


MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver 
Executive Director
DATE: March 26, 2009
SUBJECT: Amendment 80 Cooperative Formation

ESTIMATED TIME 4 HOURS

ACTION REQUIRED

- a) Review annual cooperative report
- b) Final action of Amendment 80 cooperative formation

BACKGROUND

At the February 2009 meeting, the Council conducted an initial review on an action to modify Amendment 80 cooperative formation. The following are the alternatives recommended by the Council and addressed in the analysis:

- **Alternative 1:** (Status quo) – A minimum of three unique quota share holders holding at least nine quota share permits are required to form a cooperative.
- **Alternative 2:** Reduce the number of unique quota share holders required to form a cooperative from three to two or one unique quota share holder.
- **Alternative 3:** Reduce the number of quota share permits required to form a cooperative from the existing 9 permits to some lower range. (e.g., three permits to the existing 9 permits)
- **Alternative 4:** Reduce both the number of unique quota share holders and the number of quota share permits required to form a cooperative (combination of Alternatives 2 and 3).
- **Alternative 5:** Allow a cooperative to form with a minimum of three unique QS holders holding at least nine QS permits (status quo), or a single or collective group of entities that represent 20%, 25%, or 30% of the sector quota share.
 - GRS Suboption (Applicable to all Alternatives): The GRS shall be applied in aggregate to all cooperatives if this calculation meets or exceeds the GRS requirement.

At this meeting, the Council is scheduled to review the annual cooperative report and take final action on Amendment 80 cooperative formation amendment. The analysis for this amendment was mailed out on March 11, 2009; an executive summary of that analysis is attached **(Item C-4(a))**.

EXECUTIVE SUMMARY

This Regulatory Impact Review (RIR) was prepared to meet the requirements of Presidential Executive Order 12866 for an evaluation of the benefits and costs of a proposed Federal regulatory action. The proposed action is Amendment 93 to the Fishery Management Plan for Groundfish of the Bering Sea/Aleutian Island Management Area (BSAI FMP). Analysts have also drafted an environmental assessment (EA) and initial regulatory flexibility analysis (IRFA) to comply with the National Environmental Policy Act and the Regulatory Flexibility Act, respectively. The proposed action would amend the BSAI FMP and Federal regulations related to the Amendment 80 Program.

The Amendment 80 Program is a limited access privilege program (LAPP) that allocates a quota share (QS) permit to a person based on the catch history of six Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, flathead sole, Pacific cod, rock sole, and yellowfin sole) in the Bering Sea/Aleutian Islands Management Area (BSAI) from 1998 through 2004 for each of 28 originally qualifying non-AFA trawl catcher processors. In order to receive an allocation of QS, a person must own the catch history of an original qualifying non-AFA trawl catcher/processor that met specific criteria designated by Congress in the Congress under the Capacity Reduction Program (CRP) in December 2004. The non-AFA trawl/catcher processors identified in the CRP comprise the Amendment 80 vessels. Each of the 28 originally qualifying vessels may be assigned a QS permit if that vessel owner applies to receive QS. In cases where an original qualifying vessel has suffered a total or constructive loss, or is no longer eligible to receive a fishery endorsement (i.e., has been removed through a vessel buyback program, or has been reflagged as a foreign vessel) the QS permit may be assigned to a replacement vessel, or to the License Limitation Program (LLP) license initially assigned to that original qualifying vessel. Persons not applying for QS based on the catch history of original qualifying vessels may use those vessels to continue to participate in the Gulf of Alaska (GOA), but are prohibited from using those vessels as trawl vessels in the BSAI.

Once issued, QS permits and the Amendment 80 vessels or LLP licenses associated with those QS permits may be assigned to either an Amendment 80 cooperative, or the Amendment 80 limited access fishery. A QS permit may not be subdivided and QS allocations of specific QS species may not be transferred or otherwise reassigned. In order to form a cooperative, a minimum of three unique QS holders not affiliated through control or direct or indirect common ownership of greater than 10 percent, and a minimum of nine QS permits of the 28 QS permits that are eligible to be issued under the Amendment 80 Program must be assigned to a cooperative.

NMFS assigns an exclusive harvest privilege for a specific portion of the total allowable catch (TAC) assigned to the Amendment 80 program for the six defined Amendment 80 species as well as exclusive use of a portion of the BSAI halibut, Bristol Bay red king crab, snow crab, and Tanner crab prohibited species catch (PSC) based on the aggregate QS held by all of the QS permits assigned to a cooperative. The annual exclusive harvest privilege assigned to a cooperative is called cooperative quota (CQ). Persons, who do not participate in a cooperative, are assigned to the limited access fishery and compete for the TAC and PSC remaining after allocation to cooperatives. The potential benefits that vessel owners and operators may derive from participating in a

cooperative (e.g., ending the “race for fish” thereby providing greater incentive to coordinate harvesting strategies and fish in conditions that are likely to be more economically profitable, less dangerous, and better able to respond to changing conditions on the fishing grounds), may not be realized by participants in the limited access fishery who do not receive an exclusive harvest allocation. Participants in the limited access fishery may have little incentive to coordinate harvest strategies if they perceive a benefit by competing with other participants in a race for fish.

Amendment 80 also modified the application of a groundfish retention standard (GRS) that apply to all Amendment 80 vessels fishing in the BSAI. The GRS was recommended by the North Pacific Fishery Management Council (Council) as Amendment 79 to the BSAI FMP in June 2003, published as a final rule in April 2007, and became effective in 2008. As originally recommended by the Council in April 2003, the GRS applied only to non-AFA trawl catcher/processors equal to or greater than 125 feet length overall (LOA). All Amendment 80 vessels over 125 feet would have been required to comply with the GRS recommended by the Council under Amendment 79. Under the GRS, Amendment 80 vessels are required to retain a minimum amount of all groundfish harvested. The percentage of catch that must be retained was 65 percent in 2008, increasing to 75 percent in 2009, 80 percent in 2010, and 85 percent in 2011 and all future years.

Amendment 80 modified the GRS as recommended under Amendment 79 in two critical ways. First, the GRS was extended to apply to all non-AFA trawl catcher/processors operating in the BSAI without an exemption for vessels under 125 feet LOA. Therefore, all Amendment 80 vessels regardless of size would be required to comply with the GRS. Second, Amendment 80 modified the method of calculating the total retention of catch that applies to cooperatives. Under the GRS as modified by Amendment 80, each vessel participating in the limited access fishery must ensure that it meets the GRS requirements based on the amount of catch retained by that vessel. Vessels participating in a cooperative can aggregate the total catch by all vessels in the cooperative and the total retained catch by all vessels in the cooperative. Therefore, vessels with poorer retention rates may have an incentive to join a cooperative with other vessels have a better retention rate and are able to offset the lower retention rate of those vessels. Similarly, vessels with a higher retention rate may be desirable as cooperative members because their retention rate may help ensure the cooperative meets the GRS. Vessels participating in the limited access fishery may have greater difficulty meeting the GRS if they cannot coordinate with other vessels. As the GRS increases, individual vessels with lower retention rates may have greater difficulty meeting the GRS if they cannot coordinate with other vessels in a cooperative.

The proposed action would modify the requirements that Amendment 80 QS holders would need to meet in order to form a harvesting cooperative and receive an exclusive allocation of Amendment 80 species and associated PSC that are incidentally taken during the prosecution of BSAI groundfish fisheries. This action would not modify the specific species that are allocated, the amount of the TAC allocated to the Amendment 80 Program, the specific percentage of catch that must be retained under the GRS, or how the GRS is calculated. Since the implementation of the Amendment 80 Program in 2008, some Amendment 80 sector participants have expressed concern that the current requirements necessary to form a cooperative could impede the ability to form

a cooperative and receive an exclusive allocation of Amendment 80 species. This could disadvantage participants, and require them to continue to “race for fish” instead of receiving the benefits of cooperative relationships.

In February 2008, the Council requested a discussion and review of the criteria for establishing cooperatives under Amendment 80. NMFS and Council staff prepared a discussion paper that was presented to the Advisory Panel and Council in June 2008 to provide a qualitative review of the goals of the existing cooperative formation standards, current conditions in the fishery, and the implications of modifying cooperative formation criteria. The discussion paper reviewed criteria for the number of unique entities, the number of QS permits, and amount of assigned QS required for cooperative formation. The paper also examined the consequences of modifying one or more of the criteria, including interactive effects of those changes. The discussion paper noted that most participants in the Amendment 80 sector have successfully established a cooperative in the first year of the program.

