

Public Testimony Sign-Up Sheet

Agenda Item C-3 Am 80 Rollovers / Post Delivery Transfers

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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.

MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver *Chris*
Executive Director
DATE: January 28, 2008
SUBJECT: Amendment 80 Post-Delivery Transfers and Rollovers

ESTIMATED TIME 2 HOURS

ACTION REQUIRED

Final action on Amendment 90: post-delivery transfers and rollovers

BACKGROUND

At its December 2007 meeting, the Council released for public review an analysis of an amendment to the Amendment 80 program that would (1) allow cooperatives to engage in post-delivery transfers to cover quota overages, and (2) authorize rollovers of Amendment 80 limited access allocations that are projected to be unharvested to the Amendment 80 cooperatives. The post-delivery transfer provision would be intended to reduce the potential for enforcement actions related to unintended overages, in the event a cooperative can acquire shares to cover an overage within a reasonable time. The rollovers of projected unharvested Amendment 80 limited access allocations to Amendment 80 cooperatives would be intended to reduce unharvested species allocations to ensure the TAC is utilized to the fullest extent practicable. At this meeting, the Council is scheduled to take final action on this issue. The public review draft is attached as Item C-3(a).

AGENDA C-3(a)
FEBRUARY 2008

PUBLIC REVIEW DRAFT

REGULATORY IMPACT REVIEW/ INITIAL REGULATORY FLEXIBILITY ANALYSIS

For a proposed Regulatory Amendment to
Implement **Amendment 90** to the Fishery Management Plan for
Bering Sea and Aleutian Islands Groundfish

A PROVISION
ALLOWING POST-DELIVERY TRANSFER OF SHARES AND
AMENDMENT 80 LIMITED ACCESS ROLLOVERS IN THE BERING SEA
AND ALEUTIAN ISLANDS AMENDMENT 80 PROGRAM

January 7, 2008

Prepared by staff of the
North Pacific Fishery Management Council

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1 Introduction

Amendment 80 established a share-based management program for non-AFA trawl catcher processors in the Bering Sea and Aleutian Islands. Under the program, cooperatives would receive allocations of six Bering Sea and Aleutian Islands (BSAI) groundfish species (Atka mackerel, Aleutian Islands (AI) Pacific ocean perch, flathead sole, Pacific cod¹, rock sole, and yellowfin sole). Since three separate management areas are established for both Atka mackerel and Pacific ocean perch, each cooperative will receive a total of ten allocations. In addition to these species allocations, five allocations of prohibited species catch (PSC) will be made under Amendment 80 (halibut, Zone 1 red king crab, *C. opilio*, Zone 1 *C. bairdi*, and Zone 2 *C. bairdi*). So, each cooperative is likely to receive fifteen separate allocations under the program. These annual allocations are binding (i.e., without provision to cover any overage or compensate for any underage). One of the two actions under consideration for this amendment package would allow Amendment 80 vessels to engage in post-delivery transfer of their respective shares to cover overages.

The second action under consideration by the Council is rollovers from the Amendment 80 limited access sector (i.e., Amendment 80 qualified vessels that do not join an Amendment 80 cooperative) to the Amendment 80 cooperatives. Amendment 80 allows vessels to join a cooperative or stay in the Amendment 80 limited access fishery. The Amendment 80 limited access fishery would continue to operate under a 'race for fish' within the combined allocation. In cases where vessels elect to stay in the Amendment 80 limited access fishery, there is the potential that some of these fisheries could close prematurely (e.g., due too exhausting their halibut PSC allocation). In those cases where the Amendment 80 limited access fishery is closed prior to harvesting all of their allocation, that Amendment 80 allocation has become stranded ITAC (i.e., cannot be harvested by any other trawl vessels operating in the BSAI area). Currently, the Amendment 80 program does not have a mechanism for unharvested allocation to roll from the Amendment 80 limited access sector to the Amendment 80 cooperatives. This action considers allowing rollovers of unharvested allocations from the Amendment 80 limited access fishery to the Amendment 80 cooperatives.

This document contains a Regulatory Impact Review (Section 2) and an Initial Regulatory Flexibility Analysis (Section 3) of a suite of alternatives to allow post-delivery transfers cooperative allocations and authorize rollovers from the Amendment 80 limited access sector to the Amendment 80 cooperatives. Section 4 contains a discussion of the Magnuson Stevens Act National Standards and a fishery impact statement.

Given the amendment package addresses allocative issues for the Amendment 80 sector, the document is expected to meet the requirements of CEQ regulations at 40 CFR Part 1500-1508 and NOAA Administrative Order NAO 216-6 for categorical exclusion from detailed environmental review. The proposed actions are not expected to affect the overall amount of Amendment 80 species taken in the BSAI by the Amendment 80 sector.

This document relies on, and includes by reference, information contained in the BSAI Amendment 80 Regulatory Impact Review/Environmental Assessment/Initial Regulatory Flexibility Analysis (NMFS/NPFMC, 2007).

¹ Amendment 80 conditioned the inclusion of Pacific cod in the cooperative program on receipt of an allocation of Pacific cod by the sector. Since the sector will receive that allocation under Amendment 85, (which will be implemented simultaneously with Amendment 80), Pacific cod will be included in the cooperative program from the outset.

2 Regulatory Impact Review

This chapter provides an economic analysis of the action, addressing the requirements of Presidential Executive Order 12866 (E.O. 12866), which requires a cost and benefit analysis of Federal regulatory actions.

The requirements of E.O. 12866 (58 FR 51735; October 4, 1993) are summarized in the following statement from the order:

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

E.O. 12866 further requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant”. A “significant regulatory action” is one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

2.1 Purpose and Need Statement

This amendment package addresses two separate proposed actions. The first action would allow post-delivery transfers for Amendment 80 cooperatives. The second action provides for rollovers of unharvested allocations in the Amendment 80 limited access sector to Amendment 80 cooperatives. Presented below is the Purpose and Need Statement associated with each action.

Post-Delivery Transfers

Participants in the Amendment 80 cooperative program are permitted to join cooperatives that receive annual allocations of cooperative quota, which provide exclusive privileges to catch specific amounts of Atka mackerel, Al Pacific ocean perch, flathead sole, Pacific cod, rock sole, and yellowfin sole and halibut, Zone 1 red king crab, C. opilio, Zone 1 C. bairdi, and Zone 2 C. bairdi prohibited species catch. Any harvest in excess of a cooperative’s quota allocation is a regulatory violation punishable by confiscation of catch and other penalties. Since all catch is counted against cooperative quota, the uncertainty of catch quantities and composition creates potential for overages. A provision allowing for post-delivery transfer of cooperative quota to cover overages could reduce the number of violations, allowing for more complete harvest of

allocations, and reduce enforcement costs without increasing the risk of overharvest of allocations.

Amendment 80 Limited Access Rollover

Amendment 80 allocates six target species and five PSC categories to vessels fishing in the non-AFA trawl catcher-processor sector. Vessels may choose to form cooperatives and combine their allocations, or they may choose to fish in an 'Amendment 80 limited access' fishery that continues to operate under a 'race for fish' within the combined allocations. Given that each allocation represents a cap, it is likely that the Amendment 80 limited access fishery will be closed on one species or PSC, while leaving significant amounts of the other species unharvested. Amendment 80 does not provide a mechanism for this unharvested fish to roll from the Amendment 80 limited access fishery to the Amendment 80 cooperatives for harvest. Without this provision, some amount of allocated species may be stranded in the Amendment 80 limited access sector. Creating a mechanism to roll this unharvested amount to the Amendment 80 cooperatives prior to the end of the year will facilitate more complete harvest and utilization of these allocations.

2.2 Description of Alternatives

Presented below is a description of the alternatives associated with post-delivery transfers and Amendment 80 limited access rollovers, respectively.

Post-Delivery Transfers

The Council has identified three alternatives for the post-delivery transfer action. Alternative 1 is the status quo, under which no post-delivery transfers are permitted. Any overage at the time of landing is considered a violation subject to a potential enforcement action. Under Alternative 2 (preliminary preferred), post-delivery transfers of shares are permitted and would be relatively unlimited (i.e., the number of post-delivery transfers a person may receive and their size are not limited). Post-delivery transfers are limited to being used to cover overages. All post-delivery transfers will be permitted at any time until the fishing season ends (December 31st). Under Alternative 3, moderate limits are placed on post-delivery transfers. As under Alternative 2, post-delivery transfers are allowed exclusively to cover overages. However, under Alternative 3, transfers are limited to five transfers of each species allocation. Any post-delivery transfer of retainable species is limited to 100 metric tons of catch quota on a species basis. Each transfer of halibut PSC is limited to 15,000 pounds. Transfers of red king crab PSC are limited to 3,000 animals, per transfer. Each transfer of *C. bairdi* PSC (each zone) is limited to 10,000 animals. Finally, transfers of *C. opilio* PSC are limited to 35,000 animals, per transfer. All post-delivery transfers will be permitted after a weekend date, for a period of 30 days. Below are the alternatives under consideration by the Council for post-delivery transfers in the Amendment 80 cooperative fisheries. Table 2-1 summarizes the differences between the various alternatives under consideration.

Table 2-1. Summary of Amendment 80 cooperative post-delivery transfer alternatives.

Element	Alternative 1 (status quo)	Alternative 2 (unlimited)	Alternative 3 (moderately limited)
Purpose	No post-delivery transfers permitted	Only for overages	Only for overages
Maximum amount of transfer allocated retainable species		none	100 metric tons
Maximum amount of transfer - halibut PSC			15,000 pounds
Maximum amount of transfer - red king crab PSC			3,000 animals
Maximum amount of transfer - <i>bairdi</i> PSC (either zone)			10,000 animals
Maximum amount of transfer - <i>opilio</i> PSC			35,000 animals
Maximum number of transfers		none	five per species
Time limit		Prior to the season end (Dec. 31st)	Within 30 days of the weekending date

Amendment 80 Limited Access Rollover

The Council has identified two alternatives for the rollover of unharvested Amendment 80 groundfish allocation from the Amendment 80 limited access sector to Amendment 80 cooperatives. Alternative 1 is the status quo, under which no rollover of unharvested Amendment 80 limited access allocation to the Amendment 80 cooperative would be permitted. Under Alternative 2 (preliminary preferred), a mechanism to allow allocations of target species and PSC that are projected to be unharvested in the Amendment 80 limited access fishery to roll over to the Amendment 80 cooperatives. This rollover is not intended as a means to cover overages within the Amendment 80 cooperative sector. Below are the alternatives under consideration by the Council for rollovers from the Amendment 80 limited access fishery to the Amendment 80 cooperatives.

