

MEMORANDUM

TO: Council and AP members

FROM: Chris Oliver *Chris*  
Executive Director

DATE: February 1, 2005

SUBJECT: American Fisheries Act

ACTION REQUIRED

Review AFA cooperative agreements and end of year cooperative reports

BACKGROUND

Each year the AFA pollock fishery cooperatives are required to submit year-end reports summarizing their fishing activities from the preceding year. They are also required to submit cooperative agreements for the upcoming fishing year (we have interpreted this requirement such that the cooperatives submit information only if and to what degree such agreements have been modified from existing agreements). Due to the volume of these materials, we have on hand a few copies of the complete reports, and full copies are available from our offices. Co-op representatives will provide a joint, summary report to the Council at this meeting.

As an informational item related to AFA implementation, Item C-5(a) is a copy of a recent letter received by NMFS, from the law firm of Pritchett and Jacobson, P.S. This letter requests action by the agency to implement additional restrictions on AFA vessel activities relative to the Pacific cod fisheries.

**PRITCHETT & JACOBSON, P.S.**

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January 19, 2005

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James Balsinger, Alaska Regional Administrator  
National Marine Fisheries Service  
P.O. Box 21668  
Juneau, AK 99802-1668

Re: Request to the Secretary of Commerce for Protections under Section  
211(c)(1) of the American Fisheries Act, and 50 CFR §679.64(b)

Dear Mr. Balsinger:

I am writing further to you, as the representative of the Secretary of Commerce for the Alaska Region, on behalf of the Independent Cod Trawlers Association and its three members, Omar Allinson of the fishing vessel MISS LEONA, Steve Aarvik of the fishing vessel WINDJAMMER, and Charles Burrece of the fishing vessel LONE STAR.

I previously wrote to you, seeking protective measures on behalf of my clients on January 16, 2004.

As noted in my prior letter, the North Pacific Fishery Management Council failed to recommend protections from the adverse impacts to my three clients caused by the American Fisheries Act (AFA) and by the pollock fishery cooperatives which have been established in accordance with the AFA. By this letter, my three clients again request that the Secretary of Commerce, through the Alaska region of the National Marine Fisheries Service, implement protections in accordance with Section 211(c) of the AFA, and under

50 CFR §679.64(b). That regulation provides, in part:

The Regional Administrator will restrict the ability of AFA catcher vessels to engage in directed fishing for other groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from the fishery cooperatives in the directed pollock fishery.

(emphasis added).

As you know, all three of these vessels are small vessels for the Bering Sea fishery, ranging in length from 75 to 88 feet. They have fished for cod in the Bering Sea since the 1970s (Charles Burrece), 1980s (Steve Aarvik), and 1991 (Omar Allinson), respectively. All three vessels have primarily engaged in the directed trawl fishery for Pacific Cod in the Eastern Bering Sea, and none of them qualified under the AFA because of their relatively small incidental catches of pollock.

Starting in June of 2000, my clients frequently testified before the North Pacific Fishery Management Council (NPFMC) as to the adverse effects caused by the increase in the number of vessels fishing in the Bering Sea Pacific cod fishery in January and February as a result of the AFA. After years of efforts to obtain a remedy through the NPFMC, at its February, 2003 meeting the Council postponed any protective action indefinitely, basically leaving it to the AFA fleet to self-regulate. The referenced testimony was made before you, as a member of the Council, and before the Assistant Regional Administrator, Sustainable Fisheries Division, Sue Salvesson, and therefore will only be summarized here.<sup>1</sup>

Before the Council, these three fishermen had demonstrated the adverse impacts of the AFA, including the ability of AFA vessels to enter their traditional cod fishery early in large numbers. As a result of the inaction of the Council, the numbers of AFA vessels fishing in the Bering Sea cod fishery in January and February of 2003 shot up to unprecedented levels, and in 2004 were also significantly higher than in pre-AFA-affected years. As noted below, this can be seen by comparing NMFS data for 2003 and 2004 with data compiled by Council staff.

The Public Review Draft prepared by Council staff (dated January 16, 2003) with

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<sup>1</sup> That testimony and the record of proceedings relating to their complaints to the NPFMC and relating to Proposed Amendment 73 are incorporated herein by reference.

respect to Proposed Amendment 73 shows a breakdown in Table 4.4(a) (at pages 33-36) of weekly participation in that fishery for the years 1995-2002. That breakdown shows that in the pre-AFA years of 1995-1998, there was an average of 1¼ vessels (which are now AFA vessels without cod exemption) on the grounds in the Bering Sea during the first 5 weeks of the Pacific cod fishery. Since the fishery normally starts on January 20<sup>th</sup> of each year, that means that there were never many such vessels on the grounds until near the end of February. Not until the end of February or in early March of each pre-AFA year, was there traditionally a sudden influx into the Pacific cod fishery of vessels which are now AFA-qualified.

Table 4.4(c) (page 35) shows that in 2000 the average number of non-cod-exempt AFA vessels present on the cod grounds in the first 5 weeks dramatically increased to an average of 15.2. In 2001, the situation was somewhat better, but still significantly and adversely impacted my clients, as they have testified. The 2001 average of 6 AFA non-cod-exempt vessels during the first 5 weeks of the fishery was more than double the pre-AFA average. Furthermore, as my clients testified before the Council, the AFA non-cod-exempt vessels competing against them have been generally much larger and with much greater horsepower than the vessels on the cod grounds prior to enactment of the AFA, thereby displacing the MISS LEONA, WINDJAMMER, and LONE STAR from their traditional tows. In the first week of 2001 alone there were 19 AFA non-cod-exempt vessels on the grounds; that number apparently diminished only because biology and economics dictated that the AFA fleet would do better that year by concentrating on switching to pollock in those months.

The year 2002 was similar to 2001 in the number of AFA vessels, with the similar negative impacts, as testified by my three clients. In the first five weeks of the 2003 Bering Sea cod fishery, there was an average of 22 AFA vessels on the cod grounds, including much larger and more powerful vessels than those of the traditional non-AFA fleet. In the first week alone, there were 26 AFA vessels on the grounds. These figures are shown in the chart attached as Exhibit A, which was prepared by NMFS staff. Similarly, in 2004 there were also significant adverse impacts, with a total of 54 AFA catcher vessels targeting Pacific cod in January and February. Although all 54 vessels were not targeting cod simultaneously, the data shows significant increases on a weekly basis over the pre-AFA years. Please see Exhibit B, an email with 2004 data also compiled by NMFS staff.

The Catch Per Unit Effort of the MISS LEONA, WINDJAMMER, and LONE STAR has been substantially reduced during the AFA years, as shown by the statistics and charts submitted with this letter, and previously presented before the Council. Those statistics and charts, at Exhibit C, show the following for these three vessels for the years

1995-2002:

- Pacific Cod Harvest per Hour Trawled; and
- Average Pacific Cod Haul Time by Year.<sup>2</sup>

Because of the frequent race for fish which has resulted, my clients have had to fish in extremely dangerous winter weather conditions for their small vessels, including hurricane force winds. They have been often passed by, and have had to fish behind, the much larger AFA vessels. As a result, they have had to fish further from shore, and in a more dispersed area than in pre-AFA years. Please see the maps at Exhibit E, demonstrating this adverse impact. These adverse impacts were also established in testimony before the NPFMC.

Furthermore, the effects of the AFA and the cooperative system reached a new level of adverse impact in the 2004 season, when the Bering Sea cod fishery was closed early on two separate occasions, resulting in significant lost catch and a greater emphasis on the race for fish. It appears that the same scenario will be repeated, but on a greater scale in the 2005 season. My clients have been informed that a large number of AFA vessels without a historic dependence on the January and February cod fishery will be on the grounds in the Bering Sea during those months in 2005. Therefore, it can be expected that as a result of the AFA, and the AFA fishing cooperatives, the Bering Sea Pacific cod fishery will again close prematurely in 2005, with likely greater impact on the non-AFA cod fleet than the early closures in 2004.

In the AFA, Congress mandated that fishermen outside of the AFA pollock fishery must be protected from such adverse impacts. As is made clear below, Congress plainly stated that the incursion of freed-up AFA vessels into a fishery such as the Pacific cod fishery is exactly the type of adverse which must be prevented. Section 211(a) of the AFA provides as follows:

**Sec. 211. Protections for other Fisheries; conservation measures.**

**(a) General.**-- The North Pacific Council shall recommend for approval by

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<sup>2</sup> The charts were prepared by Jennifer Sorensen and JoAnn Tweiten, based upon Fish Ticket Data and the NMFS Daily Fishing Logbooks of the three vessels. 1999 is actually a post-AFA year. The AFA was passed in 1998. As discussed above, adverse impacts have also continued after the dates shown in that data. The harvest per hour trawled chart is essentially confirmed by a chart prepared by NMFS, a copy of which is attached as Exhibit D.+

the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.

By Section 211, Congress articulated certain measures for the purpose of determining, and remedying, such adverse impacts. In the presentation of the AFA to the Senate for its consideration, key sponsoring Senators including Senator Ted Stevens and Senator Patty Murray explained what Section 211 requires. Those comments are set forth in the Conference Report (Senate - October 20, 1998).

Senator Murray explained the nearly absolute protections intended in the AFA for non-pollock fisheries as follows:

The bill attempts to ensure adequate protections for other fisheries in the North Pacific from any potential adverse impacts resulting from the formation of the fishery cooperatives in the pollock fishery. The formation of fishery cooperatives will undoubtedly free up harvesting and processing capacity that can be used in new or expanded ways in other fisheries. Although many of these vessels and processors have legitimate, historic participation in these other fisheries, they should not be empowered by this legislation to gain a competitive advantage in these other fisheries to the detriment of participants who have not benefitted from the resolution of the pollock fishery problems.

While we have attempted to include at least a minimum level of protections for these other fisheries, it is clear to many of us that unintended consequences are likely. It is therefore imperative that the fishery management councils not perceive the protections provided in this bill as the only protections needed. In fact, the opposite is true. Although the protections provided for the head and gut groundfish offshore sector are more highly developed and articulated in the bill, the protections for other fisheries are largely left for the Councils to recommend. Those of us involved in the development of this legislation strongly urge the Councils to monitor the formation of fishery cooperatives closely and ensure that other fisheries are held harmless to the maximum extent possible. [Conference Report, at page 12707].

Thus, Senator Murray's comments make clear that an early incursion of AFA

vessels into the Pacific cod fishery is in and of itself an adverse impact, where those vessels did not have a pre-AFA history of such early participation. Of course, this is particularly obvious in a fishery such as the Bering Sea Pacific cod fishery where the January and February fishery is crowded primarily into one small area in Statistical Area 655430.

The comments of Senator Stevens were consistent:

Subsection (a) of Section 211 directs the North Pacific Council to submit measures for the consideration and approval of the Secretary of Commerce to protect other fisheries under its authority and the participants in those fisheries from adverse impacts caused by subtitle II of the American Fisheries Act or by fishery cooperatives in the BSAI directed pollock fishery. The Congress intends for the North Pacific Council to consider particularly any potential adverse effects on fishermen in other fisheries resulting from increased competition in those fisheries from vessels eligible to fish in the BAI directed pollock fishery or in fisheries resulting from any decreased competition among processors. [At page 12781].

There can be no doubt that it was Congress' intent that further protections be put in place for any adverse impacts on non-AFA fishermen. And it is clear that Congress intended to forbid the type of extra fishing effort which has occurred in the January and February Bering Sea cod fishery due to the AFA.

Although in 50 CFR §679.64(b)(1)-(5) the Secretary of Commerce has promulgated specific sideboard measures as required by Section 211(c) of the AFA, no specific regulations have been promulgated (except for the first paragraph of 50 CFR §679.64(b)) to implement the broader protections contemplated by Congress under Section 211(a). As Senator Murray made clear in the legislative history quoted above, it is "imperative" that other protections, in addition to the sideboard measures as set forth in Section 211(c), be promulgated in order to "ensure that other fisheries are held harmless to the maximum extent possible."

On behalf of the Independent Cod Trawlers Association, and its individual members, Steve Aarvik, Charles Burrece, and Omar Allinson, I petition the Secretary of Commerce, through you as Regional Administrator, to comply with the intent of AFA Section 211(a) and with the mandatory language set forth in the first paragraph of 50 CFR §679.64, to restrict the ability of AFA catcher vessels to engage in the January and February Bering Sea Pacific cod fishery to the average level in effect preceding the enactment of the AFA. The pre-AFA level of participation is shown in the Public Review

Draft prepared by Council staff (dated January 16, 2003).

Absent prompt notification of steps to institute such protections, it is my clients' intention to commence litigation in the United States District Court for the purpose of compelling agency action. I sincerely hope that the stated intention of Congress, to protect fishermen in my clients' position, will be followed, and that legal recourse will be unnecessary.

Sincerely,



Russell W. Pritchett

**Attachments**

cc: Mr. Allinson, Mr. Aarvik, and Mr. Burrece  
(With Enclosures)

cc: Sue Salveson, Assistant Regional Administrator  
(With Enclosures)

#193/NMFS.LTR



**Public Testimony Sign-Up Sheet**

**and**

**Handouts Received During the  
Meeting on this Agenda Item**

# Public Testimony Sign Up Sheet

Agenda Item C-5 AFA reports

	NAME (PLEASE PRINT)	AFFILIATION
1	John Granger / Paul McGeys	PSPA / A PA
2	Russell P. Smith	Independent Crab Trawlers
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

C-B handout  
John Gruver 2-12-05  
1:20 pm

**2004**

**AMERICAN FISHERIES ACT**

**CATCHER VESSEL INTERCOOP**

**ANNUAL REPORT**

**TO THE**

**NORTH PACIFIC FISHERY MANAGEMENT COUNCIL**

**Prepared by:**

**John Gruver**

**United Catcher Boats Association**

**Seattle, Washington**

**February 2005**

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## Section 1. Overview

### 1.1 Purpose of the Catcher Vessel Intercooperative Report

The AFA Catcher Vessel Intercooperative Report is a summary of the nine catcher vessel cooperative reports required by the American Fisheries Act (AFA) regulations. While the individual coop reports track the annual activities of each cooperative, a summary of AFA catcher vessel harvests in the Bering Sea and Gulf of Alaska fisheries is needed as NMFS allocates the catcher vessel sideboard caps in the aggregate to the catcher vessel fleet, not by individual cooperatives. The Catcher Vessel Intercooperative Report provides the North Pacific Fisheries Management Council, and the public, with a simple means of evaluating the AFA catcher vessel fleet's aggregate fishing performance under the AFA regulations. Additionally this report provides information beyond the required elements of the individual coop reports to provide a broader understanding of catcher vessel cooperative activities.

### 1.2 The 2004 Catcher Vessel Intercooperative Agreement

The nine AFA catcher vessel cooperatives renewed the Intercooperative Agreement for 2004 with no significant changes from previous agreements. The 2004 agreement continues to emphasize the commitment by all members towards reducing bycatch in each Bering Sea and Gulf of Alaska groundfish fishery in which they participate.