Purpose and Need and Alternatives

Based on the information provided in the discussion paper and public testimony in June 2008, the Council adopted a draft purpose and need statement and recommended alternatives that would modify the existing cooperative formation standards for the Amendment 80 sector. The draft purpose and need statement is presented below:

Purpose and Need

Most participants in the Amendment 80 sector have successfully established a cooperative in the first year of the program. However, some participants have expressed concern that over the long term, cooperative formation standards may disadvantage them, and they may be constrained from establishing cooperative relationships, receiving an exclusive annual harvest allocation, and ending the “race for fish.” Smaller vessel owners with limited QS are likely to have weakened negotiating leverage as the groundfish retention standard (GRS) increases if they cannot be competitive in the limited access fishery and options in the Gulf of Alaska (GOA) are not viable. Participants of any size will find it difficult to receive the benefits of cooperative management if they cannot reach agreement on negotiated terms and the limited access fishery is an unattractive outside option, or a cooperative is able to derive some benefit from forcing an entity into the limited access fishery.

Relaxing cooperative formation standards either by reducing the number of quota share (QS) permits that must be assigned, or the number of owners required could: (1) provide additional opportunities to QS holders to form cooperatives because more relationships are possible; (2) diminish the negotiating leverage of vessel owners who may be necessary to meet the threshold requirements under more stringent cooperative formation standards; (3) reduce the potential risk of any one company being unable to negotiate settlement and be able to fish only in the limited access fishery; and (4) reduce the incentive for members of a cooperative to attempt to create conditions that are unfavorable for certain fishery participants to form a cooperative.

The alternatives recommended by the Council and addressed in this analysis include:

- Alternative 1: Status quo. A minimum of three unique QS holders holding at least nine QS permits are required to form a cooperative.
- Alternative 2: Reduce the number of unique QS holders required to form a cooperative from three to two or one unique QS holder.
- Alternative 3: Reduce the number of QS permits required to form a cooperative from the existing 9 permits to some lower range (e.g., three permits to the existing 9 permits).
- Alternative 4: Reduce both the number of unique QS holders and the number of QS permits required to form a cooperative (combination of Alternatives 2 and 3 above).
- Alternative 5: Allow a cooperative to form with a minimum of three unique QS holders holding at least nine QS permits (status quo), or a single or collective group of entities that represent 20, 25 or 30% of the sector QS.
 - GRS Suboption (Applicable to all Alternatives): The GRS shall be applied in aggregate to all cooperatives if this calculation meets or exceeds the GRS requirement.

Under Alternative 3, the analysis has suboptions for 3, 6, 7, and 8 QS permits based on Council guidance.

Under Alternative 4, the suboptions include a range of combinations from the most restrictive cooperative formation standard (i.e., two QS holders and 6 QS permits), and the least restrictive (i.e., 1 QS holder and 3 QS permits).

Under Alternative 5, it is possible to form a cooperative either by meeting the existing requirements (i.e., three unique QS holders and nine QS permits) or by a single person, or group of people, meeting a minimum level of QS. If a cooperative is formed by a person or persons meeting the minimum QS holding requirement, other participants could choose to form a cooperative under the existing cooperative formation standards. Under the suboption where 30 percent of the QS must be assigned to a cooperative in order for it to form, no more than one person could qualify to form a cooperative as a single company under that suboption. The existing limitations that no person may hold more than 30 percent of the Amendment 80 QS pool unless that person held the catch history of qualifying vessels prior to final action by the Council in June 2006 (50 CFR 679.92(a)), and the prohibition on the severability of QS from the permit to which it is assigned (50 CFR 679.90(a)) effectively limits all but one company from being able to hold 30 percent or more of the QS pool. However, it would still be possible for more than one company to combine their QS holdings in order to meet the minimum QS holding standards of 30, 25, or 20 percent of the Amendment 80 QS pool.

The GRS suboption would apply under all of the alternatives. It would not specifically modify the criteria to form a cooperative, but would modify the way in which the GRS is applied to cooperatives once they have formed. Presumably, allowing the GRS to be aggregated across cooperatives could reduce some of the potentially adverse consequences for vessel operators that may be disadvantaged if the cooperative standards are modified. During initial review in February 2009, the Council recommended incorporating Alternative 6 as a redesignated suboption. The Council noted that as a

stand alone alternative, Alternative 6 did not appear to conform to the purpose and need statement adopted by the Council which is specifically addressing cooperative formation standards, not the method used to compute the GRS. Because this suboption does not directly address cooperative formation standards, it is not analyzed directly with the other alternatives or suboptions in this analysis. The analysis does contain a general discussion of the effects and management and enforcement of this suboption in Section 2 of this analysis.

The Council noted that if the GRS option under Alternative 1 (status quo) was selected some modification to the purpose and need statement would be required. Should the Council choose Alternative 1 with the GRS suboption, a draft purpose and need statement is contained in the discussion of the Suboption in Section 2.4.6 of this document. The Council should review and modify that draft purpose and need statement, if applicable.

The Amendment 80 fleet is comprised of a maximum of 28 eligible QS permits and vessels. Therefore, NMFS can determine the maximum number of cooperatives that could form under Alternatives 1 through 5 as described in Table E-1. In cases where the alternative does not specify that a cooperative formation standard has been modified (e.g., Alternative 2 modifies the number of unique owners required, but not the number of QS permits), the status quo requirement for the other criteria is applied.

Table E-1: Alternatives, Suboptions, and Implications for Cooperative Formation					
Alternative	Suboption	Minimum number of unique QS holders required	Minimum number of QS permits required	Maximum number of cooperatives that could form if all QS holders apply	Maximum number of cooperatives that could form with current QS holders
Alternative 1: Status quo	N/A	3	9	3	2
Alternative 2: Fewer unique QS holders	Suboption 1: 2 unique QS holders	2	9	3	2
	Suboption 2: 1 unique owner	1	9	3	2
Alternative 3: Fewer QS permits	Suboption 1: 8 QS permits	3	8	3	3
	Suboption 2: 7 QS permits	3	7	4	3
	Suboption 1: 6 QS permits	3	6	4	4
	Suboption 2: 3 QS permits	3	3	9	8
Alternative 4: Fewer unique QS holders and Fewer QS permits	Suboption 1: 2 QS holders and 6 QS permits	2	6	4	4
	Suboption 2: 2 QS owners and 3 QS permits	2	3	9	8
	Suboption 3: 1 QS holder and 6 QS permits	1	6	4	4
	Suboption 4: 1 QS	1	3	9	8

	holder and 3 QS permits				
Alternative 5: Status quo or Minimum QS holding to form cooperative	Suboption 1: 30 % of QS pool	3 or 1	N/A	3	3 or 3
	Suboption 2: 25 % of QS pool	3 or 1	N/A	4	3 or 4
	Suboption 3: 20 % of QS pool	3 or 1	N/A	5	3 or 5

Table E-2 describes the current ownership structure within the Amendment 80 sector as well as the amount of QS that each unique QS holder is assigned. As part of this analysis, vessel owners have provided detailed information concerning the ownership status of the various vessels and QS permits. Table E-2 describes the specific QS holders that could form a cooperative under one or more of the alternatives and suboptions described in Table E-1 independent of any other QS holder. As noted in Table E-2, not all of the potentially eligible recipients of QS have chosen to apply for QS. Three potentially eligible QS permits that could be assigned based on the historic catch history of the *F/V Bering Enterprise*, *F/V Harvester Enterprise*, and the *F/V Golden Fleece* have not been issued because the prospective owners of those QS permits have chosen not to apply. Additional discussion of possible reasons why those prospective QS holders may have chosen not to participate in the Amendment 80 Program, is provided in Section 2 of the analysis. Collectively, these prospective QS holders hold only 0.6 percent of the total available Amendment 80 QS allocation. The remaining 99.4 percent of the QS pool has been allocated to eligible participants.

Table E-2 also denotes the original qualifying vessels that are no longer active in the Amendment 80 fleet in italics due to a loss (i.e., *F/V Alaska Ranger*, *F/V Arctic Sole*, and *F/V Prosperity*), or because those vessels have been reflagged under foreign ownership and are no longer eligible to reenter U.S. fisheries (i.e., *F/V Bering Enterprise*).

Table E-2 also describes those vessels that are considered to be smaller vessels for purposes of this analysis. There is not a clear distinction between large and small vessels in the Amendment 80 fleet. The final Environmental Assessment/ Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for Amendment 80 (Amendment 80 Analysis) indicated that vessels of smaller sizes had a lower retention rate than larger vessels. For purposes of this analysis, smaller vessels refers to vessels less than 144 feet LOA because the available data suggests that those vessels are most likely to have a difficult time achieving GRS requirements if fishing without participation in a cooperative. Based on the Amendment 80 analysis, vessels less than 144 feet LOA retained 63 percent of their total catch during 1995 through 2003. This is slightly less than the GRS rate in 2008 of 65 percent. While the retention rates by vessels under 144 feet LOA during this time frame may not reflect current retention rates, particularly for vessels targeting specific species with higher retention rates, or under cooperative management which reduces the incentive to race for fish, it provides some indication of the relative size of vessels that may have a difficult time meeting higher GRS requirements, and provides a useful focal point for this analysis.

