


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver 
Executive Director

ESTIMATED TIME 2 HOURS

DATE: March 26, 2004

SUBJECT: IR/IU

ACTION REQUIRED

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

BACKGROUND

In April 2003, the Council reviewed a discussion paper and decision tree for proposed Amendment 80 that would develop a cooperative structure for the non-AFA trawl CP sector. At that meeting, Amendment 80 was expanded to include alternatives for allocating BSAI groundfish and PSC species among all BSAI fishing sectors. At the June and October 2003 meetings, the Council continued to refine the components and options for Amendment 80a (sector allocations) and 80b (cooperative structure for non-AFA trawl CP sector). At the December 2003 meeting, the Council finalized the components and options for Amendment 80a and 80b for the purpose of analysis. In January 2004, the Council created a problem statement for Amendment 80 and approved alternatives for the purpose of analysis. Currently, the amendment is scheduled for initial review in June 2004, followed by final action in October 2004.

Since January 2004, the analytical team has been preparing the EA/RIR/IRFA for Amendment 80. Given the complex and lengthy processes of preparing the database for Amendment 80, much of the progress on the EA/RIR/IRFA has been in sections where data analysis is not necessary. Sections requiring data analysis will be completed over the next several weeks. NMFS is currently working on the enforcement and monitoring sections of the EA/RIR/IRFA, but these sections will likely not be completed in time for initial review in June.

In the process of working further on the analysis for Amendment 80, staff encountered a few components and options that were ambiguous, inconsistent or required additional clarification. Most of the language issues were able to be cleared up with a simple edit to the components and options. A marked up copy of the components and options is attached as Item C-6(a). For those issues that require Council clarification, staff has prepared a discussion paper highlighting the areas that need to be addressed. The paper is attached as Item C-6(b).

Finally, at the January 2004 meeting, the Council requested staff to provide an analysis of the underutilized threshold option proposed in Component 10 of Amendment 80a. Staff has prepared a discussion paper that overviews the mechanics of the of the underutilized threshold option. Also included in the paper is a brief discussion on some key elements of the component that require further clarification by the Council. The discussion paper is attached as Item C-6(c).

**Amendment 80 Component and Options
March 17, 2004**

The Council in December 2003 finalized Amendment 80 components and options for analysis. At the February 2004 meeting, the Council made some slight modifications to the components and options for Amendment 80a and 80b. The Council is scheduled to initial review Amendment 80 in June 2004 and take final action in October 2004.

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

Issue 1: Sector Allocations of Groundfish in the BSAI

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

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

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

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

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

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

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

Component 2 Management of non-target species.

Option 2.1 Use the current management system.

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

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

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

Option 3.1 7.5%

Option 3.2 10%

Option 3.3 15%

Option 3.4 20%

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

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

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

Component 5 Sector Catch History Years

- | | | |
|------------|-----------------|--|
| Option 5.1 | 1995–1997 | |
| | Suboption 5.1.1 | Exclude AFA-9 catch history |
| Option 5.2 | 1995–2002 | |
| | Suboption 5.2.1 | Exclude AFA-9 catch history |
| | Suboption 5.2.2 | Exclude 2001 because of the biological opinion |
| Option 5.3 | 1995–2003 | |
| | Suboption 5.3.1 | Exclude AFA-9 catch history |
| | Suboption 5.3.2 | Exclude 2001 because of the biological opinion |
| Option 5.4 | 1998–2002 | |
| | Suboption 5.4.1 | Exclude AFA-9 catch history |
| | Suboption 5.4.2 | Exclude 2001 because of the biological opinion |
| Option 5.5 | 1998–2003 | |
| | Suboption 5.5.1 | Exclude AFA-9 catch history |
| | Suboption 5.5.2 | Exclude 2001 because of the biological opinion |
| Option 5.6 | 2000-2003 | |
| | Suboption 5.6.1 | Exclude 2001 because of the biological opinion |

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

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

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

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

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

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

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

Component 7 Options for determining Pacific cod allocations

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

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

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

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

Suboption 7.1.3

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

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

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

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

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

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

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

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

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

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

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

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

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

- Option 9.2 Apportion PSC allotments made to fishery groups in Option 9.1 to sectors
- Suboption 9.2.1 In proportion to TAC allocated to the sector.
 - Suboption 9.2.2 In proportion to the PSC usage by the sector for the years used to determine the groundfish sector apportionments.
 - a. Reduce apportionments to 60% of calculated level.
 - b. Reduce apportionments to 75% of calculated level.
 - c. Reduce apportionments to 90% of calculated level.
 - d. Reduce apportionments to 95% of calculated level.
 - e. Do not reduce apportionments from calculated level.
 - Suboption 9.2.3 In proportion to the total groundfish harvested by the sector for each PSC fishery group for the years used to determine the groundfish sector apportionments.
 - Suboption 9.2.4 In proportion to the target species harvested by the sector in that PSC fishery group for the years used to determine the groundfish sector apportionments.
- Handwritten notes:*
 "App rec. was to delete" with a bracket around options a-e.
 "App rec." with an arrow pointing to "9.2.1-4".

Issue 3 Underutilized Species Threshold

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

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

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

Issue 4 Eligibility to Participate in a Sector

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

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

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

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

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

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

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

- The Program would limit its scope to selected groundfish and prohibited species catches with trawl gear by vessels in the Non-AFA Trawl CP Sector in the BSAI. Groundfish species not included in the program as well as other non-specified fish species or marine resources would not be explicitly managed within the Program, ~~although other~~ “existing” regulations regarding these other marine resources would not be superseded.
- **“All catch history used for allocation and eligibility purposes will be legal and documented catch.”**
- The Program will not supercede pollock and Pacific cod IRIU programs, ~~nor will it supercede the Groundfish License Limitation Program.~~ All vessels participating in the program **“the fisheries included in the program”** will need to have trawl endorsements with general licenses for BSAI **“and the additional endorsement created by and required for participation in this program.”** Length limits within the license will also be enforced such that any new vessel entering the fishery may not exceed the Maximum Length Overall (MLOA) specified on the license.
- Any non-trawl or non-BSAI catches of vessel”s” that are considered part of the non-AFA Trawl CP Sector will not be included in the Program, but would not necessarily be excluded from other rationalization programs.
- New PSC limits for the following species will be created and allocated to the non-AFA trawl catcher processor sector.
 - BSAI non-AFA trawl catcher processor multi-species halibut cap consisting of an apportionment of species identified in Component 1.
 - BSAI non-AFA trawl catcher processor multi-species red king crab cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries.
 - BSAI non-AFA trawl catcher processor multi-species snow crab (*C. opilio*) cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries (includes apportionments of the trawl sablefish/turbot/arrowtooth limits).
 - BSAI non-AFA trawl catcher processor multi-species Tanner crab (*C. bairdi*) Zone 1 cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries.
 - BSAI non-AFA trawl catcher processor multi-species Tanner crab (*C. bairdi*) Zone 2 cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries.
- Disposition of groundfish species not allocated to the Non-AFA Trawl CP sector would not change from the status quo **“which includes any provisions of amendment 80A”**.
- Bycatch limits for non-specified species or marine resources specifically for this program would not be established. However, should unreasonable bycatch or other interactions occur, specific regulations to minimize impacts will be considered.

