickets, October 2007. Note that landing days are defined as a calendar day that an individual vessel made at least one landing. Harvests for 1999 begin on January 22, 1999, the date of implementation for the trip limit regulation.

2.2.4 Enforcement of the Existing Regulation

NMFS Enforcement has the responsibility to enforce the existing regulation for the western Gulf trip limits. For landings of pollock greater than 136 mt, the enforcement practice is as follows [7]. For the first instance during a calendar year, the penalty is abandonment of the amount in excess of 136 mt For each subsequent violation during the same calendar, penalties include abandonment of the excess pollock and penalty (fine). It is important to note that, due to the structure of the existing regulation, not all instances where a vessel lands greater than 300,000 pounds represents a violation of the existing trip limit regulation. Operators in the fishery have utilized fishing methods involving deliveries to tenders, vessel loads and delivery of towed cod ends on the same trip to maximize their catch, and still remain within the existing regulation.

2.2.5 Identification of the problem to be solved

The genesis of the GOA pollock trip limits were sideboard allocations discussions that occurred during implementation of the American Fisheries Act. The Final EIS for the American Fisheries Act, contains the following statement:

Both AFA and non-AFA catcher vessel owners expressed concern that rationalization of the BSAI pollock fishery could lead to an intensification of the race for fish in other groundfish fisheries if a race for sideboard fishing developed within the AFA fleet. This could occur because under AFA cooperatives, numerous AFA catcher vessels would no longer need to participate in the BSAI pollock fishery and would be free to expand their effort into other groundfish fisheries. Absent some mechanism to allocate sideboard amounts among individual cooperatives and vessels, an intense race for sideboard fishing could ensue as each AFA vessel race to capture its share of the sideboard [8].

During the development of the Steller sea lion protection measures, a trip limit for pollock in the Gulf of Alaska was included in the measures considered in a couple of the alternatives. As noted in this report, NMFS enacted regulations to set a trip limit of 136 metric tons in the trawl pollock fishery in the GOA. The limit was established through emergency action in 1999 and through final action in 2002. Problems with the regulation as it currently exists and is administered have been brought to the attention of the Council in recent years. In testimony to the Council, fishermen from these areas have complained that the trip limit regulation has been circumvented by the use of tenders in the fishery to make multiple landings per day, which they believe is not consistent with the Council's initial intent for this regulation.

To evaluate the situation on landings in the fishery, the staff developed a data base comprised of fish ticket files and analyzed the data for the fishery from the time of implementation of the trip limit (January 22, 1999) through the 2006 season. Over this time period, there were a total of 10,890 fish tickets for trawl pollock landings in the GOA (management areas 610, 620, 630 and 640). When we look at the number of fish tickets for amounts of pollock greater than 300,000 pounds, there are a total of 165 instances where this occurred. The mean fish ticket amount, for the 165 instances over 300,000 pounds was 349,047 pounds, with a range of 300,079 pounds to 1.5 million pounds.

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[7] Ken Hansen, Alaska Enforcement Division, personal communication, September 2007.

[8] Final Environmental Impact Statement for American Fisheries Act Amendments 61/61/13/8, United States Department of Commerce, National Oceanographic and Atmospheric Administration, National Marine Fisheries Service, Alaska Region, February 2002, chapter 4, page 4-83.

As discussed above, landings greater than 300,000 pounds may or may not be a violation, since the existing regulation allows vessels to employ a number of practices to avoid the current regulation (i.e. deliveries to tenders, transfer of cod ends, and not fully offloading fish from the hold to prevent the and of a 'trip').

The intent of the proposed wording in Alternative 2 is intended to stop any future trawl catcher vessel landings greater than 300,000 pounds per day by making the regulation clear and unambiguous therefore simplifying enforcement of the pollock trip limit in the GOA. Part (a) of Alternative 2 clearly limits vessel landings to 136 mt When combined with the existing regulation in 679.7(b)(2) restricting trawl vessels operating in the GOA to retain on board at any time during a trip more than 136 mt, the trip limit should be effective. If the existing regulation is not retained, the role of tenders in the western GOA pollock fishery could change, bringing intended impacts to vessels in the fishery. Part (b) or alternative 2 provides a regulatory 'backstop' to the trip limit regulation that would prevent use of various techniques that have been used in the past to circumvent the intent of the daily trip limit. Finally, retention of 679.7(b)(3) would retain current practices on the use of tenders in the GOA west of 157 degrees W. longitude.

2.2.6 Analysis of the 'Overages'

The staff further considered the data on landings, since there is considerable latitude on practices for fish tickets. For example, a vessel owner has the potential opportunity to receive more than one fish ticket for a given trip from more than one processor, or even from the same processor. To compare the current management of the regulation with what would be the case with a 300,000 daily trip limit, we completed a second analysis, aggregating all landings made by a specific vessel over a calendar day.

This analysis showed a total of 10,604 landings by individual vessels during a calendar day for the trawl pollock fisheries in the GOA from the implementation date of January 22, 1999 through 2006. Of this total, there were 241 instances where more than 300,000 pounds was landed by an individual vessel during a calendar day. This analysis demonstrates the difference between the current situation and what would be the case with an effective daily trip limit of 300,000 pounds (per the problem statement for this proposed amendment). There is not sufficient information in the fish ticket records to be able to discern the reasons for the additional 76 instances where vessels landed more than 300,000 pounds in a calendar, above and beyond the 165 instances where the fish tickets were for amounts greater than 300,000 pounds. The 76 instances could represent multiple landings to a tender for example, or they could represent situations where landings were 'split' into more than one fish ticket record. We have no way to know what the exact reasons were for these additional overages, but it is enough for the purposes of this analysis to recognize them as an indication that the trip limit is not functioning as a 300,000 daily trip limit.

Table 4 below provides additional information on this analysis, aggregated by year. It also shows the proportion of total pollock landings comprised by the 'overage' amounts. The overage amounts are the landings for a vessel on a calendar day over 300,000 pounds. The right hand column of Table 4 shows the proportion of total pollock landings compared with the 'overage' landings. As can be noted in the table, the overall proportion for 'overage' amounts varies by year from a low of 0.6 percent in 2000 to a high of 3.0 percent in 2004.

Table 4. Gulf of Alaska Pollock Harvest Statistics, 1999–2006:

Annual Harvest Compared with 'Overage' Amount > 300,000 Pounds/Day

	total for GOA	'overage'	proportion - overage of total
1999	199,288,767	4,824,877	2.4%
2000	157,291,711	946,152	0.6%
2001	157,685,714	1,340,363	0.9%
2002	112,546,044	1,808,778	1.6%
2003	108,288,961	1,238,340	1.1%
2004	137,056,438	4,118,404	3.0%
2005	174,023,299	3,228,566	1.9%
2006	151,558,386	1,983,911	1.3%
totals	**1,197,739,320**	**19,489,391**	**1.6%**

Source: NMFS annual harvest summary and NPFMC data files, October 2007. Landings in 1999 are from the date of implementation of the trip limit regulation on January 22, 1999.

Again, we need to emphasize that the 241 instances noted above may or may not constitute a 'regulation violation'. The existing regulation limits a vessel to 136 mt on board at any one time, so it is possible for vessels to make daily landings well in excess of 136 mt without incurring a violation.

2.2.7 Further Investigating the 'Overage' Amounts

Looking further, we can look at the pattern of the 'overage' amounts, i.e. the amount of pollock landed that was above 300,000 pounds. Figure 2 below shows the distribution of the amounts by which the landings in excess of 300,000 pounds are in excess of the limit. Please note that the intervals in the graph are not equal. They were selected to allow the reader to get an understanding of the distribution of the overages, without being overly complex. As noted in the figure, the 241 'overages' range from 79 pounds to over a million pounds, with a mean of 80,868 pounds. These data show that in general, the 'overages' are not a huge proportion of the total harvest, but are a significant amount.

Another comparison was made to evaluate whether the extent to which landings were made in excess of 300,000 were made during the 'A' (roe) season. Since the 'A' season, with the extra value of roe in the pollock harvested, might be assumed to represent the greatest incentive for GOA pollock fishermen to increase harvests. As shown in Table 5 below, for the years 2003 to 2006, the average proportion of 'overage' harvests in the A season compared with the total GOA 'A' season harvest only accounts for 1.7 percent. This compares with 1.6 percent overall, for the entire year, as shown in Table 4. The 'overage' amounts in the pollock 'A' season are very small, with the exception of 2005.

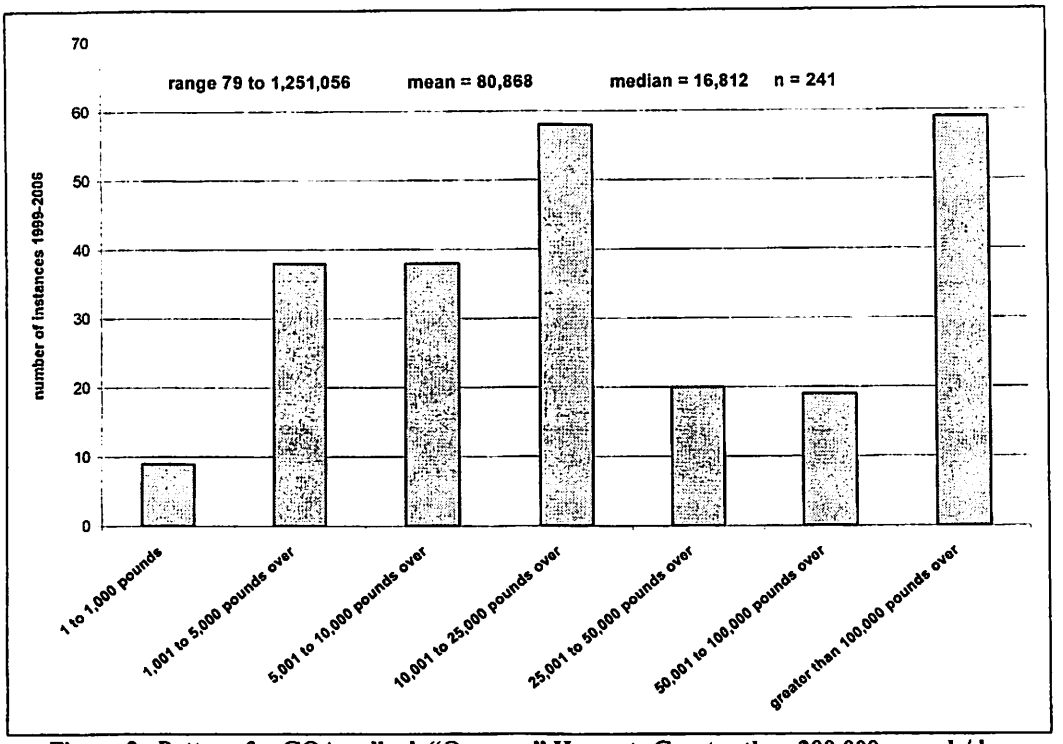

Figure 2. Pattern for GOA pollock "Overage" Harvests Greater than 300,000 pounds/day

Table 5. Gulf of Alaska Pollock Harvest Statistics, 1999–2006:

'A' Season Harvest Compared with 'Overage' Amount > 300,000 Pounds

year	GOA 'A' season total	'overage'	proportion - overage of total
2003	4,416,615	6,144	0.1%
2004	26,885,565	149,037	0.6%
2005	55,625,535	1,848,530	3.3%
2006	42,086,835	162,108	0.4%
totals	**129,014,550**	**2,165,819**	**1.7%**

Source: NMFS annual harvest summary and NPFMC data files, October 2007. Landings in 1999 are from the date of implementation of the trip limit regulation on January 22, 1999.

2.2.8 Economic Effects of the Alternatives – A Summary of Costs and Benefits

The justification for the 1999 the Steller Sea lion action was to contribute one of the three measures intended to slow down the pollock fishery in the GOA and provide temporal dispersion in the harvest to minimize potential impacts from pollock fishing activities. Compared with the situation prior to 1999, the regulation has been effective in reducing the size of landings (see Table 6 below). Looking at the right hand column of Table 6, the data analyzed demonstrate that the trip limit was effective in reducing the size of landings, thus achieving temporal dispersion as intended. Prior to implementation of the trip limit, the proportion of landings greater than 300,000 pounds totaled 13 percent (annual average from 1995-1998). Following the implementation of the trip limit regulation, the proportion of landings greater than 300,000 pounds totaled 1.7 percent (annual average from 1999-2006).

The problem described in the problem statement for this amendment relates to a continuing problem with daily landings greater than 300,000 pounds for a relatively small proportion of total landings. Although the existing regulation has been partially effective in reducing the average size of pollock landings, participants in the fishery would like to see further reductions on 'overage' amounts – the landings that are over 300,000 pounds per day.

Table 6. GOA Trawl Pollock Landings Prior to and Following Implementation of the Trip Limit on January 22, 1999

Year	Vessel landing days	Total pounds	Number of daily vessel landings over 300,000 pounds	Amount of daily vessel landings in excess of 300,000 pounds	
				in pounds	as a percent of total pounds
1995	923	138,172,727	113	22,056,509	16.0%
1996	1,005	100,644,811	45	6,593,809	6.6%
1997	1,571	178,534,593	94	24,068,159	13.5%
1998	2,029	289,957,183	204	39,266,597	13.5%
total (1995-1998)	5,528	707,309,314	456	91,985,074	13.0%
1999	1,635	199,288,767	50	5,142,942	2.6%
2000	1,499	157,291,711	15	946,152	0.6%
2001	1,670	157,685,714	20	1,340,363	0.9%
2002	1,132	112,546,044	22	1,808,778	1.6%
2003	956	108,288,961	24	1,238,340	1.1%
2004	1,040	137,056,438	46	4,118,404	3.0%
2005	1,265	174,023,299	43	3,228,566	1.9%
2006	1,407	151,558,386	26	1,983,911	1.3%
total (1999-2006)	10,604	1,197,739,320	246	19,807,456	1.7%

Source: NMFS annual harvest summary and NPFMC data files, October 2007. Landings in 1999 are from the date of implementation of the trip limit regulation on January 22, 1999. Data for 1998 include a small amount of landings for 1999, prior to trip limit implementation on January 22, 1999. A vessel landing day is a day that an individual vessel made at least one landing. Vessel landing days is the sum of landings across all vessels for the year cited.