Table E-2: Amendment 80 Vessels, Owners, QS Holdings, and their Ability to Independently form Cooperatives under the Proposed Alternatives and Suboptions

Owner ₁	Amendment 80 Vessel(s)/LLPs with length overall (LOA) ₂	Percentage of aggregate QS pool held	Alternatives and Suboptions under which a cooperative could be formed independent of other QS holders
Fishing Company of Alaska (FCA), Inc. (Management entity for owner)	Alaska Juris (238 ft) <i>Alaska Ranger</i> ₃ (203 ft -QS assigned to LLP license derived from vessel) Alaska Spirit (221 ft) Alaska Victory (227 ft) Alaska Voyager (228 ft) Alaska Warrior (215 ft)	35.9	Alternative 4: Suboptions 3 & 4 Alternative 5: All Suboptions
U.S. Seafoods, Inc. (Management entity for owners)	Ocean Alaska ₄ (124 ft) Alliance (124 ft) Legacy (132 ft) Prosperity (138 ft - QS assigned to LLP license derived from vessel) Seafreeze Alaska (296 ft)	9.6	Alternative 4: Suboption 4
Iquiqui U.S., LLC	Arica (186 ft) Cape Horn (158 ft) Rebecca Irene (140 ft) Tremont (131 ft) Unimak (185 ft)	16.9	Alternative 4: Suboption 4
O'Hara Corporation	Constellation (150 ft) Defender (124 ft) Enterprise (132 ft)	12.6	Alternative 4: Suboption 4
Fishermen's Finest (Management Entity for owners)	American No. 1 (160 ft) U.S. Intrepid (185 ft)	8.1	None
Cascade Fishing, Inc. (Management Entity for owners)	Seafisher (230 ft)	8.1	None
Ocean Peace	Ocean Peace (219 ft)	6.0	None
Jubilee Fisheries	Vaerdal (124 ft)	1.9	None
Arctic Sole Seafoods	Ocean Cape (122 ft - QS assigned to LLP derived from originally qualifying vessel <i>Arctic Rose</i>)	0.3	None

Trident Seafoods	<i>Bering Enterprise</i> (183 ft - QS could be assigned to LLP derived from vessel) Harvester Enterprise (188 ft)	0.5	N/A -- QS permits have not been issued.
Golden Fleece	Golden Fleece (124 ft)	0.1	N/A -- QS permit has not been issued.

1 Ownership data are derived from multiple sources including information provided on Amendment 80 QS applications, Restricted Access Management (RAM) LLP database (<http://www.fakr.noaa.gov/ram/llp.htm#list>), Groundfish Forum (<http://www.groundfishforum.org>), and personal communications with Dave Benson (Trident), Bill Orr (Iquiqui U.S., LLC), Susan Robinson (Fishermen's Finest), Mike Szymanski (FCA), and Dave Wood (U.S. Seafood). Most owners designate subsidiary corporations to own the vessels. In turn, those subsidiary corporations are wholly owned by the owner.

2 LOA data derived from RAM LLP license database (see URL above). These data indicate the maximum LOA of the vessel that may use the LLP originally issued for that vessel. Vessel lengths listed in the LLP database may differ from vessel lengths listed in USCG Vessel Documentation files.

3 Vessels that are no longer active in the Amendment 80 sector due to an actual total loss, constructive total loss or permanent ineligibility to receive a U.S. Fishery Endorsement under 46 USC 12108 are noted in italics.

4 Vessels considered to be smaller vessels for purposes of this analysis are noted in bold text.

Table E-3 shows the participation patterns of various QS holders and their vessels in the 2008 and 2009 Amendment 80 fisheries.

Table E-3: Participation in 2008 and 2009 Amendment 80 fisheries			
Year and Fishery	Vessel Owner	Vessels	Percent of Amendment 80 QS Pool
2008 Amendment 80 limited access fishery participants	FCA	<i>Alaska Juris</i> <i>Alaska Ranger</i> <i>Alaska Spirit</i> <i>Alaska Victory</i> <i>Alaska Voyager</i> <i>Alaska Warrior</i>	36.5 %
	U.S. Seafoods	Ocean Alaska	
2009 Amendment 80 limited access fishery participants	Arctic Sole Seafoods, Inc.	Ocean Cape	36.7 %
	FCA	<i>Alaska Juris</i> <i>Alaska Ranger</i> <i>Alaska Spirit</i> <i>Alaska Victory</i> <i>Alaska Voyager</i> <i>Alaska Warrior</i>	
2008 and 2009 Amendment 80 cooperative participants	U.S. Seafoods	Alliance Legacy Prosperity Seafreeze Alaska	63.5 % (2008) 63.3 % (2009)
	Iquiqui U.S., LLC	Arica Cape Horn Rebecca Irene Tremont Unimak	
	O'Hara Corporation	Constellation Defender Enterprise	

	Fishermen's Finest	American No. 1 U.S. Intrepid	
	Cascade Fishing, Inc.	Seafisher	
	Ocean Peace	Ocean Peace	

Potential Effects of the Alternatives

1. Effects on Cooperative Negotiating Leverage within the Amendment 80 sector

This analysis notes that under any of the alternatives under consideration, holders of a limited amount of QS, or owners of smaller vessels relative to other vessels in the Amendment 80 fleet, are likely to have weakened negotiating leverage when seeking favorable terms to join a cooperative as the GRS increases if they cannot be competitive in the limited access fishery and fishing operations in the GOA are not viable. Smaller vessels tend to have less sophisticated processing operations and may not be able to retain as many different species, or retain products as effectively or economically as larger vessels with more expansive processing operations, and greater hold capacity. Larger vessels may face less of an economic imperative to retain only high value species and products and discard lower value species and products. Participants using vessels of any size will find it difficult to receive the benefits of cooperative management if they cannot reach agreement on negotiated terms, the limited access fishery is an unattractive outside option, or (less likely) a cooperative is able to derive some benefit from forcing an entity into the limited access fishery.

General benefits to relaxing cooperative formation standards either by reducing the number of QS permits that must be assigned (Alternative 2), the number of owners required (Alternative 3), a combination of both (Alternative 4), or allowing a cooperative to form with a minimum QS holdings as an alternative to the status quo formation standards (Alternative 5) include: (1) providing additional opportunities to QS holders to form cooperatives because more combinations of unique QS holder and QS permits are possible; (3) reducing the potential risk of any one company being unable to negotiate terms and be forced to fish in the limited access fishery; and (4) reducing the incentive for members of a cooperative to attempt to create conditions that are unfavorable for certain fishery participants to form a cooperative if those fishery participants can form a cooperative independent of other QS holders. Generally, easing cooperative formation standards could reduce the risk that a person may not be able to reach agreement with other members and would be forced into the limited access fishery.

Some industry participants have suggested that there is a risk to any change to the existing cooperative formation standards because such a change would diminish the negotiating leverage of QS holders who may be necessary to meet the threshold requirements under more stringent cooperative formation standards. These participants assert that this potentially adverse affect may be more likely for participants owning vessels that are more likely to be constrained by the GRS as the retention rate increases. As an example, under the existing cooperative formation standard, a maximum of three cooperatives can form, and until that threshold is reached any prospective person may have greater negotiating leverage than could exist under alternatives where there are a greater number of potential persons who are available to allow a cooperative to form. Because the cooperative formation standard is relatively high, and a more limited number of QS permits or QS holders are available to meet the third QS holder or ninth QS permit requirements, those participants may be better able to negotiate favorable terms, even if

those participants have limited QS holdings or lower retention rates relative to other cooperative members. Under the most extreme example, as indicated in Table E-2 under Alternative 4, suboption 4, several QS holders could form cooperatives independent of other QS holders and the negotiating leverage of QS holders who are unable to form cooperatives independently may be diminished relative to those QS holders able to independently form a cooperative.

However, when compared to the status quo it is not clear that changing the cooperative standards would necessarily disadvantage participants who are more constrained by the GRS. Table E-2 shows that under the status quo several multiple vessel companies could form a cooperative and exclude all other smaller QS holders, or single vessel owners. The single cooperative that has formed in 2008 and 2009 (see Table E-3) contains several more members than are necessary to meet the cooperative formation standards. If the cooperative formation standards are relaxed it is not clear that this would adversely affect the negotiating position of participants who have chosen to participate under the current cooperative structure. In fact, it may provide additional negotiating leverage to smaller QS holders or single vessel owners if they have multiple options available to them. Other dynamics may exist between harvesters that favor a larger cooperative structure, but it is not clear how changing the cooperative formation standards would adversely affect those dynamics. Generally, under all alternatives, including the status quo, one would expect QS holders who hold only one QS permit (i.e., own one vessel) to have diminished negotiating leverage relative to QS holders with multiple permits because they are not able to contribute as many QS permits to help meet the minimum QS permit formation standard.