- ~~A Groundfish LLP is required for a Sector Eligibility Endorsement for the Non-AFA Trawl CP Cooperative program.~~ **“To participate in any fishery included in the Non-AFA Trawl CP cooperative program, a person must hold a valid groundfish LLP license with a Sector Eligibility Endorsement.”**
- Annual allocations to the cooperative ~~that result from catch histories of participating vessel~~ will be transferable among cooperative members. Such transfers would not need to be approved by NOAA Fisheries. Any member vessel of the cooperative will be eligible to use the catch history of any other member vessel regardless of vessel length.
- Permanent transfers of Sector Eligibility Endorsements would be allowed if transferred with the associated Groundfish LLP. **Sector Eligibility Endorsement”, the associated groundfish LLP license,”** and associated catch histories would not be separable or divisible. All transfers must be reported to NOAA Fisheries in order to track who owns the Sector Eligibility Endorsements. The purchaser must be eligible to own a fishing vessel under MarAd regulations or any person who is currently eligible to own a vessel.
- The Groundfish Retention Standards (GRS) (Amendment 79) would be enforced on the cooperative as an aggregate and on the open access vessels as individuals. If the cooperative cannot meet the standard in the aggregate over a period of two years then the standard would be imposed on individual vessels within the cooperative **(but is the co-op still responsible for the catch of its members)**.
- Vessels participating in the open access portion of the program will be subject to all the same regulations they would be without the Program including all restrictions of the LLP and the GRS if they are approved.
- A cooperative created under this program must have adequate internal rules. Evidence of binding private contracts and remedies for violations of contractual agreements are required to be provided to NOAA Fisheries. The cooperative must demonstrate an adequate mechanism for monitoring and reporting prohibited species and groundfish catch. Vessels participating in the cooperative must agree to abide by all cooperative rules and requirements.
- Specific requirements for reporting, monitoring and enforcement requirements, and observer protocols will be developed for vessels participating in the cooperative portion of the Program in rulemaking process and will not be the purview of the cooperative. The NPFMC and the Non-AFA Trawl CP Sector need to specify their goals and objectives for in-season monitoring and for program evaluation. Recordkeeping and reporting portions of the program can then be developed to ensure that goals and objectives of the program are met in a cost effective manner.
- Review of the non-Trawl CP program will be accomplished by requiring a detailed annual report from any cooperative formed. Fishery managers will review the annual report and determine if the program is functioning as desired. It is recommended that in-depth assessments of program could be undertaken under the auspices of the Council/NOAA Fisheries be undertaken periodically (every ~~three~~ **“five”** years, for example). Such in-depth studies will report the accomplishments of the program and indicate whether any changes are necessary.
- Socioeconomic data collection programs have been included in AFA, and crab rationalization programs, and are proposed in the GOA Rationalization program. Therefore the analytical team assumes that a socioeconomic data collection initiative would be developed and implemented under the Non-AFA Trawl CP Cooperative Program. The collection would include cost, revenue, ownership and employment data on a periodic basis to provide the information necessary to study the impacts of the program. Details of the collection will be developed in the analysis of the alternatives.

Component 1 Identifies which species will be allocated among the non-AFA trawl catcher processor sector **“under this program”**.

Option 1.1 Include all groundfish species **“allocated under amendment 80A”** for which trawling is allowed, except pollock already allocated to AFA fishery cooperatives.

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

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

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

Option 2.1 No change in overall amount of the current PSC limits.

Option 2.2 Reductions in the PSC limit for halibut is accomplished by taxing in-season non-permanent transfers of PSC within the cooperative. The halibut PSC limit is restored to its original level the following year

Suboption 2.2.1 Transfers of PSC after August 1 are not taxed .

Suboption 2.2.2 Only un-bundled transfers of PSC are taxed.

Option 2.3 Reduce halibut PSC limits by 5% when PSC limits are linked to estimated biomass levels.

Component 3 Identifies the vessels that are in the non-AFA trawl CP sector which would receive Sector Eligibility Endorsements. (It may be that some vessels identified as part of the sector in Amendment 80.a, may not be issued Sector Eligibility Endorsements. **“Vessels that do not meet the criteria identified in this component will not be eligible to participate in the cooperative or open access components of the fisheries included in the program.”**) Owners of each qualified vessel would be issued a Sector Eligibility Endorsement that will be attached to that vessel’s LLP identifying it as a member of the non-AFA Trawl CP Sector.

~~Option 3.1 Non-AFA fishing vessels registered under MarAd regulations and any other vessels eligible to participate in fish harvesting in the Alaska EEZ are eligible for a sector endorsement to be attached to their groundfish license.~~

Option 3.1 Vessels must have caught 500 mt. of groundfish with trawl gear and processed that fish between 1998-2002

Option 3.2 Vessels must have caught 1,000 mt. of groundfish with trawl gear and processed that fish between 1998-2002

Option 3.3 Vessels must have caught 500 mt. of groundfish with trawl gear and processed that fish between 1997-2002

Option 3.4 Vessels must have caught 1,000 mt. of groundfish with trawl gear and processed that fish between 1997-2002

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

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

- Option 4.1 At least 51 percent
- Option 4.2 At least 67 percent
- Option 4.3 At least 75 percent
- Option 4.4 At least 80 percent
- Option 4.5 At least 90 percent
- Option 4.6 At least 100 percent
- Option 4.7 All less one distinct and separate harvesters using the 10 percent threshold rule.

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

- Option 5.1 Catch history is based on total catch
- Option 5.2 Catch history is based on total retained catch

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

- Option 6.1 1995-2002, but each vessel drops its lowest annual catch during this period
- Option 6.2 1995-2003, but each vessel drops its lowest annual catch during this period
- Option 6.3 1998-2002, but each vessel drops its lowest annual catch during this period
 - Suboption 6.3.1 Each vessel does not drop its lowest annual catch during this period
- Option 6.4 1998-2003, but each vessel drops its lowest annual catch during this period
 - Suboption 6.4.1 Each vessel drops two years during this period
- Option 6.5 1999-2002, but each vessel drops its lowest annual catch during this period
- Option 6.6 1999-2003, but each vessel drops its lowest annual catch during this period

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

- Option 7.1 There is no limit on the consolidation in the non-AFA trawl catcher processor sector.
- Option 7.2 Consolidation in the non-AFA trawl CP sector is limited such that no single company can **harvest** more than a fixed percentage of the overall sector apportionment. **Companies** that exceed the cap in the initial allocation would be grandfathered.

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

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

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

Use of Vessel-Basis or License-Basis

Inconsistencies between sections of the Council's components and options raise the question of whether amendment 80A and 80B are intended to create a vessel-based or a license-based management program. The development of the program and its implications for future participants could differ substantially if its provisions are applied to vessels or licenses. The following discussion explains staff understanding of the provisions in which the Council would need to determine whether to use a vessel-basis or license-basis and some of the policy implications of those decisions.

General Sector Allocations (Issue 1 of 80A)

Under this issue, the allocations to the various sectors would be made based on the harvests by specific vessels identified in each sector class (i.e., AFA trawl CP, non-AFA trawl CP, etc.). Although vessels may participate in multiple sectors, the assignment of catch to the different sectors is clear and unambiguous. All harvests by vessels in each class (regardless of eligibility to participate in a sector) would be counted toward the sector allocation.

Eligibility to Participate in a Sector (Issue 4 of 80A and Component 3 of 80B)

Components 11 and 12 of 80A and Component 3 of 80B would be used to determine whether a "vessel" is eligible to participate in a sector or sector cooperative based on whether the vessel met certain landing thresholds in a specific set of years. The use of a vessel basis for determining eligibility creates a few ambiguities. The first issue concerns the identification of catch that could be attributed to a vessel to meet the threshold landing requirement for eligibility. Interpreting this provision literally, all history would need to come from a single vessel, regardless of whether an owner legally moved a license to another vessel as permitted by the LLP. A second issue concerns whether the license holder of a vessel that met the threshold requirements would still need to own the vessel to be considered eligible. For example, if a vessel sank or was sold and the license holder intended to retain the license and fishing history, a strictly applied vessel basis would lead to the conclusion that the license holder is not eligible. Also, under this strict interpretation, the owner of a vessel that met the threshold landing requirements but did not have a valid, permanent LLP would be eligible. This interpretation would seem to be inconsistent with the intention of the LLP to limit access based on its own eligibility criteria.

On the other hand, a license-based approach would first require that a person hold a valid permanent LLP license. In addition, the history associated with the license would need to meet the threshold landing requirements for eligibility. In other words, the history that gave rise to the license plus the history accrued using the license would need to exceed the landing threshold. This approach would acknowledge landings from more than one vessel, if a person moved a license between vessels. For no period of time would the catch of more than a single vessel would be credited.