2.3 Existing Conditions

This section describes the relevant existing conditions in the different Amendment 80 fisheries. The section begins with a brief description of the management of the fisheries under the program, followed by descriptions of the Amendment 80 sector in the Amendment 80 fisheries, including only information relevant to this action.

2.3.1 Management of the fisheries

The Amendment 80 program allocates a specific portion of six non-pollock groundfish species among trawl fishery sectors. These six BSAI species include AI Pacific ocean perch (POP), Atka mackerel, flathead sole, Pacific cod, rock sole, and yellowfin sole. These species are allocated between the Amendment 80 sector and all other BSAI trawl fishery participants also called the BSAI trawl limited access sector. These other trawl fishery participants include AFA catcher processors, AFA catcher vessels, and non-AFA catcher vessels. Amendment 80 vessels are non-AFA trawl catcher/processor vessels that, under statute and implementing regulations, may be used to fish in the Amendment 80 sector.

Each year, the Amendment 80 program will allocate an amount of Amendment 80 species available for harvest, called the initial total allowable catch (ITAC), and crab and halibut PSC to the Amendment 80 sector and the BSAI trawl limited access sector. Allocations made to one sector are not subject to harvest by participants in other fishery sectors, except for rollovers from the trawl limited access sector (i.e., non-Amendment 80 qualified trawl vessels) to the Amendment 80 cooperatives. If during the fishing year, NMFS determines that a reallocation of a portion of the ITAC of ICA of an Amendment 80 species assigned to the BSAI trawl limited access sector to Amendment 80 cooperatives is appropriate, then NMFS will issue a revised catch quota permit to reallocate that amount of Amendment 80 species to each Amendment 80 cooperative.

The ITAC represents the amount of TAC for each Amendment 80 species that is available for harvest, after allocations to the CDQ Program and the incidental catch allowance (ICA) have been subtracted from the TAC. The ICA is set aside for the incidental harvest of an Amendment 80 species, while vessels are targeting other groundfish species in non-trawl fisheries and in the BSAI trawl limited access sector fisheries. The Amendment 80 program will also allocate crab and halibut PSC to the Amendment 80 sector and to BSAI trawl limited access sectors to accommodate PSC use by these sectors, based on past PSC use.

The Amendment 80 program assigns quota share for Amendment 80 species based on catch by Amendment 80 vessels. Once the Amendment 80 quota share is assigned to the Amendment 80 vessel, it cannot be divided or transferred separately from the Amendment 80 vessel. If the Amendment 80 quota share is assigned to the License Limitation Program (LLP) license, originally issued for that Amendment 80 vessel, it cannot be transferred separately from that LLP license.

Persons that receive Amendment 80 quota share can join a cooperative to receive an exclusive harvest privilege for a portion of the ITAC. Amendment 80 quota share holders can form a cooperative with other Amendment 80 quota share holders on an annual basis. A cooperative will receive an amount of cooperative quota equivalent to the proportion of quota share held by all of the members of the cooperative combined, relative to the total of all holders quota share. Each Amendment 80 cooperative will also receive an annual cooperative quota with an exclusive limit on the amount of crab and halibut PSC the cooperative may use while harvesting in the BSAI. This crab and halibut PSC cooperative quota will be assigned to a cooperative proportional to the sum of Amendment 80 quota shares held by the members. These annual allocations are, at present, binding (i.e., without provision to cover any overage or compensate for any underage.)

The present program allows Amendment 80 cooperatives to receive a rollover of an additional amount of cooperative quota, if a portion of the Amendment 80 species or crab or halibut PSC allocated to the BSAI trawl limited access sector to go unharvested. The BSAI trawl limited access sector only includes the non-Amendment 80 trawl vessels (e.g., AFA trawl catcher vessels, AFA trawl catcher processors, and non-AFA trawl catcher vessels). In contrast, the rollover program proposed in this action includes Amendment 80 qualified vessels that do not join an Amendment 80 cooperative, which these vessels are not members of the BSAI trawl limited access sector. This rollover to Amendment 80 cooperatives is at the discretion of NMFS with consideration given to projected harvest rates in the BSAI trawl limited access sector and other criteria. Each Amendment 80 cooperative will receive an additional amount of cooperative quota that is based on the proportion of the Amendment 80 quota share assigned to that Amendment 80 cooperative, as compared with the amount of Amendment 80 quota share assigned to all other Amendment 80 cooperatives.

Amendment 80 quota share holders that do not join an Amendment 80 cooperative can participate in the Amendment 80 limited access fishery. The Amendment 80 program will assign to the Amendment 80 limited access fishery the amount of the Amendment 80 sector's allocation of Amendment 80 species ITAC and crab and halibut PSC that remain after allocation to all of the Amendment 80 cooperatives. Participants fishing in the Amendment 80 limited access fishery will continue to compete with each other for a share of the common pool. NMFS would manage openings and closing of the Amendment 80 limited access fishery, much as it currently manages the existing fisheries. NMFS would open directed fishing for an Amendment 80 species only if there were sufficient ITAC assigned to the Amendment 80 limited access fishery. In addition, halibut PSC and crab PSC assigned to the Amendment 80 limited access fishery would continue to be apportioned among target fishery categories, and halibut PSC would continue to be based on seasonal apportionments as established in §679.21. Assuming target groundfish TAC is unharvested in the limited access fishery, when the Amendment 80 limited access fishery fully utilize its halibut PSC apportioned to a target fishery category, that target fishery would be closed to fishing for the Amendment 80 limited access group. When, again assuming TAC remains, all of the halibut PSC apportioned to the Amendment 80 limited access group has been fully utilized, the group will be prohibited from trawling for the remainder of the year in the BSAI. When the Amendment 80 limited access fishery fully utilizes its crab PSC, the group would be prohibited from trawling in the crab savings area applicable to the exhausted crab PSC, but the group may continue to trawl in other BSAI areas, so long as open access TAC remains available.

2.3.2 Description of BSAI Amendment 80 Fisheries

In the BSAI, the rock sole, flathead sole, yellowfin sole, Atka mackerel, and AI POP fisheries are almost exclusively prosecuted by the non-AFA trawl catcher processor sector. Vessels participating in these fisheries generally fish for rock sole during the roe season until the first seasonal halibut bycatch cap is reached. After the rock sole roe fishery closes, these vessels shifted to several different targets; notably Atka mackerel, yellowfin sole, and Pacific cod. The directed Atka mackerel fishery is a bottom trawl fishery that occurs on the continental shelf in the Eastern Bering Sea (EBS) and in the passes between the islands of the central and western Aleutians. Table 2-2 and Table 2-3 provide harvest data for the Amendment 80 vessels in the BSAI flathead sole, rock sole, Pacific cod, yellowfin sole, Atka mackerel, and AI POP fisheries from 2003 through 2006.

Allocation percentage for the Amendment 80 sector is 100 percent of rock sole and flathead sole. For yellowfin sole, the allocation percent is variable dependent upon the ITAC level. The yellowfin sole allocation percentages associated with ITAC level are presented below:

<u>ITAC</u>	<u>Allocation</u>
≤ 87,500	93%
> 87,500 ≤ 95,000	87.5%
> 95,000 ≤ 102,500	82%
> 102,500 ≤ 110,000	76.5%
> 110,000 ≤ 117,500	71%
> 117,500 ≤ 125,000	65.5%
> 125,000	60%

For Atka mackerel and AI POP, the allocation will phase in the final allocation percentages over a period of years. For Atka mackerel, that period would be four years, and for AI POP, it would be two years. The allocation percentages for Atka mackerel would start in 2008 at 98 percent for areas 541/BS and area 542

and then be reduced 2 percent every year for four years, culminating at a 90 percent allocation in 2012. For area 543, the Amendment 80 sector would be allocated 100 percent of the Atka mackerel starting in 2008. For AI POP in areas 541 and 542, the allocation would start at 95 percent in 2008 and decrease to 90 percent in 2009. For area 543, the allocation to the sector would be 98 percent starting in 2008. Table 2-4 provides the annual apportionment of Amendment 80 species ITAC between the Amendment 80 sector and BSAI trawl limited access sector (except yellowfin sole).

The most recent descriptions of the BSAI groundfish fisheries are located in the *Stock Assessment and Fishery Evaluation Report for the Groundfish Resources of the Bering Sea/Aleutian Islands Regions* (NPFMC 2006). Please see this document for further details on the groundfish fisheries in the BSAI.

Table 2-2. Catch history for the Amendment 80 vessels in the BSAI flathead sole, Pacific cod, rock sole, and yellowfin sole fisheries from 2003 to 2006.

Year	Species	Catch (in metric tons)	Number of Vessels
2003	Flathead sole	11,518	22
	Pacific cod	29,727	22
	Rock sole	32,286	22
	Yellowfin sole	68,819	22
2004	Flathead sole	14,195	23
	Pacific cod	37,983	23
	Rock sole	43,910	23
	Yellowfin sole	63,292	23
2005	Flathead sole	12,143	22
	Pacific cod	30,552	22
	Rock sole	33,187	22
	Yellowfin sole	79,273	22
2006	Flathead sole	13,705	22
	Pacific cod	29,351	22
	Rock sole	31,015	22
	Yellowfin sole	78,285	22

Table 2-3. Catch history for the Amendment 80 vessels in the BSAI Atka mackerel and AI POP fisheries from 2003 to 2006.