Primary elements of the Intercoop Agreement:

- 1) Allocation, monitoring, and compliance of the BSAI and GOA sideboard limits and PSC caps among the AFA catcher vessel fleet;
- 2) Allocation, monitoring, and compliance of BSAI pollock harvest inside the Steller sea lion conservation area;
- 3) Establishment of penalties for coops that exceed pollock and sideboard allocations;

- 4) Provides for the harvest of BSAI pacific cod by the “under 1700 mt” exempt vessels while complying with AFA PSC limits;
- 5) Establishment and monitoring of sideboard species transfers between cooperatives;
- 6) Promotes compliance of the Council’s recommended sideboard measures and PSC limits while allowing for the maximum harvest of AFA pollock and sideboard allocations; and
- 7) Promotes reduction of prohibited species catch (PSC) in the Bering Sea pollock fishery.

A copy of the 2004 Intercoop Agreement is found in Appendix 1.

### 1.3 Intercoop Enforcement Actions

No enforcement or penalty actions regarding the over-harvest of AFA pollock, directed sideboard fishery caps, red king crab fishery, or PSC limits occurred in 2004. Additionally, no penalty actions in either the chinook salmon or “other” salmon bycatch agreements occurred in 2004.

## Section 2. Bering Sea Pollock Fishery

### 2.1 Allocations and Harvest

The 2004 Bering Sea pollock Total Allowable Catch (TAC) was set at 1,492,000 metric tons. 10% of the TAC is set aside for the Community Development Quota (149,200 metric tons). From the remaining 1,342,800 metric tons, 43,641 metric tons (3.25%) is reserved to fund the Incidental Catch Allowance (ICA). The ICA is established to cover pollock harvested in other Bering Sea groundfish fisheries. The remaining 1,299,159 metric tons, the Directed Fishing Allowance (DFA), is allocated among the three AFA harvest sectors. The inshore sector is allocated 50% of the DFA, the mothership sector is allocated 10%, and the catcher/processor sector is allocated 40%. Catcher vessels that historically delivered pollock to the c/p sector are allocated 8.5% of the c/p sector share (3.4% of the DFA).

There are a total of 112 AFA qualified catcher vessels. The inshore sector has 99 qualified vessels of which 98 were members of inshore cooperatives in 2004. The remaining vessel was the only participant in the inshore open access sector. The mothership sector has a total of 20 qualified vessels of which fourteen are "dual qualified" for both the mothership and inshore sector fisheries. The single inshore open access vessel falls into the dual qualified category and, consequently, is a member of the intercooperative. Seven catcher vessels are qualified under the catcher/processor sector.

The following information on Table 2.1 provides data for the number of members in each cooperative; each coop's allocation percentage; each coop's annual allocation; each coop's total directed pollock harvest; and the amount of pollock over or under the annual allocation. Note that none of the catcher vessel cooperatives exceeded their annual pollock allocation.

**Table 2.1**

Source: Annual Catcher Vessel Cooperative Reports

<b>2004 AFA CATCHER VESSEL COOPERATIVES' ALLOCATIONS AND DIRECTED FISHING HARVESTS</b>					
<b>Cooperative</b>	<b>Number of Vessels in Coop</b>	<b>Annual Allocation Percentage</b>	<b>Initial Annual Allocation</b>	<b>2004 Harvest in Metric Tons</b>	<b>Over / (Under) Allocation</b>
<b>INSHORE COOPS</b>					
Akutan Catcher Vessel Assoc.	33	28.085%	182,433	178,517	(3,916)
Arctic Enterprise Assoc.	3	4.210%	27,348	27,298	(50)
Northern Victor Fleet Cooperative	13	8.425%	54,729	54,129	(600)
Peter Pan Fleet Cooperative	9	2.138%	13,889	13,826	(63)
Unalaska Fleet Cooperative	11	12.209%	79,309	75,478	(3,831)
UniSea Fleet Cooperative	13	23.161%	150,447	150,143	(304)
Westward Fleet Cooperative	16	21.727%	141,132	137,020	(4,112)
<b>Inshore Coop Totals</b>	<b>98</b>	<b>99.955%</b>	<b>649,287</b>	<b>636,411</b>	<b>(12,876)</b>
<b>Inshore Open Access Allocation</b>	<b>1</b>	<b>0.045%</b>	<b>294</b>	<b>188</b>	<b>(106.00)</b>
<b>OFFSHORE CATCHER VESSEL COOPS</b>					
Mothership Fleet Cooperative	20	10% of DFA	129,916	129,222	(694)
High Seas Catchers Cooperative	7	3.4% of DFA	44,171	Details of the HSCC pollock harvest are covered in the joint PCC and HSCC report	

Table 2.1 reports 12,876 metric tons of pollock left unharvested by the inshore cooperatives. While there are several contributing factors that created the under harvest of pollock, two conditions contributed most significantly; salmon bycatch and increased



fuel costs. Fuel costs were driven up not only from the recent rise in fuel prices, but also from additional consumption due to the longer run times and slower fishing conditions that resulted from the regulatory salmon closures.

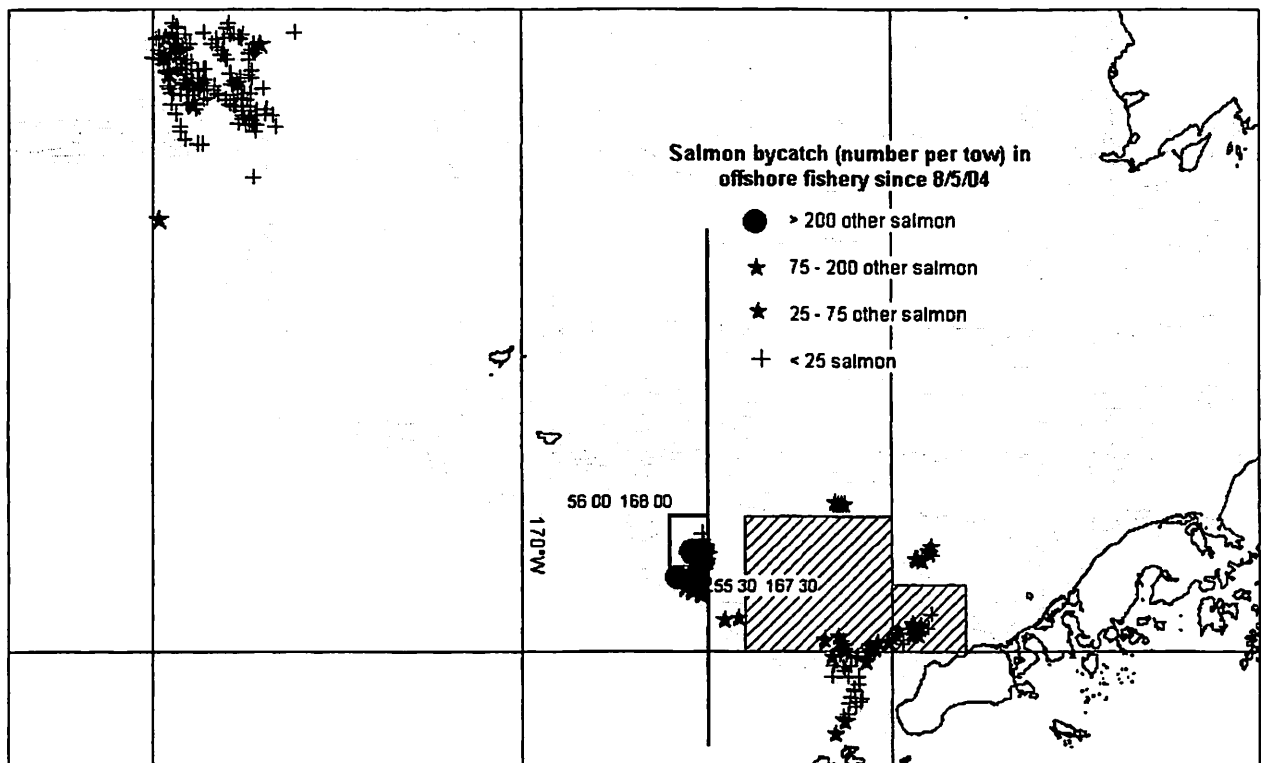
The closure of both the chum and chinook salmon savings areas created difficult fishing conditions for the fleet, and when combined with rising fuel costs, pollock harvest by smaller vessels became both physically and economically restrictive. The regulatory salmon closures created slower fishing conditions by shutting off access to the most productive pollock grounds used by the inshore fleet. Additionally, the distance between the Aleutian Islands' based shore plants and the less productive fishing grounds was greater than the normally traveled. The increased travel distance and the increased towing times spent on the slower fishing grounds were a "one-two punch" for increased fuel costs. While the larger capacity inshore vessels were able to continue fishing, albeit economically straining, for some smaller capacity vessels it became economically impracticable to continue fishing in the later months of the B season. Some of these vessels found economic relief by leasing their fish to larger vessels. Vessels participating in GOA fisheries found it expensive to make the "back and forth" seasonal runs from the Kodiak area fisheries to the Bering Sea pollock fishery. However, the GOA exempt vessels were particularly impacted because they are not allowed to lease their Bering Sea pollock and utilize their exempt status in the Gulf fisheries. Consequently, in 2004, the GOA exempt AFA inshore fleet left approximately 3,850 metric tons of pollock unharvested. (For additional information see page 6 of the 2004 Akutan Catcher Vessel Report)

## **2.2 Salmon Bycatch Avoidance Agreements**

In 2004 all ten AFA cooperatives, catcher vessel and catcher/processors alike, entered into two salmon bycatch management agreements; one for chinook salmon bycatch reduction in the "A" season and a second for chum and chinook salmon bycatch reduction in the "B" season. Copies of each agreement are found in Appendix II.

Both salmon agreements utilize a “rolling hot spot” closure system which, twice weekly, identifies the areas of the Bering Sea pollock fishery with the highest bycatch rate and initiates “Savings Closures” for those areas. Each week individual coops are assigned to a “tier level”, tier 1 for coops with the best bycatch performance, tier 2 for medium performance, and tier 3 for the lowest performance. A coop’s tier level determines the amount of fishing area restriction the coop will have for the ensuing week. The agreements also incorporate an element of peer pressure on poor performing vessels via three types of “Dirty Twenty Lists” which are updated and published each week. These lists specifically name the vessels with the highest bycatch rates on: 1) a weekly, 2) a 2 week rolling average, and 3) a season-to-date basis. Additionally, the agreements require tow-by-tow bycatch reporting by all AFA pollock vessels. SeaState, Inc. has been contracted to gather the data, compile it into useful information, and distribute it to back to the fleet.

Below is a typical report chart provided to fleet by SeaState.



## Section 3. Sideboard Fisheries

### 3.1 Groundfish Sideboards

The American Fisheries Act directed the North Pacific Fisheries Management Council (NPFMC) to provide regulations aimed at protecting non-AFA vessels participating in other groundfish fisheries from adverse impacts that may occur due to the rationalization of Bering Sea pollock fishery. This mandate brought about the development of groundfish and prohibited species catch (PSC) by the NPFMC for the AFA fleet. The development and management of Bristol Bay Red King Crab fishery sideboard restrictions were handled by the Alaska Board of Fisheries.

Vessels with less than 1700 mt of historic catch in the BSAI pollock fishery and that meet minimum landing requirements in either the BSAI and/or GOA are granted exemptions to the BSAI cod fishery and/or GOA groundfish sideboards. Vessels in the Mothership cooperative also become exempt to BSAI cod sideboards after March 1, 2004 was the first AFA year that the Mothership catcher vessels utilized their exemption; exceeding their sideboard amount by 756 metric tons. Exemptions to cod sideboards only apply to the directed fisheries; all AFA boats are subject to the PSC limits associated with the fisheries.

NMFS restricts the non-exempt AFA catcher vessels fishing by an aggregate sideboard cap for each groundfish species category, and an associated PSC bycatch limit, in both the BSAI and the GOA. In turn, the Intercoop Agreement manages the initial distribution, and re-distribution via intercoop transfers, of the aggregate sideboard caps and associated PSC among the nine catcher vessel coops based on their members catch history. In some cases the assigned caps are so small that without the harvest management and monitoring provided by the Intercoop Agreement NMFS would not open those fisheries to directed fishing by the AFA non-exempt catcher vessels. Exempt vessels must meet PSC bycatch standards or face losing their exempt status (see section 3.a. and 3.b. of the Intercoop Agreement in Appendix 1.)

Tables covering the directed groundfish sideboard fisheries available to the AFA non-exempt vessels in 2004 are located in Appendix III. These tables provide information on initial coop allocations of sideboard cap, the transfer of allocations between coops, the directed harvest by each coop, and the amount of sideboard cap that was not harvested by the AFA non-exempt fleet.

The following tables 3.1a and 3.1b provide aggregate information regarding the allocation and harvest of BSAI and GOA sideboard species by AFA non-exempt catcher vessels. The tables report the aggregate harvest of each sideboard species taken as directed catch and as incidental catch in other directed fisheries.

**Table 3.1a** Harvest data supplied by Annual Coop Reports & Sea State, Inc.

<b>2004 BSAI AFA CATCHER VESSEL AGGREGATE GROUND FISH SIDEBOARD CATCH</b>				
Species	Fishery	Sideboard Limit	Aggregate Catch, Directed & Bycatch	Over / (Under) Sideboard Limit
Pacific Cod	Jig Gear	0	0	0
	Hook & Line	0	0	0
	Pot Gear 1/1-6/10	5	0	(5)
	9/1-12/31	4	0	(4)
	CV < 60' H&L or Pot	1	0	(1)
	Trawl Gear CV	46,844	28,393	(18,451)
Sablefish	BS Trawl	112	16	(96)
	AI Trawl	43	0	(43)
Atka Mackerel	Eastern AI&BS Jig	0	0	0
	Other Gear	32	1,289	1,257
	Central AI 1/1-4/15	3	1	(2)
	HLA Limit	1	0	(1)
	9/1-11/1	3	0	(3)
	HLA Limit	1	0	(1)
	Western AI 1/1-4/15	0	0	0
	HLA Limit	0	0	0
	9/1-11/1	0	0	0
	HLA Limit	0	0	0

**Table 3.1a (continued)**

Yellowfin Sole	BSAI	4,734	166	(4,568)
Rock Sole	BSAI	1,188	2,050	862
Greenland Turbot	BS	148	4	(144)
	AI	14	0	(14)
Arrowtooth	BSAI	704	1,107	403
Alaska Plaice	BSAI	376	7	(369)
Other Flatfish	BSAI	112	370	258
Flathead Sole	BS	816	1,126	310
POP	BS	120	285	165
	Eastern AI	22	12	(10)
	Central AI	7	4	(3)
	Western AI	0	0	0
Northern rockfish	BSAI	39	47	8
Shortraker	BSAI	2	2	0
Rougheye	BSAI	1	0	(1)
Other Rockfish	BS	2	18	16
	AI	6	0	(6)
Squid	BSAI	415	658	243
Other Species	BSAI	1,251	1,508	257

**Table 3.1b**

Harvest data supplied by Annual Coop Reports & Sea State, Inc.