Once eligibility is determined, ongoing participation would differ under a vessel-based and license-based program. If a vessel-basis is used, either a person would not be allowed to replace a vessel or a vessel replacement program would need to be developed. Alternatively, a license-based program would simply add an endorsement to the existing LLP license. The license (which would include a new sector endorsement based on the eligibility findings) would authorize entry of any vessel to any endorsed fishery. The result would be an extension of the current LLP regulations to include a series of new endorsements based on the sectors defined by amendment 80A.

Cooperative Rules ("single option" components of 80B)

Several of the "single option" components contain provisions concerning "vessels" that are included in or excluded from the program and that may participate in a cooperative. One bullet, however, contains a requirement that a vessel hold a license to participate in the sector. Another bullet states that licenses are transferable (together with an endorsement for the sector) suggesting that it is the license (rather than the vessel) that carries the fishing history and eligibility. A later bullet, however, suggests that it is the history of the "participating vessels" (not the history associated with the license) that determines the allocation to the cooperative. Several issues are raised by these various wording choices, which can all be reduced to whether the Council intends to use a vessel-basis or license-basis for this aspect of the program.

Using a license-basis, a person that holds a license would be eligible for a cooperative if the license has the appropriate endorsement. The license would carry with it specific qualified history that would determine the allocation to the cooperative. This approach would facilitate vessel substitutions under the current LLP provisions, relying on those existing rules for eligibility or history movement between vessels and persons. If some other provision for substitution is intended, the Council should clarify its intent.

Another issue also arises from the wording of component 4. Most of the options in that provision state that cooperative formation depends on a threshold percent of the "eligible vessels". The last option provides that the formation depends on the number of "distinct and separate harvesters". This last provision raises the question of whether a vessel must be entered into the cooperative. The alternative approach suggested by the last option is to look only to the license. Any holder of an eligible license could be permitted to join a cooperative. The cooperative would manage the harvest of its allocation using vessels that carry the eligible LLP licenses, but not all licenses would need to be used to fish for the cooperative in any season. This approach might be favored, if removal of capital and efficiency are objectives of the program. The approach, however, could allow ownership of a portion of the fishery by persons that do not own vessels that fish. Under any system, some cooperative participants may choose to let others in the cooperative catch the allocation arising from their history to improve efficiency.

The Council should clarify:

Under amendment 80A

- 1) Whether eligibility to participate in a sector is determined on a "vessel-basis" or a "license-basis".
- 2) Whether holding an "eligible license" or owning an "eligible vessel" determines continuing eligibility
- 3) If eligibility depends on owning an "eligible vessel," rules for vessel substitution should be specified.

Under amendment 80B

- 1) Whether eligibility for a sector endorsement is determined on a "vessel-basis" or a "license-basis".
- 2) Whether cooperative membership and ongoing participation requires holding an "eligible license" or owning an "eligible vessel".
- 3) If eligibility depends on owning an "eligible vessel," rules for vessel substitution should be specified.

If the Council answers these questions, staff will revise the language to conform to the Council's intent.

Excessive Share Caps

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

- Option 7.1 There is no limit on the consolidation in the non-AFA trawl catcher processor sector.
- Option 7.2 Consolidation in the non-AFA trawl CP sector is limited such that no single company can harvest more than a fixed percentage of the overall sector apportionment. Companies that exceed the cap in the initial allocation would be grandfathered.
-

The two above provisions are the only options in Amendment 80 concerning excessive share limits. The first option would impose no limits on consolidation. The second provision would limit a company to "harvesting no more than a fixed percentage of the overall sector apportionment" with companies receiving an initial allocation in excess of that percentage grandfathered. The operation of the second provision is ambiguous in several ways and should be clarified by the Council. In clarifying the provision, the Council should consider its purpose for establishing the cap. The cap could be used to limit either concentration holdings or the concentration of harvest activity. The Council's choice of provisions might differ depending on its objectives. The Council should clarify:

- 1) Whether the provision is intended to apply to individuals and companies or only companies. If the provision is intended to apply to individuals and companies, the term "license holder" could be substituted for "company".
- 2) Whether the provision is intended to limit the harvest of the sector allocation or holding of history in the fisheries (or both). "Excessive share" caps are intended to limit holdings and ownership. Typically, "use" caps have been interpreted as limiting both share holdings and use. In the absence of clarification, the provision would be interpreted as a limitation on both holdings of history and harvesting history. Under this interpretation, a license holder may not acquire additional licenses that would result in the crediting of history to the license holders in excess of the cap.
- 3) The method for applying the cap across species. Since several different species are harvested by the sector, limiting holdings to a percentage of the sector's allocation could be accomplished in several ways. For example, the provision could be applied to limit harvests of a person to a percent of the total allocation to the sector, with that computation being done annually to account for TAC changes in the different species. Alternatively, the provision could be applied on a species-by-species basis, so that a person could not harvest over a certain percentage of that allocation of any one species. A third manner for applying the cap would be to use an index (such as the total pounds of history in the qualifying years) for determining the poundage for aggregating across species. Applying this approach to two species, if 1000 pounds of species A was taken in the qualifying period and 2000 pounds of species B TAC were taken in the qualifying period a total of 3000 pounds of history would exist. A 50 percent limit would prohibit a person from holding more than 1500 pounds of total history (species A and species B).
- 4) How the cap would be applied. A rule will need to be applied to determine what harvests or holdings are credited to a company. Typically, the Council has used either the "individual and collective" rule, which credits a person with holdings in the amount of the persons interest, or a "threshold" or "control" basis, which credits a person with all

holdings that the person controls or has over a threshold interest in. Under the individual and collective rule, a person that holds 100 shares outright would be credited with all of those holdings in applying the cap. A person that holds a 20 percent interest in a company that holds 100 shares is credited with holding 20 shares when applying the cap. Under a control rule, a person that controls a company that holds 100 shares would be credited with 100 shares when applying the cap. Under a threshold rule that uses a 10 percent threshold, a person that owns more than 10 percent of a company that holds 100 shares would be credited with holding 100 shares.

To adequately analyze excessive share caps, staff needs clarification the Council's intent with respect to those caps.

Underutilized Species Threshold

Component 10 For species that may have TAC (amounts) available in excess of historical harvest amounts, sector allocations may apply only to the historical harvest threshold¹ (utilization threshold). TAC amounts in excess of such thresholds would be available to sectors whose ability to harvest that TAC exceeds its sector allocation of that species. *(The intent of this language is that after a sector has harvested its allocation of species with a threshold and if the sector has PSC available, then the sector may target the TAC in excess of the threshold.)* Council must select one suboption from each of the options below in order to establish a threshold fishery. *(Note, this component is not meant to be a mandatory option. The Council may choose to develop sector allocations without an underutilized species threshold program.)*

Option 10.1 Species that would be assigned an utilization threshold:

- Suboption 10.1.1 Rock sole
- Suboption 10.1.2 Yellowfin sole
- Suboption 10.1.3 Flathead sole
- Suboption 10.1.4 Alaska Plaice
- Suboption 10.1.5 Rock sole, yellowfin sole, flathead sole in aggregate
- Suboption 10.1.6 Rock sole, yellowfin sole, flathead sole, and Alaska Plaice in aggregate

Option 10.2 Options for determining utilization threshold for each species or complex (Council must select one from each of the following suboptions in order to establish utilization threshold):

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

In December 2003, the Council added Component 10 to Amendment 80a. The component was developed as an approach to define which sectors would be allowed to harvest the portion of BSAI TACs that is not allocated to a specific sector. Four flatfish fisheries, specifically Alaska plaice, flathead sole, rock sole, and yellowfin sole are being considered as the primary species for which a historical harvest threshold would be set. The component would establish an underutilized threshold for these flatfish fisheries individually (all four species do not need to be included in the program) or by aggregating species together. In years where the TAC is set above the underutilized threshold for that fishery, the portion of TAC above the threshold would be reserved for an open access fishery. The suite of suboptions provided in Component 10 allows the Council to create widely different thresholds, with widely different impacts on the sector allocations and the open access fishery. Smaller underutilized thresholds, will result in smaller sector allocations and a larger open access fishery. Larger underutilized thresholds, will have the

¹ The historical harvest threshold refers to the average annual harvest of a species over a specific period of time. If the TAC for a species is set above the historic harvest threshold, the difference between the historic harvest threshold and the TAC would not be allocated to the sectors defined under Amendment 80a.

opposite result. To provide more guidance on the different sample thresholds and their implications to sector allocations and the open access fishery, four different underutilized thresholds for each of the flatfish fisheries considered in this component were estimated. The sample thresholds were then compared to total and retained catch over the 1995 to 2002 period for each fishery. Next, sector allocations were estimated using components selected from the option in Amendment 80a. The sample thresholds for each of the fisheries were applied to the sector allocations to determine distribution of the TAC to the different sectors. These distributions were then compared with the average retained and total catch for each sector by fishery from 1995 to 2002.