Year	Species	Subarea	Catch (in metric tons)	Number of Vessels
2003	Atka mackerel	541	5,600	13
		542	25,391	11
		543	17,880	8
	AI POP	541	3,724	12
		542	2,961	10
		543	6,028	8

Year	Species	Subarea	Catch (in metric tons)	Number of Vessels
2004	Atka mackerel	541	2,850	13
		542	27,909	11
		543	18,075	9
	AI POP	541	2,335	13
		542	2,965	10
		543	5,149	9
2005	Atka mackerel	541	3,340	12
		542	32,611	10
		543	18,307	10
	AI POP	541	2,210	12
		542	2,065	10
		543	4,411	10
2006	Atka mackerel	541	3,738	13
		542	37,027	11
		543	13,540	10
	AI POP	541	2,810	14
		542	3,047	12
		543	5,148	10

Table 2-4. Annual apportionment of Amendment 80 species ITAC between the Amendment 80 and BSAI trawl limited access sector (except yellowfin sole)

Fishery	Management Area	Year	Percentage of ITAC allocated to the Amendment 80 sector	Percentage of ITAC allocated to the BSAI trawl limited access sector
Atka mackerel	543	All years	100	0
		542	2008	98
	2009		96	4
	2010		94	6
	2011		92	8
	2012 and all future years		90	10
	541/EBS		2008	98
		2009	96	4
		2010	94	6
		2011	92	8
		2012 and all future years	90	10
AI POP	543	All years	98	2
		542	2008	95
	2009 and all future years		90	10
	541		2008	95
		2009 and all future years	90	10
Pacific cod	BSAI	All years	13.4	N/A
Rock sole	BSAI	All years	100	0
Flathead sole	BSAI	All years	100	0

2.3.3 Prohibited Species

Allocated to the Amendment 80 sector are halibut, red king crab, *C. opilio*, Zone 1 *C. bairdi*, and Zone 2 *C. bairdi* PSC. Halibut PSC and crab PSC limits would be allocated to the Amendment 80 sector for use while targeting their allocations of groundfish and any other non-allocated BSAI groundfish. Halibut PSC² apportionment to the Amendment 80 sector in 2008 will be 2,525 mt. The following years through 2012, the apportionment of halibut PSC to the Amendment 80 sector will be reduced by 50 mt each year. In 2012 and subsequent years, the allocation of halibut PSC to the Amendment 80 sector would remain at 2,325 mt, unless changed by the Council in the future. Like halibut PSC, the crab PSC limited to the Amendment 80 sector is reduced to 80 percent of the initial allocation. This reduction would be phased in gradually at 5 percent per year starting in 2009 and ending in 2012. Crab PSC allowance would be allocated to the Amendment 80 sector for use while targeting their allocation of groundfish and any other non-allocated BSAI groundfish. PSC allowance allocated to the Amendment 80 sector will be further divided between the cooperatives and the non-cooperative pool. Table 2-5 provides PSC from 2003 to 2006 by the Amendment 80 sector for halibut, red king crab, *C. opilio*, Zone 1 *C. bairdi*, and Zone 2 *C. bairdi*. Note that PSC is prohibited from being retained, so all PSC is considered regulatory discards.

For further details on the management of BSAI PSC, see Chapter 3 of the Final Programmatic Supplemental Environmental Impact Statement (NMFS 2004b).

Table 2-5. Crab PSC and halibut PSC by Amendment 80 vessels

Year	Halibut		<i>C. opilio</i>		Red king crab		<i>C. bairdi</i> Zone 1		<i>C. bairdi</i> Zone 2	
	Mortality (metric tons)	Number of vessels	Mortality (number of animals)	Number of vessels	Mortality (number of animals)	Number of vessels	Mortality (number of animals)	Number of vessels	Mortality (number of animals)	Number of vessels
2003	2,802	22	667,746	22	91,796	22	309,948	20	578,358	22
2004	2,773	23	1,777,850	23	83,684	23	204,372	23	368,194	23
2005	2,733	22	3,171,816	22	111,773	22	202,824	21	432,408	22
2006	2,597	22	880,106	22	101,645	22	213,847	22	515,324	22

2.3.4 Description of the Non-AFA trawl Catcher Processor Sector

The Amendment 80 sector is the most diverse of the processing sectors in the BSAI, and the only sector that consistently targets a significant amount of flatfish. However, the flatfish market is characterized as having significant constraints. The rock sole market, for example, prefers females with roe over smaller males and non-roe bearing females. Similarly, large yellowfin sole and flathead sole are preferred over smaller fish of the same species. There are few economic incentives to keep small fish because they fill limited hold space with product that is largely unprofitable. Unlike larger catcher processors and shore-plants, the Amendment 80 vessels are generally constrained from processing fish-meal. Because of size constraints, the vessels that comprise the Amendment 80 sector have fewer options for processing products (i.e., they are, by-in-large, limited to heading and gutting, or freezing whole fish) and, therefore, are typically more likely to discard small, less valuable fish.

² Halibut PSC is expressed as units of “mortality”, which is set as a fraction of halibut bycatch, and varies by gear type and fishery. In the Amendment 80 EA/RIR/IRFA dated July 20, 2007, the halibut bycatch rate from 2002-2004 was 0.0015 for Atka mackerel, 0.0121 for flathead sole, 0.0174 for rock sole, 0.0069 for rockfish, 0.0074 for yellowfin sole, and 0.0142 for Pacific cod.

The Amendment 80 fleet consists of a relatively wide variety of vessels that range from 103 ft to 295 ft in length. As would be expected, the smaller vessels are relatively less productive than the larger vessels. From 1995-2005, the smaller vessels generated approximately 13 percent of catch. However, the smaller vessels accounted for roughly 19 percent of the total discards in the sector. Vessels less than 125 ft discarded 46 percent of their catch over the eleven year period, while vessels over 125 ft discarded 30 percent. Industry sources indicate that the smaller vessels are unable to retain as many fish as larger vessels, because of limitations in hold size and processing space.

The following information on employment for the Amendment 80 sector is from the *Alaska Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement* that was published on June 2004. The average crew size for an Amendment 80 vessel is about 34 persons, which is about one-third of the average employment on a surimi catcher processor, and less than half of the average crew of a fillet catcher processor. A typical crew might include a captain, a mate, two engineers (one each for the vessel and processing equipment), a cook/housekeeper, two to three crew members dedicated to the deck, a processing foreman and assistant, and about 25 processing workers. On some vessels two or three crew members may split their time between processing and deck work. Any variation in crew size usually is the result of a change in the number of processing workers employed. An annual average of 1,022 FTE positions were generated by this vessel class during the 1992-2001 period, and estimated yearly payments to labor average \$55 million.

2.3.5 Value of BSAI Groundfish Fisheries

Relative to first wholesale value, the Amendment 80 sector is more diversified across fisheries than other sectors. Two primary fisheries have historically contributed relatively equal shares of the first wholesale revenue for the Amendment 80 fleet. Of the Amendment 80 species, yellowfin sole at \$73 million, and Pacific cod at \$57 million, were two of the largest contributors to sector's gross revenue in 2006 (Table 2-6). Other fisheries which have historically contributed a significant share of the total first wholesale value for the head and gut fleet are rock sole and Atka mackerel.

Table 2-6 . Total production and first wholesale revenue (\$) by BSAI Amendment 80 target fishery for the Amendment 80 sector, 2003-2006

year	Species	Total Production (mt)	First Wholesale Revenue (\$)	Vessel Count
2003	Pacific cod	15,481	35,757,540	22
	Flathead sole	6,143	8,409,281	22
	Rock sole	10,077	16,857,624	22
	Yellowfin sole	39,443	38,138,876	21
	AI POP	5,889	7,342,403	14
	Atka mackerel	27,846	23,788,679	17
2004	Pacific cod	20,175	46,337,169	23
	Flathead sole	7,478	11,932,480	23
	Rock sole	15,538	28,975,138	23
	Yellowfin sole	38,730	38,747,700	22
	AI POP	4,485	6,954,906	16
	Atka mackerel	29,747	28,899,959	22

year	Species	Total Production (mt)	First Wholesale Revenue (\$)	Vessel Count
2005	Pacific cod	15,927	43,801,491	22
	Flathead sole	7,146	13,679,454	22
	Rock sole	12,977	27,173,369	22
	Yellowfin sole	52,221	69,132,577	22
	AI POP	4,071	9,940,121	21
	Atka mackerel	33,626	36,188,872	21
2006	Pacific cod	15,571	56,602,382	22
	Flathead sole	6,897	15,798,814	22
	Rock sole	13,890	30,584,579	22
	Yellowfin sole	50,938	72,685,321	22
	AI POP	5,163	14,586,815	21
	Atka mackerel	34,959	33,227,634	22

Source: NMFS

2.3.5.1 BSAI Groundfish Products and Secondary Processing Activity

This section describes primary and secondary products produced in the BSAI groundfish fisheries. The discussion provides an aggregated perspective and does not examine production on a sector-by-sector basis. This section is based mainly on information provided in the document, *Alaska Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement* (NMFS 2004b).

Primary Products

Groundfish harvested off Alaska are made into a wide range of primary, secondary, and ancillary products. In this analysis, primary product is defined as the product form after the initial stage of processing.¹ By this definition all products produced directly from raw fish are considered primary products. These products may be table-ready (i.e., final product), but more often they are “reprocessed” before they are sent to retail markets or foodservice establishments. Secondary processing is defined as any processing that occurs after the primary products have been transferred to a different facility. Secondary processing includes, for example, the production of kamaboko from surimi and the production of breaded fish sticks from fillets.

Table 2-7 shows the various primary products by weight, made from three of the BSAI groundfish categories of interest in the subject action, during the 1998-2003. A large percentage of flatfish are frozen whole, while a small percentage, primarily yellowfin sole, are made into kiriti, a steak-like product. Atka mackerel is primarily produced as a headed and gutted or frozen whole product. Most flatfish, by volume, are also headed and gutted, in some instances with the roe left intact, when present. It should be noted that comparing products by weight can be misleading. For example, fillets are typically skinless and boneless product, so a 5-lb yellowfin sole might yield 1.25 lbs of fillets. The price per pound for fillets is higher than for head-and-gut product, primarily because fillets require less secondary processing (i.e., engender more “value-added” by the initial processor).

¹ This definition of primary processing differs from definitions used by processors when they report production to NOAA Fisheries in Weekly Processor Reports. In weekly reports processors differentiate primary products, such as fillets or surimi, from ancillary products, such as roe and fish meal.