Economic efficiency. While it was not specifically stipulated in the 1999 action to implement the GOA pollock trip limit, economic efficiency and/or fishing costs was/is not an issue in this action. Given potential fishing capacity and cost of production criteria, it is possible that the least cost manner to harvest pollock in the GOA would be to allow the larger vessel operators to harvest the allowable quota as quickly as they could. However, this would not be consistent with the Steller sea lion protection measures implemented in 1999, and would likely not meet the provisions in the Magnuson-Stevens Act to consider historical dependence upon the fishery and actions that would affect fishing communities.

The economic effect of the trip limit 'overages' The following analysis compares the existing situation with full compliance with a landing limit of 300,000 pounds per day during the period 1999-2006. Pollock landings that were made in the GOA with over 300,000 pounds on board represent 241 out of 10,604 total days with landings, accounting for 1.7 percent of the overall harvest (see 'overage' amount in Table 4). If we look at the actual amount of the 'overages', they total 19.8 million pounds over the period from 1999-2006. The mean 'overage' was 80,868 pounds, with a median of 16,812 as noted in Figure 2.

Table 7 below summarizes the effects of the 'overage' amounts since implementation of the regulation on January 22, 1999. The average landing over the effective period, 1999-2006 has been 112,952 pounds. The fourth column in Table 6 shows the daily landings that have occurred each year over 300,000 pounds. Column 6 of Table 7 shows the number of additional landings that would have occurred each year, had the 19.8 million pounds (the 'overage' harvest amount) been landed at the average harvest level of

112,952 pounds per landing. The number varies from an additional 9 landings (2000) to 42.2 landings (1999) with a total of 168 additional landings for the period 1999-2006, or an annual average of 21.9 additional landings. If, instead of the average landing in the fishery (112,952 pounds), we assume that the 'overage' amount would have been landed at the maximum limit of 300,000 pounds, there would have been an additional 66 landings for the period 1999-2006, or an annual average of 8.3 additional trips.

Table 7. Summary Table of Effects of Daily Landings Limit of 300,000 pounds (with full compliance)

Year	Average daily vessel landing	Number of vessel landing days	Number of daily vessel landings over 300,000 pounds	Daily vessel landings in excess of 300,000 pounds as a percent of total daily landings	Additional landings at average daily landing size if no daily vessel landing over 300,000 pounds	Additional landings at 300,000 pound landing size if no daily vessel landing over 300,000 pounds
1999	121,889	1,635	50	2.6%	42.2	17.1
2000	104,931	1,499	15	0.6%	9.0	3.2
2001	94,423	1,670	20	0.9%	14.2	4.5
2002	99,422	1,132	22	1.6%	18.2	6.0
2003	113,273	956	24	1.1%	10.9	4.1
2004	131,785	1,040	46	3.0%	31.3	13.7
2005	137,568	1,265	43	1.9%	23.5	10.8
2006	107,717	1,407	26	1.3%	18.4	6.6
total (1999-2006)	112,952	10,604	246	1.7%	21.9 (annually)	8.3 (annually)

Based on the analysis, it appears that a revised daily landing limit of 300,000 pounds would require additional trips in the fishery. The primary effect of these additional trips is likely to be distributional, as vessels making the large and/or multiple daily landings under the current rule forego the amount of those landings in excess of 300,000 pounds, which then remains available to all members of the fleet. The revised pollock trip limit regulation is likely to have a very minor effect on the rate of harvest of the fishery. It is possible that the NMFS management may not be able to allow additional fishing time, since the average number of 'additional trips' could be too small, relative to the number of vessel landing days in the fishery, to allow another day of fishing opportunity in the GOA trawl pollock fishery.

While the overage amounts are a relatively small proportion of the total harvest, they represent a change in the character of the GOA pollock fishery from what it would be without the large landings. As shown in Table 7, the average daily landing for all pollock trawl fishing in the GOA 1999-2006 was 112,952 pounds (including the large deliveries over 300,000). Including only landings over 300,000 pounds, the average daily landing for this portion of the harvest was 380,868 pounds for the GOA for 1999-2006. Including only those landings less than 300,000 pounds, the average daily landing for the portion of the harvest (excluding the large landings over 300,000 pounds), was 106,721. While the actual 'overage' amount was only 1.7 percent of the total GOA trawl pollock harvest 1999-2006, the large landings represented by the landings over 300,000 pounds accounted for 16.9 percent overall if we include the entire harvest, not just the 'overage' amounts.

Over the period 1999-2006, ex-vessel prices averaged $0.0958 per pound, so the 'overage' amount of 19.4 million pounds represents an estimated gross harvest value of approximately $1.8 million. This is the total amount that could potentially have been re-distributed over the period 1999-2006, with full compliance with a 300,000 pound daily landing limit, and also assuming that the additional trips had been possible, given in-season fisheries management limitations as noted above.

Harvest patterns in the GOA pollock trawl fishery showed a differential pattern in the overage amounts, based on vessel size. Of the total 241 instances where a vessel landed more than 300,000 pounds in one calendar day, 34 of the instances came from vessels less than 60 feet in length (mean overage 70,223 pounds), and 207 instances came from vessels greater than 60 feet in length (mean overage 82,617).

3.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

3.1 Introduction

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 600-611, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: 1) to increase agency awareness and understanding of the impact of their regulations on small business; 2) to require that agencies communicate and explain their findings to the public; and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either, (1)"certify" that the action will not have a significant adverse effect on a substantial number of small entities, and support such a certification declaration with a "factual basis", demonstrating this outcome, or, (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

Based upon a preliminary evaluation of the proposed pilot program alternatives, it appears that "certification" would not be appropriate. Therefore, this IRFA has been prepared. Analytical requirements for the IRFA are described below in more detail.

The IRFA must contain:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and the legal basis for, the proposed rule;
3. A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
4. A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and
6. A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
    a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
    b. The clarification, consolidation or simplification of compliance and reporting requirements under the rule for such small entities;
    c. The use of performance rather than design standards;
    d. An exemption from coverage of the rule, or any part thereof, for such small entities.

The "universe" of entities to be considered in an IRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing an IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule (and alternatives to the proposed rule), or more general descriptive statements if quantification is not practicable or reliable.

3.2 Definition of a small entity

The RFA recognizes and defines three kinds of small entities: (1) small businesses; (2) small non-profit organizations; and (3) and small government jurisdictions.

Small businesses: Section 601(3) of the RFA defines a "small business" as having the same meaning as a "small business concern," which is defined under Section 3 of the Small Business Act. A "small business" or "small business concern" includes any firm that is independently owned and operated and not dominate in its field of operation. The U.S. Small Business Administration (SBA) has further defined a "small business concern" as one "organized for profit, with a place of business located in the United States, and which operates primarily within the United States, or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor. A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust, or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture."

The SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business "involved in fish harvesting" is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates) and employs 500 or fewer persons, on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it does not meet the $4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established "principles of affiliation" to determine whether a business concern is "independently owned and operated." In general, business concerns are affiliates of each other when one concern controls or has the power to control the other or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party, with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development

Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities, solely because of their common ownership.

Affiliation may be based on stock ownership when: (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50% or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or have the power to control less than 50% of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners control the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint ventures if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations: The RFA defines "small organizations" as any nonprofit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions: The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000. Of particular note for this action are the communities of Sand Point (2006 population 890) and King Cove (2006 population 807).[9]

3.3 A description of the reasons why action by the agency is being considered

The Council's problem statement for this proposed amendment is as follows:

> *Section 679.7(b)(2) placed a 136 mt (300,000 lb) limit for the amount of pollock that can be aboard a catcher vessel in the Gulf of Alaska to meet the objectives of Steller sea lion protection measures, but it places no limit on the number of trips per day, and does not place a limit on the total amount of pollock that can be harvested and landed by a catcher vessel in a day. The trip limit was intended to slow down the race for fish in the pollock fishery by limiting harvests on catcher vessels to 300,000 lb of unprocessed pollock per fishing trip.*
>
> *Catcher trawl vessels may be circumventing the intent of the trip limit by making multiple 300,000 deliveries in a day. It was generally believed that only one trip per vessel would occur per day when the Council made its recommendation, but the regulation, as written, does not impose a daily limit. Multiple offloadings in a day allows a faster catch rate by those vessels than if only one trip was allowed* per day.

The analyses in Section 2 demonstrate that the existing regulation has been successful in reducing the average landing size, and thus slowing the fishery and providing temporal dispersion as initially intended. However, there are still instances of landings greater than 300,000 pounds that are viewed by a problem by participants in the fishery, particularly the smaller vessels. Additionally, the existing regulation

[9]Alaska Department of Labor, 2006 estimated population at http://www.labor.state.ak.us/research/pop/estimates/06t4-3.xls

presents NMFS enforcement with a difficult situation in trying to ensure compliance with the existing regulation.

3.4 The objectives of, and the legal basis for, the proposed rule

The trawl pollock fishery in the GOA is managed by NOAA Fisheries and the State of Alaska. The management plan that is affected by the proposed amendment is the Gulf of Alaska Groundfish Fishery Management Plan. The proposed action is limited to activities within Federal waters administered under the plan. The authority for the fishery management plans, and the actions in this amendment are contained in the Magnuson-Stevens Act, as amended by the Consolidated Appropriations Act of 2004. As discussed in Section 2 of this report, the pollock resource and the fishery within the Gulf of Alaska occur both within Federal waters and State waters. Taking action in only one area (Federal or State waters) would limit the effectiveness of the action, since pollock trawl fishery participants would be free to move to the area without the trip limits. Table 2 shows the respective proportions of the pollock harvested in Federal waters (60.6 percent) and State waters (39.4 percent) over the period from 1999-2006. In 1999, the Alaska Board of Fisheries followed the January emergency rule implementing the trip limit with corresponding regulations for State waters in the GOA. Should the Council adopt this proposed amendment, similar corresponding action by the Alaska Board of Fisheries will be necessary to have a fully effective regulation.

3.5 A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply

Information concerning linked ownership and affiliation of many pollock vessels that operate in the Gulf of Alaska, which would be used to estimate the number of small 'entities' that are directly regulated by this action, is somewhat limited.

There were a total of 173 unique trawl vessels that made harvests of pollock in the GOA over the 1999-2006 period. Based on gross harvest values from pollock fishing only, all these vessels would be classified as small entities.

Earnings from all Alaskan fisheries earnings for 2006 were matched with the vessels that participated in the GOA pollock fishery for that year. Out of a total of 146 vessels, only 3 had earnings gross earnings over $4 million, categorizing them as large entities. Making the same comparison for 2005, there were 148 vessels making landings in the GOA pollock fishery, and of these 7 had gross earnings over $4 million, categorizing them as large entities. It is possible that other vessels in both years are linked by company affiliation which would qualify them as large entities, but the Council has no information to tie vessel earnings together by ownership status.

3.6 A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule

Under the proposed alternatives, record keeping and other compliance requirements of the proposed rule will not change from the current situation. Therefore, the action under consideration requires no additional reporting, record keeping, or other compliance requirements.

Alternative 2 should simplify the NOAA Fisheries enforcement of the trip limit by removing the ambiguity that has resulted from an incomplete definition of a trip in the regulation.

3.7 An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule

The analysis did not identify any Federal rules that would duplicate, overlap, or conflict with the proposed rule.

3.8 A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities

It is clear from public testimony received by the Council in 2004, 2005 and 2007, and by the analyses provided in this report, that the 300,000 pound trip limit, as intended by the Council in their 1998 decision and as enacted into regulation by NMFS in 1999, is not fully effective due to the use of tenders to increase the landing capacity of vessels participating in the fishery or other practices.

Recognizing that the 300,000 trip limit has not effectively prevented vessels from landing in excess of 300,000 pounds per day as intended, the Council could address this problem by a change in the regulation to more explicitly limit daily landings. This action is represented by Alternative 2 in the proposed amendment.

In the process of selecting an action alternative (Alternative 2) for the proposed amendment, the Council evaluated several different approaches. The problem with the current regulation exists because of difficulties in enforcing the initial intent of the Council with respect to the pollock trip limit. The action selected in Alternative 2 was the result of consultations with the Council Enforcement Committee as well as NMFS enforcement personnel, and represents the best solution for implementing a regulation that can not be circumvented and can be easily enforced. Other possible alternatives were rejected on the basis of being less appropriate than the alternative selected to resolve the Council's problem statement.

4.0 CONSISTENCY WITH APPLICABLE LAW AND POLICY

This section of the analysis examines the Gulf of Alaska pollock trip limits with respect to the National Standards and Fishery Impact Statement requirements in the Magnuson-Stevens Act and Executive Order 12866.

4.1 National Standards

Below are the ten National Standards as contained in the Magnuson-Stevens Act, and a brief discussion of the consistency of the proposed alternatives with each of those National Standards, as applicable.

National Standard 1
Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

None of the alternatives considered in this action would have a detrimental effect on overfishing of pollock or other groundfish in the GOA and would have no effect, on a continuing basis, on achieving the optimum yield from each groundfish fishery. Alternative 2 would have the effect of slowing the pollock fishery to a small degree, but the TAC would likely be harvested with either alternative.

National Standard 2
Conservation and management measures shall be based upon the best scientific information available.

The analysis for this amendment is based upon the most accurate, up to date and best scientific information available. It was necessary for the Council staff to develop a new data bases to complete the analyses contained herein.

National Standard 3
To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The proposed action is consistent with the management of individual stocks as a unit or interrelated stocks as a unit or in close coordination.

National Standard 4
Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The proposed alternatives treat all license holders equally, i.e. the trip limit would be enforced for all vessels, regardless of vessel characteristic or ownership. Alternative 2 is intended to promote conservation, by resolving a problem with the Steller sea lion protection measure implemented in 1999.