Thresholds were estimated using following options in Component 10:

- Underutilized threshold 1 - 100 percent of the average total catch for the years 1995 to 2002
- Underutilized threshold 2 - 100 percent of the average retained catch for the years 1995 to 2002
- Underutilized threshold 3 - 150 percent of the average total catch for the years 1995-2002
- Underutilized threshold 4 - 150 percent of the average retained catch for the years 1995 to 2002.

The estimated underutilized thresholds for each fishery are shown in Table 1. A crucial element in determining the threshold is whether total or retained catch is used. Calculations based on retained catch results in a lower threshold, which in turn results in more frequent and larger open access fisheries. Calculations based on total catch results in higher thresholds and thus reduce the frequency of open access fisheries. The difference between retained and total catch for developing the underutilized thresholds is more pronounced when retained catch is significantly different from total catch. For example, in the Alaska plaice fishery, total catch is significantly higher than retained catch, thus the thresholds are significantly different. Another element impacting the threshold is the scale of average catch used. The Council has three different scales to choose from, 100, 125, and 150 percent. The effect of this option is to increase the average total and retained catch for the four fisheries by the percent selected, and thus increase the underutilized threshold by the same amount. Finally, the years selected to determine the average catch will also impact the level of the underutilized threshold. The interaction between the flatfish TACs, BSAI pollock TACs, and the 2 million mt cap for BSAI fisheries could impact the threshold depending on the years selected. When the pollock TAC is set high, TACs for other BSAI fisheries tend to be set further below their ABCs in order to stay under the 2 million mt cap. In these years, the flatfish fisheries are generally more fully utilized. Using years when pollock TACs were high, results in a relatively low threshold because harvests from these fisheries are constrained by the TAC. When the pollock TAC has been set low, the other BSAI fisheries have higher TACs, much closer to their ABCs. The impact of these years on the threshold is more dependent on the harvest choices of participants and halibut bycatch constraints in the fisheries, since the TAC is not constraining.

Table 1. Underutilized thresholds for Alaska plaice, flathead sole, rock sole, and yellowfin sole.

	Underutilized Threshold 1 (mt)	Underutilized Threshold 2 (mt)	Underutilized Threshold 3 (mt)	Underutilized Threshold 4 (mt)
Alaska Plaice	4,354	820	6,531	1,231
Flathead Sole	18,409	12,242	27,613	18,363
Rock Sole	45,406	20,304	68,110	30,457
Yellowfin Sole	103,241	83,856	154,862	125,783

Underutilized Threshold 1 = 100% of average total catch for the years 1995-2002.

Underutilized Threshold 2 = 100% of average retained catch for the years 1995-2002.

Underutilized Threshold 3 = 150% of average total catch for the years 1995-2002.

Underutilized Threshold 4 = 150% of average retained catch for the years 1995-2002.

Table 2. Annual TAC, total catch, unharvested TAC, and percent of TAC not harvested for Alaska plaice, flathead sole, rock sole, and yellowfin sole from 1995 to 2003.

TAC (mt)									
Species	1995	1996	1997	1998	1999	2000	2001	2002	2003
Alaska Plaice								10,200	9,250
Flathead Sole	25,500	25,500	36,975	85,000	65,705	44,755	34,000	21,250	17,000
Rock Sole	60,000	59,500	82,607	85,000	102,000	114,546	63,750	45,900	37,400
Yellowfin Sole	161,500	170,000	195,500	187,000	176,783	104,773	96,050	73,100	71,188
Pollock	1,156,250	1,100,750	1,045,250	1,026,751	892,800	1,014,798	1,260,000	1,336,500	1,342,583
Total Catch (mt)									
Species	1995	1996	1997	1998	1999	2000	2001	2002	2003
Alaska Plaice								12,176	9,778
Flathead Sole	14,707	17,344	20,704	24,385	17,842	19,983	17,586	15,108	13,783
Rock Sole	54,870	46,928	67,564	33,642	40,150	49,264	29,255	41,331	35,343
Yellowfin Sole	124,740	129,659	181,389	101,154	67,320	83,850	63,395	72,999	74,409
Unutilized TAC (mt)									
Species	1995	1996	1997	1998	1999	2000	2001	2002	2003
Alaska Plaice								0	0
Flathead Sole	10,793	8,156	16,271	60,615	47,863	24,772	16,414	6,142	3,217
Rock Sole	5,130	12,572	15,043	51,358	61,850	65,282	34,495	4,569	2,057
Yellowfin Sole	36,760	40,341	14,111	85,846	109,463	20,923	32,655	101	0
Percent of TAC Not Harvested									
Species	1995	1996	1997	1998	1999	2000	2001	2002	2003
Alaska Plaice								119%	106%
Flathead Sole	58%	68%	56%	29%	27%	45%	52%	71%	81%
Rock Sole	91%	79%	82%	40%	39%	43%	46%	90%	95%
Yellowfin Sole	77%	76%	93%	54%	38%	80%	66%	100%	105%

Source: NMFS, Sustainable Fisheries. As of 31 Dec, 2003

Figures 1, 2, 3 and 4, provide a graphical illustration of the four different underutilized thresholds along with TAC, total catch, and retained catch for each of the flatfish fisheries included in this component. Looking at Alaska plaice (Figure 1), underutilized thresholds 1 and 3, which are based on total catch, are significantly higher than those thresholds based on retained catch (underutilized threshold 2 and 4). However, since 2002 was the first year Alaska plaice had its own TAC, it is not possible to see the thresholds in relation to its historical TAC. In the flathead sole fishery (Figure 2), the underutilized thresholds range from 12 thousand mt (underutilized threshold 2) to 28 thousand mt (underutilized threshold 3). Under the lowest of the underutilized thresholds, an open access fishery would have existed every year during the 1995 to 2002 period, while under the highest threshold there would have been an open access fishery from 1997 to 2001, with the largest being in 1998. In the rocksole fishery (Figure 3), the underutilized thresholds range from a low of 20 thousand mt to a high 68 thousand mt. Under the

lowest of the underutilized thresholds, an open access fishery would have occurred every year from 1995 to 2002, while under the highest threshold there would have been an open access fishery from 1997 to 2000, with the largest being in 2000. In the yellowfin sole fishery (Figure 4), the underutilized thresholds differ considerably from one another, with the lowest being 84 thousand mt and the highest being 155 thousand mt. Unlike the other fisheries, three of the underutilized thresholds would have resulted in no open access fishery from 2000 to 2002, while even the lowest threshold would have resulted in no open access fishery in 2002. The reason for the no open access fisheries after 2000, under three of the thresholds, is because the TAC for yellowfin sole declined significantly after the 1995 to 1999 period. Table 3 shows the distribution of allocations to the different sectors based on the four underutilized thresholds and also compares the average total and retained catch from 1995 to 2002 for each sector. In years when the TAC is higher than the underutilized threshold, the allocation to a sector would be limited to its share of the underutilized threshold. Since sector allocations are based on catch history, the non-AFA HT-CP sector will receive the largest allocation of the flatfish species under consideration with AFA 20 and trawler catcher vessel sectors getting the next largest allocations. For underutilized threshold 1 and 2, each sector's share of that threshold is equal to their average retained and total catch during the base period by definition. Similarly, each sector's share of underutilized thresholds 3 and 4 is 150 percent of its share of thresholds 1 and 2, respectively. As shown by these sample illustrations, using an underutilized threshold to limit allocations could have a significant impact on the AFA 20, non-AFA trawl catcher processor, and trawl catcher vessel sector's allocations.