Table 2-7. Volume (1,000 mt) and value (millions of dollars) of selected BSAI groundfish products, by species and product type, 2003–2006

Product	2003		2004		2005		2006	
	Quantity (1,000 mt)	Value (millions of \$)	Quantity (1,000 mt)	Value (millions of \$)	Quantity (1,000 mt)	Value (millions of \$)	Quantity (1,000 mt)	Value (millions of \$)
Pacific cod								
Whole fish	4	5	2	3	2	3	1	2
Head & gut	72	178	91	216	82	238	72	255
Salted/split	-	-	-	-	-	-	1	4
Fillets	17	80	9	44	9	55	11	76
Other products	16	24	11	20	12	26	13	31
All products	110	287	113	283	105	321	98	368
Flatfish								
Whole fish	14	15	14	14	24	31	26	34
Head & gut	55	65	56	79	67	112	73	124
Kirimi	4	4	2	3	2	2	-	-
Fillets	1	4	1	3	0	2	1	4
Other products	1	1	1	2	1	2	2	2
All products	74	90	75	100	94	148	101	163
Atka mackerel								
Whole fish	7	4	5	3	1	1	3	2
Head & gut	21	20	25	26	33	36	33	31
All products	28	24	30	29	34	37	35	34

Source: NMFS

Overview of Secondary Processing Activities

During the period covered in this analysis (2003-2006) there were no major secondary processors of these species operating in Alaska. Groundfish harvested in Alaska is most often exported as headed and gutted, although some leaves as whole frozen fish, for example. How much remain in the U.S. and how much is shipped abroad for reprocessing before being re-imported in to domestic markets, or sole in third country markets, varies from year to year.

2.3.5.2 Product Flows and Markets for BSAI Flatfish and Rockfish Species

The Amendment 80 sector currently produces, almost exclusively, high quality whole and head and gut products. Catch is typically processed quickly after it is brought on board, maintaining relatively high quality across the fleet. A large majority of the primary processed output of this fleet is shipped to Asia for reprocessing, while a small portion of the output remains in the U.S., going directly to domestic markets. Historically, much of the production that is bound for Asia consumption has been shipped to Japan and Korea. In recent years, however, China has played a more prominent role in the reprocessing of groundfish from the Amendment 80 sector. In particular, a large portion of the flatfish, Atka mackerel, and AI POP harvested from the BSAI is shipped to China, where it is reprocessed into finished products and then exported to final consumer markets around the world. In addition, some of the various groundfish species are reprocessed in Thailand and Vietnam. After reprocessing, production from the fisheries reaches a variety of markets, including the U.S., Europe, Japan, and other Asian countries.

In addition to these generalities, some greater definition of markets for specific species and products is discernable. While the general pattern of production for the fleet is similar across all species and products, a few specific markets exist for particular products of the sector. In flatfish markets, the size (grade) of the fish is extremely important to the product flow. In general, there are four or five grades of flatfish, with each grade having a specific market. Smaller grades (S and M) are shipped directly to Japan where the product is used in lunch boxes. Larger grades (L, 2L, & 3L) are typically first shipped to China for reprocessing before being shipped to the U.S. and European markets. A typical Amendment 80 vessel will often processed up to 10 species per trip (including incidental catch species), with four or five grades per species.

Other distinguishable markets have developed for rock sole with roe, Atka mackerel, and AI POP. The major market for rock sole with roe is Japan; most rock sole with roe is shipped frozen whole directly to Japan, where it is reprocessed. Most of this production remains in the Japanese consumer market. Rock sole without roe generally follows the same path as other flatfish. Atka mackerel is more popular in Japan and Korea than elsewhere; most of the fleet's production is exported to Japan or Korea for secondary processing and consumption. Nearly all of the AI POP harvested in the BSAI is exported to China, where it is reprocessed and then shipped to Japan for final consumption.

While these production trends can be discerned, on the whole, it is difficult to assess the distribution of the sector's production among consumer markets, as much of the reprocessed fish enters the world market. As a consequence, effects of production of the fleet on consumer markets are far reaching and difficult to estimate.

2.3.6 Management and enforcement

For those vessels that are members of an Amendment 80 cooperative, any Amendment 80 species caught by these vessels counts against the allocation of the cooperative. For Amendment 80 vessels that choose to fish in the Amendment 80 limited access fishery, their catch of Amendment 80 species counts against the allocation to the Amendment 80 limited access fishery. Once final weights have been determined, quota of the cooperative is assigned to the landing. Catch of all species is estimated using observer data. Any overage is noted and referred to NOAA Fisheries Office for Law Enforcement.³ Enforcement will then pursue the participant for any penalty.

Enforcement actions are typically a matter of relying on catch accounting records that show the violation. Violations are often apparent and not disputed since reliable records of offloads are generated at the time of landings. In most instances, minor overages will be subject to lesser penalties (typically forfeiture of the overage), with larger or repeat violations subject to greater penalties. Penalties, however, are fully within the discretion of NOAA General Counsel.

The Regional Administrator can reallocate a portion of the ITAC, or incidental catch allowance (ICA), of Amendment 80 species assigned to the BSAI trawl limited access sector that is projected to be unharvested to the Amendment 80 cooperatives. The Regional Administrator can also reallocate a

³ Processors are required by regulations to report any amounts of groundfish harvests or deliveries which they possess, which were taken or retained in violations of fisheries regulations. In the case of CPs, this amounts to "self-reporting" of violations. With 100 percent onboard observer coverage for all vessels > 125' LOA, and 30 percent coverage for vessels >60' but <125' LOA, there is believed to be a strong incentive to comply with these delivery reporting requirements.

portion of halibut and crab PSC assigned to the BSAI trawl limited access sector that is projected to be utilized to the Amendment 80 cooperatives.

2.4 Analysis of alternatives

2.4.1 Post-Delivery Transfer

In a share-based fishery, participants' catch is limited by annual quota holdings. During the fishery, participants estimate catch because they are attempting to limit catch to their available quota. Even if discards are permitted (such as the Amendment 80 fisheries), overages occur at times due to errors in catch estimates. If discards are not permitted, as is the case in the rockfish program, limiting catch to available quota is even more complicated. In a fishery that is multispecies (such as Amendment 80), additional dimensions are added. Catch must be coordinated across several species. Any limiting allocation will prevent the harvest of allocations of other species (Amendment 80 cooperatives).

In many share-based programs, some flexibility is built into the program structure to accommodate imprecision and uncertainty in catch. In the halibut and sablefish program, up to 10 percent of a person's annual IFQ allocation that is unharvested will be reissued in the following year. Conversely, overharvest of up to 10 percent of a person's remaining allocation on the last trip is permitted, with a deduction from the following year's allocation. These carryover provisions limit the need for precisely estimating or catching IFQ. No similar provisions exist for either underages or overages for Amendment 80 cooperatives.

Allowing post-delivery transfers among the Amendment 80 cooperatives could mitigate potential overages, reducing enforcement costs and providing for more precise TAC management. Yet, some caution is warranted in the development of a system of post-delivery transfers. Too liberal reliance on post-delivery transfers could exacerbate overages. In addition, the system of post-delivery transfers could complicate fishery management; and oversight of share management; and enforcement of sanctions against overages that are not covered by a transfer. For example, short windows to cover overages could complicate enforcement, if timing of transactions is disputed.

Post-delivery transfer provisions have been used to mitigate potential overages in several share-based management programs outside of the U.S. In Nova Scotia, post-delivery transfers are generally permitted for up to 45 days after a landing has occurred. At the season's end, the transfer period is extended to 2 months.⁴ Participants in British Columbia are permitted to cover overages with a post-delivery transfer for 30 days after the landing. In Iceland, fishermen are limited to 3 days after notice to cover an overage. Real-time monitoring, online catch accounting, and a system of electronic transfers make this brief period for post-delivery transfers possible. In New Zealand, post delivery transfers are permitted until the 15th day of the month following the landing. In addition, New Zealand's program includes a system of "deemed values," or scheduled charges for catch that is not covered by quota. These charges are refunded in the event a person receives a post-delivery transfer to cover the overage within 15 days of the season closing (see Sanchirico, et al., 2006). Each of these programs limits post-delivery transfers temporally, but does not limit the magnitude of transfers.

⁴ Nova Scotia uses share-based management programs for different gear types. Transfers across gear types are permitted only after the season closing. The rationale for permitting these cross-gear transfers is to prevent potential TAC overruns and to reduce the incentive to discard.

Any such program obviously carries with it benefits and costs. For example, allowing post-delivery transfers provides some economic and operational incentive to fish with less care and precision. Since, by definition, it must be “presumed” that post-delivery shares will be obtained (i.e., obtainable), overages become less a moderating factor in fish behaviour. Unlike a program that mandates prior acquisition of transferred shares, in which instance availability of sufficient quota is assured, post-delivery transfers carry an inherent potential that excess catch amounts may be fully offset through reapportioning of shares (i.e., the total sector allocation may not be fully offset through reapportioning of shares (i.e., the total sector allocation may be exceeded). Even absent this worst-case outcome, post-delivery transfer of quota will impose transactions costs. Because small private markets are not frictionless, there will be numerous inefficiencies encountered, information acquisition costs, and gains and losses attributable to asymmetric information among market participants. With so few participants with the potential to engage in the market, the expected outcome will certainly depart from the pattern predicted in a classic competitive market. How different, and in what ways, this market will depart from the competitive model is an empirical question, but limitations (both economic and legal) on sharing proprietary information among independent cooperatives and companies could result in transactions costs that move the market well away from efficiency.

2.4.1.1 Effects on Amendment 80 Cooperative Participants

Alternative 1 – No post-delivery transfers (status quo)

Under the status quo alternative, all overages are subject to an enforcement action and penalty. No provision for post-delivery transfers to cover an overage is made. Enforcement actions and penalties are persuade at the discretion of agency enforcement officers and attorneys.

Since implementation of the Amendment 80 cooperative provisions will start with the 2008 fishing year, it is difficult to predict the extent to which participants will commit violations by overharvest of allocations. As each cooperative approaches the end of its allocation, it is likely that some risk of overage will arise unless a decision is made to leave a small amount of unharvested allocation, as a buffer. End of year consolidation will be driven, in part, by the requirement that a vessel not begin a fishing trip without quota of all species. Once a cooperative has fully harvested its allocation of a species, the only means of gaining value from its remaining shares of other species will be through transfers. The inter-cooperative agreement should contribute to coordination of end of the season consolidation. Allocations will likely be consolidated in one or two cooperatives with one or two vessels in those cooperatives making ‘sweep up’ trips to complete the season’s harvests. The extent to which this consolidation helps participants avoid overages is not known. If a participant chooses to operate a vessel in the fishery, it is likely that it will prioritize harvest of its own allocation. Whether a participant avoids an overage could depend on foresight to recognize the risk of overharvest and possibly accept lower revenues from a transfer instead of harvesting its own allocation.

Although consolidation of allocations in one or two cooperatives can be used to avoid overages, it is likely that a few overages could occur prior to the end of the season. Since each cooperative is limited by 15 species allocations, it is possible that unexpected catches could put a cooperative over its allocation.