<b>2004 GOA AFA CATCHER VESSEL AGGREGATE GROUND FISH SIDEBOARD CATCH</b>				
Species	Fishery	Sideboard Limit	Aggregate Catch, Directed & Bycatch	Over / (Under) Sideboard Limit
Pollock	WYK	448	0	(448)
	SEO	2,281	0	(2,281)
	610 A,B,C,&D	14,015	4,689	(9,326)
	620 A,B,C,&D	3,779	1,479	(2,300)
	630 A,B,C,&D	3,432	580	(2,852)
Pacific Cod	WGOA Inshore A&B	2,172	93	(2,079)
	WGOA Offshore A&B	174	0	(174)
	CGAO Inshore A&B	1,762	260	(1,502)
	CGOA Offshore A&B	185	0	(185)
	EGOA Inshore (annual)	28	0	(28)
	EGOA Offshore (annual)	3	0	(3)
Deep-water Flatfish	WGOA	0	0	0
	CGOA	199	5	(194)
	EGOA	48	0	(48)

**Table 3.1b (continued)**

Rex Sole	WGOA	2	1	(1)
	CGOA	295	0	(295)
	EGOA	56	0	(56)
Flathead Sole	WGOA	7	1	(6)
	CGOA	131	0	(131)
	EGOA	19	0	(19)
Shallow-water Flatfish	WGOA	70	0	(70)
	CGOA	777	1	(776)
	EGOA	41	0	(41)
Arrowtooth Flounder	WGOA	17	0	(17)
	CGOA	773	16	(757)
	EGOA	10	0	(10)
Sablefish	WGOA Trawl	0	0	0
	CGOA Trawl	105	0	(105)
	EGOA Trawl	15	0	(15)
POP	WGOA	157	0	(157)
	CGOA	727	374	(353)
	EGOA	113	0	(113)
Shortraker / Rougheye	WGOA	0	0	0
	CGOA	16	1	(15)
	EGOA	5	0	(5)
Other Rockfish	WGOA	0	0	0
	CGOA	62	0	(62)
	EGOA	0	0	0
Northern Rockfish	WGOA	0	0	0
	CGOA	150	30	(120)
Pelagic Shelf Rockfish	WGOA	0	0	0
	CGOA	0	0	0
	EGOA	7	0	(7)
Thornyhead Rockfish	WGOA	13	0	(13)
	CGOA	31	0	(31)
	EGOA	16	0	(16)
Demersal Shelf Rockfish	SEO	1		(1)
Atka Mackerel	Gulfwide	19	18	(1)
Other Species	Gulfwide	113	10	(103)

The aggregate sideboard harvest tables report overages in several species not directly fished by the AFA non-exempt vessels. The overages occurred in species taken as incidental catch in directed fisheries such as Bering Sea pollock and BSAI cod. While the coops have successfully managed the directed fisheries' sideboard limits, the incidental catch of species associated with those directed fisheries varies from season to season and from year to year. Because the sideboard limits are based on a three-year average it should be expected that the sideboard caps of species taken as incidental catch,

rather than directed catch, would at times be exceeded. Additionally, rises in species abundance and changes in location may be different now than during the 3 year snapshot of the AFA sideboard years causing increases in the incidental catch of some species.

### 3.2 Fishing by Non-Exempt BSAI Cod Vessels in ADF&G Statistical Area 655430

During the June 2000 North Pacific Management Council meeting three “non-AFA” vessel owners that fished cod in the Bering Sea raised an issue of “grounds pre-emption” created by the rationalization of the Bering Sea pollock fishery. They were particularly concerned about an increase of fishing effort in statistical area 655430 of the Bering Sea, also known as the “Breadline” to local cod fishermen, during the early weeks of the season when most cod vessels, prior to the AFA, had been busy fishing pollock.

In 2000, the first catcher vessel “AFA year”, uncertainty of pollock harvest timing, price negotiations, etc. had delayed the pollock fleet from starting to fish on the traditional date of January 20<sup>th</sup>. The AFA boats that had historically fished cod directly after the pre-AFA pollock fishery each year realized this delay would prevent them from entering the cod fishery until well after productive cod fishing would end. Consequently, many captains decided to fish cod for a few trips at the start of the season, knowing this was the only way they would have even a slight chance of making up for the cod fishing they would be missing later on. This created an increase of vessel activity in the cod fishery at the beginning of the 2000 BSAI cod fishery, but resulted in no overall increase of effort from previous seasons (see Table 3.2 on the following page). In fact Table 3.2 further shows that the average number of vessels fishing in stat area 65540 during the entire winter cod season dropped to a level under that of any of the previous 5 seasons prior to the AFA years.

Since the 2000 cod season, effort by the non-exempt AFA vessels has dropped to even lower levels. The effort that now occurs in stat area 655430 is significantly lower than in 2000. The effort in the past 3 years is very similar to 1998 and 1999, the 2 years immediately prior to the implementation of AFA for the catcher vessel fleet.

**Table 3.2**

<b>Number of AFA "cod non-exempt" vessels fishing pcod in ADF&amp;G Stat area 655430 per week, 1995 - 2004</b>													
<b>Week</b>	<b>Pre-AFA</b>						<b>Post-AFA</b>						
	1995*	1996*	1997*	1998*	1999*	Pre-AFA Average	2000*	2001*	2002*	2003**	2004**	Post-AFA Average	
<b>January - April</b>	1	0	1	1	3	5	2	3	19	4	5	3	6.8
	2	0	2	1	2	7	2.4	25	5	6	4	2	8.4
	3	1	1	1	4	5	2.4	20	5	3	3	2	6.6
	4	0	1	1	5	5	2.4	15	2	5	6	5	6.6
	5	0	1	6	4	16	5.4	14	2	7	6	7	7.2
	6	11	1	30	6	10	11.6	15	3	7	6	5	7.2
	7	20	3	41	27	32	24.6	13	4	8	6	4	7
	8	18	26	40	18	39	28.2	20	3	7	5	5	8
	9	32	34	32	31	37	33.2	17	5	2	1	4	5.8
	10	31	14	28	24	15	22.4	8	5	4	1	16	6.8
	11	34	19	22	15	30	24	11	8	16	11	1	9.4
	12	34	26	38	40	27	33	22	16	20	20	8	17.2
	13	30	36	37	30	16	29.8	21	7	10	14	4	11.2
	14	12	34	36	12		23.5	8		4	8		6.7
<b>Weekly Average</b>	<b>15.93</b>	<b>14.21</b>	<b>22.43</b>	<b>15.79</b>	<b>18.77</b>	<b>17.49</b>	<b>15.14</b>	<b>6.46</b>	<b>7.36</b>	<b>6.86</b>	<b>5.08</b>	<b>8.20</b>	

\*Source: NMFS EA/RIR/IRFA for Amendment 73; Additional Sideboard Measures for Bering Sea Winter Pacific Cod.

\*\*Source: NMFS Sustainable Fisheries

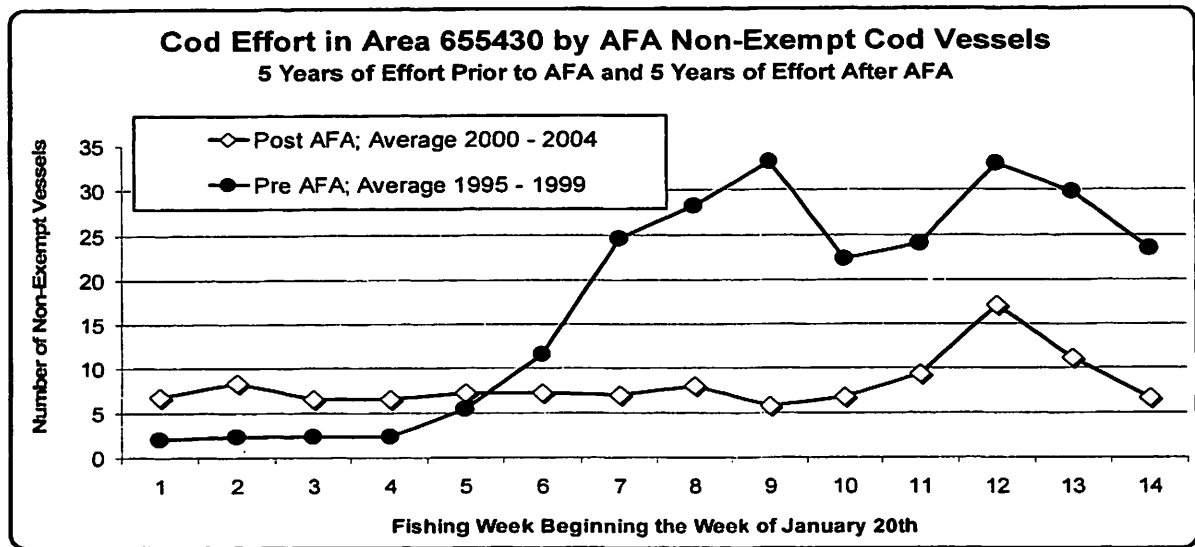
The following Figure 3.3 graphs the 10 year fishing history by non-exempt AFA boats in stat area 655430; five years prior to the AFA and five years after. The overall effect of the AFA non-exempt vessel's activity in area 655430 is demonstrated in two parts by this graph. First, the area between the two lines to the left of their intersection would be the negative effect caused by increased fishing effort by non-exempt AFA vessels in the early part of the season. Secondly the area between the two lines to the right of the



intersection would be the positive effect for the non-AFA cod fleet due to reduced fishing effort by the non-exempt AFA vessels in the latter part of the season.

It is important to note that the difference in the two areas found in Figure 3.2 clearly demonstrate that the non-AFA vessels have benefited many times over by the overall reduced effort of the non-exempt AFA cod fleet fishing in stat area 655430.

**Figure 3.2**



### 3.3 PSC Sideboards

Tables 3.3a, 3.3b, and 3.3c cover prohibited species bycatch amounts taken by AFA catcher vessels participating in BSAI and GOA groundfish fisheries. None of the halibut or crab sideboard limits were exceeded by the AFA catcher vessel sector. Herring bycatch in Bering Sea pollock fishery is on the rise but did not trigger any herring savings area closures. Salmon bycatch is up from previous years and both salmon savings areas closed this year. The Chinook Salmon Savings Area (CHSSA) trigger amount (26,825 salmon) was reached on September 5<sup>th</sup>, closing the CHSSA to pollock fishing for the remainder of the B season. The Chum Salmon Savings Area (CSSA) closure was also

triggered on September 14<sup>th</sup> and remained closed through October 14th. All indications point to steadily increasing numbers of both Chinook and Chum salmon in the Bering Sea during both the A and B seasons over the past few years. Salmon bycatch in the 2004 pollock fishery clearly indicates that the trend continues.

**Table 3.3a**

Data supplied by Sea State, Inc.

<b>2004 BSAI AFA CATCHER VESSEL AGGREGATE PSC SIDEBOARD CATCH</b>				
<b>PSC Species</b>	<b>Target Fishery</b>	<b>Sideboard Limit</b>	<b>Aggregate PSC Mortality</b>	<b>Over / (Under) Sideboard Limit</b>
Halibut	Pacific Cod, Trawl	887	374	(513)
	Pacific Cod, fixed gear	2	0	(2)
	Yellowfin Sole	101	0	(101)
	Rock Sole	221	0	(221)
	Turbot, Arrowtooth, Sablefish	0	0	0
	Rockfish	2	0	(2)
	Pollock/A.Mack/O.Species	5	0	(5)
Red King Crab, Zone 1	Pacific Cod	16,424	0	(16,424)
	Yellowfin Sole	3,872	0	(3,872)
	Rsole/Fhead Sole/O.Flatfish	34,493	0	(34,493)
	Pollock/A.Mack/O.Species	9	0	(9)
C.Opilio, COBLZ	Pacific Cod	77,124	0	(77,124)
	Yellowfin Sole	317,687	0	(317,687)
	Rsole/Fhead Sole/O.Flatfish	275,330	0	(275,330)
	Pollock/A.Mack/O.Species	1,644	0	(1,644)
	Rockfish	986	0	(986)
	Turbot, Arrowtooth, Sablefish	9,363	0	(9,363)
C.Bairdi, Zone 1	Pacific Cod	113,218	38,278	(74,940)
	Yellowfin Sole	38,993	0	(38,993)
	Rsole/Fhead Sole/O.Flatfish	103,787	0	(103,787)
	Pollock/A.Mack/O.Species	391	0	(391)
C.Bairdi, Zone 2	Pacific Cod	200,438	0	(200,438)
	Yellowfin Sole	204,600	0	(204,600)
	Rsole/Fhead Sole/O.Flatfish	169,367	0	(169,367)
	Pollock/A.Mack/O.Species	624	0	(624)
	Rockfish	269	0	(269)

**Table 3.3b**

Data supplied by Sea State, Inc.

<b>2004 GOA AFA CATCHER VESSEL AGGREGATE PSC SIDEBOARD CATCH</b>				
<b>PSC Species</b>	<b>Target Fishery</b>	<b>Sideboard Limit</b>	<b>Aggregate PSC Catch</b>	<b>Over / (Under) Sideboard Limit</b>
<b>Halibut (mortality in metric tons)</b>	Trawl, 1st Season Allowance			
	Shallow water Targets	153	6	(147)
	Deep water Targets	7	0	(7)
	Trawl, 2nd Season Allowance			
	Shallow water Targets	34	1	(33)
	Deep water Targets	21	0	(21)
	Trawl, 3rd Season Allowance			
	Shallow water Targets	68	1	(67)
	Deep water Targets	28	0	(28)
	Trawl, 4th Season Allowance			
	Shallow water Targets	51	1	(50)
	Deep water Targets	0	0	
	Trawl, 5th Season Allowance			
	All Targets	62	0	(62)

**Table 3.3c**

Data supplied by Sea State, Inc.

<b>2004 BSAI AFA CATCHER VESSEL AGGREGATE SALMON &amp; HERRING BYCATCH</b>		
<b>PSC Species</b>	<b>Target Fishery</b>	<b>Aggregate Bycatch</b>
<b>Chinook</b>	Pollock	37,517
	Pacific Cod	599
	<b>Total</b>	<b>38,116</b>
<b>Other Salmon</b>	Pollock	343,046
	Pacific Cod	67
	<b>Total</b>	<b>343,113</b>
<b>Herring</b>	Pollock	1,171
	Pacific Cod	0
	<b>Total</b>	<b>1,171</b>

### 3.4 Bristol Bay Red King Crab Sideboard Fishery

AFA qualified vessels participating in the Bristol Bay Red King Crab Fishery are restricted to a sideboard cap equal to 10.96% of the general fishery guideline harvest level. The total GHL for the 2004 fishery was set at 15,424,000 pounds, from which 1,157,000 pounds were reserved for the CDQ fishery, leaving 14,267,000 pounds for the general fishery. The resulting AFA sideboard cap for the 2004 fishery was 1,563,663 pounds. Thirty-two AFA vessels pre-registered for the 2004 fishery, all 32 vessels participated in the fishery.

Under the ADF&G regulations the AFA harvest cap will be apportioned equally, in pounds, between all AFA qualified vessels. An AFA vessel may not harvest more than its individual share of the AFA harvest cap. AFA vessels may not retain crab after the general fishery has closed, even if it has not harvested its individual share of the AFA harvest cap.