Management of the Underutilized Fishery

Several aspects of this component are unclear. For example, it is not clear when members of a sector would be able to participate in the open access fishery, how NMFS would determine if a sector has adequate PSC and other species to participate in the open access fishery, and how the allocation of PSC and other species to the fishery would be made.

The provision seems to imply that members of a BSAI sector would be eligible to participate in the open access fishery, only after their sector has fully harvested its allocation of the underutilized species. Under this approach, any sector whose members wish to participate in the underutilized fishery would have an incentive to race for its allocation, and once that is harvested to race for the "unallocated" open access fishery. This structure for determining entry to the open access portion of these fisheries seems to favor those sectors that have little or no history in the fisheries. For example, a sector with no allocation of these species could immediately enter the open access fishery, while sectors with substantial history would need to fully harvest their sector allocations prior to entering the fishery. Sectors with the greatest dependence on these fisheries could be the last to be permitted to enter.

Sectors that would likely not receive an allocation of the flatfish species included in this program would be the under 60' hook & line/pot sector, jig sector, and the longline catcher vessel sector. The pot catcher processor sector and pot catcher vessel sector would get a very small allocation of yellowfin sole, thus allowing them almost immediate access to the open access fishery. However, based on their limited historical participation in these fisheries, it is unlikely these sectors would participate in these open access fisheries in the near term. This could change if the market value for one of these species were to increase significantly in the future. For those sectors that have formed cooperatives, they also must harvest all of their allocation before entering the open access fishery. However, after the sector has harvested their allocation of flatfish, the sector (cooperative) would be free to stack their allocations for other target species on a few vessels in order to free up other cooperative vessels to enter the underutilized open access fishery.

The entry pattern to this open access fishery depends, in part, on how PSC and other species are allocated to support the open access fishery. The source of the allocation for each sector is not specified in the

motion. For example, could a sector with minimal participation in fisheries for the underutilized species enter the fishery with PSC from another fishery? If so, how would the source and amount of the allocation be determined? Since the program provides only sector allocations, no participant has a specific interest that the participant could allocate to the open access fisheries. To overcome this shortcoming a method for determining the allocations should be specified by the Council. A number of the sectors may not receive enough PSC to participate in the open access fishery because they have traditionally not participated in fisheries with substantial halibut bycatch. Complicating the management and monitoring of this program is the seasonal apportionment of halibut PSC. Currently, halibut PSC is divided into four seasons for yellowfin sole and three seasons for the rock sole/flathead sole fishery. Under this structure, the determination of whether a sector has adequate halibut PSC to participate in the open access fishery would need to be made on a seasonal basis.

An additional consideration for this program is that the incentive to quickly harvest allocations could be considered by some to be contrary to Council's problem statement, which includes the elimination of the "race for fish" as one its primary purposes. Subsidiary goals of the problem statement (such as reducing bycatch and its associated mortalities, maintaining healthy harvesting and processing sectors, and promoting safety and efficiency) could also be compromised if a "race for fish" ensues from this management structure. If the Council perceives an inconsistency of this program with its problem statement, it could consider other approaches that would provide opportunities to harvest unallocated fish in a manner that does not result in a race for fish.

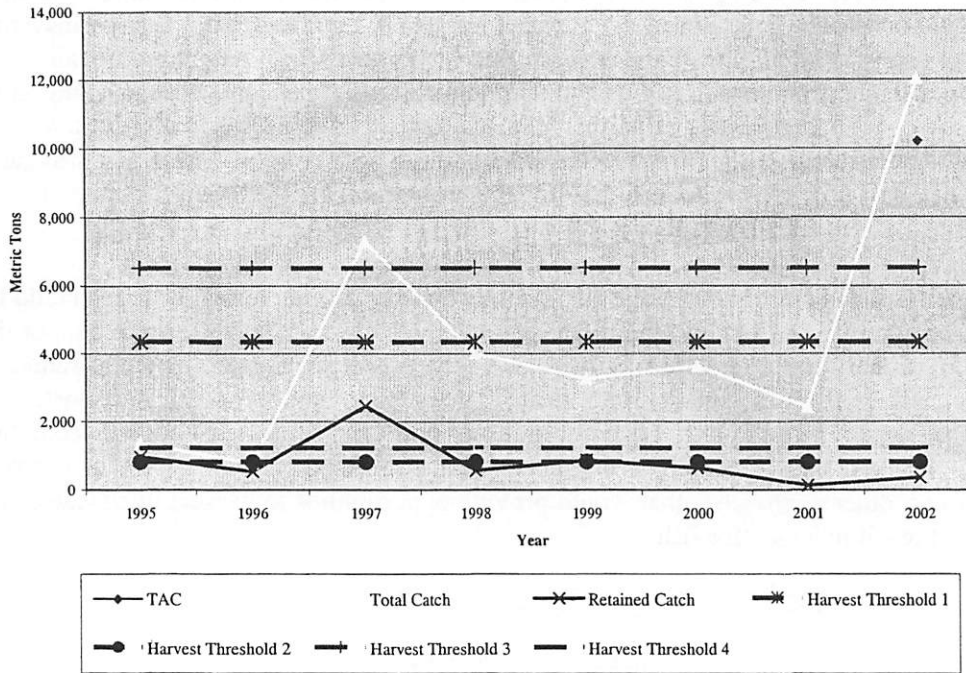


Figure 1. Underutilized thresholds, TAC, total catch, and retained catch for Alaska plaice from 1995 to 2002.

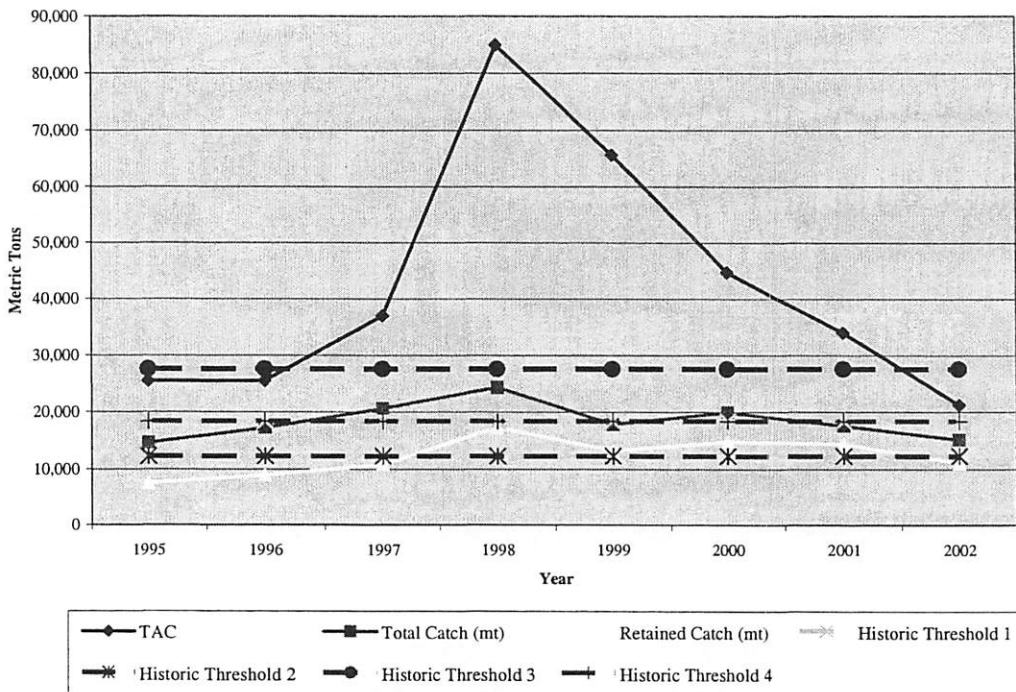


Figure 2. Underutilized thresholds, TAC, total catch, and retained catch for the flathead sole fishery from 1995 to 2002.