Alternative 2 – Unlimited post-delivery transfers (preliminary preferred)

Alternative 2 would establish a system of almost unlimited post-delivery transfers to cover overages. Although the alternative allows liberal post-delivery transfers, it is possible that few transfers would be made. However, given that implementation will start during the 2008 fishing year, it is difficult to predict

the extent to which participants will require post-delivery transfers to cover overages. The provision, however, could be very important to participants facing an enforcement action or penalty for an overage, who are able to acquire shares to cover that overage.

Despite the absence of limits, the provision is likely to be used in a limited way. Participants are only likely to rely on the provision for unintended small overages. In most cases, these transfers could be to some extent prearranged through the inter-cooperative. The number of overages at the time of landing could be slightly higher than under the status quo, if participants gain confidence that they will be able to cover the overage with a prearranged transfer. Overages not covered with a transfer and subject to penalty should be fewer than under the status quo, since the provision will allow participants to address some overharvest with transfers.

Prices for post-delivery transfers will likely be negotiated to be greater than prevailing lease rates, but less than the expected penalty on the overage. Small overages are typically subject to minor penalties and forfeiture of the overage. One would expect that the price of quota to cover an overage would be relatively close to the estimated cost of the penalty and forfeiture for post-delivery transfers of small amounts of quota. Transfers to cover relatively large overages could have lease rates substantially higher than the estimated cost of the penalty and forfeiture of the overage. Persons responsible for unintended, large overages are likely to be in a relatively weak negotiating position when faced with a substantial penalty for the overage.

It is possible that some large overages will be covered by transfers at a price similar to the prevailing lease rates, if those transfers are to cover an intentional overage with pre-negotiated terms of transfer. These arrangements are likely to occur as a part of inseason coordination of the harvest of allocations among vessels. For example, a person may elect not to send a vessel back out for a trip to harvest quota that is a small portion of the vessel's capacity, if another vessel that is already on the grounds has space to handle that catch on its current trip. These transfers might not occur under the current system because of the time it takes to submit and process a transfer in writing. In the long run, the electronic, real time system of transfers currently under development should minimize the number of these pre-negotiated transfers to cover large intended overages. Instead, transfers will be processed prior to landing (and in most cases prior to harvesting the fish to be covered by the transfer). Transfers to cover overages will only apply to situations where a person begins a trip with less quota, than is used on the trip. In any case, it remains the responsibility of the cooperatives to manage their allocations in order to prevent overages (not covered by post delivery transfers). It should be noted that beginning a fishing trip without quota is a violation. An alternative could be to require a specific amount of quota prior to beginning a fishing trip. While this provision might have appeal as a potential means to prevent overages, it is problematic for a few reasons. First, any minimum amount of quota is likely to be somewhat arbitrary, as defining an amount of quota that is reasonably intended to prevent an overage from occurring will depend on the circumstances (i.e., targeting on the trip, seasonal bycatch rates, etc.). In addition, enforcement of a minimum quota requirement will be complicated by the need to track allocations and vessel activities in the fisheries. Given the limited potential benefit and the enforcement complexity, whether a minimum quota requirement is appropriate is questionable.

Despite the relative lack of constraints on transfers under this alternative, the likelihood of a substantial number of uncovered, large overages is relatively small. Penalties for violations are likely to increase with the magnitude of overages. Persons are unlikely to risk large overages without a known source of shares to cover that overage to avoid a potential enforcement action and penalty.

Although post-delivery transfers have the potential to benefit participants with overages, the relatively small number of cooperatives that could form will limit its utility. Participants are more likely to benefit from the formation of a single cooperative that could coordinate the harvest of all shares. Using this arrangement, no shares would be available to cover an overage, since they would all be held by a single cooperative. The single cooperative could more efficiently administer the distribution of catch among vessels in the sector to avoid an overage.

Overall, Amendment 80 participants are likely to realize minor production efficiency gains under this alternative from allowing post-delivery transfers to cover overages. It is unlikely that participants will have excessive overages through unreasonable reliance on the post-delivery transfers. Some cooperative members, however, will be more likely to attempt to fully harvest their allocations, if they know that a post-delivery transfer could be used to cover a minor overage. Cooperative members are likely to benefit from a reduction in the number of overage violations, which should be reduced through post-delivery transfers.

Alternative 3 – Moderately limited post-delivery transfers

Alternative 3 is similar to Alternative 2, but imposes a few additional restrictions on post-delivery transfers. The effects of the two alternatives are largely the same, except for differences arising from these additional restrictions. Under Alternative 3, each post-delivery transfer of allocated Amendment 80 species is limited to 100 metric tons for each species. In addition, each post-delivery transfer of PSC is strictly limited: halibut PSC limit is 15,000 pounds, red king crab PSC limited is 3,000 animals, *C. bairdi* PSC limit is 10,000 animals for each zone, and *C. opilio* PSC limit is 35,000 animals. These amounts are likely sufficient to cover an unintentional overage arising from a single tow. In some instances, it is possible (although unlikely) that an overage arising from a single tow could exceed one of these amounts. The limits, however, could reduce the effectiveness of the provision in addressing harvesting efficiencies that could be realized through inseason transfers used to coordinate harvesting activity that cannot be completed in a timely manner.

The thresholds could be effective in deterring unreasonable reliance on the post-delivery transfers as a means of covering an excessive overage. Yet, the possibility of unreasonable reliance on a speculative post-delivery transfer to cover an excessive overage is limited. Participants are likely to realize that the cost of covering an overage will rise with the magnitude of the overage. Sellers of quota, who realize that the potential penalty facing a person with a substantial overage will be punitive, are likely to exploit that position offering shares for a higher price. In addition, covering a large overage is more likely to be complicated by the need to involve the selling cooperative's associated processor, increasing the price for the transfer and transaction costs.

This alternative would also limit each cooperative to five post-delivery transfers per each species allocation. This limit would allow the cooperative to make up to five independent overages for an allocation. Although it is possible that a cooperative could have multiple overages of an allocation, it is unlikely that the limit of five post-delivery transfers would be constraining. Since only three cooperatives could form under the program, the potential for repeated overages of an allocation by a cooperative is somewhat limited. In addition, a cooperative facing the limit is likely to contract for transfers of large enough in magnitude prior to fishing to avoid exceeding the limit of five post-delivery transfers for the allocation.

Under this alternative, post-delivery transfers would need to be completed within 30 days after the

weekending date of the landing with the overage. The limit on post-delivery transfers is unlikely to constrain effectiveness of the provision.

2.4.1.2 Effects on management and enforcement

Alternative 1 – No post-delivery transfers (status quo)

Under the status quo, post-delivery transfers are not permitted. At the time of landing, offloads are weighed, assigned to quota and credited against catch by RAM, and any overage is determined and reported to NOAA Fisheries Office of Law Enforcement. Overage prosecution is based on catch accounting records, so specific catch is not confiscated. Overage catches are processed with all other catch to prevent spoilage. If the overage is forfeited, as is typical practice, the Amendment 80 vessel purchases the overage from NOAA Fisheries Office of Law Enforcement at the prevailing price. Additional penalties may be pursued based on the size of an overage or frequency of overages by the cooperative. Overall, few overages are likely to occur, requiring few enforcement actions (see discussion in Alternative 3 above for more details on this issue).

Alternative 2 - Unlimited post-delivery transfers and Alternative 3 – Moderately limited post-delivery transfers

Under the two alternatives allowing post-delivery transfers, cooperatives are permitted to cover overages with few limitations. The effects of the two alternatives on management and enforcement are very similar, although with slight differences arising under the different options. To streamline the analysis, the discussion of these two alternatives is consolidated.

Since post-delivery transfers are permitted only to cover overages, the increase in administrative and record keeping requirements to address post-delivery transfers is somewhat limited. In general, RAM will oversee share accounts and share usage. At the time of landing (weekending date), RAM will maintain a record of any overage, but instead of reporting overages to NOAA Fisheries Office of Law Enforcement immediately, RAM would defer reporting until the time permitted to cover the overage with a post-delivery transfer has lapsed. Under the option that limits the time to cover overages from the date of landing (i.e., 30 days from the weekending date), overages would be reported on a rolling basis as overages become final (or the time to cover the overage lapses). Basing the limitation on the time from the landing could contribute to disputes. To administer this provision, a catcher processor landing would be considered to have occurred on the weekending date on which the weekly processing report is filed. It is possible that using a time limit based on a landing could contribute to disputes. For example, a cooperative may contest the time limit on notice grounds, if they were not aware of the overage at the time of landing. Even if these disputes are unsuccessful, they could be considered mitigating circumstances when establishing penalties for overages.

Overall, allowing post-delivery transfers should reduce the number of enforcement actions prosecuting overages, since cooperative will have the opportunity to acquire shares to correct the pending violation.

2.4.2 Rollovers

2.4.2.1 Effects on Amendment 80 Participants

Alternative 1 – Status Quo (no Amendment 80 limited access rollovers)

Under the status quo alternative, no reallocation of Amendment 80 species, halibut PSC, or crab PSC from the Amendment 80 limited access fishery to Amendment 80 cooperatives would be permitted. Any limited access Amendment 80 allocation that is unharvested would remain unharvested in the Amendment 80 limited access fishery allocation and cannot be harvested by Amendment 80 cooperatives vessels, or BSAI trawl limited access sector (i.e., non-Amendment 80 qualified trawl vessels to include AFA trawl catcher processors, AFA trawl catcher vessels, and non-AFA trawl catcher vessels).

It is difficult to predict the amount of Amendment 80 species that would remain unharvested, since implementation of the Amendment 80 program will not start until 2008. However, it is possible that some amount of ITAC allocated to the Amendment 80 limited access fishery could remain unharvested. This may not be uniquely attributable to concerns about overages, but may reflect mismanagement of PSC or groundfish allocation by sector participants, market demand, price, fish condition and quality, etc. NMFS management of the Amendment 80 limited access is intended to reduce this potential for unharvested ITAC. For example, if NMFS determines there is not enough Pacific cod ITAC allocation for a directed fishery at the beginning of the year, they could close Pacific cod to directed fishing, but allow fisheries to catch and retain incidental amount of cod in non-target operations. That is, when directed fishing for Pacific cod closes, any catch of Pacific cod must be retained up to the maximum retainable allowance (MRA), while catch over the MRA must be discarded. Any catch of Pacific cod on MRA status by the Amendment 80 limited access fleet would be retained and accrue to their ITAC allocation. If, in this example, the Amendment 80 limited access Pacific cod ITAC allocation is exhausted, NMFS would put the Pacific cod fishery on PSC status, requiring the Amendment 80 limited access vessels to discard all further catch of Pacific cod.

