


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver 
Acting Executive Director

DATE: February 1, 2001

SUBJECT: American Fisheries Act

ESTIMATED TIME 6 HOURS

ACTION REQUIRED

- (a) Review final co-op reports (including BSAI salmon bycatch provisions) - action as appropriate.
- (b) Discuss alternatives for processing sideboards and provide direction.
- (c) Receive industry report on Pacific cod sideboards and provide direction.
- (d) Discuss AFA report to Congress.

BACKGROUND

Co-op reports and salmon bycatch

In December we reviewed the draft co-op reports for the 2000 fisheries, with the final reports due for review at this meeting. Most of those reports have not changed since December, so we have not re-copied them but they are available. Minor changes to some of the reports are summarized via letter. Following the December meeting I sent a letter to the inshore AFA processors requesting them to provide information on product recovery and overall utilization rates, which were unavailable in the vessel co-op report. I made a similar request to the offshore co-op. These reports are in your Supplemental Folder and I expect to get a brief summary from the co-op representatives.

Of particular interest in December was the inter-co-op agreement regarding a draft plan to manage BSAI salmon and herring bycatch. You expressed your intent to closely review the final agreement at this meeting and determine whether any further Council action would be necessary. That agreement is also in your Supplemental Folder and we will get a report from co-op representatives.

Processing sideboards

Last fall you took action to approve BSAI pollock processing excessive share caps, per the mandates of the AFA, but postponed action on groundfish processing sideboards. While the AFA is unspecific with regard to the nature of "protective measures for non-AFA processors", the primary alternatives were designed around limitations based on the 1995-1997 history of the AFA processors, mirroring what we did with harvest vessel sideboards. At the October meeting you requested that we schedule this issue for further discussion at the February 2001 meeting, noting that alternatives to be considered may include the existing sideboard limitations; adjustments to the IR/TU program, including but not limited to those submitted by Groundfish Forum; or other measures taking into account our bycatch reduction mandates under the SFA.

The Executive Summary from the previous analysis is attached under Item C-4(b)(1). The Groundfish Forum proposal is attached under Item C-4(b)(2).

P. cod sideboards

For several meetings you have received testimony from three, non-AFA Pacific cod fishermen who feel that the additional early season effort in the cod fisheries from AFA vessels is negatively impacting their participation. You previously requested that these individuals meet with representatives from the AFA sector to develop a mutually acceptable solution. In December you reiterated that request, asking for a report from the industry involved, noting that you may take action at this meeting, if necessary, to address the situation. The representative for those three cod fishermen has submitted comment and recommendations under Item C-4(c)(1).

Report to Congress

We continue to work on the report to Congress as required by the AFA. While technically due last October, it is recognized that we just got a full year under our belt and are now working to complete a meaningful report. Darrell Brannan has been working on this report, and we have a contract with KEA Environmental regarding social and community level impacts. We have also requested help from the State regarding impacts to the CDQ program. My plan at the moment is to try and have something completed by late April or May. Where I need Council direction now is whether and how to vet this through the Council and public, prior to submitting the report to Congress. I recommend that, depending on our progress, I make the draft available for review at our April Council meeting where we could receive public comment and any Council re-direction.

E1 Executive Summary

This document provides an assessment of the effects of imposing limits on the amount of groundfish harvested from the Gulf of Alaska and Bering Sea and Aleutian Island that processors participating in cooperatives under the American Fisheries Act could process. The document also examines the effects of an excessive share cap on the amount of Bering Sea and Aleutian Island pollock that any given entity comprising AFA facilities could process. The document is divided into five sections, an introduction, a discussion of environmental considerations, an assessment of AFA processing limits, an assessment of an excessive share cap on the processing of pollock in the Bering Sea and Aleutian Islands, and a summary section that addresses other applicable laws.

The problem statement developed by the Council in February 2000 to address the processing sideboard and excessive share issues is presented below:

The American Fisheries Act (AFA) was passed by Congress in the fall of 1998. The AFA established non-CDQ allocations of BSAI pollock among three major sectors (offshore, inshore, and motherships), it established specific limitations on who could participate in the harvest and processing of BSAI pollock, and it facilitated the formation of fishery cooperatives in the BSAI pollock fisheries. In establishing these operating advantages for the pollock fishery participants, the AFA recognized a need for limiting their participation in other, non-pollock fisheries as necessary to prevent adverse impacts on traditional harvesters and processors of those other fisheries due to the AFA or cooperatives in the pollock fishery. Congress directed the Council to address these concerns by developing processor sideboards and excessive share caps. The problem before the Council is to develop measures that take into account the impacts on AFA and non-AFA harvesters and processors, and fishing communities.