National Standard 5
Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

Both alternatives contribute to utilization of the trawl pollock resource in the GOA to the extent that they contribute to Steller sea lion protection, thus allowing the commercial pollock fishery to operate. As noted in Section 2.2.8, pursuit of greater efficiency would conflict with the Steller sea lion protection objectives which were the original purpose of the action.

National Standard 6
Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

None of the proposed alternatives are expected to affect changes in the availability and variability in the pollock resources in the GOA in future years. The harvest would be managed for and limited by the pollock TAC, with or without this amendment.

National Standard 7
Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

This action does not duplicate any other management action. It would clarify, and replace, the existing regulation described in Section 1.

National Standard 8
Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

This action will not have adverse impacts on communities or affect community sustainability. As noted in Section 2, the largest share of the 'overage' instances has been landed by large (greater than 60 foot) vessels. Many of the locally-owned vessels in Sand Point and King Cove are converted seine vessels, and are less than 60 feet.

National Standard 9
Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

This proposed amendment could help to minimize bycatch to a minimal degree by slowing down the fishery slightly.

National Standard 10
Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The alternatives proposed under this action should have no effect on safety at sea.

4.2 Section 303(a)(9) - Fisheries Impact Statement

Section 303(a)(9) of the Magnuson-Stevens Act requires that any management measure submitted by the Council take into account potential impacts on the participants in the fisheries, as well as participants in adjacent fisheries. The impacts on participants in the trawl pollock fisheries in the GOA have been discussed in previous sections of this document. The proposed alternatives will have no effect on participants in other fisheries.

5.0 CONSULTATION AND PREPARERS

5.1 List of Persons and Agencies Consulted

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6.0 REFERENCES

Alaska Department of Labor, 2006 community population estimates at http://www.labor.state.ak.us/research/pop/estimates/06t4-3.xls.

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Ken Hansen, NMFS Alaska Enforcement Division, personal communication, October 10, 2007.

North Pacific Fishery Management Council Newsletter, December 1998.

NMFS, regulations for the Gulf of Alaska Groundfish Fishery, §679.7 (b)(2) & (b) (3).

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State of Alaska, Alaska Administrative Code, 5 AAC 28.073 – Trip limits for commercial pollock vessels.

United States Department of Commerce. Final Environmental Impact Statement for American Fisheries Act Amendments 61/61/13/8, National Oceanographic and Atmospheric Administration, National Marine Fisheries Service, Alaska Region, February 2002, chapter 4, page 4-83.

Appendix 1 – Staff Discussion Paper, dated February 2005

AGENDA D-1(e)
FEBRUARY 2005

WESTERN GULF OF ALASKA 300,000 LB POLLOCK TRIP LIMIT
DISCUSSION PAPER
FEBRUARY 1, 2005

In December 2004, the Council requested that staff develop a discussion paper of a proposal submitted by a representative of Western Alaska groundfish fishermen during public testimony at that meeting. The proposal recommends implementing a 300,000 lb limit of unprocessed pollock during a 24 hour period in place of the current 300,000 lb trip limit. Some vessels are delivering multiple 300,000 lb trips daily to tenders, up to the 600,000 lb tender limit in the Western Gulf (Area 610). The proposers reported that some fishermen are using multiple tenders and have harvested and delivered as much as 1,500,000 lb in a single day. While the regulations do not prohibit this activity, the Council will consider whether this is consistent with its original intent to increase temporal dispersion of the fleet as part of the Steller sea lion mitigation measures, under which the trip limits were implemented in 1999. At its February 2005 meeting, the Council will review the paper and decide whether to initiate a regulatory amendment and set a timeline for action.

PROPOSED ACTION: Replace the 300,000 lb catcher vessel pollock trip limit with a 300,000 lb catcher vessel pollock daily limit in the western GOA (Area 610).

PROBLEM STATEMENT/OBJECTIVE: Section 679.7(b)(2) places a 300,000 lb trip limit for catcher vessels in the Gulf of Alaska, but places no limit on the amount of trips, or total amount of pollock, allowed on board a catcher vessel in a day. The trip limit was intended to slow down the race for fish in the pollock fishery by limiting harvests on catcher vessels to 300,000 lb of unprocessed pollock per fishing trip.

Non-resident catcher trawl vessels may be circumventing the intent of the trip limit by making multiple 300,000 deliveries in a day to tenders in the western GOA, which have a 600,000 lb limit [§679.7(b)(3)(ii)]. It was generally believed that only one trip per vessel would occur per day when the Council made its recommendation, but the regulations do not impose a daily limit. The higher tender trip limit would allow one vessel to offload twice and land its own trip limit or two vessels to offload once each and each land their trip limit. Multiple trips and offloading to tenders allow a faster catch rate by those vessels than if they were delivering to plants on shore or if only one trip was allowed per day.

BACKGROUND: The Council recommended and NMFS implemented a variety of measures to slow the pace of the pollock fishery under Steller sea lion mitigation measures. The 1999 emergency rule contained a trip limit of 300,000 lb (136 mt) for all vessels fishing for pollock in the western and central (Areas 620 and 630) GOA management areas. This limit accommodated larger non-resident vessels, which have hold capacities exceeding 1 million lb, and the smaller catcher vessel fleet based in Sand Point and King Cove, which have hold capacities of less than 150,000 lb. In the past, the entry of large numbers of Bering Sea -based catcher vessels has led to short-term pulse fisheries in the GOA with attendant concerns about localized depletion of pollock populations and quota overages. The trip limit significantly slowed the pace of fishing by the larger BS-based catcher vessel fleet that has traditionally fished in the GOA when BS fishing seasons were closed.

The Council also recommended regulations that prohibit catcher vessels from fishing in both the GOA and BS during the same fishing season and prohibit vessels from operating as pollock tenders in central

GOA to prevent the large scale use of tender vessels to avoid the trip limit restriction. Vessels operating as tenders in western GOA are prohibited from retaining on board more than 600,000 lb (272 mt) of unprocessed pollock. Tendering is allowed there, while prohibited from other Gulf management areas, because smaller vessels delivering to Sand Point and King Cove are more dependent on tenders than the larger vessels that operate in the central GOA and deliver primarily to Kodiak.

The American Fisheries Act placed additional (sideboard) restrictions on BS-based catcher vessels when fishing in the GOA. The combined effects of all of these measures were expected to significantly slow the pace of the GOA pollock fisheries in a manner consistent with the principle of temporal dispersion, by discouraging or preventing all but a few BS-based catcher vessels from continuing to fish in the GOA. During 1995-1997, BS-based catcher vessels accounted for approximately 75 percent of the pollock landings in Areas 610 and 620, and more than 50 percent of pollock landings in Areas 630 and 640.

In-season management of 2005 fishery: NMFS staff reported that most catcher vessels do not exceed the trip limit. Twenty two catcher vessels participated in the 2005 "A" season. During the three day fishery, eight vessels made three deliveries, nine vessels made four deliveries and one vessel made eight deliveries. The remaining four vessels made two or fewer deliveries for a total of 76 deliveries for the fishery. Of those, eight (about 9 percent) exceeded the 300,000 lb trip limit, compared with one or two vessels in a typical season. While one vessel exceeded the limit by over 57,000 lb, the others exceeded the limit by 1,000-10,000 lb (the average of all eight was 14,396 lb). One vessel had overages on two deliveries in a row. The total of all catcher vessel trip limit overages was 115,170 lb or about 52 mt, which is approximately 1 percent of the TAC. The enforcement policy is to forfeit the value of an overage for the first infraction if the overage is small (approximately 10 percent). Subsequent violations carry a fine of up to $5000. Fines are more substantial if there are more than three overages in a year.

Since there are no limits on the number of trips allowed each day for either catcher vessels or tenders in the WGOA, the pace of the fishery has accelerated in recent years. The pre-announced 2005 "A" season began on a Thursday and lasted three days. While overages of the catcher vessel trip limit were not significant and overages of the tender trip limit have not been determined at this time, the 5,000 mt "A" season pollock TAC was exceeded by 2,000 mt due to the fast pace of the fishery from the use of tenders. Season closures must be filed through NMFS headquarters, which is not possible on weekends. A pre-season announcement is a (not necessarily better) alternative to in-season management, in which NMFS announces the closing date of a fishery prior to its start. This may still result in either overages, as was the case in this most recent season, or underages based on the lack of precision by staff in projecting the daily harvest rate. Sufficient TAC must remain in an underage for a projected full day of fishing to allow for a reopening. Otherwise, the underage amount is rolled over to the next seasonal allocation. While pre-announced closures are sometimes necessary if the projected season length is too short to allow for inseason management, they eliminate the ability for inseason mangers to react to unanticipated changes in weather conditions and or catch rates.

The four processing plants that traditionally participate in this fishery all have tender vessels operating on the grounds during the fishery. A few cod end transfers have occurred in the last few seasons, including the 2005 "A" season, but this has been more the exception than the rule (or just not documented by NMFS). There were nine tenders in the 2005 fishery, compared with four tenders in 2004. This year, one processor had two tenders operating on the grounds and an additional seven tenders tied to their dock to hold fish waiting for processing (or for transport to another processing facility). One plant is weighing the fish through their hopper scales and then pumping the fish onto the tender vessels for shipment to Akutan to get processed. In doing this, the tender is not really acting as a buying tender but more as a transporter of unprocessed fish that was already delivered and reported, and may not be subject to the tender trip limit. This allows the fleet to not be constrained by the processing capacity of the plant.

The use of tenders speed the pace of fishing, whether they shorten the run time from the fishing grounds to the point of offload, thereby allowing the fleet to spend more time fishing and less time running between the processor and the fishing grounds, or provide additional holding capacity for the processing plant. Tenders typically haul the cod end on board, dump the pollock into their recirculating seawater tanks, and then transport the harvest in to a shore plant for processing. The use of tenders in the WGOA pollock fishery has been an evolving phenomenon, allowing catcher vessels to make multiple deliveries in a shorter period of time and contributing to quota overages by complicating in-season tracking of harvests. Having fish going to both shore plants and tenders makes it more difficult to track the entire catch in a manner timely enough to be useful for in-season management. If the Council chooses to reexamine the tender allowance (rather than the current trip limit), more local vessels with a 300,000 lb hold capacity could enter the fishery (now about 8 of the 22 boats have that capacity).

ANALYSIS: RIR/IRFA for a regulatory amendment; a categorical exclusion for NEPA would be requested; however, an EA may be required.

RANGE OF ALTERNATIVES:

1. No action: Limit catcher vessels to no more than 300,000 lb of pollock on board the vessel at any time during a trip in the WGOA.
2. Limit catcher vessels to no more than 300,000 lb of pollock in a 24-hour period* in the WGOA.

*Staff recommends noon to noon to coincide with season openings

The Council may wish to consider whether to expand the proposed action to: (1) all or other areas of the GOA, and/or (2) 600,000 lb tender trip limit in the western GOA or (3) eliminate the use of tenders in the WGOA.

ESTIMATE OF STAFF RESOURCES: Likely no more than 4 weeks of total interagency staff time for analytical and regulatory writing and review, if limited to the proposed action in an RIR/IRFA.

TIMELINE TO IMPLEMENTATION: A regulatory amendments typically requires two Council meetings for initial review and final action, with an additional six months for rulemaking and implementation. If not controversial and the proposed action entails a clarification of Council intent to the original implementing regulations (Steller sea lion mitigation measures) without triggering re-initiation of Section 7 formal consultation, it may be possible to proceed straight to final action in one meeting. Rulemaking and implementation would still require at least six months. The Council would have to identify this as a high priority action and identify staff or contract resources to schedule action in 2005. Final action would be needed by June 2005, for the possibility of implementation in January 2006.

OTHER APPLICABLE LAWS: Endangered Species Act consultations may be necessary if the alternatives are expanded beyond those currently proposed.

Acknowledgements: Rance Morrison and Josh Keaton, NMFS SF

Appendix 2 – Draft motion discussed by the Council in December 2004 (author unknown)

Motion to correct a loophole in the WGOA 300,000lb pollock trip regulation

The Problem:
Vessels are beginning to exploit a loophole in GOA fishing regs found at 50 CFR 679.7(a)(2), which pertains to trip limits for pollock.

§ 679.7 Prohibitions
In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:
(b) Prohibitions specific to the GOA.
(2) Catcher vessel trip limit for pollock. Retain on board a catcher vessel at any time during a trip more than 300,000 lb (136 mt) of unprocessed pollock.

The regulation is intended to slow down the race for fish in the WGOA pollock by limiting harvesting vessels to 300,000 pounds of unprocessed pollock per trip. Until recently, it was understood that the regulation meant that a harvester could not move more than 300,000 pounds of pollock daily. Pollock tender vessels are able to 900,000 pounds of pollock in the WGOA.

50 CFR 679.2 defines a fishing trip as follows:
§ 679.2 Definitions.
Fishing trip means:
(A) The effective date of a notification prohibiting directed fishing in the same area under § 679.20(d) or § 679.21;
(B) The offload or transfer of all fish or fish product from that vessel;
(C) The vessel enters or leaves an area where a different directed fishing prohibition applies;
(D) The vessel begins fishing with different type of authorized fishing gear; or
(E) The end of a weekly reporting period, whichever occurs first.

Some vessels are now delivering multiple 300,000lb trips daily to tenders, up to 900,000 tender limit. In some cases they are reported to have employed multiple and harvested and delivered as much as 1,500,000 in a single day.
The WGOA currently has 4 distinct seasons, all with low TACs. The practice circumventing the original intent of the 300,000 pound trip limit will increase as harvesters struggle to remain competitive. This situation is significant, undesirable, unwarranted, and unintended.

The Solution:
Taken together 679.2(B) and 679.7(b)(2) creates a loophole in regulations which allows harvesting vessels to make multiple trips daily and to greatly exceed the intended 300,000 pound daily trip limit.

This loophole can be corrected by modifying 679.7(b)(2) with the following **Regulatory Amendment**.
Move to modify § 679.7 *Prohibitions* as follows:
§ 679.7 *Prohibitions*
In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:
(b) Prohibitions specific to the GOA.