The extent to which specific alternatives would advantage or disadvantage the negotiating leverage of specific fishery participants is not possible to predict quantitatively. The factors that affect the decision to establish a cooperative include numerous subjective and variable factors. Generally, one would expect that less strict cooperative formation standards might provide greater opportunities for cooperatives to form, in general, and greater opportunities for any specific participant to find arrangements that allow them to participate in a cooperative. It is not clear that relaxing the cooperative formation standards reduces the negotiating leverage a participant may have under the status quo alternative as the third unique QS holder or ninth QS permit under the status quo alternative. Overall, one would expect that relaxing the cooperative formation standard would provide a greater likelihood that a greater proportion of the TAC and PSC assigned to the Amendment 80 sector is harvested under cooperative management.

Whether cooperatives actually form under any alternative would likely depend on a wide range of factors. These include pre-existing business relationships, the ability to establish mutually agreeable contracts on data sharing and civil enforcement of cooperative contract provisions, whether the fishing operations of the companies created unproductive intra-cooperative competition, the viability of the limited access fishery or forgoing fishing in the BSAI for opportunities in the GOA as an outside option for any potential cooperative participant, and the potential risk or advantage of the participation of a specific vessel operation in ensuring that the cooperative overall would be able to meet the GRS.

2. *Effects of the Alternatives on Fishing Patterns in the Amendment 80 sector.*

This analysis assumes that vessels fishing under a cooperative will realize benefits of LAPP management including a strong incentive to reduce the race for fish. Based on a preliminary review of the 2008 season, and past experience with similar cooperative based management (e.g., AFA cooperatives, Central GOA Rockfish Program, and BSAI Crab Rationalization Cooperatives) participation in a cooperative is likely to allow optimization of harvest rates for product recovery and quality, reduce incentives to operate in adverse weather conditions, and streamline operations to maximum profits. It is possible that participants in the limited access fishery could choose to coordinate their fishing operations and voluntarily form a private contractually-based arrangement to assign a portion of the TAC. However, that voluntary arrangement did not occur during 2008 among limited access fishery participants, does not appear to have been established for 2009, and there is little to suggest such an arrangement would occur in the future.

Alternatives 2 through 5 would be expected to increase the potential that a greater proportion of the catch is harvested under cooperative management. The analysis assumes that alternatives other than the status quo with more restrictive cooperative formation standards would have a lower potential to encourage cooperative management (i.e., Alternative 2, suboption 1) versus those alternatives with less restrictive criteria (i.e., Alternative 4, suboption 4). This analysis does not attempt to predict which specific alternative would maximize the potential for cooperative fishing given the lack of any quantitative data.

Because vessels operating in a cooperative receive exclusive, and binding, allocations of PSC, this analysis assumes fishing under a cooperative would have a greater incentive than vessels fishing in the limited access fishery to engage in fishing patterns that may reduce PSC use such as attempting to use halibut excluder devices. In addition, because Alternatives 2 through 5 would be expected to increase the potential for cooperative formation, fewer vessels, and possibly no vessels, would be expected to participate in the limited access fishery. It is possible that if cooperative formation standards are relaxed so that cooperatives held by one company are allowed to form, the incentive to reduce bycatch may be somewhat diminished to the extent that a multi-company cooperative is likely to have stringent contractual requirements on its members to minimize their bycatch. However, any cooperative, regardless of the number of its members, is constrained by its allocations of PSC and the potential that a single company cooperative would be less attentive to PSC would be likely to be limited to any marginal difference between the potential constraints imposed by a multi-party contract and the allocation that a cooperative receives.

Generally, the fewer vessels participating in the limited access fishery would be expected to reduce the risk that NMFS managers would fail to close the limited access fishery in time, potentially exceeding the TAC. Again, there are no quantitative data available to assess the potential distinctions that may exist among alternatives.

3. *Potential Effects on Net Benefits to the Nation*

Overall, this action is likely to have a limited effect on net benefits realized by the Nation, *ceteris paribus*. Generally, Alternatives 2 through 5 would be expected to encourage cooperative formation, and therefore may encourage fishing practices that are more likely to result in fully harvesting the TAC assigned to the Amendment 80 sector.

To the extent that increased participation in cooperatives allows harvesters additional time to focus on improving product forms, there may be some slight consumer benefits realized by the proposed action if the proposed alternatives reduce the risk that a specific harvester, or group of harvesters, would otherwise be unable to participate in a cooperative. Conceivably, the proposed alternatives may increase the economic efficiency of that harvester. An additional potential benefit may result if vessels now active in the limited access fishery formed a cooperative and were able to trade CQ with other cooperatives to maximize their harvest. Currently, the Amendment 80 Program does not allow unharvested TAC assigned to the limited access fishery to be reallocated to a cooperative. If multiple cooperatives form rather than a cooperative and a limited access fishery, CQ could be shared among cooperatives as necessary to maximize their harvest.

Generally, cooperative management reduces management costs to NMFS because cooperatives undertake actions to ensure their allocation is not exceeded, whereas under a limited access fishery, NMFS assumes that management burden and its associated costs. Alternatives 2 through 5 are likely to reduce management costs overall relative to the status quo option to the extent they result in less participation in the limited access fishery. Again, the lack of any quantitative data makes it difficult to assess the relative differences in net benefits among the alternatives.

4. Potential Effects on Management, Enforcement, and Safety.

As noted under the effects on net benefits, Alternatives 2 through 5 may reduce some management costs. Enforcement of Alternatives 2 through 5 would not be expected to differ from the status quo because NMFS would continue to require the same catch accounting and reporting protocols regardless of how the cooperative formation standards are changed. The GRS suboption may require some changes in enforcement if this alternative were selected in conjunction with one of the other alternatives. Specifically, under this alternative NMFS would need to monitor the overall retention rates of all cooperatives and determine whether this aggregate retention rate should be applied to all cooperatives. This is not likely to be a substantially greater burden than current GRS monitoring and enforcement currently, assuming that this alternative is applied as described in Section 2 of this analysis.

Safety is not likely to be effected substantially under any of the alternatives under consideration. Specifically, under each of the alternatives, all vessels are required to comply with minimum safety standards under USCG regulations. Although vessels fishing in cooperatives are likely to have reduced incentives to engage in a potentially dangerous race for fish, and easing cooperative formation standards may encourage greater participation in cooperative management, NMFS does not have quantifiable data to conclude that Alternatives 2 through 5 would result in fishing practices that are substantially different than exist under the limited access fishery, or the status quo option for cooperative formation.

5. Potential Effects on Fishing Crew and Communities.

None of the alternatives would be expected to result in changes in effects to fishing communities or crew. The Amendment 80 sector did not appear to consolidate, or otherwise decrease the number of active vessels, or crew, through deliberative action

during the first year of the program, and there is no evidence that such patterns have emerged in 2009. Vessel operations, including the number of crew, crew payments, vessel offloading patterns, time in port, supply and fuel purchases or other factors that may affect communities are not known for the period prior to and after implementation of the Amendment 80 Program. In addition, there is no information available to suggest that modifying cooperative formation standard would affect crew or communities in ways that differ from the status quo. NMFS has no information to suggest that payment to crew differ between cooperative or limited access fishery vessels, or that changing cooperative formation standards would result in any changes.

March 20, 2009

MA 20 009
N.P.F.M.C.

Mr. Eric Olson, Chair
North Pacific Fishery Management Council Sent via fax to (907) 271-2817
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99601

Re: Agenda Item C-4(b) Amendment 80 Cooperative Formation

Dear Mr. Chairman:

As owner operator of the F/T OCEAN CAPE and President of Arctic Sole Seafoods, Inc., I am writing this comment letter on agenda item C-4(b) to express my deep concern about the harm that this package could have on my operation.

The F/T Ocean Cape is one of the smallest, maybe the smallest, NON-AFA Trawl CPs, and is the type of vessel that A80 was designed to protect. We bought the F/T Ocean Cape to replace the F/T Arctic Rose which as you know was lost in 2001. Because of the catch history years used for Amendment 80, and the crab sideboards for the GOA groundfish fisheries, my vessel has very little history and completely depends on the existence and availability of the A80 limited access fishery. In acquiring and rebuilding the F/T Ocean Cape at great time, expense, and effort we relied on the structure of Amendment 80 which created a significant limited access fishery available for operations like mine. If you reduce or relax the coop formation standards as proposed by Amendment 93 it is very likely that my vessel will have no fisheries available to it. Therefore, I ask you to keep the Amendment 80 coop formation standards unchanged at 3 separate entities and 9 vessels and support Alternative 1.

It was my understanding that Amendment 80 was designed to protect small vessel operators like myself through the 3 entity and 9 vessel coop formation rule. As the analysis makes perfectly clear, this rule was designed to encourage "cooperation" in the sector and protect the most vulnerable members of the sector. I am convinced that removing or relaxing the 3 entity 9 vessel rule will only serve to disadvantage small and single vessel owners who are already marginalized by the

GRS and the catch history years.