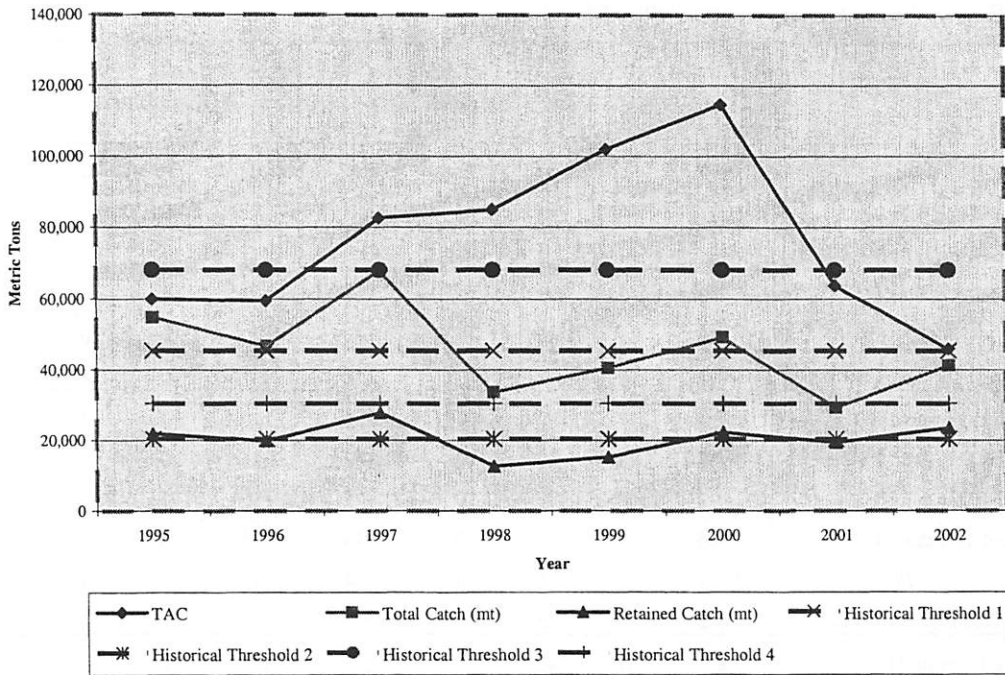


Figure 3. Underutilized thresholds, TAC, total catch, and retained catch for the rocksole fishery from 1995 to 2002.

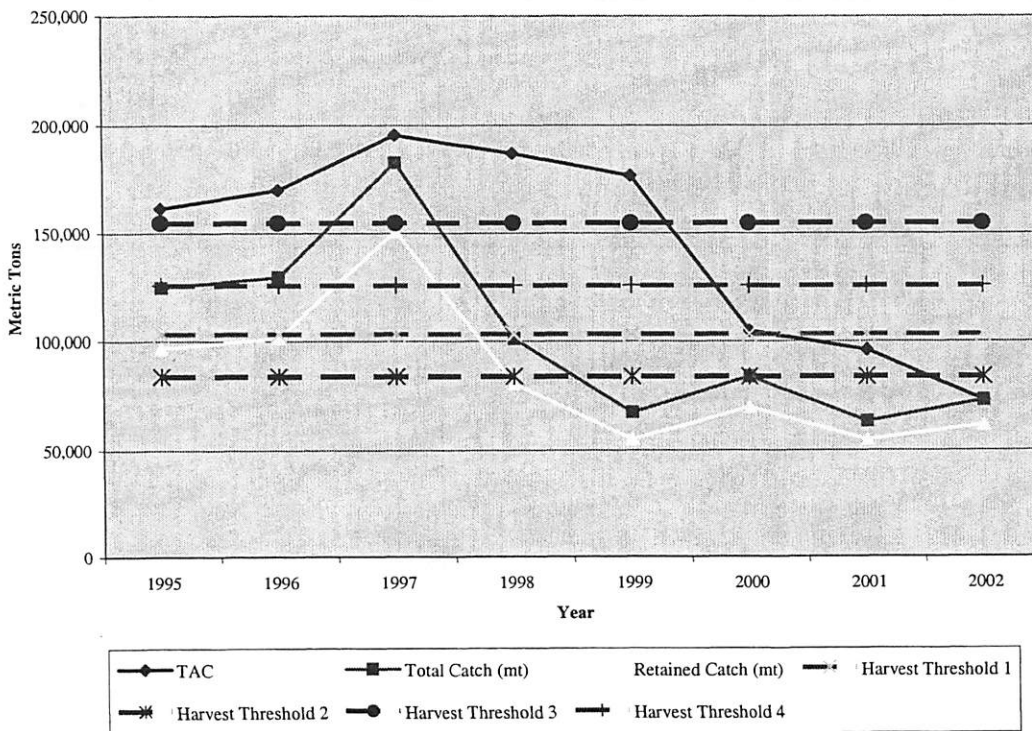


Figure 4. Underutilized thresholds, TAC, total catch, and retained catch for yellowfin sole fishery from 1995 to 2002.

Table 3. Underutilized thresholds (mt) and average total and retained catch (mt) for 1995 to 2002 by sector for Alaska plaice, flathead sole, rock sole, and yellowfin sole.

		AFA 20	AFA 9	LGL- CP	LGL- CV	NON- AFA HT-CP	NON- AFA ST-FT- CP	POT- CP	POT- CV	TWL- CV	Total
Alaska Plaice	Underutilized Threshold 1	539	1	0	0	3,403	0	0	0	410	4,354
	Underutilized Threshold 2	191	0	0	0	249	0	0	0	381	820
	Underutilized Threshold 3	808	2	0	0	5,105	0	0	0	616	6,531
	Underutilized Threshold 4	286	0	0	0	374	0	0	0	571	1,231
	<i>Average Total Catch 1995-2002</i>	<i>539</i>	<i>1</i>	<i>0</i>	<i>0</i>	<i>3,403</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>410</i>	<i>4,354</i>
	<i>Average Retained Catch 1995-2002</i>	<i>191</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>249</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>381</i>	<i>820</i>
Flathead Sole	Underutilized Threshold 1	1,394	377	299	0	14,534	100	0	1	1,703	18,409
	Underutilized Threshold 2	483	95	18	0	11,229	14	0	0	402	12,242
	Underutilized Threshold 3	2,091	566	448	0	21,801	150	1	2	2,555	27,613
	Underutilized Threshold 4	725	143	27	0	16,843	21	0	0	602	18,363
	<i>Average Total Catch 1995-2002</i>	<i>1,394</i>	<i>377</i>	<i>299</i>	<i>0</i>	<i>14,534</i>	<i>100</i>	<i>0</i>	<i>1</i>	<i>1,703</i>	<i>18,409</i>
	<i>Average Retained Catch 1995-2002</i>	<i>483</i>	<i>95</i>	<i>18</i>	<i>0</i>	<i>11,229</i>	<i>14</i>	<i>0</i>	<i>0</i>	<i>402</i>	<i>12,242</i>
Rock Sole	Underutilized Threshold 1	2,844	751	42	0	36,924	162	0	2	4,680	45,406
	Underutilized Threshold 2	1,180	233	2	0	18,259	31	0	0	600	20,304
	Underutilized Threshold 3	4,266	1,127	63	0	55,386	244	0	3	7,021	68,110
	Underutilized Threshold 4	1,769	350	2	0	27,388	46	0	0	900	30,457
	<i>Average Total Catch 1995-2002</i>	<i>2,844</i>	<i>751</i>	<i>42</i>	<i>0</i>	<i>36,924</i>	<i>162</i>	<i>0</i>	<i>2</i>	<i>4,680</i>	<i>45,406</i>
	<i>Average Retained Catch 1995-2002</i>	<i>1,180</i>	<i>233</i>	<i>2</i>	<i>0</i>	<i>18,259</i>	<i>31</i>	<i>0</i>	<i>0</i>	<i>600</i>	<i>20,304</i>
Yellowfin Sole	Underutilized Threshold 1	18,933	2,527	292	0	75,338	569	38	50	5,493	103,241
	Underutilized Threshold 2	15,932	1,786	11	0	60,646	507	1	1	4,971	83,856
	Underutilized Threshold 3	28,399	3,791	439	0	113,008	854	57	75	8,240	154,862
	Underutilized Threshold 4	23,899	2,679	16	0	90,970	760	2	1	7,457	125,783
	<i>Average Total Catch 1995-2002</i>	<i>18,933</i>	<i>2,527</i>	<i>292</i>	<i>0</i>	<i>75,338</i>	<i>569</i>	<i>38</i>	<i>50</i>	<i>5,493</i>	<i>103,241</i>
	<i>Average Retained Catch 1995-2002</i>	<i>15,932</i>	<i>1,786</i>	<i>11</i>	<i>0</i>	<i>60,646</i>	<i>507</i>	<i>1</i>	<i>1</i>	<i>4,971</i>	<i>83,856</i>