However, ADF&G may allow the AFA vessels to fish the cap in the aggregate provided that an acceptable cooperative fishing agreement is in place. The agreement must have 100% of the qualified AFA vessels agreeing to participate in that cooperative. All 32 pre-registered AFA vessels agreed to fish under an acceptable cooperative agreement. The 2004 agreement provided two fishing options for the AFA crab fleet. Below are the conditions for participating in the 2004 AFA BBRKC cooperative:

- 
1. The AFA vessels participating in the Bristol Bay Red King Crab ("BBRKC") fishery will be limited to a cap of 10.96% of the harvest guideline established for the fishery. The participating vessels will be managed on the basis of an adjusted AFA cap, which shall be 97% of the overall AFA vessel cap. The remaining 3% of the cap is reserved as a "buffer".
  2. Each vessel will choose one of the 2 fishing options, described below, for harvesting crab during the 2004 season. The amount of BBRKC a vessel may harvest will be limited by the conditions of selected option.

Option 1. Vessels participating in the Option 1 category will fish in an "Olympic" mode until the UCB cooperative manager (the "Manager") determines that 80 percent of the Option 1 Cap\* has been harvested. At that time each Option 1 vessel will be assigned a "not to exceed limit," which will be issued as a number of crab. The "not to exceed limit" will be calculated by dividing the remainder of the Option 1 Cap (as determined by the Manager) by the total number of AFA vessels participating under Option 1. That amount will be divided by the estimated average weight of an individual crab harvested during the season (as determined by the Manager). Notwithstanding any vessel failing to have harvested its "not to exceed" cap, the AFA fishery will close when ADF&G announces the closure of the AFA fishery or the general fishery, whichever occurs first.

Option 1 vessels will report their harvest in six (6) hour intervals during the course of the fishery, beginning at noon on October 16th. Each report shall include the number of pots pulled during the reporting period, the number of crab retained within the reporting period,

and the total estimated number of crab on board. In addition, Option 1 vessels will report when every 1,000 crab is retained. All reports shall be to the Manager

\*The "Option 1 Cap" will be calculated by subtracting the aggregate amount of the seasonal limits assigned to the vessels electing to fish under Option 2, below, from the adjusted AFA BBRKC cap as described in item 1. above.

Option 2. Each participating vessel's seasonal harvest will be limited to a specific number of crab calculated by dividing the adjusted AFA cap by the number of AFA vessels electing to participate in the 2003 BBRKC fishery, as reflected on the Alaska Department of Fish and Game ("ADF&G") registration list, then divided by an estimated average crab weight (as determined by the Manager) to establish an initial season limit. The initial season harvest limit will be subject to a one time, mid season reassessment of the average crab weight by the Manager. At that time a final seasonal harvest limit will be assigned to the Option 2 vessels. Seasonal limits are not re-assignable by vessels. In the event that an Option 2 vessel loses the capacity to harvest its entire limit, the balance of its limit, as determined by the Manager, will be forfeited to the entire AFA fleet, and distributed equally among all AFA vessels actively participating in the fishery at the time of distribution by the Manager. Notwithstanding any vessel failing to have harvested its seasonal limit, the AFA fishery will close when ADF&G announces the closure of the AFA fishery or the general fishery, whichever occurs first.

Option 2 vessels will report their harvest in twelve (12) hour intervals during the course of the fishery, beginning at 0600 hrs. on October 16th. Each report shall include the number of pots pulled during the reporting period, the number of crab retained within the reporting period, and the total estimated number of crab on board.

3. ADF&G requires 10% observer coverage by the AFA Fleet and will randomly pick which vessels will carry observers onboard. Observer contract fees and transportation costs will be shared equally by the AFA Fleet.
4. Each vessel will either have a functioning Inmarsat C system or satellite telephone for communications.
5. Penalties 1. Any vessel that exceeds any BBRKC harvest limit assigned to it under this Affidavit or a related implementing agreement by >5% shall pay a penalty equal to 200% of the ex-vessel value of the overage to UCB. 2. Any Option 1 vessel determined to have underreported or over-reported its catch by >5% shall pay a civil penalty equal to 200% of the ex-vessel value of the entire amount underreported or over-reported. 3. Any vessel failing to report as scheduled will be assessed a penalty (\$100 per missed report 1 & 2; \$500 per missed report 3 & 4; \$1,000 per each missed report thereafter). Penalties for reporting overages and underages by Option 1 vessels and landing overages by all vessels shall be calculated based on the number of crab by which a vessel is determined to have over or underreported, or by which it is determined to have exceeded its catch limit, using the seasonal average weight per crab (as determined by the Manager) to liquidate the penalty amount.

6. All vessels will use best efforts not to collectively exceed the AFA cap and agree that to the extent it is exceeded, that the AFA cap in the following year will be reduced by an amount in pounds equal to twice the overage.
7. All costs incurred by UCB to facilitate the management of the fishery will be totaled at the end of the season. Participating vessel owners will pay an advance amount of \$500. After the end of the season the outstanding balance will be paid by the vessel owners on a pro-rata basis, based on the pounds harvested per vessel.
8. Participating vessel owners agree to release all BBRKC harvest information to the UCB manager/monitor. Individual final harvest information will be made available to participating vessel owners as well as to the ADF&G by the UCB monitor.

Twenty-nine vessels chose to fish under an individual trip limit (Option 2), leaving 3 vessels fishing in the Option 1 pool. The Option 1 fleet reached the 80% threshold at 2:45 pm on October 17<sup>th</sup>; consequently they were issued a “not-to-exceed cap” at that time. A summary of the Option 1 vessels’ harvest is found in Table 3.4a.

Of the 29 vessels fishing in Option 2, 18 vessels caught their individual trip limit. A summary of the Option 2 vessels’ harvest is found in Table 3.4b. As shown in Table 3.4c, the AFA BBRKC fleet stayed under the AFA sideboard cap in 2004, harvesting 93.53% of the sideboard amount.

**Table 3.4a**

<b>Option 1 Vessel Reported Crab</b>					
Reporting Period		Crab This Period	Total Reported Crab	Pots Hauled This Period	Total Pots Hauled
Date	Time				
Oct. 16	12:00	1,282	1,282	37	37
	18:00	5,299	6,581	122	159
Oct. 17	0:00	3914	10,495	132	291
	6:00	1,397	11,892	72	363
	12:00	5,834	17,726	199	562
Final Pick		4,344	22,060	184	746
<b>Option 1 Vessel Landed Crab</b>					
Landed Total:		21,488	Reporting Accuracy:	2.60%	

**Table 3.4b**

<b>Option 2 Vessel Reported Crab</b>					
Reporting Period		Crab This Period	Total Reported Crab	Pots Hauled This Period	Total Pots Hauled
Date	Time				
Oct. 16	6:00	0	0	0	0
	18:00	25,065	25,065	894	894
Oct. 17	6:00	46,310	71,375	1,435	2,329
	18:00	62,286	133,661	1,902	4,231
Oct. 18	6:00	34,051	167,712	1,399	5,630
	18:00	16,433	184,145	1,040	6,670
Oct. 19	6:00	4,971	189,116	322	6,992
	18:00	0	189,116	0	6,992
<b>Option 2 Vessel Landed Crab</b>					
Landed Total:		188,622	Reporting Accuracy:	0.26%	

**Table 3.4c**

<b>Summary of 2004 AFA BBRKC Harvest</b>			
AFA Sideboard Limit	Total Number of Crab Landed	Total Landed Weight	Percentage of AFA Sideboard Harvested
1,563,663	210,110	1,462,513	93.53%

## **Appendix I**

### **2004 Catcher Vessel Intercoop Agreement**



## 2004 INTERCOOPERATIVE AGREEMENT

This 2004 INTERCOOPERATIVE AGREEMENT is entered into by and among HIGH SEAS CATCHERS COOPERATIVE ("High Seas"), MOTHERSHIP FLEET COOPERATIVE ("MFC") and the "Inshore Coops", i.e., AKUTAN CATCHER VESSEL ASSOCIATION, ARCTIC ENTERPRISE ASSOCIATION, NORTHERN VICTOR FLEET COOPERATIVE, PETER PAN FLEET COOPERATIVE, UNALASKA FLEET COOPERATIVE, UNISEA FLEET COOPERATIVE and WESTWARD FLEET COOPERATIVE, all of which are Washington Fish Marketing Act corporations, as of November 24, 2003, with respect to the following facts:

A. High Seas, MFC and the Inshore Coops (together, the "Coops") are composed of certain catcher vessels (the "Vessels") eligible to harvest Bering Sea ("BS") and Aleutian Islands ("AI") pollock under the American Fisheries Act (the "AFA"). High Seas and the MFC are composed of all of the catcher vessels eligible to harvest BS and AI pollock in the "catcher/processor" and "mothership" sectors of such fisheries, respectively. The Inshore Coops have each received an allocation of BS pollock in accordance with Section 210 of the AFA. The members of each of the Coops have allocated among themselves the pollock available to their respective Coop, and have agreed that an over-harvest of its allocation by any member shall subject such member to a penalty.

B. The North Pacific Fishery Management Council (the "Council") has adopted "trigger amounts" of chinook, other salmon and herring (the "Trigger Amounts"). Attainment of a Trigger Amount causes certain "savings areas" to be closed to trawling for pollock for certain periods of time. The Coops are also subject to limits on their incidental catch of halibut and crab (the "PSC Limits"). Each Coop's members have agreed to exercise their best efforts to conduct their fishing efforts such that their Coop operates within the Trigger Amounts and PSC Limits, and to comply with the related management measures.

C. Pursuant to Section 211(c) of the AFA, the Council has adopted certain measures to prevent the Vessels from exceeding in the aggregate their traditional harvest levels in certain fisheries other than BS and AI pollock (the "Sideboards"). The members of each of the Coops have allocated the Sideboards limits among themselves, and have agreed that an over-harvest of a Sideboard limit by any member shall subject that member to a penalty.

D. The Coops are subject to certain time and area limits on their harvest of BS and AI pollock in connection with Steller sea lion protection measures (the "RPAs").

Now, therefore, the parties agree as follows:

1. Trigger Amount Management. The Coops agree to exercise all reasonable efforts to reduce their salmon and herring bycatch to the lowest commercially practical levels, and specifically agree to coordinate their members' fishing activities with the goal of achieving the lowest practicable bycatch rates. For purposes of this Section, Coop catch data produced by the Monitoring Agent (as identified in Section 6.a, below) in conformance with NMFS catch accounting and bycatch estimation procedures shall be presumed accurate.

a. Bycatch Reporting. Each Coop shall arrange to have each of their members' Vessels' bycatch data (to the fullest extent available, with tow-by-tow data being considered optimal) released directly from then NMFS Observer Program to the Monitoring Agent and the Intercoop Manager (as identified in Section 8, below). The Monitoring Agent and the Intercoop Manager are hereby authorized to release all such data in forms and to parties as they reasonably deem appropriate to promote bycatch reduction.

2. Sideboard Limits. Subject to applicable Sideboard exemptions (including the "1700 metric ton" BS/AI cod and Gulf of Alaska ("Gulf") groundfish Sideboard exemptions and the mothership sector BS/AI cod sideboard exemption), the Coops agree to limit their collective members' Vessels' aggregate annual harvest of each Sideboard species to the amount that the Coop members' Vessels' collective catch histories contribute to the annual Sideboard for such species, as calculated by the National Marine Fisheries Service ("NMFS") in accordance with 50 C.F.R. § 679.64(b). To give effect to this provision, each Coop shall (i) limit its non-exempt members' Vessels' aggregate annual harvest of each Sideboard species to the amount that such Vessels contribute to the aggregate annual Sideboard for such species; or (ii) in the case of two or more Coops entering into an intercooperative agreement under which the parties have agreed to limit their collective non-exempt members' Vessels' aggregate annual harvest of one or more Sideboard species to the amount that such Coops' members' Vessels' collective catch histories contribute to the annual Sideboard for such species, limit its members catch in compliance with such intercooperative agreement.

3. Sideboard Management. The Coops acknowledge and agree that coordinated Sideboard management is essential to insure compliance with the aggregate Sideboard limits established under the AFA. Therefore, the Coops agree to the procedures set forth in this Section 3. For purposes of this Section, Coop catch data produced by the Monitoring Agent in conformance with NMFS catch accounting and bycatch estimation procedures shall be presumed accurate.

a. Sideboard and Sideboard-Related PSC Cap Allocation. The Monitoring Agent will annually allocate the BS/AI Pacific cod Sideboard (the "Cod Sideboard") in accordance with the terms and conditions of that certain Cod Allocation Agreement among the Coops dated as of June 1, 2000 (the "Cod

Agreement”). The Monitoring Agent, in consultation with NMFS, will allocate all Sideboard species other than BS/AI Pacific cod and will allocate all PSC Caps (including those applicable to BS/AI Pacific cod) in accordance with this Section 3.a.

The Monitoring Agent will first reserve an amount of each such Sideboard species necessary to fund the bycatch needs of pollock and other directed groundfish fisheries in which the AFA catcher vessels participate. Then, the Monitoring Agent will initially allocate the BS, AI and Gulf non-exempt vessel Sideboard directed fishery allowances, exempt vessel Sideboard reserves and PSC Limits among the Coops as set forth herein. The allocations will be based on NMFS data and formulas to the extent feasible, and on the best available data otherwise. Each Coop agrees to exercise its best efforts to provide the Monitoring Agent with all catch data that the Monitoring Agent reasonably requests for purposes of calculating such allocations. Upon the Monitoring Agent having allocated the non-exempt and exempt vessel Sideboard allowances among the Coops, the Monitoring agent shall allocate the PSC Limits such that:

(i) each Coop shall receive PSC Limit allocations for each of the Sideboard fisheries in which its vessels operate without exemptions proportionate such Coop’s related Sideboard species allocations, provided that each Coop’s initial PSC Limit allocations related to non-exempt vessel BS/AI cod harvest shall be reduced by five percent (5%) to fund the “traditional time and area” buffer (the “Buffer”) provided to the exempt vessels pursuant to (ii), below; and

(ii) each Coop shall receive separate PSC Limit allocations for each of the fisheries in which one or more of its vessels operate on an exempt basis, proportionate to such vessels’ contribution to the related NMFS reserve, provided that each Coop’s initial “1700 mt” exempt vessel BS/AI cod PSC allocation shall be adjusted upward by a pro rata amount of the Buffer. In cases where an exempt vessel contributes less than 500 metric tons (“mt”) to the BS/AI cod exempt vessel reserve, the initial allocation of PSC relative to that vessel shall be based on a presumed contribution of 500 mt.