I strongly believe that this package is unnecessary, and am confident that a second Amendment 80 cooperative consisting largely of the present Amendment 80 limited access fishery participants is very achievable, making this action completely unnecessary. In fact this package itself has undermined coop formation among the A80 limited access fishery participants, as over the past year the smaller Amendment 80 limited access fishery participants have made numerous coop formation overtures, to no avail. From our perspective relaxing the coop formation standards as this package proposes only rewards one company for "being difficult," which I believe sends the wrong message and may conflict with the MSA and other law.

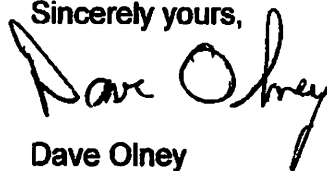
In the end if you decide to do something to change the Amendment 80 coop formation standard, and I hope you don't, I ask that you exercise extreme caution in doing so and recommend that you pick Alternative 2 and only reduce the number of entities to 2. While I greatly prefer status quo, I am recommending Alternative 2 -- 2 entities as your second best option because it is the option that presents the least amount of harm to small vessels like the F/T Ocean Cape.

While I question whether the GRS sub-option offers any benefit to the sector or small GRS challenged vessels in particular I can't see that it will do much harm and would therefore support that sub-option.

I greatly appreciate the opportunity to submit these comments to you and hope that you consider the situation of the F/T Ocean Cape when you make your decision.

I cannot make the April Council meeting as I will be on the Ocean Cape fishing in the Bering Sea. If you have any questions for me please call me on the vessel TOLL FREE 1 866 290 0041.

Sincerely yours,



Dave Olney
Captain, F/T Ocean Cape
President, Arctic Sole Seafoods, Inc.



Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue Suite 306
Anchorage AK 99501

Re: Agenda Item C-4 (b) Amendment 80 Coop Formation Criteria

Dear Chairman Olson,

I am writing to you on behalf of Ocean Peace, an amendment 80 catcher processor fishing the BS, AI and GOA. We are also members of both Best Use Cooperative and Groundfish Forum.

This complex issue elicits a wide array of perspectives as to what may be in the best interests of sound fisheries management and our sector as a whole. To be clear, Ocean Peace believes that rationalized fisheries and cooperative structures work well in achieving desired conservation and management objectives. We do not wish to prevent any qualified A80 vessel or company from being able to join a coop.

The reality is that adequate opportunity exists to form another coop under the present criteria of 3 unique QS holders and 9 permits. Another coop can be formed at this time with the current group of limited access participants plus one more permit. These criteria were well thought out at the time A80 was formed. Considerable deliberation took place as to what conditions would allow a very eclectic field that includes both large and small vessels as well as single vessel companies and multiple vessel companies to come together to form coops.

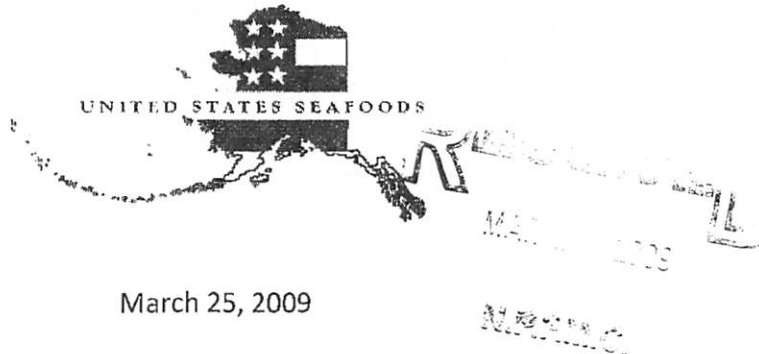
What we have not seen is any compelling evidence of FCA's effort to form a coop under the existing criteria. Alternative 5, sub option 1 and Alternative 4, sub option 4 in particular seem like an easy out for the one company this would apply to. We do not see any rationale for supporting this action and ask you to maintain status quo until we can first address the greater issues in regard to amendment 80.

I thank you for the opportunity to comment,

A handwritten signature in dark ink, appearing to read "Jim Hamilton", is written over a light-colored background.

Jim Hamilton
Government Affairs

Ocean Peace, Inc • 4201 21st Ave W • Seattle, WA 98199
Phone (206) 282-6100 • Facsimile (206) 282-6103



March 25, 2009

Mr. Eric Olson, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99601

Re: C-4(b) Amendment 80 Cooperative Formation

Dear Mr. ~~Chairman:~~ ^{Eric}

I am writing to you on behalf of United States Seafoods, LLC (USS) to comment on agenda item C-4(b) -- Amendment 80 (A80) cooperative formation. As you know, USS managed vessels rely on the current structure of A80 by participating in both the A80 cooperative and limited access fisheries. We support the status quo option Alternative 1 for the following reasons:

1. The status quo coop formation rules are an integral part of the well-balanced A80 package:

As became very evident during its development and as the analysis makes clear, A80 is a complicated package that balances a number of competing goals and objectives between the BS, AI, and GOA groundfish fisheries. Those goals that are clearly acknowledged in the administrative record include among other things: reducing bycatch, increasing utilization, providing smaller H&G vessels the tools to mitigate the impacts of Groundfish Retention Standard (GRS), and fostering cooperation within the sector. In our view, the North Pacific Fishery Management Council (NPFMC) got A80 right, and we're concerned that changing something as fundamental as the coop formation rules could change the *gestalt* of what we consider a well designed and balanced program.

2. The information does not support action:

Because A80 is so new there is not enough information to determine whether a problem that requires fixing truly exists. Moreover, the limited fisheries performance data that we do have

does not provide a strong rationale for changing the coop formation standard from the 3 entities 9 vessel rule. As the analysis illustrates with table 5 (page 32) the A80 limited access fishery's PSC rates were generally better than the A80 sector's historic averages. Maybe more importantly the A80 limited access fishery had very few and very limited PSC related shut-downs in 2008, and so far in 2009 there have been no PSC related closures. To that end the analysis should include historic and present fishery open/closure dates to better compare fishing opportunities over time (pre and post A80) and between the two A80 fisheries (coop and limited access), so that we can understand whether material differences in fishing opportunities exist.

It also appears that much of the rationale for changing the coop formation standard is rather speculative and is based on a fear of future gaming. The gaming scenarios put forward to provide a rationale for this action are hypothetical in nature and are simply not supported by the record. In sum, this action at best appears to be based on very limited information and at worst on speculation, neither of which in our view provides a strong foundation for reasoned decision-making.

3. A second A80 coop is achievable under the current formation rules:

A second A80 coop composed largely of current members of the A80 limited access fishery is readily available under the existing coop formation rule making this action unnecessary. As table 2 illustrates, with 3 companies and 8 vessels presently participating in the A80 limited access fishery the existing A80 limited access participants are only one vessel away from a cooperative under the status quo rules. There are a number of other vessels not presently in the A80 limited access fishery (including at least one managed by USS) available to form a second A80 cooperative under the existing 3 entity 9 vessel rule. It's also notable that an honest effort to form a second A80 cooperative under the existing rules has not been made by the proponent of this action yet. Given that there are sufficient parties interested in creating a second coop, and an honest effort has not been made yet, we suggest that the NPFMC consider tabling this action indefinitely to allow a cooperative to be formed under the existing rules.

4. Potential Harm to Smaller A80 Vessels:

We oppose changing the existing coop formation standard because it is likely to harm smaller A80 vessels. It's important to remember that A80 extended the GRS to vessels under 125 ft, in exchange for a coop formation standard that offered these vessels an improved negotiating position. Recognizing that catch history and retention capability were the new *coin of the realm* between A80 participants, the NPFMC made this trade-off between the GRS and the coop formation rules to provide smaller A80 vessels with an additional chit at the negotiating table – a "handicap" so to speak. This handicap allowed those who were disadvantaged by A80's catch history years or who might struggle with retention to sit down and negotiate on a more even playing field with the stronger, more established, or luckier players. Taking the benefit of the 3 entity 9 vessel rule away from the smaller vessels as this action proposes to do is in our view patently unfair.

Especially vulnerable are the small GRS challenged vessels that have minimal A80 catch history such as the Ocean Alaska and the Ocean Cape. While these two A80 limited access vessels do not have significant A80 catch history, (based on the set of years used by A80) they still have some value in helping other firms reach the standard required for coop formation as either a separate entity or an additional vessel under the current rule. A change in the A80 coop structure would put these vessels at a great disadvantage in coop negotiations, or foreclose any opportunity to even participate in a cooperative, possibly forcing them into the Gulf of Alaska (if they had the ability to do so) or into a limited access fishery which NMFS might not open because of insufficient target species or PSC.

In short, we oppose any change from the status quo coop formation standard because it reduces the negotiating position and potential economic viability of smaller vessels in direct conflict with the objectives of A80.