Underutilized Threshold 1 = 100% of average total catch for the years 1995-2002.
 Underutilized Threshold 2 = 100% of average retained catch for the years 1995-2002.

Underutilized Threshold 3 = 150% of average total catch for the years 1995-2002.
 Underutilized Threshold 4 = 150% of average retained catch for the years 1995-2002.

UNITED STATES SEAFOODS, L.L.C.

AGENDA C-6
Supplemental
APRIL 2004

March 23, 2004

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

RECEIVED
MAR 24 2004
N.P.F.M.C.

Re: C-6 IR/IU

Dear Stephanie:

I am writing on behalf of United States Seafoods, LLC ("USSF") to comment on IR/IU Amendments 79, 80A, and 80B. USSF manages three catcher processors and two catcher vessels that depend on the non-pollock trawl groundfish fisheries of the Bering Sea and Aleutian Islands ("BSAI"). Specifically USSF:

- Supports the approval and implementation of Amendment 79;
- Requests that "GRS Retention Pools" be considered as a trailing amendment to Amendment 79 or as an option under Amendment 80; and
- Requests that a multiple H&G coop option be added to Amendment 80B.

1. **Amendment 79 is critical for the long term health of our fisheries:**

USSF was founded by Alaska fishermen who wanted to build an H&G company that met the mandate of IR/IU. USSF recognizes the improvements in retention that the H&G sector has made since the implementation of IR/IU in 1998, however, we believe our sector's discards are still unacceptably high. The waste from H&G vessels may have ecological consequences, creates allocation issues due to the 2 million metric ton cap, is inconsistent with the Magnuson-Stevens Act, and draws negative attention to the fisheries of the North Pacific. USSF believes that the issue of economic discards must be addressed in a meaningful manner. Accordingly, we support the implementation of Amendment 79 at the soonest possible date.

USSF believes that Amendment 79 is the key to the future viability of the H&G sector rather than its undoing. The benefits of Amendment 79 spread well beyond the H&G sector and greatly outweigh the associated costs placed upon a handful of vessels. Thus, this program clearly satisfies the practicability language contained in

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National Standard Nine. When the Council passed Amendment 79 it clearly considered the costs to the fleet and made efforts to mitigate those costs by exempting smaller vessels and phasing-in the GRS over five years. However, because USSF believes that Amendment 79 is so important we would support additional measures to mitigate the costs of this program if it makes approval and implementation more likely. One measure suggested by the State of Alaska is postponing the implementation of the flow scale requirement for two years.¹ Another such measure would be to allow H&G vessels to form contractual retention pools.

2. **GRS Retention Pools compliment the IR/IU Amendments:**

Amendment 79 as passed at the Kodiak meeting, applies the GRS to vessels individually. USSF believes that an option allowing H&G vessels to meet the GRS on a group level should also be considered. Such contractual retention pools would make the GRS regulations more practicable, more effective, and more consistent with applicable law.

It is worth noting that Amendment 80B already has a single-option component that would apply the GRS to cooperative member vessels in the aggregate. However, H&G vessels may not be able to take advantage of this provision because the implementation date of Amendment 80B is uncertain, and under 80B coop formation is voluntary and not inevitable. Retention pools would give the H&G fleet the tools it needs to bridge any timing gaps between the implementation of Amendment 79 and the formation of an H&G coop.

USSF proposes that the following retention pool option be considered as a trailing amendment to Amendment 79 or as an additional component to Amendments 80A or 80B:

One or more Non-AFA Catcher Processor vessels may address the GRS regulations at a multiple vessel level by forming contractual Retention Pools. All Non-AFA Catcher Processors shall be a member of a Retention Pool. Each Retention Pool shall: (i) meet the applicable GRS, (ii) harvest at least 90% of the BSAI ground fish harvested on vessels with NMFS approved flow scales and 200% observer coverage, and (iii) establish NMFS approved monitoring and reporting protocols for those vessels operating without flow scales or 200% observer coverage.

¹ See E. Krieger Memorandum, IR/IU Program for Groundfish in the Bering Sea/Aleutian Islands-Amendment 79, February 10, 2004, p. 4.

Such retention pools are consistent with MSA and other applicable law, and further a number of important policy objectives by:

- Making Amendment 79 less costly, more practicable, and thus more approvable;
- Providing flexibility so that smaller vessels can comply with the GRS;
- Providing flexibility so that smaller vessels can develop and implement alternative monitoring and enforcement protocols;
- Addressing the under 125 foot GRS exemption;
- Facilitating enforcement of the GRS;
- Slowing the race for fish;
- Avoiding the allocation controversies involved with the privatization of a public resource;
- Creating incentives to improve vessel retention above and beyond the GRS; and
- Rewarding high retention in the future rather than simply rewarding past performance.

Such retention pools fit into the larger IR/IU picture in a number of ways. First, as previously suggested retention pools could bridge any timing gaps between the implementation of Amendment 79, 80A, and 80B. Second, retention pools could be implemented in concert with the Amendment 80B H&G cooperative provisions. And third, retention pools could provide an alternative to the 80B allocation cooperatives.

3. A Multiple Coop option should be added to Amendment 80B:

Amendment 80B presently provides for the formation of a single H&G cooperative. The single coop/100% formation requirement system is the model for all of the existing North Pacific catcher-processor cooperatives and is USSF's preferred approach for rationalizing the H&G sector. However, we believe that a multiple cooperative alternative should be analyzed as part of Amendment 80B, and understand that such an alternative would fit within the Amendment 80B package without creating a significant amount of additional work.

One advantage with a Multiple Coop approach is that it rationalizes the entire H&G sector, rather than creating cooperative and open access fisheries that operate simultaneously. A multiple coop approach would also better protect minority interests from the tyranny of the majority, by not forcing those stakeholders that do not share the majority's view of the world into a coop that is controlled by the

majority. Frankly, given the majority's record on regulatory compliance, PSC usage, and retention we have serious concerns regarding fair treatment within a majority controlled coop.

Multiple coops, however, do raise a number of potential problems. First, because the importance of the allocation methodology is elevated under multiple coops it is imperative that the allocation framework chosen is as fair and equitable as possible. Second, multiple coops make it difficult to ensure that negotiations occur between stakeholders prior to cooperative formation. Without negotiations smaller vessels, single vessel companies, and those with minority viewpoints are at risk of being caught, (in musical chairs scenario) without any suitable coop partners. Third, a multiple coop system runs the risk of creating "squid-box problems" through small and imbalanced allocations within the multiple coops. And finally, as the number of coops increases a multi-coop system begins to look more-and-more like an IFQ program. Because of these and other issues a multiple cooperative alternative must be designed with great care. Because the multiple cooperative approach is less forgiving than the classic cooperative model we believe that it is imperative that at least half of any allocations awarded under such a program be linked to future cooperative performance rather than simply based upon past vessel performance.

In conclusion, USSF believes that the future health of our fisheries depends upon Amendment 79. To facilitate approval and implementation of Amendment 79 we are requesting that the Council consider adding a retention pool component to Amendment 79 or 80. In addition, we are requesting that a multiple coop option be added to 80B.