(2) Catcher vessel trip limit for pollock. ***<u>For a catcher vessel to harvest</u>*** more than 300,000 lbs (136 mt) in aggregate, of unprocessed pollock ***<u>during a 24 hour period</u>***

AGENDA C-3(c)
DECEMBER 2007
Supplemental

Groundfish Data Bank

Alaska

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Julie Bonney, Executive Director jbonney@gci.net
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November 28, 2007

North Pacific Fisheries Management Council Chair
NPFMC
6005 W. 4th, Suite 306
Anchorage, AK 99501-2252
Fax: 907-271-2817

Re: Regulatory Amendment to Revise the Definition of the Gulf of Alaska Pollock Trip Limit

Dear Chair:

The Alaska Groundfish Data Bank is a member organization representing GOA shoreside trawlers and shoreside processors. We would like to take this opportunity to express our gratitude to the North Pacific Fisheries Management Council members and their staff for the time and effort they have expended toward the proposed amendment to revise the section in 50 CFR 679.7 regarding the Gulf of Alaska Pollock trip limit.

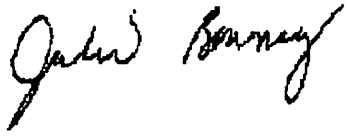
This amendment package was a result of concerns expressed by WGOA trawl pollock participants where vessels were circumventing the 300,000 pound trip limit by making multiple landings within one calendar day either to a processor or tender. No tendering is allowed in the CGOA pollock east of 157 degrees thus landing of more than 300,000 pounds is only possible through multiple vessel landings to a processor within a calendar day. The members of the Alaska Groundfish Data Bank support the closure of the regulatory loophole only because it makes sense to have consistent trip limit regulations across the Gulf of Alaska for ease of enforcement and regulatory consistency. We support alternative 2 as the preferred alternative.

However, the members of AGDB would note for the record that trip limits are a poor tool to slow a fishery or create temporal distribution of pollock harvests over time to avoid jeopardy for Stellar Sea lions. As the price of fuel continues to increase, trip limits serve to increase costs and create inefficiencies for the fleet. It also puts a large burden on the vessels to control catches to stay under 300,000 pounds yet get as close as possible to the maximum limit to increase revenues. To truly control the race for fish, temporarily spread the fishery over time, keep harvests under the available quota and create efficiencies for the vessels, allocating the quota to individual vessels or cooperatives is a superior management regime. However, the Council has chosen to set aside GOA rationalization, thus allocating to individuals as a management measure is not an option for consideration at this time.

We urge the Council to adopt this amendment under alternative 2 which would close the loophole in the existing GOA pollock trip limit regulation. The amended regulation would be read and be interpreted as intended by including a limit per 24-hour period, not just per trip, with a landing limit of 300,000 pounds.

Thank you for the opportunity to comment.

Sincerely,



Julie Bonney
Executive Director,
Alaska Groundfish Data Bank
P.O. Box 788
Kodiak, AK 99615

C-3(c)

Public Review Draft

REGULATORY IMPACT REVIEW/REGULATORY FLEXIBILITY ANALYSIS

Gulf of Alaska Pollock Trip Limit

NPFMC
November 9, 2007

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1.0 INTRODUCTION

The Gulf of Alaska pollock trip limit has been before the Council a number of times, dating back to the late 1990s. The initial Council action was in 1999, with a corresponding action for State waters from the Alaska Board of Fisheries the same year. The Council has been advised through public testimony that a problem exists with the current trip limit regulation. This report evaluates the existing situation and analyzes two potential alternatives to resolve the problem.

The Gulf of Alaska is the focus of this proposed action. The boundaries of the proposed action are detailed in Figure 1. Management area 610 includes the entire Western Regulatory Area in the map. Management area 620 is compromised of the western half—the Chirkiof District—of the Central Regulatory area. The Kodiak area is management area 630 and West Yakutat is area 640.

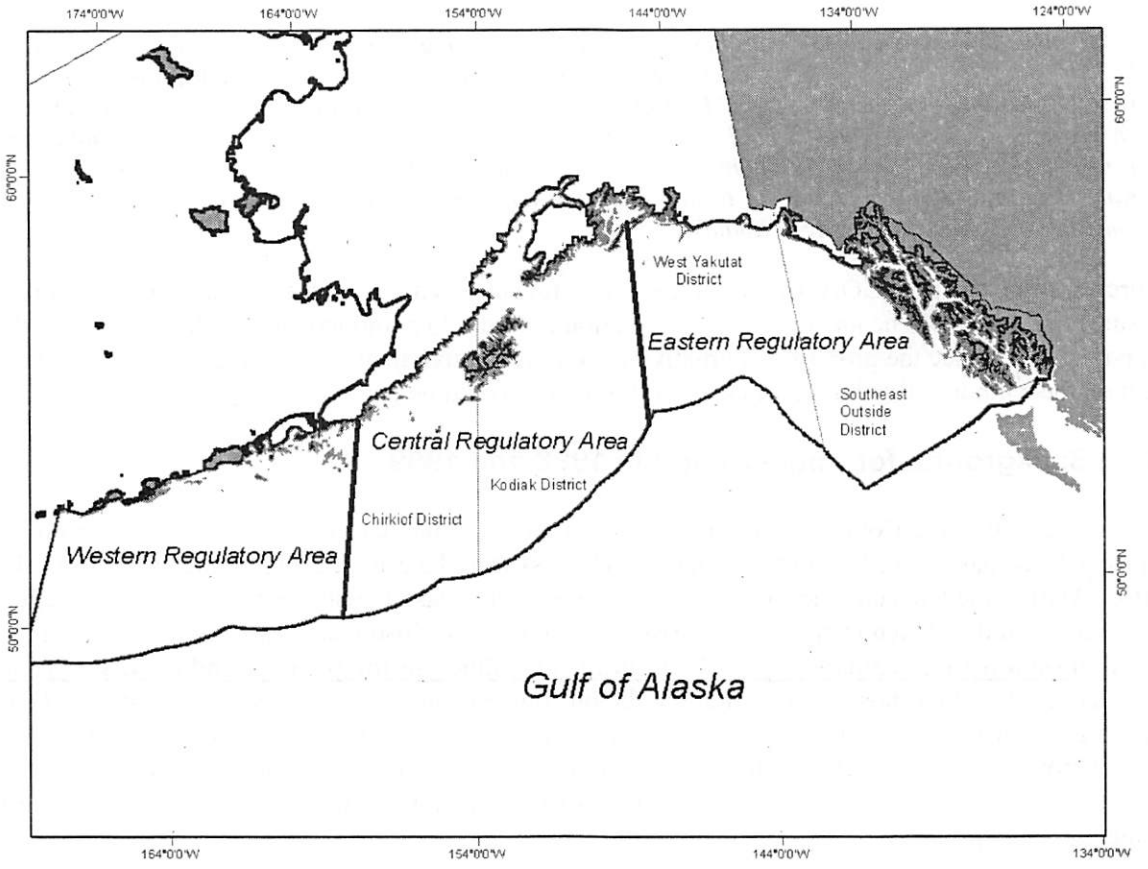

Figure 1. Management Areas in the Gulf of Alaska

Trip limits for pollock were implemented as part of a package of sea lion mitigation measures adopted in 1999 to allow the fishery to continue in the Gulf of Alaska (GOA). Alternative 4 of the Steller Sea Lion Protection Measures Final Supplemental Environmental Impact Statement (November 2001), established in the National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) process of developing protections for Steller sea lions, was determined to be the preferred alternative. When it was selected as the preferred alternative, an ESA Section 7 Consultation was reinitiated for the fisheries management measures embodied in Alternative 4 (including the GOA pollock trip limit) resulting in the 2001 Biological Opinion and Incidental Take Statement. The 2001 Biological Opinion concludes that

this suite of management measures would not likely jeopardize the continued existence of the western or eastern populations of Steller sea lions.

The language in the Steller sea lion regulations describing the effects of the trip limit measure is shown below:

> *The 300,000 lb (136 mt) trip limit for catcher vessels harvesting pollock in the directed pollock fisheries of the GOA at § 679.7 supports temporal distribution objectives and is maintained by this rule. A catcher vessel fishing for groundfish in the GOA will be prohibited from retaining on board more than 300,000 lb (136 mt) of pollock harvested in the GOA any time during a trip. This trip limit will not exempt vessels from existing regulations that require 100 percent retention of pollock when directed fishing for pollock is open. A vessel would have to stop fishing for pollock during a fishing trip before the 300,000 lb (136 mt) trip limit is reached to avoid a violation of either the 300,000 lb (136 mt) trip limit or the 100 percent retention requirement for pollock.*
>
> *In addition, § 679.7 continues to prohibit vessels from operating as pollock tenders in the GOA east of 157°00' west longitude to prevent the large scale use of tender vessels to avoid the trip limit restriction. Vessels operating as tenders in the GOA west of 157° 00' west longitude will be prohibited from retaining on board more than 600,000 lb (272 mt) of unprocessed pollock or the equivalent of two fishing trips. Tendering west of 157° 00' west longitude is allowed because smaller vessels delivering to Sand Point and King Cove are more dependent on tenders than the larger vessels that operate east of 157° 00' west longitude and deliver primarily to Kodiak* [1]

At present, the existing GOA trip limit measure, together with the other Steller sea lion protection measures, is believed to be an appropriate mitigation measure to avoid jeopardy to the western Steller sea lion population. Since the proposed alternative is more restrictive than the existing trip limit measure, any effect on the temporal distribution of catch of this action would be beneficial.

1.1 Background for Initial Action in 1998 and 1999

In December 1998, the Council took emergency actions to implement measures consistent with NMFS' proposed Reasonable and Prudent Alternatives (RPAs) to reduce impacts to Steller sea lions. For the Gulf of Alaska, the Council's action included: creating four seasons with limits on the percentage of the TAC which could be taken from any one season; expanding the closure areas around rookery and haul-out sites; **and establishing a 300,000 pound trip limit for pollock in the western and central Gulf areas**[2]. As noted in the text box below, the regulation implemented by NMFS translated the Council's recommended trip limit of 300,000 pounds to the nearest whole metric equivalent, which is 136 metric tons. Throughout the report, the limit is referred to as the 300,000 pound limit, since that was the management action, but the regulation is set at 136 metric tons, which is slightly less than 300,000 pounds (299,829 pounds).

In response to the Council recommendation, on January 22, 1999, NMFS implemented an emergency action to apply Steller sea lion protection measures, including the action described above, to the 1999 fishing season[3]. The wording for the emergency rule, as it relates to the Gulf of Alaska trip limits is as follows:

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[1] Federal Register/Vol 67, No. 5, Tuesday, January 8, 2002/Rules and Regulations, page 964.
[2] North Pacific Fishery Management Council newsletter, December 1998 (*emphasis added*).
[3] Federal Register/Volume 64, No. 14/Friday, January 22/Rules and Regulations – page 3441.

> *"The emergency rule prohibits the operator of a catcher vessel fishing for groundfish in the W/C GOA from retaining on board more than 136 mt of pollock harvested in the W/C GOA. In addition, to prevent the large scale use of tender vessels to avoid the trip limit restriction, this rule also prohibits vessels operating as tenders from retaining on board more than 272 mt (the equivalent of 2 fishing trips) of unprocessed pollock that was harvested in the W/C GOA. This 136 mt trip limit does not exempt vessels from existing regulations that require 100 percent retention of pollock when directed fishing for pollock is open. A vessel operator must cease fishing for pollock during a fishing trip before the 136 mt limit is reached in order to avoid a violation of either the 136 mt trip limit or the 100 percent retention requirement for pollock."* [4]

The reason for the emergency trip limit action was clearly spelled out in the Federal Register notice to temporally or spatially disperse pollock harvests in the GOA. The rule was implemented as of January 22, 1999 and has been in effect since then. The NMFS intent from the wording of the supporting text for the emergency regulation specifically uses the phrase "trip limit" and the intent is clear[4]. However, the language in regulation is less clear[5]. The language in the regulation prohibits retaining on board a catcher vessel at any one time during a trip more than 300,000 pounds of pollock. However, the regulation does not define 'trip' in a manner that prevents daily landings above the 300,000 pound limit. Participants can potentially bypass the intent of the regulation through actions such as multiple deliveries per day to a tender or transferring cod ends to the tender or processor, thereby not taking the pollock on board or partially offloading the fish in the hold, thus extending the trip. The existing regulation allows vessels to land well in excess of 300,000 pounds per day, without incurring a fisheries violation.

The second part of the regulation 679.7 (b) (3) stipulated that tenders cannot retain on board at any one time more than 272 mt (600,000 pounds) of pollock. However, since deliveries to tenders are not identified as such on fish tickets, it is not possible to track the amount of pollock delivered to tenders to see if companies utilizing tenders in the western Gulf pollock fishery are abiding by the regulation. Enforcement of the tender regulation appears dependent upon on-grounds enforcement. Based on this review, it appears as if 679.7 (b) (3) is a difficult regulation to enforce.

The Alaska Board of Fisheries, following the action of the Council, implemented similar regulations within State waters on July 27, 1999. The State trip limit regulation is worded similarly to the NMFS regulation above (see 5 AAC 28.073). The area incorporated into the State trip limit regulation includes State waters adjacent to the Federal management areas 610, 620 and 630, between 147 and 170 degrees west longitude. It should be noted that there is a small discrepancy between the State and Federal regulations. The Federal regulations include management area 640 (between 140 and 147 degrees W. Longitude) whereas the State regulation cited above extends to the eastward boundary of management area 630 at 147 degrees W. longitude. Therefore, State regulations do not currently include management area 640. There is a small pollock fishery in the West Yakutat area, but it is currently managed by the State to include the 300,000 trip limit, so the regulation discrepancy is not reflected in a difference in management approach between State and Federal management.

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[4] Federal Register/Volume 64, No. 14/Friday January 22, 1999.
[5] 50 CFR 679.7 (b) & (c)

1.2 Council/NMFS Action in 2000

On January 25, 2000, NMFS, implementing recommendations from the Council, published an emergency interim rule to continue protection measures for Steller sea lions. The pollock trip limit was included in the package, continuing the rule in regulation.