5. A single company coop is not a "cooperative" and was already rejected by the NPFMC as inappropriate for the A80 sector:

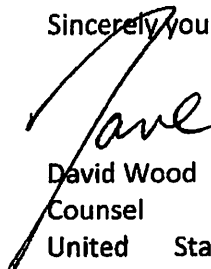
We agree with the SSC that a single company coop is problematic (by definition and in practice) and likely inconsistent with A80's original purpose and need statement. (Draft Report of the SSC to the NPFMC, February 5, 2009, page 5.) In our experience one of the central features, maybe THE central feature of cooperative management is the negotiation, coordination, and most importantly *compromise* that a cooperative requires of it's members. This package, concerns us because it attempts to minimize and under some alternatives entirely circumvent this critical part of the *cooperative experience*. Should you decide to change the coop formation rules we ask that you not select any of the "single coop options."

6. In the event that you modify the A80 coop formation standard:

In the event that you do decide to change the coop formation rules, we ask that you do so with restraint, and recommend Alternative 2 selecting 2 separate entities because it will do the least amount of harm to other members of the A80 sector.

I appreciate the opportunity to submit these comments, and look forward to discussing this issue with you and other Council members in greater detail at the April meeting.

Sincerely yours,



David Wood
Counsel

United States Seafoods, LLC

Best Use
Cooperative
Annual
Report to
the North
Pacific
Fishery
Management
Council

March 27

2009

Introduction

On September 14, 2007, the National Marine Fisheries Service (NMFS) published a final rule for implementing Amendment 80 to the Fishery Management Plan for groundfish of the Bering Sea and Aleutian Islands management area (BSAI). Amendment 80 provides specific groundfish and prohibited species catch (PSC) allocations to the non-American Fisheries Act (AFA) trawl catcher processor sector and allows the formation of cooperatives. Sector allocations and the formation of cooperatives were intended to assist compliance with the Groundfish Retention Standard (GRS) program.

On January 20, 2008, the Best Use Cooperative (BUC) began fishing allocations under regulations implementing Amendment 80. This report summarizes BUC, its catch for the 2008 fishing year, and the processes implemented to ensure that catch limits are not exceeded.

BUC membership

BUC is comprised of the following seven member companies, and sixteen non-AFA trawl catcher processors.

Company	Vessel	Length Overall
M/V Savage	Seafisher	211
Fishermen's Finest, Inc.	American No. 1	160
	U.S. Intrepid	184
Iquique U.S., L.L.C.	Arica	186
	Cape Horn	158
	Rebecca Irene	140
	Tremont	125
	Unimak	184
Jubilee Fisheries	Vaerdal	124
Ocean Peace	Ocean Peace	220
O'Hara Corporation	Constellation	165
	Defender	124
	Enterprise	124
United States Seafoods, LLC	Seafreeze Alaska	296
	Legacy	132
	Alliance	107

Coop management

BUC activities are governed by a Board of Directors, which is appointed by BUC Members. Additionally, owners, captains, crew, and company personnel participate and provide input to the cooperative management process. The Members executed a cooperative agreement after extensive discussion and negotiation that outlines harvest strategies, harvest shares, and agreement compliance provisions. The agreement is amended as necessary to improve cooperative management of allocations and PSC, and to comply with regulatory programs.

The BUC Manager is responsible for the day to day management of the cooperative. This includes overseeing and providing communication among the fleet, member companies, and BUC staff, ensuring compliance with the BUC agreement and regulatory programs, tracking the BUC budget, coordinating Board meetings and BUC activities, ensuring harvest shares are distributed in a timely and accurate manner, and managing BUC office and staff. The Manager also completes all cooperative reporting requirements in a timely manner, including applying for annual catch allocations on behalf of BUC. Finally, the Manager coordinates with other staff on research, protected species issues, and community outreach to provide catch and operational transparency.

BUC also employs a full-time Data Manager. The Data Manager is responsible for tracking individual vessel catch and bycatch information relative to allocations, providing regular reports to the coop and individual vessel reports as requested, securely archiving data, identifying and resolving data errors, and working with the Alaska Region and Observer Program offices to ensure timely information streams. The Data Manager also provides Geographic Information System support and analysis as needed.

Finally, BUC members employ Seastate, Inc., which assists as a third party in management activities. Seastate, Inc. is the direct observer data link for many of the processes and activities described in this document, specifically, identifying bycatch issues and tracking historic catch and bycatch trends. Information provided by Seastate, Inc. is essential to the management of BUC allocations.

Harvest strategy

BUC has implemented several protocols and practices to maintain regulatory compliance and ensure allocations are not exceeded. These are described below.

Subsequent to receiving annual cooperative allocations, BUC and Seastate, Inc. staffs calculate individual vessel harvest shares and PSC limits. For each internal harvest share and PSC allocation, a reserve is established so that both individual vessels and BUC as a whole have a buffer that will be reached prior to the allocation limit. Vessels may not fish into their reserve without Member approval.

The BUC agreement also establishes a mechanism for Members to transfer quota among themselves. These transfers must be approved by the BUC Manager, and may be facilitated by BUC staff.

Catch monitoring

BUC receives data from several different sources. Generally, this includes total catch and species composition information from the North Pacific Groundfish Observer Program, Alaska Fisheries Science Center, total catch and species composition information from the Alaska Region, and production data from the Alaska Region. These data are used by NMFS to debit against quota accounts, and determine Groundfish Retention Standard compliance.

The BUC Data Manager receives observer data, which is archived in a database. The database allows the Data Manager to track various Amendment 80 quota accounts, bycatch amounts, catch of other non-Amendment 80 targets, and transfers between Members. The Data Manager uses the database to summarize catch information and distribute regular catch reports to vessels and BUC members. The Data Manager also performs routine data quality checks on observer data, and resolves any discovered errors with individual vessels and NMFS.

NMFS Alaska Region total catch information is provided to BUC staff on a secure website, and upon request by NMFS staff. As noted above, this information constitutes official BUC catch. As a quality control measure, the Data Manager compares these data with the corresponding observer data, and explores and resolves discrepancies.

In addition to receiving regular reports from BUC staff, Seastate, Inc. provides each Member and BUC staff access to a secure website. This webpage provides vessel owners with vessel-level catch information for GOA sideboarded species, Amendment 80 quota species, and other species of interest. Additionally, the Seastate, Inc. website displays information on vessel and cooperative GRS levels.

BUC vessels submit daily production reports through a NMFS software program called Elandings. Because NMFS uses production information to calculate an annual GRS, BUC also collects this information to keep a running tally of vessels' GRS'.

Observer information is transmitted from the vessel, to the Observer Program Offices at the Alaska Fisheries Science Center, then to the Alaska Region offices. Data undergoes initial error checking, and individual observer sample amounts are expanded to total catch amounts. During this process, these data are initially checked for errors. By the time Alaska Region catch information is available to BUC staff and vessel captains, it is two or three days old.

To address this delay, companies have purchased software packages that expand raw observer sample data to total catch amounts, and assigned catch amounts to quota categories. These data expansions are based on the same algorithms that NMFS uses to expand raw observer sampling data. This software allows vessel captains to analyze catch amounts on a real time basis, and make better fishing decisions to maximize harvest amounts while reducing individual vessel overage occurrences. To further check data accuracy, the Data Manager compares expanded data reported by Seastate, Inc. with expanded data produced by the software program.

To help ensure accurate quota accounting and compliance, NMFS requires vessels to implement an extensive monitoring package at their own expense:

- 200 percent observer coverage, nearly all hauls are sample
- Motion compensated observer scale
- Flow scale for weighing the entire catch
- No mixing hauls
- No fish on the deck outside of the codend
- Only one conveyor line at the point the observer collects a sample
- Each vessel must be certified to maintain one of three bin monitoring options
- Larger observer sampling station
- Vessel Monitoring System

The above list is collectively designed to improve accuracy and reduce bias. High quality catch estimates are important to BUC members and provide increased confidence in NMFS management information, thus facilitating inter-cooperative trades and quota management and oversight.

In addition to these increased monitoring requirements, BUC vessels and companies comply with recordkeeping and reporting regulations. While recordkeeping and reporting requirements are complex and create a significant burden to vessel captains and company representatives, these efforts create an authoritative, timely, and unambiguous record of quota harvested.

The Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis prepared for regulations implementing Amendment 80 indicates that monitoring and catch accounting challenges are greater and more complex than other quota programs. To address these challenges and ensure quota limits are not exceeded, NMFS has required and BUC vessels have implemented the extensive and expensive monitoring program described above.

GOA sideboard management

Regulations limit Amendment 80 vessels to historic catch levels by establishing sideboard amounts for several species. To help manage GOA sideboard fisheries, BUC established a GOA fishing plan. The 2008 GOA fishing plan described management measures BUC utilized to ensure individual vessels had access to historical GOA catch amounts for Pacific cod, certain rockfish fisheries, and halibut PSC.