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

Sincerely yours,

David S. Wood
United States Seafoods LLC

Western Gulf of Alaska Fishermen

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March 21, 2004

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

RECEIVED

MAR 23 2004

N.P.F.M.C.

Re: **C-3 IRIU -- Amendment 80A**

Dear Madam Chair:

I write to you today to express concern about the IR/IU process, specifically Amendment 80A, which proposes to establish Sector Allocations of Groundfish in the BSAI. The reason for this letter is that many members of the Western Gulf of Alaska Fishermen (WGOAF) have migrated to the Aleutian Islands to fish p-cod during the Winter due to the crumbling economics of fishing for p-cod in the Western Gulf of Alaska. Western Gulf of Alaska Fishermen (WGOAF) is an association of groundfish trawl, pot, and longline harvesters who participate in Gulf of Alaska (GOA) groundfish fisheries. Most, but not all of the vessels in our association are less than 60' LOA.

Stellar Sea Lion RPAs have eroded traditional GOA fishing areas and redistributed seasonal p-cod allocations with the 60:40 split. Overall fixed gear fishing pressure has increased inside the GOA parallel fishery since implementation of the RPAs. We believe that the increase in fixed gear is in part due in part to the RPA stimulated re-allocation of p-cod. The result is clearly a reallocation of p-cod away from the traditional small boat trawl fleet in the Western Gulf of Alaska, to an expanding parallel fishery fixed gear fleet. Many WGOAF members have migrated into the Aleutian Islands p-cod fishery.

Displaced WGOAF fishermen trawling for p-cod out of the Port of Adak do not have Federal LLPs and therefore they can only fish inside 3-miles in the State Parallel Fishery. Their harvest counts against the federal TAC allocated to BSAI Trawl fisheries. Over the past few years their harvest of Aleutian Island p-cod has been substantial. For many WGOAF members it is now an economic mainstay of their businesses.

We are concerned that although proposed Amendment 80A may be a fine program; we have not been involved in any of the scoping process. We have been peripherally aware, but economically we are hard pressed just to participate fully in the GOA Groundfish Rationalization process. Additional full participation in the BSAI process is beyond our means. We regret not being engaged until now, nevertheless we want to make our presence known in the Aleutian Islands p-cod fishery at this time.

Parallel Fisheries

Reflecting on our extensive participation in the GOA Groundfish Rationalization process with the NPFMC, the Board of Fisheries, and the Alaska legislature, we find it incredible that so little attention is paid to the State water/Parallel fishery dilemma in the Amendment 80A document. The parallel fishery issue is an incredibly complicated and thorny issue that sorely

plagues GOA Rationalization, yet in the Amendment 80A document from February 10, 2004, only a "Note:" on page four makes any reference at all to state water fisheries.

As you know, there is an important distinction between State water fisheries and State Water Parallel Fisheries. There are no State water p-cod fisheries in the Aleutians, but there is a very significant State water parallel fishery. It is clear to us in the GOA rationalization process that no rationalization of federally managed species can occur if those species are also available inside 3 miles, unless the parallel fishery issue is resolved.

The GOA Groundfish Rationalization process is fully engaged with the parallel fishery question. Parallel fisheries effectively checkmate attempts to rationalize any federal fisheries for species that are available inside state waters, because federal managers cannot control fishing effort inside state waters. Clearly this is the case with p-cod, in both the GOA and in the Aleutian Islands!

We are glad that this issue is now surfacing, because we really want to resolve the parallel issue as soon as possible. Resolution of the parallel fishery issue is essential for rationalization of both the GOA and Aleutian Islands fisheries.

In conclusion, our message and our request at this time, is that the parallel fishery issue and the participation of WGOAF members in the Aleutian Islands parallel trawl p-cod fishery, be addressed and analyzed in the Amendment 80A process.

Thank you for your consideration of this issue.

Best regards,



Joe Childers

Director, Western Gulf of Alaska Fishermen

Groundfish Forum

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March 24, 2004

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

RECEIVED

MAR 24 2004

N.P.F.M.C.

Re: Agenda Item C-6: IR/IU

Dear Madam Chair,

Groundfish Forum is an association representing 18 non-AFA 'head-and-gut' trawl catcher-processors operating in the Bering Sea/Aleutian Islands and Gulf of Alaska fisheries. Our sector will be most impacted by both Amendments 79 and 80 to the BSAI FMP. We are writing you to comment on the elements and options for Amendment 80 adopted by the Council at the February 2004 meeting.

Amendment 80 was developed specifically to address the need for the non-AFA trawl CP sector to rationalize in order to meet the Groundfish Retention Standard mandated in Amendment 79. This is the only sector that will be required to meet that standard, and while we have significantly increased both retention and utilization of all species, under the current 'race for fish' scenario we are unable to continue these improvements while maintaining economic viability. NMFS recognized this dilemma when it partially disapproved Amendment 75 (delay of Amendment 49, IRIU) because it imposed unreasonable costs on our sector. We need to have rationalization to be able to further explore gear modifications, new products and new fishing techniques which are economically impossible when we are racing for fish.

Amendment 80 contains two parts, 'Sector Allocations' (80a) and 'Establishment of a Non-AFA Trawl CP Cooperative Program' (80b). We support the Council's decision to revise the priorities in the staff's draft Problem Statement for Amendment 80 to reflect the importance of 80b. The new problem statement clearly states that the first priority in the IRIU process is to develop rationalization programs to slow the race for fish.

It is imperative that 80a and 80b remain connected and proceed together through the Council process as quickly as possible. Sector allocations (80a) are only necessary because they are the first step to rationalizing the non-AFA trawl CP sector (80b); since rationalization of this sector requires defining its allocation, other sectors' allocations will also be defined by default. Sector allocations alone, however, will not solve the problem; in fact, they will exacerbate the problem since the non-AFA trawl CP catch will be restricted even more, and the race for fish in this sector will be more intense than it is

now. We cannot state this point strongly enough. If the Council approves sector allocations without providing our sector the ability to coop, we will be faced with having to meet new retention standards in an even more onerous race for fish. The only sectors that will benefit are those which did not need this program in the first place.

Amendment 80a contains a component (number 10) which is intended to develop a 'utilization threshold' for fisheries which are not expected to reach TAC. Because the component was not fully developed, Council staff recommended that it not be a mandatory part of the program. Our letter to the Council on January 28, 2004 contained an explanation of how this component could result in a re-allocation of species away from sectors that have traditionally harvested them, and toward sectors which do not depend on them. The IRIU Technical Committee discussed utilization thresholds, and was developing options which could allow flexibility for all sectors as TAC levels change. We urge the Council to re-activate the IRIU Technical Committee and task it with developing a threshold program which accomplishes the goal of component 10 without disadvantaging any sectors.

Thank you for the opportunity to comment on Amendment 80. We look forward to working with the Council to refine and implement this Amendment, in its entirety, as quickly as possible.

Sincerely,



Ed Luttrell
Executive Director

**Public Testimony Sign-Up Sheet
and
Other Handouts Received**

**PUBLIC TESTIMONY SIGN-UP SHEET FOR
AGENDA ITEM C-6 IRIU**

	NAME (PLEASE PRINT)	AFFILIATION	
1 X	Dave Wood	US Seafoods	6
2 X	GERRY McLEIGHAN + Joe Childers	PROWELL FISHERIES	6
3 X	Stacy THOMSON	DCC	6
4 X	Russell Pritchett	Independent Cod Trawlers Assn.	6
5 X	Buck LAUKITTS	self	3
6 X	Dennis Piche	Arctic Star	
7 X	dave fraser	Auction Cod Fishermen's Market/Assn	6
8 X	Mike Szymanski	PCA	3
9 X	ED LUTTRELL/LORI SWANSON	GIF	3
10 X	SUZAN ROBINSON	FISHICKMAN'S FINNERS	3
11 X	BILL ORN	IQUEQUE U.S.	3
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NOT
HERE

Passed

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.

CLARK