Management of PSC also provides some flexibility for the Amendment 80 limited access fishery in reducing the potential for unharvested ITAC. NMFS will continue apportioning Amendment 80 limited access fishery PSC between fisheries. When the Amendment 80 limited access fishery fully exhausts the PSC that is assigned to that fishery, NMFS will close that fishery to trawling (for crab PSC, NMFS will close the associated crab savings area, instead of the entire BSAI area). Since NMFS is managing the PSC across the different fisheries for the Amendment 80 limited access fishery, it is difficult to determine the extent to which there would be unharvested Amendment 80 species as a result of PSC closures that could be reallocated to the Amendment 80 cooperatives. However, using the entire Amendment 80 limited access fishery PSC limit prior to the end of the year could result in leaving ITAC allocation in the water. If, for example, the Amendment 80 limited access fishery utilizes all of its halibut PSC allocation prior to the end of the year, NMFS will close all trawling in the BSAI for the Amendment 80 limited access fleet. The same is true for crab PSC but closures are limited to the BSAI crab protection areas.

Alternative 2 – Amendment 80 limited access rollovers (preliminary preferred)

Alternative 2 would establish a mechanism for reallocating projected unharvested Amendment 80 species and PSC from the Amendment 80 limited access fishery to the Amendment 80 cooperatives. One of the most obvious impacts of the proposed action is that it would likely reduce unharvested Amendment 80 species allocations. The Council's attempt to ensure optimum yield of the Amendment 80 resource are consistent with Council policy, as well as with MSA National Standard 1.

Currently, the Amendment 80 program authorizes a rollover of Amendment 80 species and PSC allocated from the BSAI trawl limited access sector to the Amendment 80 cooperatives. However, the current Amendment 80 program does not provide a similar mechanism for unharvested Amendment 80 species or PSC in the Amendment 80 trawl limited access fishery. Despite managing the Amendment 80 species

allocation to ensure full harvest of the Amendment 80 limited access allocations, there is a potential some portion of the Amendment 80 species allocations assigned to the Amendment 80 limited access fishery could go unharvested.

Given this action is related to the rollover regulations already included in the Amendment 80 program, the rollover mechanism under Alternative 2 is designed to be consistent to the current Amendment 80 rollover program. Under proposed rollover action, the Regional Administrator may reallocate a portion of an Amendment 80 species ITAC, crab PSC, or halibut PSC amount assigned to Amendment 80 limited access fishery to Amendment 80 cooperatives if the amount assigned to the Amendment 80 limited access fishery is projected not to be harvested or used. Any reallocation will result in an amended catch quota permit for each Amendment 80 cooperative. The timing of the reallocation will be at the discretion of the Regional Administrator.

Similar to the current Amendment 80 program regulations, the Regional Administrator may consider the following factors when reallocating an Amendment 80 species, or crab PSC, or halibut PSC amount from the Amendment 80 trawl limited access fishery to Amendment 80 cooperatives:

- (1) The risk of biological harm to a groundfish species or species group
- (2) The risk of socioeconomic harm to other domestic fishery participants
- (3) The impact that the allocation might have on the socioeconomic well being of Amendment 80 cooperatives
- (4) Current catch and PSC use in the Amendment 80 limited access fishery
- (5) Historic catch and PSC use in the Amendment 80 limited access fishery
- (6) Harvest capacity and any stated intent on the future harvesting patterns of vessels in the Amendment 80 limited access fishery
- (7) Administrative requirements to reissue catch quota permits, and
- (8) Any other relevant biological, socioeconomic, or administrative factors.

Requiring the Regional Administrator to consider all the factors noted above through a formal analysis could delay a reallocation. NMFS does not intend to prepare a formal analysis of all of the listed criteria. Such an analysis would substantially increase the amount of time required to reallocate fishery resources within a fishing season and would undermine the ability of NMFS to ensure the effective harvest of fishery resources.

The formulas for reallocating Amendment 80 species, crab PSC, and halibut PSC are presented below.

Rollover of Amendment 80 species

Amount of additional catch quota issued to an Amendment 80 cooperative = amount of Amendment 80 species available for reallocation to Amendment 80 cooperatives x (amount of catch quota for that Amendment 80 species initially assigned to that Amendment 80 cooperative / \sum catch quota for that Amendment 80 species initially assigned to all Amendment 80 cooperatives).

Rollover of halibut PSC

Amount of additional catch quota issued to an Amendment 80 cooperative = maximum amount of halibut PSC available for reallocation to Amendment 80 cooperatives x (Amount of halibut PSC

catch quota initially assigned to the Amendment 80 cooperative / \sum halibut PSC catch quota initially assigned to all Amendment 80 cooperatives.)

Rollover of crab PSC

Amount of catch quota issued to an Amendment 80 cooperative = amount of crab PSC available for reallocation to Amendment 80 cooperatives \times (amount of that crab PSC catch quota initially assigned to that Amendment 80 cooperative / \sum crab PSC catch quota initially assigned to all Amendment 80 cooperatives).⁵

Reducing the potential for rollovers is the flexible management of the Amendment 80 limited access fishery. When NMFS determines there is not enough of a species allocation to the limited access remaining to support incidental catch of the species in other directed fisheries, it will close the directed fishery. When directed fishing closes, any catch of the species must be retained up to the maximum retainable allowance (MRA), and catch over the MRA must be discarded. Any catch of a species on MRA status by the Amendment 80 limited access fleet would accrue against the Amendment 80 limited access ITAC allocation. If the Amendment 80 limited access Pacific cod ITAC allocation is exhausted, NMFS would continue to accrue limited access catch against the general ITAC until the allowable biological catch (ABC) is approached, when the species would be put on PSC status. If the ABC is exceeded, and the overfishing level (OFL) is approached, NMFS would close fisheries that catch that species. Given NMFS' flexibility in closing directed fisheries and monitoring incidental catch, it is likely that the Amendment 80 limited access sector could harvest its allocation unless constrained by other factors such as limited availability of PSC.

For PSC, NMFS apportions the Amendment 80 limited access fishery halibut and crab PSC between fisheries. When the Amendment 80 limited access fishery fully exhausts its halibut or crab PSC in a fishery, or fishery complex (e.g., rock sole/flathead sole complex) NMFS will close that fishery or fishery complex to trawling (for crab PSC, NMFS will close the associated crab savings area instead of the entire BSAI). Since NMFS is managing the PSC across the different fisheries for the Amendment 80 limited access fishery and fishery complexes, it is difficult to determine the extent there would be unharvested Amendment 80 species that could be reallocated to the Amendment 80 cooperatives as a result of PSC closures. However, using the entire Amendment 80 limited access fishery PSC limit prior to the end of the year could result in unharvested ITAC allocation. If, for example, the Amendment 80 limited access fishery utilizes all of its halibut PSC allocation prior to the end of the year, NMFS would close all trawling in the BSAI for the Amendment 80 limited access fleet. The same is true for attainment of crab PSC, except in this case closures would be limited to the BSAI crab protection areas.

Fishing under the program will begin in 2008. The amount of Amendment 80 species that would remain unharvested in the Amendment 80 limited access fishery cannot be predicted. Factors such as the relative size of the ITAC allocations and the rate of PSC use will affect the potential for rollovers. However, it is possible that some amount of ITAC or PSC allocated to the Amendment 80 limited access fishery could remain unharvested or unused, thus allowing the potential for a rollover to Amendment 80 cooperatives.

The effect of the rollover provision also interacts with cooperative formation rules. Cooperative formation in the Amendment 80 program requires 30 percent of the Amendment 80 vessels, representing at a

⁵ Under these provisions, any reallocation of PSC from the Amendment 80 limited access fishery to the Amendment 80 cooperatives would be of the full amount of PSC without reduction.

minimum three separate and unique entities. The relatively high vessel threshold together with the 3 entity requirement, however, could provide cooperatives that have formed with the ability to force non-members to either accept unfavorable cooperative membership terms or remain in the Amendment 80 limited access fishery. The potential for cooperatives to leverage their position is increased by the ability of cooperatives to offer each member individual terms. Additionally, the ability of a person owning multiple vessels to choose to participate in both an Amendment 80 cooperative and the Amendment 80 limited access fishery could encourage behavior that would seek to advantage their cooperative at the expense of other non-cooperative members in the Amendment 80 limited access fishery. These conditions could be exacerbated by a potential rollover provision that cooperatives could use to exact even less favorable terms from non-cooperative members wishing to join their cooperative.

Several scenarios could occur. Consider the case of non-members of a cooperative unable to meet the threshold for cooperative formation on their own. If these non-members can successfully prosecute their allocations in the limited access, with remaining PSC, that PSC would be rolled over to the cooperative. Cooperative members would have limited incentive to agree to cooperative terms that would compensate non-members wishing to join the cooperative because the cooperative could be reasonably certain that it would receive this PSC through a rollover. Alternatively, if the non-members are unable to prosecute the target allocations to the Amendment 80 limited access with the available PSC, the cooperative will have limited incentive to enter into a cooperative agreement that would compensate non-members for those allocations, knowing that the allocation will roll to the cooperative, if (or when) it is unused. At the extreme, the cooperative may refuse cooperative membership to a person, thereby requiring them to participate in the Amendment 80 limited access fishery. To the extent that Amendment 80 limited access fishing disadvantages participants' ability to effectively target catch and limit PSC usage, non-members will be further disadvantaged in negotiations with existing cooperatives by the cooperative rules and the rollover to cooperatives.

The ability of a cooperative to use the rollover provision to leverage its position with non-members is also increased by the rule allowing a person to put vessels in both the limited access and a cooperative. Using this rule, a cooperative could enter a vessel with a minimal allocation into the limited access. That vessel could add pressure on non-members by using both target and PSC allocations. At the extreme, the vessel could affect the species included in and size of any rollover by affecting rates of catch of targets or PSC allocations assigned to the Amendment 80 limited access fishery which may limit the ability of participants in the Amendment 80 limited access fishery to fully harvest the allocation to that fishery. Whether any of these different scenarios would occur is uncertain. Yet, the rollover provision increases the ability of cooperative members to exert negotiating leverage on or disadvantage non-members, who may already be disadvantaged by the structure of rules governing cooperative formation and limited access participation.