Amendment 80 sideboards are applied to all Amendment 80 vessels on aggregate. Several BUC vessels spend a significant portion of their time in the GOA. Non-BUC vessels have historically entered the GOA during the summer months to prosecute rockfish fisheries. While GOA seasonal or area-specific catch only includes BUC catch, NMFS may distribute catch information to BUC staff. However, when non-BUC vessels enter the GOA, confidentiality restrictions may prevent NMFS from distributing GOA catch information. BUC staff communicate closely with NMFS staff to manage GOA fisheries during these time periods.

Rockfish Pilot Program management

In 2008, several BUC vessels participated in the Rockfish Pilot Program Limited Access fishery. BUC staff communicated with NMFS to provide daily catch information in order to establish appropriate closure dates for Amendment 80 rockfish sideboards and the Rockfish Pilot Program catcher processor sideboards.

2008 BUC Catch

The following tables provide BUC catch. All data is rounded to the nearest whole number for reading simplicity. It's important to understand that fishing behavior and catch amounts under the first year of cooperative operations may not reflect those of subsequent years. Several examples are provided below.

BUC captains are concerned that individual vessel Pacific cod apportionments could severely constrain their ability to harvest other groundfish species. Therefore, in 2008, captains were conservative in their Pacific cod use, deciding to limit or eliminate Pacific cod directed fishing. For 2009 and subsequent years, captains will attempt to harvest more of their Pacific cod allocations, and BUC will likely harvest a much larger percentage of its allocation.

In 2008, ice conditions reduced large scale directed flathead sole fishing opportunities on traditional fishing grounds and during typical time frames. Additionally, halibut were generally found deeper than normal in 2008, and flathead sole were associated with higher halibut bycatch rates. To reduce overall halibut catch, BUC captains chose to fish for shallower species which contained lower halibut bycatch rates. In years where halibut are found in shallower water, or allocations for shallow water species such as yellowfin sole are constraining, captains may choose to increase flathead sole effort.

Bering Sea and Aleutian Islands BUC Allocated Quota and Catch Amounts

Species	BUC A80 Allocation (mt)	BUC Catch (mt)
Flathead	35,758	16,931
Cod (Total)	17,135	13,517
Rock Sole	47,003	34,982
Yellowfin Sole	98,982	84,853
POP 541	1,908	1,845
POP 542	1,984	1,941
POP 543	3,124	3,096
Mackerel 541	8,683	8,556
Mackerel 542	8,447	7,472
Mackerel 542 HLA	5,068	4,228
Mackerel 543	5,784	5,377
Mackerel 543 HLA	3,470	1,629

Bering Sea and Aleutian Islands BUC PSC Limits and Catch Amounts

Species	BUC A80 Allocation (mt)	BUC Catch (mt)
Halibut Mortality	1,837	1,293
King Crab Z1	78,631	48,931
Bairdi Z1	340,520	106,731
Bairdi Z2	580,311	211,792
COBLZ Opilio	1,632,432	286,781

Bering Sea and Aleutian Islands Salmon Catch Amounts

Species	BUC Catch (#s)
Chinook	329
Non-Chinook	1,225

Groundfish Retention Standard

In addition to beginning Amendment 80 operations, Amendment 79 required BUC to meet (GRS) requirements in 2008. The GRS and Amendment 80 require the cooperative to annually retain an annual percentage of groundfish relative to their overall Bering Sea and Aleutian Islands catch. The GRS is applicable to BUC in aggregate, and is phased in over a four year period according to the following table:

Groundfish Retention Standard	
GRS Schedule	Annual GRS
2008	65%
2009	75%
2010	80%
2011 and each year thereafter	85%

The GRS calculation is based on the proportion of groundfish retained. The GRS calculation numerator is the amount of groundfish retained over the course of a fishing year. Retained catch is reported by observers for each species. However, these estimates are not sampled, and are recorded visual observations. Therefore, NMFS determined that the most defensible measure of retention is to apply a standard product recovery rate (PRR) published in regulation (Table 3 to 50 CFR 679) to the weight of each species by product type. This amount is known as the round weight equivalent (RWE). Retained product weight is self reported by each vessel through a software program called Elandings.

The denominator of the GRS calculation is the total groundfish harvest by an Amendment 80 vessel over the course of a fishing year. Because vessels also catch non-groundfish species, NMFS and fishing companies must rely on observers to collect sub-samples from each haul. The proportion of groundfish in a sample is expanded to the total haul weight, as measured by a motion compensated flow scale, to estimate the total amount of groundfish in each haul.

The cumulative BUC GRS is calculated as the sum of all participating vessels' retained catch divided by the sum of all participating vessels' groundfish catch. ***For 2008, BUC achieved a GRS of 76.9 percent.***

Findings and Future Issues

GRS Issues

Under the GRS program, some BUC vessels have been required to retain smaller and less valuable groundfish species to remain compliant with implementing regulations. Therefore, BUC is keenly interested in ensuring that sampling and catch estimation techniques accurately represent actual catch composition, total catch weights, and production information. Bias in this process could force the retention of more low-valued product to meet the GRS than would otherwise be needed to meet GRS requirements if catch estimation were more accurate. Additionally, increased accuracy avoids overestimating quota species, and reducing fishing opportunities that would have otherwise been available.

Fishing under Amendment 79 began January 20, 2008. Vessel companies have typically tracked their product by species, and compared product weights with observed catch weights. Early in 2008, anecdotal information from fishing companies indicated that RWE amounts were sometimes less than observed catch amounts for those same species. Theoretically, these amounts should be equal. Furthermore, individual vessel GRSs calculated using the formula described in regulation creates concerns for a number of BUC vessels in anticipation of increasing retention standards. To address these concerns associated with GRS compliance, BUC is exploring ways to understand the source of these discrepancies to ensure that the GRS is functioning properly.

The following table shows BUC's 2008 retention performance for several different catch categories. The GRS is calculated for each catch category using formulas described in regulation. Although the GRS calculation does not use observer estimates of retained or discarded catch, this information is shown for comparison purposes. Observer retention estimates are reported for each sampled haul and for each groundfish species. However, observers make these estimates visually in a haphazard manner, and this information is considered low quality relative to other data sources.

Allocated target species are 77.6 percent of BUC groundfish catch, and BUC retained 83.2 percent of its allocated catch. Non-allocated species are subject to maximum retainable amount (MRA) regulations and comprise regulatory discards. They also include species which are open to directed fishing part of the year, and subject to MRA regulations the remainder of the year. These species represent 14.9 percent of BUC groundfish catch, and 68% of that amount was retained. Retention of unmarketable or low valued species displaces fish of any value. These species are 7.5 percent of BUC's overall groundfish catch, and 29 percent was retained. As described above, BUC achieved a 2008 GRS of 76.9 percent.

GroupDescription	Obs Total Catch	Obs est retained catch	Obs est discarded catch	Prod: Retained primary product RWE	Prod: Discarded	GRS Retained	Percent of Total GF
Allocated Target Species	201,925	195,420	6,505	168,026	22,197	83.21%	77.58%
Subject to MRA Regulations	38,843	32,187	6,655	26,452	9,600	68.10%	14.92%
Unmarketable/Low Value Species	19,526	7,975	11,554	5,684	14,947	29.11%	7.50%
Total Groundfish Catch	260,295						

Each component of the GRS equation is measured with some error. For example, scale weight is measured on a flow scale calibrated to ± 3 percent accuracy for a known weight, and for each reading of scale weight there is an opportunity for the reader to misread or misrecord the weight. PSC and non-groundfish catch weights are a function of observer estimates of species composition for each haul and are subject to varying degrees of precision dependent in part on the volume of the PSC and non-groundfish catch and the observer sample size. Product weight is typically estimated from an average case weight from all cases of that product type. Both the case count and the mean case weight are subject to measurement error. Finally, PRR, although currently treated as fixed without error, can vary from vessel to vessel, processing line to processing line, by season, by area, and by the same product for different species.

To explore the magnitude and direction of each of these potential error sources would be time consuming and expensive. However, BUC has begun conducting some pilot work to explore PRRs in the 2009 rock sole, Pacific cod, and yellowfin sole fisheries to better understand the discrepancies reported. This should initially inform BUC of differences between actual and NMFS standard PRRs, and provide a basis for further sampling if needed. Additionally, BUC may engage in other projects, collaboratively with NMFS if possible, to address GRS data quality concerns.

As retention requirements are increased through 2011, BUC is concerned that current GRS percentages may become economically impractical, and unattainable. In addition to the error sources listed above which factor into the GRS equation, BUC is concerned that the standards approved by the Council in 2005 were measured using different data than were required to create an enforceable GRS program. For example, the Amendment 79 EA/RIR/FRFA described historical retention rates for the Amendment 80 sector. Historical retention rates were based on "blend" data, which was used through 2003 to estimate total catch amounts.