For purposes of this Section 3, the mothership sector catcher vessels shall be considered “non-exempt” prior to March 1, and their initial coop Sideboard and PSC Limit allocations shall be made accordingly. The mothership catcher vessels shall become “exempt” as of March 1, and thereupon shall become eligible for a reallocation of PSC pursuant to Subsection b., below, if as a coop group they have harvested their initial BS/AI cod Sideboard allocation without exceeding their initial allocation of PSC.

b. BS/AI and Gulf Cod PSC Reallocation. The Monitoring Agent will track the aggregate BS/AI and Gulf cod catch and halibut and crab bycatch of each Coop’s exempt vessels. Upon the Monitoring Agent determining

that a Coop's exempt vessels (as a group) have harvested their initial or subsequent allocation(s) of cod in the BS/AI or Gulf cod fishery without exceeding the Coop's related allocation of exempt vessel PSC (as adjusted by intra or inter Coop transfers) (such Coop being a "Complying Coop"), the Monitoring Agent will reduce each Coop's (including the Complying Coop's) remaining allocation of cod-related PSC for such cod fishery (if any) pro rata, according to the proportion of its initial non-exempt allocation of such PSC vis-a-vis the other Coops, such that the sum of the reductions is the lesser of (i) the amount of PSC necessary for each exempt vessel in the Complying Coop to harvest an additional 300 mt of cod at the pre-Buffer non-exempt cod/PSC ratio, or (ii) the proportionate amounts of such PSC that the Monitoring Agent deems necessary for the Complying Coop's exempt vessels to operate at such ratio until such fishery is closed to catcher vessel trawling; provided that the sum of such reductions under (i) or (ii) above shall in no case exceed that amount of PSC calculated to harvest 1500 mt at the pre-Buffer non-exempt cod/PSC ratio. The Monitoring Agent will then increase the relevant Coop's exempt vessel cod-related PSC allocations for such fishery by the sum of such reductions. On the other hand, if a Coop's exempt vessels harvest their initial or subsequent cod-related PSC allocation for the BS/AI or Gulf cod fishery (as adjusted by inter or intra Coop transfers) before having harvested the Coop's cod allocations made available therewith, the Monitoring Agent will not increase such Coop's exempt vessel allocations, and such Coop shall require such vessels to cease their directed fishing in that cod fishery, notwithstanding their exemption. If the Monitoring Agent determines that a PSC reallocation under this Section has provided a Coop with PSC in excess of the amount necessary to fish until fishery closure, the Monitoring Agent will have the authority to release an amount of the surplus that the Monitoring Agent deems reasonable back to the contributing Coops.

c. BS/AI Cod Harvest Timing. To facilitate harvest of the full amount of the BS/AI cod Sideboard, each Coop agrees to manage its non-exempt vessels' BS/AI cod directed fishing harvest such that no more than sixty percent (60%) of the related initial PSC allocation is harvested prior to March 1.

d. Optimal PSC Utilization. Each Coop agrees to exercise its best efforts to manage its vessels such that their aggregate PSC catch (as determined by the Monitoring Agent in accordance with NMFS procedures) does not exceed the Coop's PSC Limit allocations, as adjusted by transfers with other Coops and pursuant to Subsection 3.b., above. Each Coop agrees to release to the Monitoring Agent on a timely basis for redistribution at no cost the PSC it determines is not necessary to harvest its Sideboard allocations.

e. Gulf of Alaska Groundfish Sideboard Exemption. The Coops acknowledge that the Council has stipulated that no Vessel shall be exempt from the Gulf of Alaska groundfish Sideboards in any year during which other vessels are permitted to lease any portion of such Vessel's BS or AI pollock

allocations. The Coops acknowledge that the Council's stipulation was intended to prevent a Vessel from using its ability to transfer or license its Coop BS or AI pollock allocation to increase its opportunity to harvest Gulf groundfish in excess of applicable Sideboards. The Coops agree to require that an exempt Vessel that actually exceeds an otherwise applicable Gulf groundfish Sideboard in 2004 shall not have transferred any amount of such Vessel's BS/AI pollock allocation for 2004 to another vessel such that the aggregate amount of such exempt Vessel's annual BS/AI pollock allocation is reduced by such transfer(s). The Coops agree that an exempt Vessel which actually exceeds a Gulf groundfish Sideboard and fails to comply with the BS/AI pollock transfer limitations of this Section shall be deemed to have over-harvested its Sideboard allocation, notwithstanding its exempt status, and shall be subject to the related over-harvest penalties per the enforcement provisions of its Coop's Membership Agreement and this Agreement. For purposes of this provision, a Vessel's pollock allocations shall be calculated net of the amount normally reserved for harvest by a Coop "sweep-up" Vessel for purposes of season and/or area harvest limit compliance.

#### 4. Over-harvest Prevention Measures.

a. Harvest Limits. The Coops agree to exercise their best efforts to prevent any of their members from exceeding their pollock allocation and Sideboard limits. In cases where a member has done so, the Coops agree to exercise their best efforts to prevent such over-harvest from affecting non-members and/or resulting in a violation of fishery regulations. To that end, the Coops agree to facilitate pollock allocation and Sideboard limit transfers among members when practicable, agree to transfer PSC Limit apportionments among Coops when practicable, and to issue "stop fishing" orders as appropriate when such transfers are not practicable. The Coops also agree to encourage their members to mitigate the effects of inadvertent over-harvests by making directed fishing and PSC Limit allocations available to other Coop members on reasonable terms and conditions. However, other than as provided in Section 4.f.(ii), below, nothing in this Section 4 shall constitute an affirmative obligation on the part of any Coop or its members to transfer an allocation at the request of another Coop or other members.

b. Pollock Allocation and Sideboard Penalties. The Coops acknowledge that notwithstanding the provisions of Section 4.a, above, adopting and enforcing appropriate penalties is necessary to create over-harvest disincentives. The Inshore Coops therefore each agree to adopt the uniform penalty for an Inshore Coop member exceeding its BS, AI or Gulf pollock directed fishing allocation amount or area or season proportion of one hundred fifty percent (150%) of the total ex-vessel value of such over-harvest. For purposes of this Subsection 4.b and Subsection 4.c, below, provision, ex-vessel value shall be deemed to be the ex-vessel price paid by the processor(s) to which the over-harvesting member delivered for the over-harvested species during the season(s) in which the over-harvest takes place, and shall include all consideration paid for the over-harvested

allocation, including but not limited to all bonuses and post season adjustments. The Coops each agree to adopt the uniform penalty amount of One Thousand Dollars (\$1,000.00) per metric ton for over-harvests in the directed BS, AI and Gulf Pacific cod fisheries, and the amount of Three Hundred Dollars (\$300.00) per metric ton for over-harvests in all other BS, AI and Gulf directed groundfish fisheries. Over-harvests shall be determined on the basis of the best available data. Harvest reports developed by the Monitoring Agent shall be presumed accurate in the absence of demonstrable error.

c. PSC Limit Enforcement. Upon a Coop receiving written notice from the Monitoring Agent that it does not have an adequate PSC Limit allocation to support further fishing activity by its members' vessels, such Coop shall immediately cause its members' vessels to cease fishing in the relevant directed fisheries. The Coops hereby adopt as a uniform penalty for each landing following such notice that includes a PSC species harvested in excess of a Coop's PSC Limit allocation an amount equal to twice the ex-vessel value of all commercially harvestable species delivered in such landing. For purposes of this Subsection, Coop catch data produced by the Monitoring Agent in conformance with NMFS catch accounting and bycatch estimation procedures will be presumed accurate. The Coops agree to take all actions and execute all documents reasonably necessary to give effect to this provision.

d. Liquidated Damages. The Coops acknowledge that the financial impact associated with over-harvesting an allocation or exceeding a Sideboard limit or PSC Limit are difficult to estimate, and that penalty amounts are therefore intended to be a substitute in all cases for direct, indirect and consequential damages. Therefore, the Coops agree that the penalty amounts established under 4.b. and 4.c., above are liquidated damages, the payment of which (together with reasonable costs of collection) shall satisfy a member's obligation with respect to any harvest in excess of an allocation, Sideboard or applicable PSC Cap. The Coops hereby waive any and all claims to direct, indirect or consequential damages related to such over-harvest.

e. Rights of Action. Each Coop agrees that the members of all other Coops shall have rights to initiate penalty actions and to be paid overharvest forfeitures and related costs of collection equivalent to such Coop's own members' rights. Each Coop agrees to take all corporate action necessary to give effect to this provision.

f. Indemnification.

(i) Each Coop (an "Indemnifying Coop") hereby agrees to indemnify, defend and hold harmless all other Coops and their members (the "Indemnitees") against all third party claims, legal actions and proceedings of any type whatsoever (the "Actions"), and against all third party damages, including

but not limited to all liabilities, obligations, judgments, penalties, fines, forfeitures, costs of defense and reasonable attorneys' fees (including fees incurred enforcing this indemnification) (together, the "Damages") that the Indemnitees incur as a result of an overharvest of a pollock allocation, Sideboard species or PSC Limit by a member of the Indemnifying Coop.

(ii) For purposes of this provision, in cases where an over-harvest by a member is (a) not willful or repeated; (b) is capable of being corrected by other members (of the same or other Coops) restraining their harvest(s), and timely written notice is provided to such members' Coop(s); and (c) for which the appropriate amount of liquidated damages is tendered by the originally over-harvesting member to a qualified third party escrow agent in readily available funds, the obligation of indemnification for third party claims related to the original over-harvest shall shift to the Coop(s) receiving notice and the tender of liquidated damages.

#### 5. Steller Sea Lion-Related Management Measures.

a. Non-Exempt Vessels. Other than as necessary to give effect to exemptions for which its members qualify, each Inshore Coop agrees to limit the aggregate annual pollock harvest of its members per season and per area (as determined in accordance with NMFS accounting procedures related to such harvests, including NMFS presumptions concerning unmonitored vessels) to the percentage of the annual inshore pollock directed fishing allowance generally permitted to be harvested during such season and/or in such area.

b. Unmonitored Vessels. The Coops acknowledge that NMFS presumes pollock catch by unobserved vessels that are not carrying an operating Vessel Monitoring System ("VMS") is harvested in the Sea Lion Conservation Area ("SCA") until such area is closed, notwithstanding where the vessel actually fished. The Coops agree to work collectively to establish, adopt and enforce measures that promote accurate inside/outside SCA catch accounting.

c. SCA Exemption for Vessels Equal to or Less than 99' in Overall Length. The Coops acknowledge that under the current Steller sea lion-related management measures, vessels equal to or less than 99 feet in length are eligible to harvest all of their BS pollock A and D season allocations inside the SCA. So long as this exemption remains in effect, the Coops agree that the Monitoring Agent in consultation with NMFS will calculate and reserve from the Coops' aggregate pollock allocations an amount of quota inside the SCA adequate to fund the total seasonal directed harvest of all members' Vessels equal to or less than 99 feet (the "99' Reserve"). The Monitoring Agent will then allocate the 99' Reserve among the Coops pro rata, according to the relative catch histories of their

vessels under 99'. Each Coop shall in turn allocate its share of the 99' Reserve among its members operating vessels under 99' in length, prior to establishing the inside SCA allocations for its members' Vessels over 99' in length. The Coops agree to require that any license or transfer of pollock quota from a vessel equal to or less than 99' to a vessel over 99' shall be subject to generally applicable regulations concerning spatial and temporal distribution of catch, including but not limited to proportions which may be harvested inside the SCA, notwithstanding the exemption extended to vessels less than or equal to 99'.

6. Data Reporting.

a. Appointment of Monitoring Agent. The Coops acknowledge that it will not be possible to obtain the benefits associated with cooperative harvesting activity unless catch data is reported on a timely basis to a centralized monitoring and reporting agent (the "Monitoring Agent"). The Coops agree to independently contract with Sea State, Inc. as their agent for that purpose.

b. Data Gathering. Each Coop agrees to take all commercially reasonable actions to obtain catch data and other information that may be necessary for effective fishery management from its members as soon as reasonably possible, and to provide such data to the Monitoring Agent as soon as reasonably possible after receiving such data. Data produced for the Coops by the Monitoring Agent shall be presumed accurate, which presumption shall only be reputable upon clearly demonstrating inaccuracy.

7. Vessel Pre-registration. The Coops acknowledge that it may be necessary for their members to provide advance notice of their intent to employ Vessels in certain fisheries, to provide NMFS and the Coops with the ability to project catch rates and amounts. Each Coop agrees to obtain such elections from its members and report them to the Monitoring Agent on a timely basis.

8. Intercooperative Management. The Coops acknowledge that resolving issues related to cooperative harvesting operations will be a continuing process. Each Coop agrees to appoint a person to represent it in intercooperative matters. The Coops further agree to retain United Catcher Boats ("UCB") to provide ongoing intercooperative coordination services and an intercooperative manager (the "Intercoop Manager") through December 31, 2004. The Coops agree such services shall not include representing the Coops or any of them in political or general policy matters, other than as authorized by all Coops in advance.

9. Term. This Agreement shall take effect upon execution by all of the Coops. This Agreement shall expire on November 30, 2004. The Coops agree to meet in good faith negotiations concerning modification of this Agreement and extension of its term not later than October 1, 2004, with the express intent of replacing or extending this Agreement prior to November 30, 2004.



10. Miscellaneous.

a. No amendment to this Agreement shall be effective against a party hereto unless in writing and duly executed by such party. The parties agree to amend this Agreement as reasonably necessary to comply with changes in law, and policies and regulations implementing the American Fisheries Act.

b. This Agreement shall be governed by and construed in accordance with applicable federal law and the laws of the State of Washington.

c. This Agreement may be executed in counterparts which, when taken together, shall have the same effect as a fully executed original. Delivery of a signed copy of this Agreement by telefacsimile shall have the same effect as delivering a signed original.

d. The parties agree to execute any documents necessary or convenient to give effect to intents and purposes of this Agreement.

e. All notices required to be given under this Agreement shall be deemed given five (5) days following deposit in certified first class U.S. mail, postage prepaid, with the correct address, or upon the first business day following confirmed telefacsimile transmission to the recipient. Each Coop agrees to provide the name, postal address, telefacsimile number and e-mail address (if any) of its representative for purposes of receiving notices under this Agreement within three (3) days of executing this Agreement.

f. In the event that any provision of this Agreement is held to be invalid or unenforceable, such provision shall be deemed to be severed from this Agreement, and such holding shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

g. Each Coop agrees to use its best efforts to resolve any disputes arising under this Agreement through direct negotiations. Other than disputes related to overharvest of pollock, Sideboard limits or PSC Limits in connection with which one or more Coops or their members seek an injunction, a restraining order or some other form of equitable relief, all disputes not resolved through direct negotiation and/or dispute resolution will be submitted to arbitration in Seattle, Washington upon the request of any party to this Agreement. The party's written request will include the name of the arbitrator selected by the party requesting arbitration. The other party will have ten (10) days to provide written notice of the name of the arbitrator it has selected, if any. If the other party timely selects a second arbitrator, the two arbitrators will select a third arbitrator within ten

(10) days. If the other party does not timely select the second arbitrator, there shall be only the one arbitrator. The single arbitrator or the three (3) arbitrators so selected will schedule the arbitration hearing as soon as possible thereafter. Every arbitrator, however chosen, must have no material ties to any Coop or Coop member. The decision of the arbitrator (or in the case of a three (3) arbitrator panel, the decision of the majority) will be final and binding. The arbitration will be conducted under the rules of (but not by) the American Arbitration Association. The parties will be entitled to limited discovery as determined by the arbitrator(s) in its or their sole discretion. The arbitrator(s) will also determine the "prevailing party" and that party will be entitled to its reasonable costs, fees and expenses, including attorneys' and arbitrator fees, incurred in the action by said party. In no event will arbitration be available pursuant to this paragraph after the date when commencement of such legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

## Appendix II

### Salmon Bycatch Management Agreements

# CHINOOK SALMON BYCATCH MANAGEMENT AGREEMENT

## 2004 POLLOCK "A" SEASON

This CHINOOK SALMON BYCATCH MANAGEMENT AGREEMENT is entered into by and among POLLOCK CONSERVATION COOPERATIVE ("PCC"), the HIGH SEAS CATCHERS COOPERATIVE ("High Seas"), MOTHERSHIP FLEET COOPERATIVE ("MFC") and the "Inshore Coops", i.e., AKUTAN CATCHER VESSEL ASSOCIATION, ARCTIC ENTERPRISE ASSOCIATION, NORTHERN VICTOR FLEET COOPERATIVE, PETER PAN FLEET COOPERATIVE, UNALASKA FLEET COOPERATIVE, UNISEA FLEET COOPERATIVE and WESTWARD FLEET COOPERATIVE, as of \_\_\_\_\_, 2004, with respect to the following facts:

### RECITALS

Western Alaskans have expressed conservation and allocation concerns regarding the incidental catch of chinook salmon in the Bering Sea/Aleutian Islands pollock fishery. While such bycatch is regulated by the North Pacific Fishery Management Council (the "Council") and the National Marine Fisheries Service ("NMFS"), the Coops desire to address this issue by inter-cooperative agreement, out of respect for the concerns of Western Alaskans, to avoid unnecessary incidental catch of chinook salmon and, to the extent feasible, to avoid triggering a regulatory closure of the Chinook Salmon Savings Area (the "CHSSA").