1.3 Council/NMFS Action in 2002

On January 8, 2002, NMFS published the final rules and regulations to implement the Steller sea lion protection measures, including in final action the pollock trip limits in the GOA. This regulation is still in effect as passed in 2002.

1.4 Council Action in 2004/2005

In December 2004, the Council requested staff to prepare a discussion paper for the 300,000 pound trip limit, prompted by a proposed motion submitted by western Alaska groundfish fishermen. The Council record shows a motion submitted to the Council for consideration (copy attached as Appendix 1) recommending an action to resolve the landing pattern that the proponents of the motion believed to be a 'loophole' to ignore Council intent with the 300,000 pound trip limit. The discussion paper was prepared and presented to the Council at the February 2005 meeting.

The notes from the meeting indicate the following action by the Council:

> In December 2004, the Council requested that staff develop a discussion paper of recommended changes to the 300,000 lb pollock trip for catcher vessels. Multiple trips and offloading to tenders have allowed a faster catch rate by catcher vessels than if they were delivering to plants on shore or if only one trip was allowed per day. The faster paced fishery led to a 2,000 mt overage of the 5,000 mt seasonal pollock quota in the 2005 'A' season in Area 610. The Council expressed concern, but tabled further action indefinitely after receiving assurances from industry representatives that the pace of future fishing would be slower, and from NMFS that the 2006 'A' season would be more closely managed. If the problem is not addressed voluntarily, the Council may reschedule further discussion and possible regulatory action in the future.

The link between the Council action initial action in 1999 and the Council discussion and proposed motion in December 2004 is the common theme to slow down the fishery.

1.5 Council Action in 2007

At the April 2007 meeting, the Council directed the staff to initiate the process for an amendment to resolve this issue. This report is the results of that request.

The following sections provide a Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Act (IRFA) review. Requirements for National Environmental Policy Act (NEPA) compliance will be addressed separately. An application has been submitted to NMFS for a Categorical Exclusion Determination under National Environmental Policy Act (NEPA) for the Gulf of Alaska Pollock Trip Limit proposed amendment and regulation change. Initial discussions between the staffs of the Council and NMFS have indicated that this approach is appropriate for this application.

2.0 REGULATORY IMPACT REVIEW

2.1 Introduction

This chapter provides information on the economic and socioeconomic impacts of the alternatives, as required under Executive Order 12866 (E.O. 12866). This chapter includes a description of the purpose and need for the action and the management objectives, a description of the alternatives proposed to meet those objectives, identification of the individuals or groups that may be affected by the action, the nature of those impacts (quantifying the economic impacts where possible), and discussion of the tradeoffs. The economic impacts of the alternatives under consideration, including the Council's preferred alternative, are summarized in Section 3.4.

The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

> *In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.*

This section addresses the requirements of E.O. 12866 to provide adequate information to determine whether an action is "significant" under E.O. 12866. The order requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant." A "significant regulatory action" is one that is likely to:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

As will be presented in the following sections, it is not anticipated that selection of any alternative under consideration for this amendment would trigger any of the above considerations to be a "significant regulatory action".

2.2 Purpose and Need for the Action

2.2.1 Draft Problem Statement

This regulation was implemented in 1999. The trip limit of 136 mt (300,000 pounds) was established to provide temporal dispersion in pollock fishing, through slowing the fishery. As shown by the analyses presented in this report, the measure has not been fully effective due to avoidance of the trip limit by some of the participants in the fishery. It cannot be determined from the available data whether the

avoidance has been a result of the use of tenders, making multiple landings per day, or through disregard of the regulation, but the effect is the same. The issue addressed by this proposed amendment is not one of enforcement. Rather, it is whether or not the existing regulation meets the initial goal of temporally dispersing pollock harvests in the GOA. The Council may decide whether or not the existing regulation reflects their intent for regulation of the GOA pollock fishery, but the relevant comparison is whether they agree with the problem statement, and agree on an appropriate action to change the existing situation.

The April 2007 staff discussion paper (included in Appendix 1) presented a draft problems statement. However, the draft problem statement was revised by the Council at their October 2007 meeting as noted below:

> *Section 679.7(b) (2) placed a 136 mt (300,000 lb) limit for the amount of pollock that can be aboard a catcher vessel in the Gulf of Alaska to meet the objectives of Steller sea lion protection measures, but it places no limit on the number of trips per day, and does not place a limit on the total amount of pollock that can be harvested and landed by a catcher vessel in a day. The trip limit was intended to slow down the race for fish in the pollock fishery by limiting harvests on catcher vessels to 300,000 lb of unprocessed pollock per fishing trip.*
>
> *Catcher trawl vessels may be circumventing the intent of the trip limit by making multiple 300,000 deliveries in a day. It was generally believed that only one trip per vessel would occur per day when the Council made its recommendation, but the regulation, as written, does not impose a daily limit. Multiple offloadings in a day allows a faster catch rate by those vessels than if only one trip was allowed per day.*

Clearly, the regulation may not be having the full effect because of fishermen's ability to land greater than 300,000 pounds per day without incurring a violation under the existing regulation. The most straightforward way to fix this situation would be to adjust the regulation, so that an effective and enforceable trip limit would be in place.

While the genesis of the trip limit regulation resulted from the need to implement Steller sea lion protection measures, the need for the current alternative is predominantly due to problems with the current regulation that have exacerbated conflicts between small trawl pollock vessels and larger trawl pollock vessels operating in the GOA. The trip limit issue, as noted in the discussion below, has served to promote continuing conflict between the larger trawl vessels fishing pollock and the smaller trawl vessels fishing pollock. The Council has heard testimony by pollock fishermen in the region, that their fishing opportunities to fish in the pollock fishery are truncated to some extent, by avoidance of the 300,000 pound trip limit. The extent of the 'overage' problem is described in the following sections. Taking action to correct the trip limit regulation would have the effect of extending the number of days the pollock fisheries was open in the GOA by reducing the daily harvest per vessel to 300,000 pounds per day or less.

2.2.2 Draft Alternatives

In the April 2007 staff discussion paper, two draft alternatives were presented for the Council's consideration. The alternatives are:

2.2.2.1 Alternative 1: No Action.

If this alternative were selected, the status quo would not change. The pattern of using multiple tender deliveries in the area 610 and 620 pollock trawl fishery and/or other practices throughout the GOA that allow greater than 300,000 pounds of pollock to be landed per day without incurring a fisheries violation would not change. However, NMFS enforcement indicated an expectation that taking no action on the

problem would amount to tacit approval of the practices that have been employed by portions of the GOA trawl fleet in making trip landings or daily landings over 136 mt (300,000 pounds) in recent years. It could be expected that selecting the no action alternative would legitimize these practices, resulting in a likely future increase in average landing size.

2.2.2.2 Alternative 2: Additions to Existing Regulation (as follows):

a) *Limit trawl catcher vessels in the Gulf of Alaska (GOA) pollock fishery to landing no more than 136 metric tons, through any delivery means, in a calendar day - 12 AM to 12 AM (or 0001 hrs to 2400 hrs); and*

b) *The cumulative amount of pollock harvested from any GOA ~~regulatory~~ area landed by a trawl catcher vessel cannot exceed the daily trip limit of 136 metric tons times the numbers of calendar days the fishery is open in the respective ~~regulatory~~ area.*

The Council revised this alternative at the October 2007 meeting, incorporating recommendations from the Council's Enforcement Committee. It is the opinion of Council staff and NMFS enforcement personnel [6], that the proposed regulation change will be most effective if the existing regulations §679.7 (b)(2) and (b)(3) are retained. In the opinion of NMFS enforcement and other staff, as well as the Council staff, the combined effect of the new restrictions selected by the Council in Alternative 2 and the existing regulation will result in a clear and enforceable regulation that will prevent trawl catcher vessel landings of pollock in the GOA greater than 300,000 pounds per day, consistent with the Council's initial intent for this regulation.

2.2.3 Description of the Pollock Trawl Fishery

Table 1 below shows the recent history of the GOA pollock harvests for management areas 610 (Shumagin), 620 (Chirikof), 630 (Kodiak) and 640 (West Yakutat) from 1999 through 2007. One of the most noticeable features of this table is the radical decrease in the quota in area 620 for the years 2000 and 2001 and the return in 2002 to previous levels. The reason for this change during 2000 and 2001 was the recording of harvests to the Shelikof area during those two years. In 2000 and 2001, the Shelikof area, which is comprised of portions of both 620 and 630, had pollock landings of 25,853 mt and 18,895 respectively. Beginning in 2002, the Shelikof harvests have not been accounted for separately.

An important aspect of the pollock fishery in the GOA is that it occurs partially within State waters (0 to 3 miles) and partially within Federal waters (3-200 miles). With the fishery split between the State and Federal waters, management problems cannot be resolved in one jurisdiction without also addressing the problem in the other. In 1999, following the NMFS implementation of the 136 mt limit, the State of Alaska, through action by the Alaska Board of Fisheries, implemented a similar regulation to mirror the Federal regulations in State waters. To be fully effective, the new regulation proposed in Amendment 2 will need to be adopted by the Alaska Board of Fisheries to become effective in State waters. The Board of Fisheries has placed the issue of the GOA trawl fishery pollock trip limit on their agenda for November 2007, and may take action at that time.

[6] Ken Hansen, Alaska Enforcement Division, personal communication, October 10, 2007.

Table 1. Basic Information on the GOA Pollock Fishery: TACs & Landings 1999-2006

	610-Shumagin		620-Chirikof		630-Kodiak		640-W. Yakutat	
year	total catch	quota	total catch	quota	total catch	quota	total catch	quota
1999	23,384	23,120	38,142	38,840	30,133	30,520	1,759	2,110
2000	22,074	26,378	699	7,815	25,853	20,987	2,108	2,340
2001	30,471	31,056	1,742	8,059	17,026	23,583	2,351	2,235
2002	17,455	17,840	20,535	25,233	10,902	6,995	1,818	1,165
2003	16,510	16,788	19,642	19,685	12,435	10,339	943	1,078
2004	23,455	22,930	24,661	26,490	14,444	14,040	226	1,280
2005	30,973	30,380	27,904	34,404	19,329	18,718	1,880	1,688
2005	24,738	28,918	27,156	30,492	17,056	18,448	1,572	1,792
2007	16,159	25,012	19,332	20,980	12,217	14,850	86	1,398

source: NMFS Gulf of Alaska Seasonal Catch Reports (catch in metric tons).
2007 harvest is through 10/20/2007.

Table 2 shown below shows the respective split of pollock harvests between State and Federal waters. The far right hand side of the table shows the respective proportion, by year and in total over the period from 1999-2006, that was harvested in State waters and in Federal waters. The respective proportions shift considerably from year to year. Based on the data in Table 2, it appears as if fishermen may be shifting effort from year to year in response to changes in resource abundance. The total at the bottom of Table 2 shows the overall proportions harvested over the 8 year period (1999-2006) for all GOA trawl pollock. The overall proportions for the years 1999-2006 are 36.9 percent of the harvest from State waters and 63.1 percent from Federal waters. The conclusion to be drawn from Table 2 is that action in both State and Federal waters is important if the trip limit is to be successfully enforced. If the regulation were just to be administered only in Federal waters, for example, the unintended result would likely be a shift in effort by those wishing to make larger landings into State waters.

Over the 1999 to 2006 period, the GOA trawl pollock fishery harvested 1,169,942,350 pounds (530,586 mt) with a gross harvest value of $113 million.

In understanding the patterns of the fishery, it is important to also look at the change in fishing effort by vessels of different sizes to see of there has been a recognizable trend over the period since the trip limit regulation has been implemented. Table 3 shows the pattern of days with landings (defined as a vessel landing pollock in the GOA during a calendar day) for the years 1999–2006. The days with landings are divided by vessel length category: those vessels less than 60 feet compared with those vessels 60 feet or greater. These data represent an admittedly gross measure of effort, since the there is no measure of catch associated with the days with landings. Nevertheless, this table does allow perspective on the participation trends for smaller and larger vessels in the trawl pollock fishery in areas 610 and 620. While there is some variation in the number of landing days for the groupings in Table 3, there is not a remarkable trend to indicate that vessels less than 60 feet or 60 feet and over had had a steady increase or decrease in the number of days where landings have been made in the trawl pollock fishery.

Table 2. Proportional Harvests of Pollock in GOA State and Federal Waters, 1999–2006

Year	Area	Inside/Outside Harvest	Inside/Outside Proportion
1999	I	67,374,058	33.8%
	O	131,914,709	66.2%
	Total	199,288,767	100.0%
2000	I	41,731,901	26.5%
	O	115,559,810	73.5%
	Total	157,291,711	100.0%
2001	I	66,923,075	42.4%
	O	90,762,639	57.6%
	Total	157,685,714	100.0%
2002	I	49,324,866	43.8%
	O	63,221,178	56.2%
	Total	112,546,044	100.0%
2003	I	36,664,513	33.9%
	O	71,624,448	66.1%
	Total	108,288,961	100.0%
2004	I	62,429,708	45.6%
	O	74,626,730	54.4%
	Total	137,056,438	100.0%
2005	I	57,473,726	33.0%
	O	116,549,573	67.0%
	Total	174,023,299	100.0%
2006	I	59,834,311	39.5%
	O	91,724,075	60.5%
	Total	151,558,386	100.0%
Total	I	441,756,158	36.9%
	O	755,983,162	63.1%
	Total	1,197,739,320	100.0%

Source: NPFMC data files, October 2007. Landings in 1999 are from the date of implementation of the trip limit regulation on January 22, 1999. Harvests are in pounds.

key: I equals inside (State) waters
O represents outside (Federal) waters

Table 3. Landing Days for Pollock Trawl CVs in the GOA, 1999–2006

year	landing days for vessels < 60 ft.	landing days for vessels ≥ 60 ft.	total days w/landings
1999	359	1,276	1,635
2000	324	1,174	1,498
2001	531	1,139	1,670
2002	259	873	1,132
2003	194	762	956
2004	231	809	1,040
2005	379	886	1,265
2006	312	1,095	1,407

Source: NPFMC data file based upon ADF&G fish tickets, October 2007. Note that landing days are defined as a calendar day that an individual vessel made at least one landing. Harvests for 1999 begin on January 22, 1999, the date of implementation for the trip limit regulation.