2.4.3 Effects on consumers

Neither action is likely to have a noticeable effect on consumers. Very minor additional amounts of harvest could be made under the proposed actions. These additional harvests are likely to be indiscernible in consumer markets.

2.4.4 Net benefits to the Nation

A minor overall net benefit to the Nation is likely to accrue from this action. From the post-delivery transfer aspect, the action is likely to reduce the number of overages in the Amendment 80 fisheries. The risk of increasing the frequency and/or magnitude of overages may also be limited, since acquiring post-

delivery quota will not be costless to the operator. Transactions costs associated with locating, negotiating for, and obtaining sufficient quota to offset an overage will take effort, time, and money. The potential for enforcement actions and the associated penalties are likely to add to the economic and administrative disincentives to careless overharvest allocations. The action has the potential to reduce NOAA administrative and enforcement costs by reducing the number of enforcement actions for overages. In terms of the rollover component contained in this action, there could be reduced amounts of unharvested Amendment 80 limited access fishery ITAC allocation, ensuring the TAC is utilized to the fullest extent practicable. If, as might be expected, cooperatives are more cost effective in harvesting available quota, there may be an improvement in aggregate net economic efficiency in the groundfish sector as a result of providing for rollovers of unharvested TAC. In the present Amendment 80 fisheries' example, consumption of fewer productive resources, to obtain the same output, would result in net National benefits, *ceteris paribus*.

3 Regulatory Flexibility Analysis

3.1 Introduction

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

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

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

The IRFA must contain:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and the legal basis for, the proposed rule;
3. A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
4. A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule;
6. A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
 - a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
 - b. The clarification, consolidation or simplification of compliance and reporting requirements under the rule for such small entities;
 - c. The use of performance rather than design standards;
 - d. An exemption from coverage of the rule, or any part thereof, for such small entities.

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

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

3.1.1 Definition of a Small Entity

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

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

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

employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party, with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities, solely because of their common ownership.

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

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

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

Small governmental jurisdictions: The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

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

There are two separate actions being proposed. The first action is post-delivery transfers for Amendment 80 cooperatives. The second action is rollovers of unharvested allocation in the Amendment 80 trawl limited access group to Amendment 80 cooperatives. Presented below is the Purpose and Need Statement

associated with each action.

Post-Delivery Transfers

Participants in the Amendment 80 cooperative program are permitted to join cooperatives that receive annual allocations of cooperative quota, which provide exclusive privileges to catch specific amounts of Atka mackerel, AI Pacific ocean perch, flathead sole, Pacific cod, rock sole, and yellowfin sole and halibut, Zone 1 red king crab, C. opilio, Zone 1 C. bairdi, and Zone 2 C. bairdi prohibited species catch. Any harvest in excess of a cooperative quota allocation is a regulatory violation punishable by confiscation of catch and other penalties. Since all catch is counted against cooperative quota, the uncertainty of catch quantities and composition creates potential for overages. A provision allowing for post-delivery transfer of cooperative quota to cover overages could reduce the number of violations, allowing for more complete harvest of allocations, and reduce enforcement costs without increasing the risk of overharvest of allocations.

Amendment 80 Limited Access Rollover

Amendment 80 allocates six target species and five PSC categories to vessels fishing in the non-AFA trawl catcher-processor sector. Vessels may choose to form cooperatives and combine their allocations, or they may choose to fish in an 'Amendment 80 limited access' fishery that continues to operate under a 'race for fish' within the combined allocations. Given that each allocation represents a cap, it is likely that the Amendment 80 limited access fishery will be closed on one species or PSC while leaving significant amount(s) of the other species unharvested. Amendment 80 does not provide a mechanism for this unharvested fish to roll from the Amendment 80 limited access fishery to the Amendment 80 cooperatives for harvest. Without this provision, some amount of allocated species may be stranded in the Amendment 80 limited access sector. Creating a mechanism to roll this unharvested amount to the Amendment 80 cooperatives prior to the end of the year will facilitate more complete harvest and utilization of these allocations.

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

Under the current regulatory structure, BSAI groundfish species are managed by NOAA Fisheries, under the Bering Sea and Aleutian Islands Groundfish FMP. The authority for this action and the FMP are contained in the Magnuson-Stevens Act, as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization (P.L. 109-479).

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

Amendment 80 incorporates statutory mandates in section 219 of the Consolidated Appropriations Act of 2005 (Public Law No. 108-447; December 8, 2004) to establish two sectors of BSAI trawl fishery participants: (a) the Amendment 80 sector; and (b) the "BSAI trawl limited access sector." The Amendment 80 sector is comprised of non-AFA trawl catcher processors eligible to fish Amendment 80 species under this statutory mandate. The BSAI trawl limited access sector is comprised of AFA catcher processors, AFA catcher vessels, and non-AFA catcher vessels

Based on the Final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis for Amendment 80 (July 20, 2007), there are a total of 28 qualified Amendment 80 catcher processor vessels that qualify to join a cooperative(s) as a result of this amendment. Catcher processor vessels both harvest and process the fish they catch. These catcher processors then sell their product into the first wholesale market. Of the 28 qualified Amendment 80 vessels, five had zero landings in 2006 and one vessel had annual receipts less than \$4 million in first wholesale revenue during the 2006 fishing year.

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

The reporting, record keeping, and other compliance requirements of the proposed rule will not change. As such, this action requires no additional reporting, record keeping, or other compliance requirements.

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

The analysis uncovered no Federal rules that would conflict with, overlap, or be duplicated by the alternatives.

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

The Council has identified two separate actions. The first action allows post-delivery transfer of quota exclusively for the purposes of covering catch overages. There are three alternatives under this action. Alternative 1 is the status quo, under which no post-delivery transfers are permitted. Any overage at the time of landing is considered a violation subject to a potential enforcement action. Under Alternative 2, post-delivery transfer of shares is permitted, and such transfers are relatively unlimited in size and frequency. Post-delivery transfers are limited to being used to cover catch overages. Under Alternative 3, moderate limits are placed on post-delivery transfers. Post-delivery transfers are allowed exclusively to cover overages. Transfers of allocated retainable species shall be limited to 100 metric tons of catch quota on a species basis. The following are the limits on PSC:

- halibut PSC transfers shall be limited to 15,000 pounds
- red king crab PSC transfers shall be limited to 3,000 animals
- *C. bairdi* PSC transfers (each zone) shall be limited to 10,000 animals
- *C. opilio* PSC transfers shall be limited to 35,000 animals

Transfers, whether groundfish or PSCs, are limited to five transfers of each allocation. No person shall be permitted to begin a fishing trip, unless the person holds unused catch quota. All transfers are required to be completed within 30 days of the weekending date of the overage delivery.

The effects of the first action on large and small participants are similar. Allowing post-delivery transfers

should facilitate a reduction in overages that, under the status quo, may result in forfeiture of catch and other penalties. Since all entities directly regulated by this proposed action are members in a cooperative, that rely on managers to coordinate harvest activity, it is unlikely that any are “small”, based upon SBA criteria. In the absence of definitive data to confirm this, however, the IRFA suggests that, if small entities are directly regulated under this action, none would be disproportionately affected, competitively disadvantaged, or otherwise excessively burdened by this action.

The second action the Council has identified would provide for the rollover of unharvested Amendment 80 limited access allocation, to the Amendment 80 cooperatives. Alternative 1 is the status quo, under which no rollover of unharvested Amendment 80 limited access allocation to the Amendment 80 cooperatives would be permitted. Under Alternative 2, a mechanism to allow allocations of target species and PSC that are projected to be unharvested in the Amendment 80 limited access fishery, to roll over to the Amendment 80 cooperatives. This rollover is not intended as a means to cover overages within the Amendment 80 cooperative sector. The primary effect of permitting rollovers of Amendment 80 species allocations, surplus to the needs of the Amendment 80 limited access fishery, to the Amendment 80 cooperatives, would be to ensure the TAC is utilized to the fullest extent practicable. Since this action addresses only reallocating projected unharvested allocation amounts that would likely remain unharvested throughout the remainder of the fishing year, it is unlikely that any small entities, as defined under SBA criteria, would be disproportionately affected, competitively disadvantaged, or otherwise excessively burdened by this action.

4 National Standards and Fishery Impact Statement

4.1 National Standards

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

National Standard 1

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

Nothing in the proposed alternatives would undermine the current management system that prevents overfishing.

National Standard 2

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

The analysis draws on the best scientific information that is available, concerning the BSAI Amendment 80 fisheries. The most up-to-date information that is available has been provided by the managers of these fisheries, as well as by members of the fishing industry.

National Standard 3

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

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

National Standard 4

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

The proposed alternatives would treat all participants the same, regardless of their residence. The proposed change would be implemented without discrimination among participants and is intended to contribute to the fairness and equity of the program by allowing participants to make full use of landed catch within the share allocations made under the program. The action will not contribute to an entity acquiring an excessive share of privileges.

National Standard 5

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

This action will improve efficiency in utilization of the resource. The action does not allocate shares, but simply allows participants to make more complete use of their catch and share allocations.

National Standard 6

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

None of the alternatives would be expected to affect changes in the availability of BSAI groundfish resources each year. Any such changes would be addressed through the annual allocation process, which is not affected by the alternatives.

National Standard 7

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

This action does not duplicate any other measure and could reduce costs of enforcement actions in the fisheries.

National Standard 8

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

This action will not have adverse effects on communities or affect community sustainability.

National Standard 9

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

This action will have no effect on bycatch.

National Standard 10

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

The program should reduce the incentives for Amendment 80 participants to fish in inclement weather, or fish in a manner that compromises safety. The alternatives considered under this action do not affect any potential benefits arising out of those incentives.

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

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

5 List of Preparers, Persons Consulted, and References

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References

Stock Assessment and Fishery Evaluation Report for the Groundfish Fisheries of the Gulf of Alaska and Bering Sea/Aleutian Islands Area, Economic Status of the Groundfish Fisheries Off Alaska, 2006

North Pacific Fishery Management Council/National Marine Fishery Service (2007) Regulatory Impact Review and Final Environmental Assessment for Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, Allocation of Non-Pollock Groundfish and Development of a Cooperative Program for the H&G Trawl Catcher Processor Sector, Anchorage, Alaska.