### AGREEMENT

1. Purpose of Agreement. The purpose of this Agreement is to implement a private, contractual inter-cooperative program to reduce chinook salmon bycatch in the 2004 Bering Sea/Aleutian Islands ("BS/AI") trawl pollock "A" season non-CDQ fishery (the "Fishery"). Each party to this Agreement agrees exercise all commercially reasonable efforts to achieve that purpose.

2. Chinook Salmon Bycatch Management. The parties agree that chinook salmon bycatch in the Fishery shall be managed on an inter-cooperative basis as follows.

a. The Coops will retain Sea State, Inc. ("Sea State") to provide the data gathering, analysis, fleet monitoring and reporting services necessary to implement the bycatch management program contemplated under this Agreement.

b. Sea State will use the bycatch rate (the "Base Rate") as a trigger for Savings Area closures (as described in Subsection 2.h, below) and determining the Tier to which a Coop is assigned for purposes of Savings Area access. The Base Rate is .067 chinook salmon per metric ton of pollock, which is calculated by

dividing the 2003 CHSSA trigger amount of 30,525 chinook salmon (i.e., the 2003 regulatory trigger of 33,000 chinook salmon, less the 7.5% Community Development Quota (“CDQ”) reserve) by the seven (7) year average, 1997–2003, of the BS/AI pollock “A” season directed fishing allowance (“DFA”), net of incidental catch allowances for non-pollock fisheries and of CDQ allocations.

c. Sea State will use bycatch data from the period January 20 - 23, 2004 to provide Coops with preliminary information regarding the location and concentration of chinook salmon. Sea State will use bycatch data from the period January 24 - 29, 2004 for initial Savings Area closures and Coop Tier assignments, and thereafter Sea State will determine each Coop’s Tier assignment on a weekly basis.

d. Rate calculations for purposes of Tier assignments will be based on each Coop’s pollock catch in the Fishery for the prior two weeks (the denominator) and the associated bycatch of chinook salmon taken by its members (the numerator), with the exception of the initial tier assignments as described in Section 2.c. For purposes of this Section, a Coop’s salmon bycatch amount shall be based on observed, counted chinook salmon (i.e., whole haul samples), or sample sizes sufficiently large that Sea State reasonably concludes that estimated number of chinook salmon has a high probability of being accurate. Classification of inshore Coops shall be based on plant observer data, and not on tow-by-tow estimates from the fishing grounds.

- Coops with chinook salmon bycatch rates of less than 75% of the Base Rate, i.e., with bycatch rates less than .05 chinook per metric ton (“mt”) of pollock, shall be assigned to Tier 1.
- Coops with chinook salmon bycatch rates equal to or greater than 75% of the Base Rate but less than 125% of the Base Rate, i.e., with bycatch rates equal to or greater than .05 chinook per mt, but less than or equal to .084 chinook per mt, shall be assigned to Tier 2.
- Coops with chinook salmon bycatch rates greater than 125% of the Base Rate, i.e., above .084 chinook per mt, shall be assigned to Tier 3.

e. When the Fishery is open to any of the inshore, catcher/processor or mothership components, on an ongoing basis Sea State will calculate the bycatch rates for each Alaska Department of Fish and Game (“ADF&G”) statistical area for which Sea State receives a salmon bycatch report, and when feasible, for each lateral half of each such statistical area. The bycatch rates shall be calculated on the basis of reports Sea State determines to be adequately accurate, including reliable tow-by-tow estimates from the fishing grounds. In every case, rates calculated on the basis of the actual number of salmon observed per tow will be given priority over rates based on sampling and extrapolation.

f. On January 29, 2004, and on each Thursday thereafter, and on February 2, 2004 and on each Monday thereafter, for the duration of the 2004 pollock "A" season, Sea State will provide notice to the Coops identifying one or two areas with the highest chinook salmon bycatch rate(s) in excess of the Base Rate, if any (the "Savings Areas") in the BS/AI. Savings Areas will be sized as Sea State determines appropriate to address chinook bycatch. The maximum total area of Savings Closure(s) will be 1000 square miles. The boundaries of Savings Areas will be defined by a series of latitude/longitude coordinates and will be shaped as Sea State determines appropriate.

g. Savings Area closures announced on Thursdays (the "Friday Closures") shall be effective from 12:00 noon the following Friday through 12:00 noon the following Tuesday, and Savings Area closures announced on Mondays (the "Tuesday Closures") shall be effective from 12:00 noon the following Tuesday through 12:00 noon the following Friday. Upon a Savings Area closure taking effect, fishing by Coop vessels participating in the Fishery shall be restricted pursuant to Subsection 2.h, below.

h. There will be two phases of Savings Area closures. From the beginning of the 2004 "A" season until such time as Sea State determines that chinook bycatch in the Fishery has reached 10,730 salmon (i.e., 40% of the Base Rate numerator), Savings Areas shall be closed to fishing by Tier 3 Coop vessels only. As of the time that Sea State determines chinook bycatch in the Fishery has exceeded 10,730 salmon and delivers notice of the same to the Coops, and thereafter for the duration of the 2004 "A" season, in addition to all Savings Areas being closed to fishing by Tier 3 Coop vessels, the Savings Area(s) announced in the Friday Closures shall be closed to fishing by Tier 2 Coop vessels through 12:00 noon the following Tuesday.

i. On a weekly basis, Sea State will provide the following information to the Coops:

- i. Each Coop's season-to-date chinook salmon bycatch rate.
- ii. A list of the 20 vessels with the highest season-to-date chinook salmon bycatch rates in excess of the Tier One rate and a seasonal harvest of more than 500 mt of pollock.
- iii. A list of the 20 vessels with the highest chinook salmon bycatch rates for the previous 2 weeks in excess of the Tier One rate.
- iv. A list of the 20 vessels with highest chinook salmon bycatch rates for the previous week in excess of the Tier One rate.

j. Throughout the 2004 pollock "A" season, Sea State will provide chinook salmon "hot spot" advisory notices concerning areas of high bycatch that do not fall within Savings Area closures.

3. Data Gathering and Reporting. The Coops acknowledge that the effectiveness of the bycatch management program set forth in Section 2, above, depends on gathering, analyzing and disseminating accurate chinook salmon bycatch data rapidly. The Coops therefore agree as follows.

a. Each Coop shall require its members' vessels to exercise all commercially reasonable efforts to report to Sea State within 24 hours the location of, estimated pollock tonnage of and estimated number of chinook salmon in each trawl tow. PCC may satisfy its obligation under this section 3.a by arranging to have its members' vessels' observer reports concerning chinook bycatch transmitted to Sea State. MFC and High Seas may satisfy their obligations under this Section by arranging to have the pollock amounts and chinook salmon counts for their members' vessels reported to Sea State by the observers on the processing vessels to which their members' vessels deliver. The Inshore Coops shall arrange for their vessels to report the crew's best estimate of the amount of pollock and the number of chinook salmon in the tow when reporting its location. Each Inshore Coop shall develop its own methods and means to accurately calculate (when feasible) or estimate the amount of pollock and the number of salmon contained in each tow by its members' vessels, and to rapidly and accurately report that information to Sea State.

b. The Inshore Coops acknowledge that the Vessel Monitoring System ("VMS") is the most efficient means for reporting tow-by-tow data to Sea State, and the Inshore Coops therefore agree to encourage their members to use the VMS system to do so. However, the Coops all acknowledge that in certain circumstances, it may be difficult to achieve accurate, reliable reporting through the VMS system, and that for vessels with relatively small pollock allocations, the cost of acquiring, installing and operating the VMS data transmission system may be higher than reasonable. Therefore, reporting bycatch information via the VMS system is not required.

c. Sea State will from time to time announce a chinook bycatch rate that will trigger an incident reporting requirement. Each Coop shall require its members' vessels to notify their coop manager (if applicable), the intercooperative manager and, if feasible, Sea State as soon as possible of any tow with a chinook salmon bycatch rate that the crew estimates to be equal to or greater than the incident reporting rate threshold.

4. Savings Area Closure Enforcement. Upon a Coop receiving a Savings Area closure notice which has the effect of closing one or more Savings Areas to fishing by its members' vessels under this Agreement, the Coop shall timely notify

its members. Each Coop agrees to take enforcement action with respect to any violation of a Savings Area closure notice, and to impose the penalties set forth below in cases where a vessel is found to have violated a closure.

g. The Coops hereby adopt a uniform penalty for the first violation of a Savings Area closure of an amount equal to fifty percent (50%) of the ex-vessel value of the pollock caught in the Savings Area. The Coops hereby adopt a uniform penalty for second and subsequent violations of a Savings Closure of one hundred percent (100%) of the ex-vessel value of the pollock caught in the Savings Area. For purposes of this Subsection, Coop catch data produced by the Sea State in conformance with NMFS catch accounting and bycatch estimation procedures will be presumed accurate. The Coops agree to take all actions and execute all documents reasonably necessary to give effect to this provision.

h. The Coops acknowledge that the damages resulting from violating a Savings Closure are difficult to estimate, and that penalty amounts are therefore intended to be a substitute in all cases for direct, indirect and consequential damages. Therefore, the Coops agree that the penalty amounts established under Subsection 4.a., above, are liquidated damages, the payment of which (together with reasonable costs of collection) shall satisfy a Coop's and its members' obligations related to violating a Savings Closure. The Coops hereby waive any and all claims to direct, indirect or consequential damages related to such violation.

i. Each Coop agrees that the members of all other Coops shall have rights to initiate Savings Closure enforcement or penalty actions equivalent to such Coop's own members' rights. However, the authority to pursue enforcement or penalty actions with respect to alleged violation of a Savings Closure and the authority to levy fines, penalties, forfeitures or costs related to such actions shall in every case be reserved to the Coop to which the vessel involved belongs. Each Coop agrees to take all corporate action necessary to give effect to this provision.

j. The Coops agree to cause their members to release their VMS tracking data to Sea State, on the condition that Sea State executes a confidentiality agreement under Sea State agrees not to disclose any such information to any third party without prior consent from the affected vessel owner, and agrees to limit its use of such information to monitoring compliance with this Agreement.

5. Term. This Agreement shall take effect upon execution by all of the Coops. This Agreement shall expire on June 10, 2004, provided that the



enforcement provisions of Section 4, above, shall survive such expiration with full force and effect.

6. Miscellaneous.

h. No amendment to this Agreement shall be effective against a party hereto unless in writing and duly executed by such party. The parties agree to amend this Agreement as reasonably necessary to conform with changes in law or circumstances.

i. This Agreement shall be governed by and construed in accordance with applicable federal law and the laws of the State of Washington.

j. This Agreement may be executed in counterparts which, when taken together, shall have the same effect as a fully executed original. Delivery of a signed copy of this Agreement by telefacsimile shall have the same effect as delivering a signed original.

k. The parties agree to execute any documents necessary or convenient to give effect to the intents and purposes of this Agreement.

l. All notices required to be given under this Agreement shall be deemed given five (5) days following deposit in certified first class U.S. mail, postage prepaid, with the correct address, or upon the first business day following confirmed telefacsimile or e-mail transmission to the recipient. Each Coop agrees to provide the name, postal address, telefacsimile number and e-mail address of its duly authorized representative(s) for purposes of receiving notices under this Agreement within three (3) days of executing this Agreement.

m. In the event that any provision of this Agreement is held to be invalid or unenforceable, such provision shall be deemed to be severed from this Agreement, and such holding shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

n. Each Coop agrees to use its best efforts to resolve any disputes arising under this Agreement through direct negotiations. All disputes not resolved through direct negotiation and/or dispute resolution will be submitted to arbitration in Seattle, Washington upon the request of any party to this Agreement. The party's written request will include the name of the arbitrator selected by the party requesting arbitration. The other party will have ten (10) days to provide written notice of the name of the arbitrator it has selected, if any. If the other party timely selects a second arbitrator, the two arbitrators will select a third arbitrator within ten (10) days. If the other party does not timely select the second arbitrator, there shall be only the one arbitrator. The single arbitrator or the three (3) arbitrators so selected will schedule the arbitration hearing as soon as possible

thereafter. Every arbitrator, however chosen, must have no material ties to any Coop or Coop member. The decision of the arbitrator (or in the case of a three (3) arbitrator panel, the decision of the majority) will be final and binding. The arbitration will be conducted under the rules of (but not by) the American Arbitration Association. The parties will be entitled to limited discovery as determined by the arbitrator(s) in its or their sole discretion. The arbitrator(s) will also determine the "prevailing party" and that party will be entitled to its reasonable costs, fees and expenses, including attorneys' and arbitrator fees, incurred in the action by said party. In no event will arbitration be available pursuant to this paragraph after the date when commencement of such legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

## SALMON BYCATCH MANAGEMENT AGREEMENT

### 2004 POLLOCK "B" SEASON

This SALMON BYCATCH MANAGEMENT AGREEMENT is entered into by and among POLLOCK CONSERVATION COOPERATIVE ("PCC"), the HIGH SEAS CATCHERS COOPERATIVE ("High Seas"), MOTHERSHIP FLEET COOPERATIVE ("MFC") and the "Inshore Coops", i.e., AKUTAN CATCHER VESSEL ASSOCIATION, ARCTIC ENTERPRISE ASSOCIATION, NORTHERN VICTOR FLEET COOPERATIVE, PETER PAN FLEET COOPERATIVE, UNALASKA FLEET COOPERATIVE, UNISEA FLEET COOPERATIVE and WESTWARD FLEET COOPERATIVE, as of \_\_\_\_\_, 2004, with respect to the following facts:

#### RECITALS

Western Alaskans have expressed conservation and allocation concerns regarding the incidental catch of chinook and chum salmon in the Bering Sea/Aleutian Islands pollock fishery. While such bycatch is regulated by the North Pacific Fishery Management Council (the "Council") and the National Marine Fisheries Service ("NMFS"), the Coops desire to address this issue by inter-cooperative agreement, out of respect for the concerns of Western Alaskans, to avoid unnecessary incidental catch of chinook and chum salmon and, to the extent feasible, to avoid triggering a regulatory closure of the Chinook Salmon Savings Area (the "CHSSA") and/or the Chum Salmon Savings Area ("CSSA").