2.2.4 Enforcement of the Existing Regulation

NMFS Enforcement has the responsibility to enforce the existing regulation for the western Gulf trip limits. For landings of pollock greater than 136 mt, the enforcement practice is as follows [7]. For the first instance during a calendar year, the penalty is abandonment of the amount in excess of 136 mt For each subsequent violation during the same calendar, penalties include abandonment of the excess pollock and penalty (fine). It is important to note that, due to the structure of the existing regulation, not all instances where a vessel lands greater than 300,000 pounds represents a violation of the existing trip limit regulation. Operators in the fishery have utilized fishing methods involving deliveries to tenders, vessel loads and delivery of towed cod ends on the same trip to maximize their catch, and still remain within the existing regulation.

2.2.5 Identification of the problem to be solved

The genesis of the GOA pollock trip limits were sideboard allocations discussions that occurred during implementation of the American Fisheries Act. The Final EIS for the American Fisheries Act, contains the following statement:

Both AFA and non-AFA catcher vessel owners expressed concern that rationalization of the BSAI pollock fishery could lead to an intensification of the race for fish in other groundfish fisheries if a race for sideboard fishing developed within the AFA fleet. This could occur because under AFA cooperatives, numerous AFA catcher vessels would no longer need to participate in the BSAI pollock fishery and would be free to expand their effort into other groundfish fisheries. Absent some mechanism to allocate sideboard amounts among individual cooperatives and vessels, an intense race for sideboard fishing could ensue as each AFA vessel race to capture its share of the sideboard [8].

During the development of the Steller sea lion protection measures, a trip limit for pollock in the Gulf of Alaska was included in the measures considered in a couple of the alternatives. As noted in this report, NMFS enacted regulations to set a trip limit of 136 metric tons in the trawl pollock fishery in the GOA. The limit was established through emergency action in 1999 and through final action in 2002. Problems with the regulation as it currently exists and is administered have been brought to the attention of the Council in recent years. In testimony to the Council, fishermen from these areas have complained that the trip limit regulation has been circumvented by the use of tenders in the fishery to make multiple landings per day, which they believe is not consistent with the Council's initial intent for this regulation.

To evaluate the situation on landings in the fishery, the staff developed a data base comprised of fish ticket files and analyzed the data for the fishery from the time of implementation of the trip limit (January 22, 1999) through the 2006 season. Over this time period, there were a total of 10,890 fish tickets for trawl pollock landings in the GOA (management areas 610, 620, 630 and 640). When we look at the number of fish tickets for amounts of pollock greater than 300,000 pounds, there are a total of 165 instances where this occurred. The mean fish ticket amount, for the 165 instances over 300,000 pounds was 349,047 pounds, with a range of 300,079 pounds to 1.5 million pounds.

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[7] Ken Hansen, Alaska Enforcement Division, personal communication, September 2007.

[8] Final Environmental Impact Statement for American Fisheries Act Amendments 61/61/13/8, United States Department of Commerce, National Oceanographic and Atmospheric Administration, National Marine Fisheries Service, Alaska Region, February 2002, chapter 4, page 4-83.

As discussed above, landings greater than 300,000 pounds may or may not be a violation, since the existing regulation allows vessels to employ a number of practices to avoid the current regulation (i.e. deliveries to tenders, transfer of cod ends, and not fully offloading fish from the hold to prevent the and of a 'trip').

The intent of the proposed wording in Alternative 2 is intended to stop any future trawl catcher vessel landings greater than 300,000 pounds per day by making the regulation clear and unambiguous therefore simplifying enforcement of the pollock trip limit in the GOA. Part (a) of Alternative 2 clearly limits vessel landings to 136 mt When combined with the existing regulation in 679.7(b)(2) restricting trawl vessels operating in the GOA to retain on board at any time during a trip more than 136 mt, the trip limit should be effective. If the existing regulation is not retained, the role of tenders in the western GOA pollock fishery could change, bringing intended impacts to vessels in the fishery. Part (b) or alternative 2 provides a regulatory 'backstop' to the trip limit regulation that would prevent use of various techniques that have been used in the past to circumvent the intent of the daily trip limit. Finally, retention of 679.7(b)(3) would retain current practices on the use of tenders in the GOA west of 157 degrees W. longitude.

2.2.6 Analysis of the 'Overages'

The staff further considered the data on landings, since there is considerable latitude on practices for fish tickets. For example, a vessel owner has the potential opportunity to receive more than one fish ticket for a given trip from more than one processor, or even from the same processor. To compare the current management of the regulation with what would be the case with a 300,000 daily trip limit, we completed a second analysis, aggregating all landings made by a specific vessel over a calendar day.

This analysis showed a total of 10,604 landings by individual vessels during a calendar day for the trawl pollock fisheries in the GOA from the implementation date of January 22, 1999 through 2006. Of this total, there were 241 instances where more than 300,000 pounds was landed by an individual vessel during a calendar day. This analysis demonstrates the difference between the current situation and what would be the case with an effective daily trip limit of 300,000 pounds (per the problem statement for this proposed amendment). There is not sufficient information in the fish ticket records to be able to discern the reasons for the additional 76 instances where vessels landed more than 300,000 pounds in a calendar, above and beyond the 165 instances where the fish tickets were for amounts greater than 300,000 pounds. The 76 instances could represent multiple landings to a tender for example, or they could represent situations where landings were 'split' into more than one fish ticket record. We have no way to know what the exact reasons were for these additional overages, but it is enough for the purposes of this analysis to recognize them as an indication that the trip limit is not functioning as a 300,000 daily trip limit.

Table 4 below provides additional information on this analysis, aggregated by year. It also shows the proportion of total pollock landings comprised by the 'overage' amounts. The overage amounts are the landings for a vessel on a calendar day over 300,000 pounds. The right hand column of Table 4 shows the proportion of total pollock landings compared with the 'overage' landings. As can be noted in the table, the overall proportion for 'overage' amounts varies by year from a low of 0.6 percent in 2000 to a high of 3.0 percent in 2004.

Table 4. Gulf of Alaska Pollock Harvest Statistics, 1999–2006:

Annual Harvest Compared with 'Overage' Amount > 300,000 Pounds/Day

	total for GOA	'overage'	proportion - overage of total
1999	199,288,767	4,824,877	2.4%
2000	157,291,711	946,152	0.6%
2001	157,685,714	1,340,363	0.9%
2002	112,546,044	1,808,778	1.6%
2003	108,288,961	1,238,340	1.1%
2004	137,056,438	4,118,404	3.0%
2005	174,023,299	3,228,566	1.9%
2006	151,558,386	1,983,911	1.3%
totals	**1,197,739,320**	**19,489,391**	**1.6%**

Source: NMFS annual harvest summary and NPFMC data files, October 2007. Landings in 1999 are from the date of implementation of the trip limit regulation on January 22, 1999.

Again, we need to emphasize that the 241 instances noted above may or may not constitute a 'regulation violation'. The existing regulation limits a vessel to 136 mt on board at any one time, so it is possible for vessels to make daily landings well in excess of 136 mt without incurring a violation.

2.2.7 Further Investigating the 'Overage' Amounts

Looking further, we can look at the pattern of the 'overage' amounts, i.e. the amount of pollock landed that was above 300,000 pounds. Figure 2 below shows the distribution of the amounts by which the landings in excess of 300,000 pounds are in excess of the limit. Please note that the intervals in the graph are not equal. They were selected to allow the reader to get an understanding of the distribution of the overages, without being overly complex. As noted in the figure, the 241 'overages' range from 79 pounds to over a million pounds, with a mean of 80,868 pounds. These data show that in general, the 'overages' are not a huge proportion of the total harvest, but are a significant amount.

Another comparison was made to evaluate whether the extent to which landings were made in excess of 300,000 were made during the 'A' (roe) season. Since the 'A' season, with the extra value of roe in the pollock harvested, might be assumed to represent the greatest incentive for GOA pollock fishermen to increase harvests. As shown in Table 5 below, for the years 2003 to 2006, the average proportion of 'overage' harvests in the A season compared with the total GOA 'A' season harvest only accounts for 1.7 percent. This compares with 1.6 percent overall, for the entire year, as shown in Table 4. The 'overage' amounts in the pollock 'A' season are very small, with the exception of 2005.

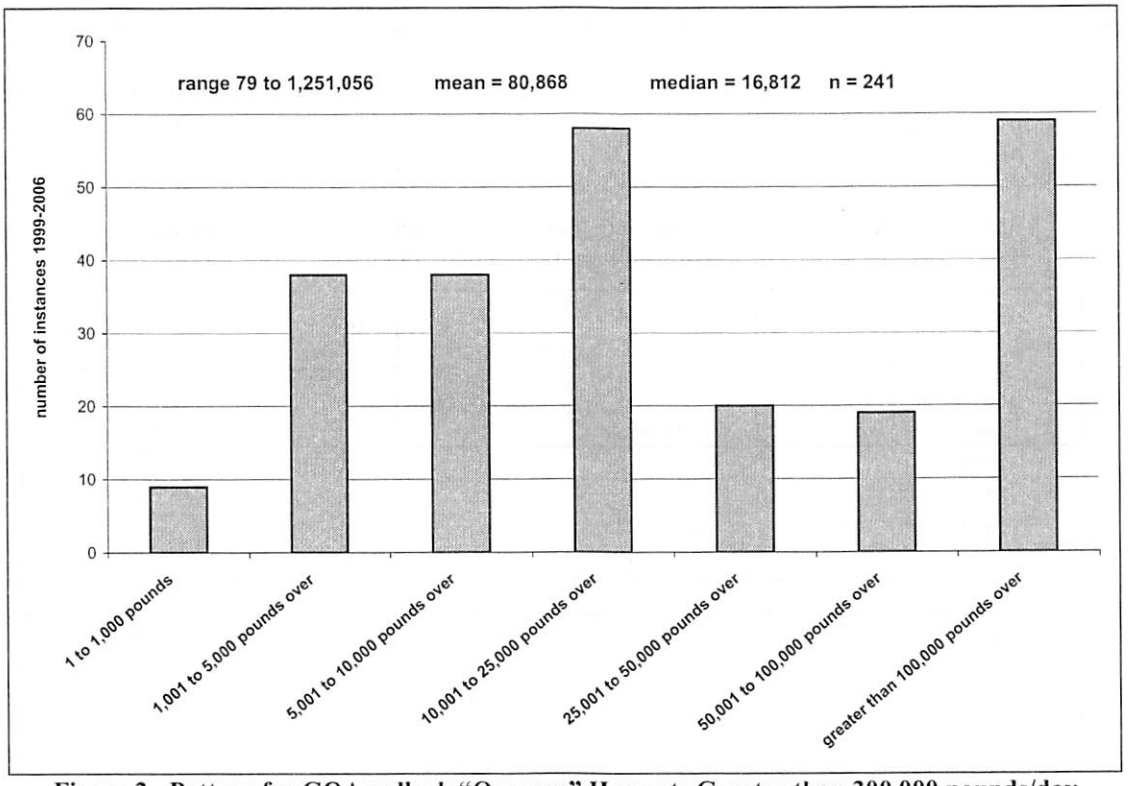

Figure 2. Pattern for GOA pollock "Overage" Harvests Greater than 300,000 pounds/day

Table 5. Gulf of Alaska Pollock Harvest Statistics, 1999–2006:

'A' Season Harvest Compared with 'Overage' Amount > 300,000 Pounds

year	GOA 'A' season total	'overage'	proportion - overage of total
2003	4,416,615	6,144	0.1%
2004	26,885,565	149,037	0.6%
2005	55,625,535	1,848,530	3.3%
2006	42,086,835	162,108	0.4%
totals	**129,014,550**	**2,165,819**	**1.7%**

Source: NMFS annual harvest summary and NPFMC data files, October 2007. Landings in 1999 are from the date of implementation of the trip limit regulation on January 22, 1999.

2.2.8 Economic Effects of the Alternatives – A Summary of Costs and Benefits

The justification for the 1999 the Steller Sea lion action was to contribute one of the three measures intended to slow down the pollock fishery in the GOA and provide temporal dispersion in the harvest to minimize potential impacts from pollock fishing activities. Compared with the situation prior to 1999, the regulation has been effective in reducing the size of landings (see Table 6 below). Looking at the right hand column of Table 6, the data analyzed demonstrate that the trip limit was effective in reducing the size of landings, thus achieving temporal dispersion as intended. Prior to implementation of the trip limit, the proportion of landings greater than 300,000 pounds totaled 13 percent (annual average from 1995-1998). Following the implementation of the trip limit regulation, the proportion of landings greater than 300,000 pounds totaled 1.7 percent (annual average from 1999-2006).

The problem described in the problem statement for this amendment relates to a continuing problem with daily landings greater than 300,000 pounds for a relatively small proportion of total landings. Although the existing regulation has been partially effective in reducing the average size of pollock landings, participants in the fishery would like to see further reductions on 'overage' amounts – the landings that are over 300,000 pounds per day.