Sanchirico, J., D. Holland, K. Quigley, and M. Fina (2006) "Catch-quota balancing in multispecies individual fishing quotas," in *Marine Policy*, (30)6, pp. 767-785.

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January 29, 2008

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Re: Amendment 80 post-delivery transfers and rollovers (item C-3)

Dear Chairman Olson,

Groundfish Forum represents many of the non-AFA trawl catcher-processors operating in the Bering Sea/Aleutian Island and Gulf of Alaska trawl fisheries. Our members are all included in the 'Amendment 80' sector, and are all members of the 'Best Use Cooperative (BUC)' which formed under Amendment 80. We are writing you to comment on Agenda item C-3 (Amendment 80 post-delivery transfers and rollovers), which has been designated 'Amendment 90' to the BSAI FMP. This Amendment is scheduled for final action at the February meeting of the North Pacific Fishery Management Council.

The Amendment actually includes two separate provisions: post-harvest transfers and rollovers. We support Alternative 2 for post-harvest transfers, and approval of rollovers from the Amendment 80 limited access sector (the vessels which choose not to join a cooperative) to the Amendment 80 coop(s).

Post-harvest transfers. This action mirrors actions which the Council is taking for Bering Sea Crab Rationalization and the Rockfish Pilot Program. It allows cooperatives to compensate for an over-harvest of an allocated species by arranging to transfer the necessary amount from another cooperative which has a surplus. We recommend that the Council approve Alternative 2 for this action, which provides for relatively unlimited transfers. This provides maximum flexibility for the Amendment 80 sector, with minimum cost for enforcement, while still minimizing the possibility of a sector-wide overage.

Since only one cooperative formed for 2008, there would be no need for this provision this year. However, Amendment 80 allows the formation of up to three cooperatives. The Amendment is timely, given the parallel actions the Council is taking for other rationalized fisheries, and will provide for future transfers should more than one cooperative form.

Rollovers from Amendment 80 limited access to Amendment 80 cooperatives. At present, Amendment 80 has no provision to address unharvested allocations to the Amendment 80 limited access sector (vessels qualified under Amendment 80 which choose not to join a cooperative). NMFS will manage this sub-sector with 'soft caps' on allocations, so hitting a particular allocation of target species would not close down all fishing. However, there are circumstances where it could be clear that some part of the allocations will not be harvested and, minus some mechanism to roll these allocations to the cooperative(s), would be stranded.

The clearest example of this is if the Amendment 80 limited access group were to reach its allocation of halibut. Under this scenario, all fishing on any species would stop since halibut is incurred in all fisheries, and the allocation is a hard cap. Reaching the allocation for a crab cap would close certain areas to fishing for the duration of the year and, while this would not mandate closure of all fisheries, it might make it impractical for the group to harvest all of their allocations. Finally, NMFS could determine that the allocations to this sector are unlikely to be taken for a variety of other reasons (lack of effort, numerous allocations being on bycatch status, etc.). Approving the rollover provision gives NMFS in-season management the ability to move any remaining target or PSC allocations to the cooperative(s) where they may be more likely to be harvested.

The EA/RIR/IRFA discusses the possibility that the rollover provision could provide an incentive for an owner of multiple vessels to enter the limited access fishery and trigger a premature closure, which would move more fish into the cooperative(s). While this is a possibility, there is a clear remedy available to non-coop vessels: join or form a cooperative. Amendment 80 explicitly allows more than one cooperative to form so that no entity is forced to join one particular coop or to partner with vessels against their will. In 2008, 17 of the qualified entities representing 8 companies formed the Best Use Cooperative; this leaves 11 qualified entities and five companies available to form a separate coop. This is more than enough to meet the 9 entity/3 company threshold for coop formation established under Amendment 80.

In contrast, there is no remedy for stranded fish in the Amendment 80 limited access sector. If the allocated target fish or PSC is not taken, it goes unharvested. This is counter to National Standard One of the Magnuson-Stevens Act.

Approving the rollover provision does not take fish away from the Amendment 80 limited access sector if they are able to harvest it. NMFS will manage this sector by moving species to bycatch status as allocations are approached, so the vessels will have a great deal of opportunity to harvest the maximum amounts possible. However, should the sector be unable or unwilling to harvest their entire allocations, the rollover provision allows NMFS to roll the remaining fish over to the cooperative(s) for harvest.

In summary, we urge the Council to take final action on both items contained in the proposed Amendment 90. We recommend Alternative 2 for post-harvest transfers, and approval of a provision to give NMFS the ability to roll allocations from the Amendment 80 limited access sector to the Amendment 80 cooperative(s) if they determine it is

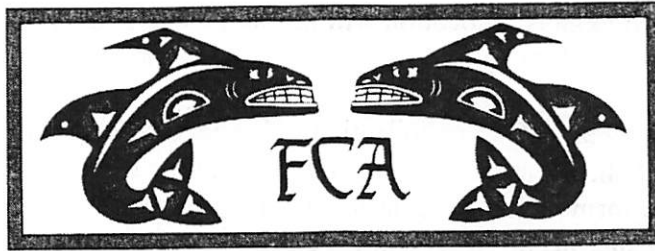
necessary to avoid stranding fish. Both of these actions will facilitate the maximum harvest of the Amendment 80 allocations.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "L Swanson", with a long horizontal flourish extending to the right.

Lori Swanson
Executive Director
Groundfish Forum



January 29, 2008

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Ste 306
Anchorage, AK 99501-2252

RECEIVED
JAN 30 2008
NPFMC

RE: C-3 Amendment 80 - Final action on Amendment 80 post-delivery transfers and rollovers.

Dear Chairman Olson:

The Fishing Company of Alaska (FCA) would like to bring your attention to the analysis on pages 21 and 22 of the Amendment 90 Public Review Draft, which highlights an issue FCA and Council staff raised at the December meeting. Specifically, it discusses the potential that the provision allowing for rollovers from the Amendment 80 limited access (LA) sector to the Amendment 80 cooperative sector could provide an incentive to “game the system” in ways contrary to the North Pacific Council’s intent in adopting Amendments 79 and 80. To prevent the possibility of unintended consequences and to ensure elemental fairness among vessels in the Amendment 80 fishery, FCA urges the Council to defer final action on Regulatory Amendment 90 and add an additional provision that would enable FCA to form a cooperative. Such action would both avoid the problems identified in the analysis and better enable the sector to meet the Council’s ambitious retention and bycatch reduction goals.

The issue of “gaming” identified in the Public Review Draft stems from the combination of companies’ ability to split their vessels between the Amendment 80 cooperative and LA sectors, the limited and progressively smaller amounts of prohibited species catch (PSC) allocations to the Amendment 80 sector, and the large amount of Amendment 80 species currently in the limited access sector (nearly all of which is attributable to FCA’s history, and includes more than half the allocations of Atka mackerel and Pacific Ocean perch). These factors provide no incentive for a vessel fishing in the LA fishery but owned by a company that also belongs to a cooperative to make any attempt to try to limit its catch of PSC. In fact, the opposite incentive may exist if Amendment 90 is adopted without further changes because if the

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LA sector closes, such vessels' allocation will fall to the one cooperative that currently exists along with the rest of the uncaught fish allocated to the LA sector.

Amendments 79 and 80 were collectively designed to improve the H&G sector's retention of fish, while minimizing and reducing its use of PSC. If the current stringent cooperative formation rules continue in effect, however, Amendment 90 will create the exact opposite incentive. As things currently stand, not only is it impossible for FCA to form a cooperative, there is virtually no chance it will ever be able to join one. As the analysis of the rollover provision in the proposed amendment states:

Cooperative members would have limited incentive to agree to cooperative terms that would compensate non-members wishing to join the cooperative because the cooperative could be reasonably certain that it would receive this PSC through a rollover. Alternatively, if the non-members are unable to prosecute the target allocations to the Amendment 80 limited access with the available PSC, the cooperative will have limited incentive to enter into a cooperative agreement that would compensate non-members for those allocations, knowing that the allocation will roll to the cooperative, if (or when) it is unused. **At the extreme, the cooperative may refuse cooperative membership to a person, thereby requiring them to participate in the Amendment 80 limited access fishery.** To the extent that Amendment 80 limited access fishing disadvantages participants' ability to effectively target catch and limit PSC usage, **non-members will be further disadvantaged in negotiations with existing cooperatives by the cooperative rules and the rollover to cooperatives.**

Amendment 90 Public Hearing Document, at 22 (emphasis added). If this amendment were to pass in its current form, not only would FCA likely be permanently stuck in the limited access sector, it is very unlikely that it would ever be able to harvest anywhere near its historic share of Amendment 80 species.

In order to better meet the Council's objectives, FCA respectfully renews its request that the current rulemaking be expanded to loosen the rules governing the number of entities and vessels it takes to form a cooperative. Such action would provide a rationale for the first part of Amendment 90, which allow for post-delivery transfers of quota between cooperatives by allowing for a second coop. It would also insure that nearly all the fish allocated to the H&G sector is fished in the slower, more deliberative, and cleaner manner that a rationalized fishery allows. Finally, and most importantly, allowing for another cooperative to form is far better policy than the creation of perverse incentives (without passing judgment on the motives of any particular company) for vessels to not do all possible to minimize incidental harvest of PSC, which the analysis and commonsense show would exist if the action is passed as is.

Not only does allowing for the formation of additional cooperatives represent a better policy, but as a practical matter it also would not likely effect Amendment 90's

timing. Even if the Council took final action on Amendment 90 at one of the next two meetings, it is unlikely that it could be implemented for the 2008 fishing season. Moreover, given that multiple cooperatives was considered in Amendment 80, there should not be any need for significant additional analysis. Perhaps the only issue of some difficulty – although we understand that staff has been developing some ideas – would be developing options that allow for treating Pacific cod as a soft cap in the cooperative sector, because without such a provision, FCA would be unable to form a coop. However, the fact is that in real terms, it would not change the situation, because cod is treated as a soft cap in the LA fishery, and incentives can be developed to insure that its incidental catch is minimized.

FCA's single company cooperative under the Rockfish Pilot Program has helped to make that program a success. We would sincerely hope that a similar set of rules could be developed for the groundfish fishery. Thank you for your consideration of these comments, and we look forward to discussing the issue with you in more depth.

Sincerely,



Mike Szymanski
FCA- Government Affairs