#### AGREEMENT

1. Purpose of Agreement: The purpose of this Agreement is to implement a private, contractual inter-cooperative program to reduce chinook and chum salmon bycatch in the 2004 Bering Sea/Aleutian Islands ("BS/AI") trawl pollock "B" season non-CDQ fishery (the "Fishery"). Each party to this Agreement agrees exercise all commercially reasonable efforts to achieve that purpose.

2. Salmon Bycatch Management. The parties agree that chinook and chum salmon bycatch in the Fishery shall be managed on an inter-cooperative basis as follows.

j. The Coops will retain Sea State, Inc. ("Sea State") to provide the data gathering, analysis, fleet monitoring and reporting services necessary to implement the bycatch management program contemplated under this Agreement.

k. Sea State will use bycatch rates (the "Base Rates") as a triggers for chinook and chum salmon Savings Area closures (as described in Subsection

2.g and 2.h, below) and, **for chum salmon Savings Areas only**, to determine the Tier to which a Coop is assigned for purposes of Savings Area access. The chinook Base Rate is .05 chinook salmon per metric ton of pollock. The chum salmon base rate is .062 "other" salmon per metric ton of pollock.

1. Each week rate calculations for purposes of chum salmon Tier assignments will be based on each Coop's pollock catch in the Fishery for the prior two weeks (the denominator) and the associated bycatch of chum salmon taken by its members (the numerator). For purposes of this Section, a Coop's salmon bycatch amount shall be based on observed, counted chum salmon (i.e., whole haul samples), or sample sizes sufficiently large that Sea State reasonably concludes that estimated number of chum salmon has a high probability of being accurate. Classification of inshore Coops shall be based on plant observer data, and not on tow-by-tow estimates from the fishing grounds.

- Coops with chum salmon bycatch rates of less than 75% of the Base Rate, i.e., with bycatch rates less than .047 chum per metric ton ("mt") of pollock, shall be assigned to Tier 1.
- Coops with chum salmon bycatch rates equal to or greater than 75% of the Base Rate but less than 125% of the Base Rate, i.e., with bycatch rates equal to or greater than .047 chum per mt, but less than or equal to .078 chum per mt, shall be assigned to Tier 2.
- Coops with chum salmon bycatch rates greater than 125% of the Base Rate, i.e., above .078 chum per mt, shall be assigned to Tier 3.

m. When the Fishery is open to any of the inshore, catcher/processor or mothership components, on an ongoing basis Sea State will calculate the bycatch rates for each Alaska Department of Fish and Game ("ADF&G") statistical area for which Sea State receives a salmon bycatch report, and when feasible, for each lateral half of each such statistical area. The bycatch rates shall be calculated on the basis of reports Sea State determines to be adequately accurate, including reliable tow-by-tow estimates from the fishing grounds. In every case, rates calculated on the basis of the actual number of salmon observed per tow will be given priority over rates based on sampling and extrapolation.

n. Unless and until the relevant closure suspension provisions of Section 2.i., below, take effect, on June \_\_\_\_\_, 2004, and on each Thursday thereafter, and on June \_\_\_\_\_, 2004 and on each Monday thereafter, Sea State will provide notice to the Coops identifying the areas (if any) exceeding a salmon bycatch Base Rate that will be closed as salmon savings areas (the "Savings Areas") in each of the "East Region" (i.e., east of 167 degrees 30 minutes west longitude) and "West Region" (i.e., west of 167 degrees 30 minutes west longitude) of the BS/AI. There shall be up to two Savings Areas per region at any one time.

The Savings Areas within a region shall be either a “Chinook Closure” or a “Chum Closure”, but not both. In the event that the Base Rates for both chinook and chum salmon are exceeded in a region during a week, the Savings Area closure in that region shall be a “Chinook Closure”, and Sea State will issue a non-binding avoidance recommendation for the area of high chum salmon bycatch. Savings Areas will be sized as Sea State determines appropriate to address salmon bycatch. The maximum total area of chum salmon Savings Closure(s) may not exceed 1000 square miles per region. The maximum total area of chinook salmon Savings Closure(s) shall not exceed 500 square miles per region. The boundaries of Savings Areas will be defined by a series of latitude/longitude coordinates and will be shaped as Sea State determines appropriate.

o. Salmon Savings Area closures announced on Thursdays (the “Friday Closures”) shall be effective from 12:00 noon the following Friday through 12:00 noon the following Tuesday, and salmon Savings Area closures announced on Mondays (the “Tuesday Closures”) shall be effective from 12:00 noon the following Tuesday through 12:00 noon the following Friday.

p. Chum salmon Savings Areas shall be closed to fishing by all Tier 3 Coop vessels, and chum salmon Savings Areas closed on Fridays shall be closed to fishing by Tier 2 Coop vessels through 12:00 noon the following Tuesday. Tier 1 Coop vessels may fish in chum salmon Savings Areas, so long as the Coop maintains its Tier 1 status.

q. Chinook salmon Savings Areas shall be closed to fishing by all Coop vessels, regardless of their Tier status. In the event a different chinook Savings Area cannot be identified for the Tuesday Closure, there will be no chinook Savings Area for the last 3 days of the week.

r. Upon the CSSA being closed by NMFS (excluding the August regulatory closure), the chum salmon Savings Area closures shall be suspended for the remainder of the 2004 pollock “B” season, and thereafter Sea State shall issue chum salmon avoidance notices on Thursdays and Mondays, which shall be non-binding recommendations to avoid fishing in areas of elevated chum salmon bycatch. Upon the CHSSA being closed by NMFS, the chinook salmon Savings Area closures shall be suspended for the remainder of the 2004 pollock “B” season, and thereafter Sea State will issue chinook salmon avoidance notices on Thursdays and Mondays, which shall be non-binding recommendations to avoid fishing in areas of elevated chinook salmon bycatch.

s. On a weekly basis, Sea State will provide the following information to the Coops:

i. Each Coop’s season-to-date chinook and chum salmon bycatch rate.

ii. A list of the 20 vessels with the highest season-to-date chinook salmon bycatch rates in excess of the .050 chinook salmon per metric ton and a seasonal harvest of more than 500 mt of pollock, and a list of the 20 vessels with the highest season-to-date chum salmon bycatch rates in excess of the Tier One rate and a seasonal harvest of more than 500 mt of pollock .

iii. A list of the 20 vessels with the highest chinook salmon bycatch rates for the previous 2 weeks in excess of .050 chinook salmon per metric ton, and a list of the 20 vessels with the highest chum salmon bycatch rates for the previous 2 weeks in excess of the Tier One rate.

iv. A list of the 20 vessels with highest chinook salmon bycatch rates for the previous week in excess of .050 chinook salmon per metric ton, and a list of the 20 vessels with highest chum salmon bycatch rates for the previous week in excess of the Tier One rate.

j. Throughout the 2004 pollock "B" season, Sea State will provide salmon "hot spot" advisory notices concerning areas of high bycatch that do not fall within Savings Area closures.

3. Data Gathering and Reporting. The Coops acknowledge that the effectiveness of the bycatch management program set forth in Section 2, above, depends on gathering, analyzing and disseminating accurate salmon bycatch data rapidly. The Coops therefore agree as follows.

d. Each Coop shall require its members' vessels to exercise all commercially reasonable efforts to report to Sea State within 24 hours the location of, estimated pollock tonnage of and estimated number of salmon in each trawl tow. PCC may satisfy its obligation under this section 3.a by arranging to have its members' vessels' observer reports concerning chinook bycatch transmitted to Sea State. MFC and High Seas may satisfy their obligations under this Section by arranging to have the pollock amounts and salmon counts for their members' vessels reported to Sea State by the observers on the processing vessels to which their members' vessels deliver. The Inshore Coops shall arrange for their vessels to report, on a tow-by-tow basis, the location of the tow and the crew's best estimate of the amount of pollock and the number of salmon in that tow. Each Inshore Coop shall develop its own methods and means to accurately calculate (when feasible) or estimate the amount of pollock and the number of salmon contained in each tow by its members' vessels, and to rapidly and accurately report that information to Sea State.

e. The Inshore Coops acknowledge that the Vessel Monitoring System ("VMS") is the most efficient means for reporting tow-by-tow data to Sea State, and the Inshore Coops therefore agree to encourage their members to use the

VMS system to do so. However, the Coops all acknowledge that in certain circumstances, it may be difficult to achieve accurate, reliable reporting through the VMS system, and that for vessels with relatively small pollock allocations, the cost of acquiring, installing and operating the VMS data transmission system may be higher than reasonable. Therefore, reporting bycatch information via the VMS system is not required.

f. Sea State will from time to time announce a bycatch rate that will trigger an incident reporting requirement. Each Coop shall require its members' vessels to notify their coop manager (if applicable), the intercooperative manager and, if feasible, Sea State as soon as possible of any tow with a salmon bycatch rate that the crew estimates to be equal to or greater than the incident reporting rate threshold.

4. Savings Area Closure Enforcement. Upon a Coop receiving a Savings Area closure notice which has the effect of closing one or more Savings Areas to fishing by its members' vessels under this Agreement, the Coop shall timely notify its members. Each Coop agrees to take enforcement action with respect to any violation of a Savings Area closure notice, and to impose the penalties set forth below in cases where a vessel is found to have violated a closure.

k. The Coops hereby adopt a uniform penalty for the first violation of a Savings Area closure of an amount equal to fifty percent (50%) of the ex-vessel value of the pollock caught in the Savings Area. The Coops hereby adopt a uniform penalty for second and subsequent violations of a Savings Closure of one hundred percent (100%) of the ex-vessel value of the pollock caught in the Savings Area. For purposes of this Subsection, Coop catch data produced by the Sea State in conformance with NMFS catch accounting and bycatch estimation procedures will be presumed accurate. The Coops agree to take all actions and execute all documents reasonably necessary to give effect to this provision.

l. The Coops acknowledge that the damages resulting from violating a Savings Closure are difficult to estimate, and that penalty amounts are therefore intended to be a substitute in all cases for direct, indirect and consequential damages. Therefore, the Coops agree that the penalty amounts established under Subsection 4.a., above, are liquidated damages, the payment of which (together with reasonable costs of collection) shall satisfy a Coop's and its members' obligations related to violating a Savings Closure. The Coops hereby waive any and all claims to direct, indirect or consequential damages related to such violation.

m. Each Coop agrees that the members of all other Coops shall have rights to initiate Savings Closure enforcement or penalty actions equivalent to such Coop's own members' rights. However, the authority to pursue enforcement or penalty actions with respect to alleged violation of a Savings

Closure and the authority to levy fines, penalties, forfeitures or costs related to such actions shall in every case be reserved to the Coop to which the vessel involved belongs. Each Coop agrees to take all corporate action necessary to give effect to this provision.

n. The Coops agree to cause their members to release their VMS tracking data to Sea State, on the condition that Sea State executes a confidentiality agreement under Sea State agrees not to disclose any such information to any third party without prior consent from the affected vessel owner, and agrees to limit its use of such information to monitoring compliance with this Agreement.

5. Term. This Agreement shall take effect upon execution by all of the Coops. This Agreement shall expire on regulatory closure of the 2004 pollock "B" season, provided that the enforcement provisions of Section 4, above, shall survive such expiration with full force and effect.

6. Miscellaneous.

o. No amendment to this Agreement shall be effective against a party hereto unless in writing and duly executed by such party. The parties agree to amend this Agreement as reasonably necessary to conform to changes in law or circumstances.

p. This Agreement shall be governed by and construed in accordance with applicable federal law and the laws of the State of Washington.

q. This Agreement may be executed in counterparts which, when taken together, shall have the same effect as a fully executed original. Delivery of a signed copy of this Agreement by telefacsimile shall have the same effect as delivering a signed original.

r. The parties agree to execute any documents necessary or convenient to give effect to the intents and purposes of this Agreement.

s. All notices required to be given under this Agreement shall be deemed given five (5) days following deposit in certified first class U.S. mail, postage prepaid, with the correct address, or upon the first business day following confirmed telefacsimile or e-mail transmission to the recipient. Each Coop agrees to provide the name, postal address, telefacsimile number and e-mail address of its duly authorized representative(s) for purposes of receiving notices under this Agreement within three (3) days of executing this Agreement.

t. In the event that any provision of this Agreement is held to be invalid or unenforceable, such provision shall be deemed to be severed



from this Agreement, and such holding shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

u. Each Coop agrees to use its best efforts to resolve any disputes arising under this Agreement through direct negotiations. All disputes not resolved through direct negotiation and/or dispute resolution will be submitted to arbitration in Seattle, Washington upon the request of any party to this Agreement. The party's written request will include the name of the arbitrator selected by the party requesting arbitration. The other party will have ten (10) days to provide written notice of the name of the arbitrator it has selected, if any. If the other party timely selects a second arbitrator, the two arbitrators will select a third arbitrator within ten (10) days. If the other party does not timely select the second arbitrator, there shall be only the one arbitrator. The single arbitrator or the three (3) arbitrators so selected will schedule the arbitration hearing as soon as possible thereafter. Every arbitrator, however chosen, must have no material ties to any Coop or Coop member. The decision of the arbitrator (or in the case of a three (3) arbitrator panel, the decision of the majority) will be final and binding. The arbitration will be conducted under the rules of (but not by) the American Arbitration Association. The parties will be entitled to limited discovery as determined by the arbitrator(s) in its or their sole discretion. The arbitrator(s) will also determine the "prevailing party" and that party will be entitled to its reasonable costs, fees and expenses, including attorneys' and arbitrator fees, incurred in the action by said party. In no event will arbitration be available pursuant to this paragraph after the date when commencement of such legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