Table 6. GOA Trawl Pollock Landings Prior to and Following Implementation of the Trip Limit on January 22, 1999

Year	Vessel landing days	Total pounds	Number of daily vessel landings over 300,000 pounds	Amount of daily vessel landings in excess of 300,000 pounds	
				in pounds	as a percent of total pounds
1995	923	138,172,727	113	22,056,509	16.0%
1996	1,005	100,644,811	45	6,593,809	6.6%
1997	1,571	178,534,593	94	24,068,159	13.5%
1998	2,029	289,957,183	204	39,266,597	13.5%
total (1995-1998)	5,528	707,309,314	456	91,985,074	13.0%
1999	1,635	199,288,767	50	5,142,942	2.6%
2000	1,499	157,291,711	15	946,152	0.6%
2001	1,670	157,685,714	20	1,340,363	0.9%
2002	1,132	112,546,044	22	1,808,778	1.6%
2003	956	108,288,961	24	1,238,340	1.1%
2004	1,040	137,056,438	46	4,118,404	3.0%
2005	1,265	174,023,299	43	3,228,566	1.9%
2006	1,407	151,558,386	26	1,983,911	1.3%
total (1999-2006)	10,604	1,197,739,320	246	19,807,456	1.7%

Source: NMFS annual harvest summary and NPFMC data files, October 2007. Landings in 1999 are from the date of implementation of the trip limit regulation on January 22, 1999. Data for 1998 include a small amount of landings for 1999, prior to trip limit implementation on January 22, 1999. A vessel landing day is a day that an individual vessel made at least one landing. Vessel landing days is the sum of landings across all vessels for the year cited.

Economic efficiency. While it was not specifically stipulated in the 1999 action to implement the GOA pollock trip limit, economic efficiency and/or fishing costs was/is not an issue in this action. Given potential fishing capacity and cost of production criteria, it is possible that the least cost manner to harvest pollock in the GOA would be to allow the larger vessel operators to harvest the allowable quota as quickly as they could. However, this would not be consistent with the Steller sea lion protection measures implemented in 1999, and would likely not meet the provisions in the Magnuson-Stevens Act to consider historical dependence upon the fishery and actions that would affect fishing communities.

The economic effect of the trip limit 'overages' The following analysis compares the existing situation with full compliance with a landing limit of 300,000 pounds per day during the period 1999-2006. Pollock landings that were made in the GOA with over 300,000 pounds on board represent 241 out of 10,604 total days with landings, accounting for 1.7 percent of the overall harvest (see 'overage' amount in Table 4). If we look at the actual amount of the 'overages', they total 19.8 million pounds over the period from 1999-2006. The mean 'overage' was 80,868 pounds, with a median of 16,812 as noted in Figure 2.

Table 7 below summarizes the effects of the 'overage' amounts since implementation of the regulation on January 22, 1999. The average landing over the effective period, 1999-2006 has been 112,952 pounds. The fourth column in Table 6 shows the daily landings that have occurred each year over 300,000 pounds. Column 6 of Table 7 shows the number of additional landings that would have occurred each year, had the 19.8 million pounds (the 'overage' harvest amount) been landed at the average harvest level of

112,952 pounds per landing. The number varies from an additional 9 landings (2000) to 42.2 landings (1999) with a total of 168 additional landings for the period 1999-2006, or an annual average of 21.9 additional landings. If, instead of the average landing in the fishery (112,952 pounds), we assume that the 'overage' amount would have been landed at the maximum limit of 300,000 pounds, there would have been an additional 66 landings for the period 1999-2006, or an annual average of 8.3 additional trips.

Table 7. Summary Table of Effects of Daily Landings Limit of 300,000 pounds (with full compliance)

Year	Average daily vessel landing	Number of vessel landing days	Number of daily vessel landings over 300,000 pounds	Daily vessel landings in excess of 300,000 pounds as a percent of total daily landings	Additional landings at average daily landing size if no daily vessel landing over 300,000 pounds	Additional landings at 300,000 pound landing size if no daily vessel landing over 300,000 pounds
1999	121,889	1,635	50	2.6%	42.2	17.1
2000	104,931	1,499	15	0.6%	9.0	3.2
2001	94,423	1,670	20	0.9%	14.2	4.5
2002	99,422	1,132	22	1.6%	18.2	6.0
2003	113,273	956	24	1.1%	10.9	4.1
2004	131,785	1,040	46	3.0%	31.3	13.7
2005	137,568	1,265	43	1.9%	23.5	10.8
2006	107,717	1,407	26	1.3%	18.4	6.6
total (1999-2006)	112,952	10,604	246	1.7%	21.9 (annually)	8.3 (annually)

Based on the analysis, it appears that a revised daily landing limit of 300,000 pounds would require additional trips in the fishery. The primary effect of these additional trips is likely to be distributional, as vessels making the large and/or multiple daily landings under the current rule forego the amount of those landings in excess of 300,000 pounds, which then remains available to all members of the fleet. The revised pollock trip limit regulation is likely to have a very minor effect on the rate of harvest of the fishery. It is possible that the NMFS management may not be able to allow additional fishing time, since the average number of 'additional trips' could be too small, relative to the number of vessel landing days in the fishery, to allow another day of fishing opportunity in the GOA trawl pollock fishery.

While the overage amounts are a relatively small proportion of the total harvest, they represent a change in the character of the GOA pollock fishery from what it would be without the large landings. As shown in Table 7, the average daily landing for all pollock trawl fishing in the GOA 1999-2006 was 112,952 pounds (including the large deliveries over 300,000). Including only landings over 300,000 pounds, the average daily landing for this portion of the harvest was 380,868 pounds for the GOA for 1999-2006. Including only those landings less than 300,000 pounds, the average daily landing for the portion of the harvest (excluding the large landings over 300,000 pounds), was 106,721. While the actual 'overage' amount was only 1.7 percent of the total GOA trawl pollock harvest 1999-2006, the large landings represented by the landings over 300,000 pounds accounted for 16.9 percent overall if we include the entire harvest, not just the 'overage' amounts.

Over the period 1999-2006, ex-vessel prices averaged $0.0958 per pound, so the 'overage' amount of 19.4 million pounds represents an estimated gross harvest value of approximately $1.8 million. This is the total amount that could potentially have been re-distributed over the period 1999-2006, with full compliance with a 300,000 pound daily landing limit, and also assuming that the additional trips had been possible, given in-season fisheries management limitations as noted above.

Harvest patterns in the GOA pollock trawl fishery showed a differential pattern in the overage amounts, based on vessel size. Of the total 241 instances where a vessel landed more than 300,000 pounds in one calendar day, 34 of the instances came from vessels less than 60 feet in length (mean overage 70,223 pounds), and 207 instances came from vessels greater than 60 feet in length (mean overage 82,617).

3.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

3.1 Introduction

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 600-611, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: 1) to increase agency awareness and understanding of the impact of their regulations on small business; 2) to require that agencies communicate and explain their findings to the public; and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either, (1)"certify" that the action will not have a significant adverse effect on a substantial number of small entities, and support such a certification declaration with a "factual basis", demonstrating this outcome, or, (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

Based upon a preliminary evaluation of the proposed pilot program alternatives, it appears that "certification" would not be appropriate. Therefore, this IRFA has been prepared. Analytical requirements for the IRFA are described below in more detail.

The IRFA must contain:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and the legal basis for, the proposed rule;
3. A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
4. A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and
6. A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
    a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
    b. The clarification, consolidation or simplification of compliance and reporting requirements under the rule for such small entities;
    c. The use of performance rather than design standards;
    d. An exemption from coverage of the rule, or any part thereof, for such small entities.

The "universe" of entities to be considered in an IRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing an IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule (and alternatives to the proposed rule), or more general descriptive statements if quantification is not practicable or reliable.

3.2 Definition of a small entity

The RFA recognizes and defines three kinds of small entities: (1) small businesses; (2) small non-profit organizations; and (3) and small government jurisdictions.

Small businesses: Section 601(3) of the RFA defines a "small business" as having the same meaning as a "small business concern," which is defined under Section 3 of the Small Business Act. A "small business" or "small business concern" includes any firm that is independently owned and operated and not dominate in its field of operation. The U.S. Small Business Administration (SBA) has further defined a "small business concern" as one "organized for profit, with a place of business located in the United States, and which operates primarily within the United States, or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor. A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust, or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture."

The SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business "involved in fish harvesting" is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates) and employs 500 or fewer persons, on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it does not meet the $4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established "principles of affiliation" to determine whether a business concern is "independently owned and operated." In general, business concerns are affiliates of each other when one concern controls or has the power to control the other or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party, with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development

Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities, solely because of their common ownership.

Affiliation may be based on stock ownership when: (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50% or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or have the power to control less than 50% of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners control the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint ventures if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations: The RFA defines "small organizations" as any nonprofit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions: The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000. Of particular note for this action are the communities of Sand Point (2006 population 890) and King Cove (2006 population 807).[9]

3.3 A description of the reasons why action by the agency is being considered

The Council's problem statement for this proposed amendment is as follows:

> *Section 679.7(b)(2) placed a 136 mt (300,000 lb) limit for the amount of pollock that can be aboard a catcher vessel in the Gulf of Alaska to meet the objectives of Steller sea lion protection measures, but it places no limit on the number of trips per day, and does not place a limit on the total amount of pollock that can be harvested and landed by a catcher vessel in a day. The trip limit was intended to slow down the race for fish in the pollock fishery by limiting harvests on catcher vessels to 300,000 lb of unprocessed pollock per fishing trip.*
>
> *Catcher trawl vessels may be circumventing the intent of the trip limit by making multiple 300,000 deliveries in a day. It was generally believed that only one trip per vessel would occur per day when the Council made its recommendation, but the regulation, as written, does not impose a daily limit. Multiple offloadings in a day allows a faster catch rate by those vessels than if only one trip was allowed* per day.

The analyses in Section 2 demonstrate that the existing regulation has been successful in reducing the average landing size, and thus slowing the fishery and providing temporal dispersion as initially intended. However, there are still instances of landings greater than 300,000 pounds that are viewed by a problem by participants in the fishery, particularly the smaller vessels. Additionally, the existing regulation

[9]Alaska Department of Labor, 2006 estimated population at http://www.labor.state.ak.us/research/pop/estimates/06t4-3.xls

presents NMFS enforcement with a difficult situation in trying to ensure compliance with the existing regulation.

3.4 The objectives of, and the legal basis for, the proposed rule

The trawl pollock fishery in the GOA is managed by NOAA Fisheries and the State of Alaska. The management plan that is affected by the proposed amendment is the Gulf of Alaska Groundfish Fishery Management Plan. The proposed action is limited to activities within Federal waters administered under the plan. The authority for the fishery management plans, and the actions in this amendment are contained in the Magnuson-Stevens Act, as amended by the Consolidated Appropriations Act of 2004. As discussed in Section 2 of this report, the pollock resource and the fishery within the Gulf of Alaska occur both within Federal waters and State waters. Taking action in only one area (Federal or State waters) would limit the effectiveness of the action, since pollock trawl fishery participants would be free to move to the area without the trip limits. Table 2 shows the respective proportions of the pollock harvested in Federal waters (60.6 percent) and State waters (39.4 percent) over the period from 1999-2006. In 1999, the Alaska Board of Fisheries followed the January emergency rule implementing the trip limit with corresponding regulations for State waters in the GOA. Should the Council adopt this proposed amendment, similar corresponding action by the Alaska Board of Fisheries will be necessary to have a fully effective regulation.

3.5 A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply

Information concerning linked ownership and affiliation of many pollock vessels that operate in the Gulf of Alaska, which would be used to estimate the number of small 'entities' that are directly regulated by this action, is somewhat limited.

There were a total of 173 unique trawl vessels that made harvests of pollock in the GOA over the 1999-2006 period. Based on gross harvest values from pollock fishing only, all these vessels would be classified as small entities.

Earnings from all Alaskan fisheries earnings for 2006 were matched with the vessels that participated in the GOA pollock fishery for that year. Out of a total of 146 vessels, only 3 had earnings gross earnings over $4 million, categorizing them as large entities. Making the same comparison for 2005, there were 148 vessels making landings in the GOA pollock fishery, and of these 7 had gross earnings over $4 million, categorizing them as large entities. It is possible that other vessels in both years are linked by company affiliation which would qualify them as large entities, but the Council has no information to tie vessel earnings together by ownership status.

3.6 A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule

Under the proposed alternatives, record keeping and other compliance requirements of the proposed rule will not change from the current situation. Therefore, the action under consideration requires no additional reporting, record keeping, or other compliance requirements.

Alternative 2 should simplify the NOAA Fisheries enforcement of the trip limit by removing the ambiguity that has resulted from an incomplete definition of a trip in the regulation.

3.7 An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule

The analysis did not identify any Federal rules that would duplicate, overlap, or conflict with the proposed rule.

3.8 A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities

It is clear from public testimony received by the Council in 2004, 2005 and 2007, and by the analyses provided in this report, that the 300,000 pound trip limit, as intended by the Council in their 1998 decision and as enacted into regulation by NMFS in 1999, is not fully effective due to the use of tenders to increase the landing capacity of vessels participating in the fishery or other practices.

Recognizing that the 300,000 trip limit has not effectively prevented vessels from landing in excess of 300,000 pounds per day as intended, the Council could address this problem by a change in the regulation to more explicitly limit daily landings. This action is represented by Alternative 2 in the proposed amendment.

In the process of selecting an action alternative (Alternative 2) for the proposed amendment, the Council evaluated several different approaches. The problem with the current regulation exists because of difficulties in enforcing the initial intent of the Council with respect to the pollock trip limit. The action selected in Alternative 2 was the result of consultations with the Council Enforcement Committee as well as NMFS enforcement personnel, and represents the best solution for implementing a regulation that can not be circumvented and can be easily enforced. Other possible alternatives were rejected on the basis of being less appropriate than the alternative selected to resolve the Council's problem statement.

4.0 CONSISTENCY WITH APPLICABLE LAW AND POLICY

This section of the analysis examines the Gulf of Alaska pollock trip limits with respect to the National Standards and Fishery Impact Statement requirements in the Magnuson-Stevens Act and Executive Order 12866.

4.1 National Standards

Below are the ten National Standards as contained in the Magnuson-Stevens Act, and a brief discussion of the consistency of the proposed alternatives with each of those National Standards, as applicable.

National Standard 1
Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

None of the alternatives considered in this action would have a detrimental effect on overfishing of pollock or other groundfish in the GOA and would have no effect, on a continuing basis, on achieving the optimum yield from each groundfish fishery. Alternative 2 would have the effect of slowing the pollock fishery to a small degree, but the TAC would likely be harvested with either alternative.