The blend was a catch estimation process that incorporated observer data where possible, and vessel reported weekly production report (WPR). Historical groundfish retention estimates provided in the Amendment 79 EA/RIR/FRFA did not include many of the components required to create an enforceable GRS program. For example, these historical retention rates did not anticipate error changes associated with flow scales, PRRs, increases in observer coverage, etc.

Market Issues

PSC was not generally limiting to BUC vessels in 2008, and increased flatfish was put on the market. Global economic problems have resulted in decreased available credit and cash, therefore decreasing selling opportunities for BUC members. Pacific cod prices have been reduced by almost half from what they were in 2007. Decreased demand and increased supply has resulted in lowered flatfish prices. Additionally, increasing GRS retention requirements are anticipated to impact market supply, demand, and price.

Allocation Management

In 2008, BUC was not constrained by any of its PSC limit allocations and harvested 70.40 percent of its halibut allocation. However, as previously noted, fishing behavior, halibut distribution, and harvest under the first year of cooperative operations may not reflect those of subsequent years.

While under Amendment 80, vessel captains were able to slow fishing operations, and move from areas with higher PSC rates. The consensus from BUC vessel is that lower than normal halibut biomass was seen in typical head and gut fishing areas. Therefore, BUC is cautiously optimistic about this first year of cooperative operations. Higher PSC abundance on flatfish fishing grounds coupled with Amendment 80 halibut and crab PSC annual reductions, and changes to fishing patterns due to water temperatures, ice conditions, and/or climate change could result in future PSC constraints.

As of March 25, 2009, 411 tons of halibut PSC, or 29 percent of BUC's allocation was harvested¹. As of March 25, 2008, 271 tons of halibut PSC, or 15 percent of BUC's allocation was harvested. This represents a 52 percent increase from similar time periods. Similarly, as of March 25, 2009, 30,210 Zone 1 red king crabs, or 42 percent of BUC's Zone 1 king crab PSC allocation was harvested². As of March 25, 2008, 13,736 Zone 1 red king crabs, or 17 percent of BUC's Zone 1 red king crab PSC allocation was harvested. This represents a 119 percent increase from similar time periods. To avoid future constraints, BUC continues to look for opportunities to reduce its incidental PSC catch.

GOA Issues

As described above, BUC works closely with NMFS to manage GOA sideboard fisheries. However, during 2008, BUC discovered several constructs within the inseason management and catch accounting systems which affects BUC vessels' quarterly catch accounting. We would like to continue working to resolve the following inseason management ambiguities:

- The assignment of halibut to deep and shallow water complexes when a quarter ends in the middle of a week results in catch from the 1st quarter accruing towards the 2nd quarter. The effect of this is compounded by the fact that halibut does not roll from quarter to quarter as it does in open access.
- The methodology for assigning halibut to deep and shallow water complexes based on the observer's visual estimate of species retention rather than actual product complicates at-sea management.

¹ BUC's 2009 halibut mortality PSC was reduced by 44 mt from the 2008 amount.

² BUC's 2009 Zone 1 red king crab PSC was reduced by 4,286 individual animals from the 2008 amount.

- The “B” season directed cod fishery is managed according to an open access model that is no longer appropriate to the Amendment 80 fleet which is sideboarded on cod and halibut, is required to report production and discards daily, measures catch on flow scales, and has 100 percent observer coverage.

Research and Outreach

In addition to harvesting and processing activities, BUC is actively engaged in several projects to improve the natural and human environment affected by fishing operations. These are briefly described below.

Trawl sweep modification

John Gauvin works for BUC on environmental and scientific issues that affect BUC fisheries. Since 2006, he has been collaborating with Dr Craig Rose and other scientists from the Alaska Fisheries Science Center (AFSC) to modify groundfish trawls to reduce their effects on the benthic habitat. During testing in 2006 and 2007, elevating devices were added to trawl sweeps to raise the sweeps off the bottom, and reduce their contact with sessile seafloor animals and unconsolidated substrates. For most Bering Sea flatfish trawls, trawl sweeps are long (up to 1500 ft), and sweep 90 percent of the area between the trawl doors. Proposed modifications would attach 10 inch bobbins, or disks, every 90 feet to the trawl sweeps, raising the trawl sweep above the substrate allowing animals to pass underneath. In field testing, these modifications have proven effective at reducing effects on basketstars and sea whips, and did not substantially reduce catches of target flatfish. In June, the Council is scheduled to initially review an action to require these trawl sweep modifications for all Bering Sea flatfish trawling.

Reducing halibut mortality

BUC believes operating as cooperative increases incentives for individual bycatch accountability and optimal use of halibut bycatch mortality limits. BUC vessels now have a direct relationship between careful utilization of halibut bycatch mortality allowances and how much of their allocated and non-allocated target species are harvested. Therefore, BUC companies have begun discussing how to optimally utilize halibut excluders, reduce bycatch through data sharing, and reduce halibut mortality rates through improved fishing practices and halibut handling procedures.

Halibut bycatch mortality rates in flatfish and cod fisheries currently range from 70-80 percent. While these mortality rates are already quite high, BUC anticipates they will increase due to the Amendment 80 catch handling procedures. Discard halibut mortality rates are determined based on a three year rolling average of observed discard mortality rates. Data from the first year of Amendment 80 will become part of this three year rolling average starting in 2009. Because halibut mortality rates are likely to increase, and Amendment 80 halibut PSC limits will be

reduced by 50 mt over the next several years, BUC is committed to wisely using its halibut bycatch mortality cap.

The largest obstacle to reducing halibut mortality rates is the Amendment 80 catch handling requirements, which prevent sorting and removal of catch on deck prior to observer sampling. Observer sampling is nearly always conducted below deck as the catch comes into the processing area from the vessel's stern tank. After a tow, the contents of the net are dumped into the vessel's tank and sampling occurs as catch enters the processing area. Halibut and other PSC cannot be removed prior to observer sampling. Halibut near the back of the tank may not be discarded for up to two hours. The time needed to discard halibut has increased since Amendment 80 implementation because catch from different hauls can no longer be mixed. This means that fish from a new haul cannot be dumped into the tank and sorted until the tank is completely cleared of catch from the previous haul.

The intent of catch handling regulations is to allow for accurate estimations of catch including halibut bycatch. However, as a consequence halibut survival may be lower than what would be possible using a different approach to handling and accounting for halibut bycatch on Amendment 80 vessels.

BUC consulted with NMFS and the IPHC on an experimental fishing permit (EFP) to determine if halibut could be removed on deck, thereby decreasing the amount of time they are removed from the sea, and decreasing mortality rates. If approved, research conducted under the EFP would begin to assess how much halibut mortality rates could be reduced, what fraction of the halibut could be sorted out on deck, and how well alternative methods for accounting for halibut catches and mortality rates would work under modified procedures for handling halibut on Amendment 80 vessels. At their April meeting, the Council is scheduled to receive a staff presentation, and make recommendations on the EFP.

Community outreach

Because careful halibut bycatch management is so important to BUC's ability to harvest its target species allocations, BUC captains will always make decisions to avoid areas with high halibut rates. As high concentrations of yellowfin sole migrate across the Bering Sea shelf, BUC vessels follow these schools as they typically represent high catch per unit effort (CPUE) and low halibut bycatch. As the ice clears, large spawning schools of yellowfin sole congregate in very shallow water. At certain times of the year, these may be the only low bycatch areas. Displacement to other areas would result in higher CPUE, longer bottom times, increased costs, and additional habitat effects.

These shallow yellowfin spawning areas are sometimes adjacent to western Alaska communities. Community members have expressed concern to BUC and the Council about all vessel activities, and their affects on local commercial and subsistence harvests. Additionally, there have been gear conflicts in the area between large and small scale fishing operations, and claims of illegal

fishing. Because there are several different sectors that operate in these areas, and because BUC believes there have been misconceptions about BUC catch, operations, and trawl gear effects, BUC has proactively engaged in a community outreach and education program.

BUC representatives have traveled to several western Alaska communities to engage with community leaders. During trips to Nome, Bethel, Dillingham, and Anchorage, BUC met with representatives from Kawarak, the Association of Village Council Presidents, the Bristol Bay Economic Development Corporation, the Bristol Bay Native Association, the Qayassic Walrus Commission, and the United States Fish and Wildlife Commission. We discussed BUC operations under Amendment 80, provided catch information, and discussed research to reduce trawl effects to the benthic habitat. Additionally, we negotiated a regulatory closure to protect western Alaska subsistence resources in the Etolin Strait/Nunivak Island area, while still maintaining access to important flatfish fishing grounds.

Summary

The initial fishing year from was a learning process for BUC, highlighted by implementing a conservative approach to quota monitoring and management. This approach resulted in 2008 catch amounts below regulatory limits, and a GRS that exceeded minimum requirements. While BUC companies are pleased with these successes, they are concerned about future GRS requirements, market effects of the GRS, the effects of a depressed economy, and habitat and community interactions. BUC will continue to look for opportunities to address these challenges with NMFS and the Council.