**Appendix III**

**Coop Sideboard Caps, Transfers, and Harvest in**

**2004 Directed Sideboard Fisheries**

**of the BSAI and Gulf of Alaska**

**Table 1. BSAI PACIFIC COD**

Annual Sideboard cap less bycatch requirements: 36,544

Coop	Coop Sideboard Percentage	Initial Sideboard Allocation (mt)	Sideboard Cap Transfers	Final Sideboard Allocation (mt)	Directed Catch	Remaining Sideboard Allocation
Akutan Catcher Vessel Assoc.	25.28%	9,238.323	-559.890	8,678.433	5,017	3,661.43
Arctic Enterprise Assoc.	4.30%	1,571.392	868.932	2,440.324	1,986	454.30
High Seas Catchers Cooperative	10.57%	3,862.503	1221.653	5,084.156	3,649	1,435.16
Mothership Fleet Cooperative	14.97%	5,470.637	-528.120	4,942.517	5,699	-756.48
Northern Victor Cooperative	13.49%	4,929.786	1383.249	6,313.035	5,211	1,102.03
Peter Pan Fleet Cooperative	0.50%	181.460	0.000	181.460	0	181.46
Unalaska Fleet Cooperative	8.11%	2,963.718	-1115.800	1,847.918	502	1,345.92
UniSea Fleet Cooperative	11.37%	4,155.053	-250.286	3,904.767	2,040	1,864.77
Westward Fleet Cooperative	11.42%	4,173.325	-1019.738	3,153.587	569	2,584.59
<b>Intercoop Totals</b>	<b>100.01%</b>	<b>36,546.196</b>	<b>0.000</b>	<b>36,546.196</b>	<b>24,673.02</b>	<b>11,873</b>

**Table 2. BSAI ROCK SOLE**

Annual Sideboard cap less bycatch requirements: 1,188

Coop	Coop Sideboard Percentage	Initial Sideboard Allocation (mt)	Sideboard Cap Transfers	Final Sideboard Allocation (mt)	Directed Catch	Remaining Sideboard Allocation
Akutan Catcher Vessel Assoc.	13.54%	161	0	161	0	161
Arctic Enterprise Assoc.	4.37%	52	0	52	0	52
High Seas Catchers Cooperative	15.44%	183	0	183	0	183
Mothership Fleet Cooperative	5.96%	71	0	71	0	71
Northern Victor Cooperative	1.47%	17	0	17	0	17
Peter Pan Fleet Cooperative	1.94%	23	0	23	0	23
Unalaska Fleet Cooperative	15.61%	185	0	185	0	185
UniSea Fleet Cooperative	7.97%	95	0	95	0	95
Westward Fleet Cooperative	33.71%	400	0	400	0	400
<b>Intercoop Totals</b>	<b>100%</b>	<b>1,188</b>	<b>0</b>	<b>1,188</b>	<b>0</b>	<b>1,188</b>

**Table 3. BSAI YELLOWFIN SOLE**

Annual Sideboard cap less bycatch requirements: 4,734

Coop	Coop Sideboard Percentage	Initial Sideboard Allocation (mt)	Sideboard Cap Transfers	Final Sideboard Allocation (mt)	Directed Catch	Remaining Sideboard Allocation
Akutan Catcher Vessel Assoc.	9.27%	439	0	439	0	439
Arctic Enterprise Assoc.	0.02%	1	0	1	0	1
High Seas Catchers Cooperative	2.65%	125	0	125	0	125
Mothership Fleet Cooperative	2.72%	129	0	129	0	129
Northern Victor Cooperative	1.26%	60	1,202	1,262	25	1,244
Peter Pan Fleet Cooperative	0.16%	8	0	8	0	8
Unalaska Fleet Cooperative	25.39%	1,202	-1,202	0	0	0
UniSea Fleet Cooperative	41.63%	1,971	0	1,971	0	1,971
Westward Fleet Cooperative	16.89%	800	0	800	0	800
<b>Intercoop Totals</b>	<b>100%</b>	<b>4,734</b>	<b>0</b>	<b>4,734</b>	<b>25</b>	<b>4,716</b>

**Table 4. AREA 610 POLLOCK**

Annual AFA CV Sideboard Cap (metric tons): 14,015

Coop	Coop Sideboard Percentage	Annual Sideboard Allocation (mt)	Sideboard Cap Transfers	Final Sideboard Allocation (mt)	Directed Catch	Remaining Sideboard Allocation
Akutan CV Assoc.	36.47%	5,111	-924.27	4,187	1,414	2,773
Arctic Ent. Assoc.	0.66%	92		92		92
HSCC	0.31%	43	1,627.17	1,671	1,538	133
Mothership Coop	0.91%	128		128		128
N. Victor Coop	6.58%	922	-72.50	850		850
Peter Pan Fleet Coop	0.75%	105		105		105
Unalaska Fleet Coop	16.10%	2,256		2,256	1,729	527
UniSea Fleet Coop	16.85%	2,362	-630.40	1,731		1,731
Westward Fleet Coop	21.36%	2,994		2,994		2,994
<b>Intercoop Totals</b>	<b>100%</b>	<b>14,014</b>	<b>0.00</b>	<b>14,014</b>	<b>4,681</b>	<b>9,333</b>

**Table 5. AREA 620 POLLOCK**

Annual AFA CV Sideboard Cap (metric tons): 3,779

Coop	Coop Sideboard Percentage	Annual Sideboard Allocation (mt)	Sideboard Cap Transfers	Final Sideboard Allocation (mt)	Directed Catch	Remaining Sideboard Allocation
Akutan CV Assoc.	60.52%	2,287		2,287	1,334	953
Arctic Ent. Assoc.	0.00%	0		0	0	0
HSCC	1.80%	68	123	191	11	180
Mothership Coop	0.21%	8		8	0	8
N. Victor Coop	13.17%	498	-123	375	0	375
Peter Pan Fleet Coop	0.03%	1		1	0	1
Unalaska Fleet Coop	10.55%	399	301	700	134	566
UniSea Fleet Coop	5.22%	197	-197	0	0	0
Westward Fleet Coop	8.49%	321	-104	217	0	217
<b>Intercoop Totals</b>	<b>100%</b>	<b>3,779</b>	<b>0</b>	<b>3,779</b>	<b>1,479</b>	<b>2,300</b>

**Table 6. AREA 630 POLLOCK**

Annual AFA CV Sideboard Cap (metric tons): 3,432

Coop	Coop Sideboard Percentage	Annual Sideboard Allocation (mt)	Sideboard Cap Transfers	Final Sideboard Allocation (mt)	Directed Catch	Remaining Sideboard Allocation
Akutan CV Assoc.	52.67%	1,808		1,808	106	1,702
Arctic Ent. Assoc.	0.00%	0		0	0	0
HSCC	3.99%	137		137	0	137
Mothership Coop	8.54%	293		293	0	293
N. Victor Coop	9.64%	331		331	0	331
Peter Pan Fleet Coop	6.18%	212		212	0	212
Unalaska Fleet Coop	12.31%	422	229	651	474	177
UniSea Fleet Coop	3.23%	111	-111	0	0	0
Westward Fleet Coop	3.43%	118	-118	0	0	0
<b>Intercoop Totals</b>	<b>100%</b>	<b>3,432</b>	<b>0</b>	<b>3,432</b>	<b>580</b>	<b>2,852</b>

**Table 7. AREA 640 POLLOCK**

Annual AFA CV Sideboard Cap (metric tons): 448

Coop	Coop Sideboard Percentage	Initial Sideboard Allocation (mt)	Sideboard Cap Transfers	Final Sideboard Allocation (mt)	Directed Catch	Remaining Sideboard Allocation
Akutan Catcher Vessel Assoc.	0.11%	0.493	172.565	173	0	173
Arctic Enterprise Assoc.	7.08%	31.718		32	0	32
High Seas Catchers Cooperative	0.07%	0.314		0	0	0
Mothership Fleet Cooperative	0.00%	0.000		0	0	0
Northern Victor Cooperative	12.76%	57.165	-57.160	0	0	0
Peter Pan Fleet Cooperative	0.00%	0.000		0	0	0
Unalaska Fleet Cooperative	0.00%	0.000		0	0	0
UniSea Fleet Cooperative	54.23%	242.950		243	0	243
Westward Fleet Cooperative	25.76%	115.405	-115.405	0	0	0
<b>Intercoop Totals</b>	<b>100%</b>	<b>448.04</b>	<b>0.000</b>	<b>448</b>	<b>0</b>	<b>448</b>

**Table 8. WESTERN GULF COD**

Annual AFA CV Sideboard Cap (metric tons): 2,172

Coop	Coop Sideboard Percentage	A Season Sideboard Allocation (mt)	Sideboard Cap Transfers	Final Sideboard Allocation (mt)	Directed Catch	Remaining Sideboard Allocation
Akutan CV Assoc.	32.91%	715		715	0	715
Arctic Ent. Assoc.	9.01%	196		196	0	196
HSCC	9.92%	215		215	0	215
Mothership Coop	5.35%	116		116	0	116
N. Victor Coop	11.09%	241		241	0	241
Peter Pan Fleet Coop	7.57%	164		164	0	164
Unalaska Fleet Coop	8.16%	177		177	0	177
UniSea Fleet Coop	8.08%	175		175	0	175
Westward Fleet Coop	7.93%	172		172	0	172
<b>Intercoop Totals</b>	<b>100%</b>	<b>2,172</b>	<b>0</b>	<b>2,172</b>	<b>0</b>	<b>2,172</b>

**Table 9. CENTRAL GULF COD**

Annual AFA CV Sideboard Cap (metric tons): 1762

Coop	Coop Sideboard Percentage	A Season Sideboard Allocation (mt)	Sideboard Cap Transfers	Final Sideboard Allocation (mt)	Directed Catch	Remaining Sideboard Allocation
Akutan CV Assoc.	50.23%	885		885	39	846
Arctic Ent. Assoc.	0.00%	0		0	0	0
HSCC	7.00%	123	-74	49	0	49
Mothership Coop	10.01%	176		176	0	176
N. Victor Coop	5.29%	93		93	0	93
Peter Pan Fleet Coop	8.09%	143		143	0	143
Unalaska Fleet Coop	10.79%	190	74	264	106	158
UniSea Fleet Coop	0.01%	0		0	0	0
Westward Fleet Coop	8.59%	151		151	0	151
<b>Intercoop Totals</b>	<b>100%</b>	<b>1,762</b>	<b>0</b>	<b>1,762</b>	<b>145</b>	<b>1,617</b>

**Table 10. CENTRAL GULF SHALLOW-WATER FLATFISH**

Annual AFA CV Sideboard Cap (metric tons): 777

Coop	Coop Sideboard Percentage	Initial Sideboard Allocation (mt)	Sideboard Cap Transfers	Final Sideboard Allocation (mt)	Directed Catch	Remaining Sideboard Allocation
Akutan Catcher Vessel Assoc.	26.52%	206		206	0	206
Arctic Enterprise Assoc.	0.00%	0		0	0	0
High Seas Catchers Cooperative	10.22%	79		79	0	79
Mothership Fleet Cooperative	0.21%	2		2	0	2
Northern Victor Cooperative	0.23%	2		2	0	2
Peter Pan Fleet Cooperative	1.30%	10		10	0	10
Unalaska Fleet Cooperative	61.24%	476		476	1	475
UniSea Fleet Cooperative	0.00%	0		0	0	0
Westward Fleet Cooperative	0.29%	2		2	0	2
<b>Intercoop Totals</b>	<b>100%</b>	<b>777</b>	<b>0</b>	<b>777</b>	<b>1</b>	<b>776</b>

**Table 11. CENTRAL GULF DEEP-WATER FLATFISH**

Annual AFA CV Sideboard Cap (metric tons): 199

Coop	Coop Sideboard Percentage	Initial Sideboard Allocation (mt)	Sideboard Cap Transfers	Final Sideboard Allocation (mt)	Directed Catch	Remaining Sideboard Allocation
Akutan Catcher Vessel Assoc.	12.56%	25		25	0	25
Arctic Enterprise Assoc.	0.00%	0		0	0	0
High Seas Catchers Cooperative	2.06%	4		4	0	4
Mothership Fleet Cooperative	0.03%	0		0	0	0
Northern Victor Cooperative	0.00%	0		0	0	0
Peter Pan Fleet Cooperative	5.46%	11		11	0	11
Unalaska Fleet Cooperative	74.49%	148		148	5	143
UniSea Fleet Cooperative	0.00%	0		0	0	0
Westward Fleet Cooperative	5.40%	11		11	0	11
<b>Intercoop Totals</b>	<b>100%</b>	<b>199</b>	<b>0</b>	<b>199</b>	<b>5</b>	<b>194</b>

**Table 12. CENTRAL GULF NORTHERN ROCKFISH**

Annual AFA CV Sideboard Cap (metric tons): 150

Coop	Coop Sideboard Percentage	Initial Sideboard Allocation (mt)	Sideboard Cap Transfers	Final Sideboard Allocation (mt)	Directed Catch	Remaining Sideboard Allocation
Akutan Catcher Vessel Assoc.	55.69%	84		84	29	55
Arctic Enterprise Assoc.	0.00%	0		0	0	0
High Seas Catchers Cooperative	1.11%	2		2	0	2
Mothership Fleet Cooperative	0.03%	0		0	0	0
Northern Victor Cooperative	0.00%	0		0	0	0
Peter Pan Fleet Cooperative	0.00%	0		0	0	0
Unalaska Fleet Cooperative	36.05%	54		54	1	53
UniSea Fleet Cooperative	0.00%	0		0	0	0
Westward Fleet Cooperative	7.11%	11		11	0	11
<b>Intercoop Totals</b>	<b>100%</b>	<b>150</b>	<b>0</b>	<b>150</b>	<b>30</b>	<b>120</b>



**Table 13. CENTRAL GULF POP**

Annual AFA CV Sideboard Cap (metric tons): 727

Coop	Coop Sideboard Percentage	Initial Sideboard Allocation (mt)	Sideboard Cap Transfers	Final Sideboard Allocation (mt)	Directed Catch	Remaining Sideboard Allocation
Akutan Catcher Vessel Assoc.	31.05%	226		226	197	29
Arctic Enterprise Assoc.	0.00%	0		0	0	0
High Seas Catchers Cooperative	10.83%	79		79	0	79
Mothership Fleet Cooperative	0.63%	5		5	0	5
Northern Victor Cooperative	0.00%	0		0	0	0
Peter Pan Fleet Cooperative	0.02%	0		0	0	0
Unalaska Fleet Cooperative	41.44%	301		301	177	124
UniSea Fleet Cooperative	0.00%	0		0	0	0
Westward Fleet Cooperative	16.01%	116		116	0	116
<b>Intercoop Totals</b>	<b>100%</b>	<b>727</b>	<b>0</b>	<b>727</b>	<b>374</b>	<b>353</b>

**Table 14. EASTERN GULF POP**

Annual AFA CV Sideboard Cap (metric tons): 113

Coop	Coop Sideboard Percentage	Initial Sideboard Allocation (mt)	Sideboard Cap Transfers	Final Sideboard Allocation (mt)	Directed Catch	Remaining Sideboard Allocation
Akutan Catcher Vessel Assoc.	0.00%	0		0	0	0
Arctic Enterprise Assoc.	0.00%	0		0	0	0
High Seas Catchers Cooperative	99.57%	113		113	0	113
Mothership Fleet Cooperative	0.00%	0		0	0	0
Northern Victor Cooperative	0.34%	0		0	0	0
Peter Pan Fleet Cooperative	0.00%	0		0	0	0
Unalaska Fleet Cooperative	0.00%	0		0	0	0
UniSea Fleet Cooperative	0.00%	0		0	0	0
Westward Fleet Cooperative	0.09%	0		0	0	0
<b>Intercoop Totals</b>	<b>100%</b>	<b>113</b>	<b>0</b>	<b>113</b>	<b>0</b>	<b>113</b>