National Standard 2
Conservation and management measures shall be based upon the best scientific information available.

The analysis for this amendment is based upon the most accurate, up to date and best scientific information available. It was necessary for the Council staff to develop a new data bases to complete the analyses contained herein.

National Standard 3
To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The proposed action is consistent with the management of individual stocks as a unit or interrelated stocks as a unit or in close coordination.

National Standard 4
Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The proposed alternatives treat all license holders equally, i.e. the trip limit would be enforced for all vessels, regardless of vessel characteristic or ownership. Alternative 2 is intended to promote conservation, by resolving a problem with the Steller sea lion protection measure implemented in 1999.

National Standard 5
Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

Both alternatives contribute to utilization of the trawl pollock resource in the GOA to the extent that they contribute to Steller sea lion protection, thus allowing the commercial pollock fishery to operate. As noted in Section 2.2.8, pursuit of greater efficiency would conflict with the Steller sea lion protection objectives which were the original purpose of the action.

National Standard 6
Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

None of the proposed alternatives are expected to affect changes in the availability and variability in the pollock resources in the GOA in future years. The harvest would be managed for and limited by the pollock TAC, with or without this amendment.

National Standard 7
Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

This action does not duplicate any other management action. It would clarify, and replace, the existing regulation described in Section 1.

National Standard 8
Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

This action will not have adverse impacts on communities or affect community sustainability. As noted in Section 2, the largest share of the 'overage' instances has been landed by large (greater than 60 foot) vessels. Many of the locally-owned vessels in Sand Point and King Cove are converted seine vessels, and are less than 60 feet.

National Standard 9
Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

This proposed amendment could help to minimize bycatch to a minimal degree by slowing down the fishery slightly.

National Standard 10
Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The alternatives proposed under this action should have no effect on safety at sea.

4.2 Section 303(a)(9) - Fisheries Impact Statement

Section 303(a)(9) of the Magnuson-Stevens Act requires that any management measure submitted by the Council take into account potential impacts on the participants in the fisheries, as well as participants in adjacent fisheries. The impacts on participants in the trawl pollock fisheries in the GOA have been discussed in previous sections of this document. The proposed alternatives will have no effect on participants in other fisheries.

5.0 CONSULTATION AND PREPARERS

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Appendix 1 – Staff Discussion Paper, dated February 2005

AGENDA D-1(e)
FEBRUARY 2005

WESTERN GULF OF ALASKA 300,000 LB POLLOCK TRIP LIMIT
DISCUSSION PAPER
FEBRUARY 1, 2005

In December 2004, the Council requested that staff develop a discussion paper of a proposal submitted by a representative of Western Alaska groundfish fishermen during public testimony at that meeting. The proposal recommends implementing a 300,000 lb limit of unprocessed pollock during a 24 hour period in place of the current 300,000 lb trip limit. Some vessels are delivering multiple 300,000 lb trips daily to tenders, up to the 600,000 lb tender limit in the Western Gulf (Area 610). The proposers reported that some fishermen are using multiple tenders and have harvested and delivered as much as 1,500,000 lb in a single day. While the regulations do not prohibit this activity, the Council will consider whether this is consistent with its original intent to increase temporal dispersion of the fleet as part of the Steller sea lion mitigation measures, under which the trip limits were implemented in 1999. At its February 2005 meeting, the Council will review the paper and decide whether to initiate a regulatory amendment and set a timeline for action.

PROPOSED ACTION: Replace the 300,000 lb catcher vessel pollock trip limit with a 300,000 lb catcher vessel pollock daily limit in the western GOA (Area 610).

PROBLEM STATEMENT/OBJECTIVE: Section 679.7(b)(2) places a 300,000 lb trip limit for catcher vessels in the Gulf of Alaska, but places no limit on the amount of trips, or total amount of pollock, allowed on board a catcher vessel in a day. The trip limit was intended to slow down the race for fish in the pollock fishery by limiting harvests on catcher vessels to 300,000 lb of unprocessed pollock per fishing trip.

Non-resident catcher trawl vessels may be circumventing the intent of the trip limit by making multiple 300,000 deliveries in a day to tenders in the western GOA, which have a 600,000 lb limit [§679.7(b)(3)(ii)]. It was generally believed that only one trip per vessel would occur per day when the Council made its recommendation, but the regulations do not impose a daily limit. The higher tender trip limit would allow one vessel to offload twice and land its own trip limit or two vessels to offload once each and each land their trip limit. Multiple trips and offloading to tenders allow a faster catch rate by those vessels than if they were delivering to plants on shore or if only one trip was allowed per day.

BACKGROUND: The Council recommended and NMFS implemented a variety of measures to slow the pace of the pollock fishery under Steller sea lion mitigation measures. The 1999 emergency rule contained a trip limit of 300,000 lb (136 mt) for all vessels fishing for pollock in the western and central (Areas 620 and 630) GOA management areas. This limit accommodated larger non-resident vessels, which have hold capacities exceeding 1 million lb, and the smaller catcher vessel fleet based in Sand Point and King Cove, which have hold capacities of less than 150,000 lb. In the past, the entry of large numbers of Bering Sea -based catcher vessels has led to short-term pulse fisheries in the GOA with attendant concerns about localized depletion of pollock populations and quota overages. The trip limit significantly slowed the pace of fishing by the larger BS-based catcher vessel fleet that has traditionally fished in the GOA when BS fishing seasons were closed.

The Council also recommended regulations that prohibit catcher vessels from fishing in both the GOA and BS during the same fishing season and prohibit vessels from operating as pollock tenders in central

GOA to prevent the large scale use of tender vessels to avoid the trip limit restriction. Vessels operating as tenders in western GOA are prohibited from retaining on board more than 600,000 lb (272 mt) of unprocessed pollock. Tendering is allowed there, while prohibited from other Gulf management areas, because smaller vessels delivering to Sand Point and King Cove are more dependent on tenders than the larger vessels that operate in the central GOA and deliver primarily to Kodiak.

The American Fisheries Act placed additional (sideboard) restrictions on BS-based catcher vessels when fishing in the GOA. The combined effects of all of these measures were expected to significantly slow the pace of the GOA pollock fisheries in a manner consistent with the principle of temporal dispersion, by discouraging or preventing all but a few BS-based catcher vessels from continuing to fish in the GOA. During 1995-1997, BS-based catcher vessels accounted for approximately 75 percent of the pollock landings in Areas 610 and 620, and more than 50 percent of pollock landings in Areas 630 and 640.

In-season management of 2005 fishery: NMFS staff reported that most catcher vessels do not exceed the trip limit. Twenty two catcher vessels participated in the 2005 "A" season. During the three day fishery, eight vessels made three deliveries, nine vessels made four deliveries and one vessel made eight deliveries. The remaining four vessels made two or fewer deliveries for a total of 76 deliveries for the fishery. Of those, eight (about 9 percent) exceeded the 300,000 lb trip limit, compared with one or two vessels in a typical season. While one vessel exceeded the limit by over 57,000 lb, the others exceeded the limit by 1,000-10,000 lb (the average of all eight was 14,396 lb). One vessel had overages on two deliveries in a row. The total of all catcher vessel trip limit overages was 115,170 lb or about 52 mt, which is approximately 1 percent of the TAC. The enforcement policy is to forfeit the value of an overage for the first infraction if the overage is small (approximately 10 percent). Subsequent violations carry a fine of up to $5000. Fines are more substantial if there are more than three overages in a year.

Since there are no limits on the number of trips allowed each day for either catcher vessels or tenders in the WGOA, the pace of the fishery has accelerated in recent years. The pre-announced 2005 "A" season began on a Thursday and lasted three days. While overages of the catcher vessel trip limit were not significant and overages of the tender trip limit have not been determined at this time, the 5,000 mt "A" season pollock TAC was exceeded by 2,000 mt due to the fast pace of the fishery from the use of tenders. Season closures must be filed through NMFS headquarters, which is not possible on weekends. A pre-season announcement is a (not necessarily better) alternative to in-season management, in which NMFS announces the closing date of a fishery prior to its start. This may still result in either overages, as was the case in this most recent season, or underages based on the lack of precision by staff in projecting the daily harvest rate. Sufficient TAC must remain in an underage for a projected full day of fishing to allow for a reopening. Otherwise, the underage amount is rolled over to the next seasonal allocation. While pre-announced closures are sometimes necessary if the projected season length is too short to allow for inseason management, they eliminate the ability for inseason mangers to react to unanticipated changes in weather conditions and or catch rates.

The four processing plants that traditionally participate in this fishery all have tender vessels operating on the grounds during the fishery. A few cod end transfers have occurred in the last few seasons, including the 2005 "A" season, but this has been more the exception than the rule (or just not documented by NMFS). There were nine tenders in the 2005 fishery, compared with four tenders in 2004. This year, one processor had two tenders operating on the grounds and an additional seven tenders tied to their dock to hold fish waiting for processing (or for transport to another processing facility). One plant is weighing the fish through their hopper scales and then pumping the fish onto the tender vessels for shipment to Akutan to get processed. In doing this, the tender is not really acting as a buying tender but more as a transporter of unprocessed fish that was already delivered and reported, and may not be subject to the tender trip limit. This allows the fleet to not be constrained by the processing capacity of the plant.

The use of tenders speed the pace of fishing, whether they shorten the run time from the fishing grounds to the point of offload, thereby allowing the fleet to spend more time fishing and less time running between the processor and the fishing grounds, or provide additional holding capacity for the processing plant. Tenders typically haul the cod end on board, dump the pollock into their recirculating seawater tanks, and then transport the harvest in to a shore plant for processing. The use of tenders in the WGOA pollock fishery has been an evolving phenomenon, allowing catcher vessels to make multiple deliveries in a shorter period of time and contributing to quota overages by complicating in-season tracking of harvests. Having fish going to both shore plants and tenders makes it more difficult to track the entire catch in a manner timely enough to be useful for in-season management. If the Council chooses to reexamine the tender allowance (rather than the current trip limit), more local vessels with a 300,000 lb hold capacity could enter the fishery (now about 8 of the 22 boats have that capacity).

ANALYSIS: RIR/IRFA for a regulatory amendment; a categorical exclusion for NEPA would be requested; however, an EA may be required.

RANGE OF ALTERNATIVES:

1. No action: Limit catcher vessels to no more than 300,000 lb of pollock on board the vessel at any time during a trip in the WGOA.
2. Limit catcher vessels to no more than 300,000 lb of pollock in a 24-hour period* in the WGOA.

*Staff recommends noon to noon to coincide with season openings

The Council may wish to consider whether to expand the proposed action to: (1) all or other areas of the GOA, and/or (2) 600,000 lb tender trip limit in the western GOA or (3) eliminate the use of tenders in the WGOA.

ESTIMATE OF STAFF RESOURCES: Likely no more than 4 weeks of total interagency staff time for analytical and regulatory writing and review, if limited to the proposed action in an RIR/IRFA.

TIMELINE TO IMPLEMENTATION: A regulatory amendments typically requires two Council meetings for initial review and final action, with an additional six months for rulemaking and implementation. If not controversial and the proposed action entails a clarification of Council intent to the original implementing regulations (Steller sea lion mitigation measures) without triggering re-initiation of Section 7 formal consultation, it may be possible to proceed straight to final action in one meeting. Rulemaking and implementation would still require at least six months. The Council would have to identify this as a high priority action and identify staff or contract resources to schedule action in 2005. Final action would be needed by June 2005, for the possibility of implementation in January 2006.

OTHER APPLICABLE LAWS: Endangered Species Act consultations may be necessary if the alternatives are expanded beyond those currently proposed.

Acknowledgements: Rance Morrison and Josh Keaton, NMFS SF

Appendix 2 – Draft motion discussed by the Council in December 2004 (author unknown)

Motion to correct a loophole in the WGOA 300,000lb pollock trip regulation.

The Problem:
Vessels are beginning to exploit a loophole in GOA fishing regs found at 50 CF 679.7(b)(2), which pertains to trip limits for pollock.

§ 679.7 Prohibitions
In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:
(b) Prohibitions specific to the GOA.
(2) Catcher vessel trip limit for pollock. Retain on board a catcher vessel at any time during a trip, more than 300,000 lb (136 mt) of unprocessed pollock.

The regulation is intended to slow down the race for fish in the WGOA pollock by limiting harvesting vessels to 300,000 pounds of unprocessed pollock per t Until recently, it was understood that the regulation meant that a harvester cou no more than 300,000 pounds of pollock daily. Pollock tender vessels are allo 600,000 pounds of pollock in the WGOA.

50 CFR 679.2 defines a fishing trip as follows.
§ 679.2 Definitions.
Fishing trip means:
(A) The effective date of a notification prohibiting directed fishing in the same area under § 679.20 or § 679.21;
(B) The offload or transfer of all fish or fish product from that vessel;
(C) The vessel enters or leaves an area where a different directed fishing prohibition applies;
(D) The vessel begins fishing with different type of authorized fishing gear; or
(E) The end of a weekly reporting period, whichever comes first.

Some vessels are now delivering multiple 300,000lb trips daily to tenders, up 600,000 tender limit. In some cases they are reported to have employed multi and harvested and delivered as much as 1,500,000 in a single day.
. The WGOA currently has 4 distinct seasons, all with low TACs. The practi circumventing the original intent of the 300,000 pound trip limit will increase harvesters struggle to remain competitive. This situation is significant, undes unwarranted, and unintended.

The Solution:
Taken together 679.2(B) and 679.7(b)(2) creates a loophole in regulations which allows harvesting vessels to make multiple trips daily and to greatly exceed the intended 300,000 pound daily trip limit.

This loophole can be corrected by modifying 679.7(b)(2) with the following **Regulatory Amendment.**
Move to modify § 679.7 *Prohibitions* as follows:
§ 679.7 *Prohibitions*
In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:
(b) Prohibitions specific to the GOA.

(2) Catcher vessel trip limit for pollock. ***For a catcher vessel to harvest*** more than 300,000 lb (136 mt) in aggregate, of unprocessed pollock ***during a 24 hour period.***