E1.1 Processing Limits

Chapter 3 examines the impacts of establishing processing limits on non-pollock groundfish in the Bering Sea and Aleutian Islands and all groundfish in the Gulf of Alaska (including pollock) by processors eligible to participate in pollock cooperatives under the American Fisheries Act (AFA). The analysis examines the language in the AFA, shows the organizational structure of the industry, provides a detailed assessment of the status quo, and develops 10 specific options to implement processing limits, sometimes referred to as "processing sideboards". It then calculates the percent of the total allowable catch (TAC) in the GOA and BSAI that could be processed by AFA processors and associated facilities based on the structure of the industry and options specified. Conclusions are drawn regarding the efficacy of the options in fulfilling the mandates of the AFA.

E1.1.1 The Organizational Structure of the Pollock Processing Industry

The AFA directs the Council to provide protection to non-AFA processors from the AFA processors that may benefit from participation in pollock cooperative. The AFA also introduces the concept of AFA entities as follows: "Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph." Entities that are linked by this "10% Ownership Rule" to AFA-eligible processing facilities are referred to as AFA entities.

The language in the AFA regarding the 10% Ownership Rule is subject to interpretation. A preliminary analysis in June 1999 used a literal interpretation of the 10% Ownership Rule. Because of the potentially far-reaching consequences of the literal interpretation of the 10% Ownership Rule, a more limited interpretation was developed. This interpretation known as the 10% Limited Rule was presented to the Council in October. The 10% Limited Rule recognizes the limits of the stream of benefits that could result from participation in AFA pollock cooperatives.

NMFS also recognized the far-reaching implications of a literal interpretation of the 10% rule, and chose to develop their own interpretation for implementing processor limits for crab and harvesting limits for AFA harvesters. NMFS interpretation is based on a multiplicative algorithm that enables them to assess the level of

ownership where very complicated ownership structures exist. The language of the NMFS interpretation of the 10% Ownership Rule is as follows.

10-percent ownership standard. For purposes of this definition, all individuals, corporations or other entities that either directly or indirectly own a 10 percent or greater interest in the mothership, inshore processor or pollock harvesting entity, as the case may be, are considered as comprising a single AFA entity. An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's percentage of direct, or indirect interest in the mothership, inshore processor or pollock harvesting entity, as the case may be.

Outcomes using NMFS' 10 percent ownership standard mirror outcomes using the 10% Limited Rule in relatively straightforward situations, and provide more guidance than the 10% Limited Rule in more complicated situations. Therefore NMFS' 10 percent ownership standard, along with NMFS' 10 percent control standard, is used in the analysis to determine AFA entities. AFA companies are determined by using similar 50 percent ownership and control standards. Ownership interests of AFA processors in companies and entities developed in organization charts in Chapter 3. The organization charts were based on research in public databases and on interviews with owners and officers of processing firms.

The analysis of the ownership structure using the 10 percent ownership and control standards indicates that there are a total of 12 AFA entities described in Table 1. If 50 percent ownership and control standards are used to define AFA companies, only 3 AFA facilities would be directly affected—rather than a single entity comprising the *F/V Arctic Storm*, *F/V Arctic Fjord*, and *M/V Ocean Phoenix*, two separate companies would be defined, one comprising the *F/V Arctic Storm* and *F/V Arctic Fjord*, the other consisting of *M/V Ocean Phoenix*.

Table 1. Summary of AFA Entities as Defined with the 10 Percent Ownership and Control Standards

Entity	Description
Alaska Ocean LLP	The entity comprises the <i>F/V Alaska Ocean</i>
Alaska Trawl Fisheries	The entity comprises the <i>F/V Endurance</i>
Aleutian Spay Fisheries APICDA, CVRF, Prowler LLC, and Ocean Prowler LLC	The entity comprises the <i>F/V Starbound</i> , as well as 5 fixed gear catcher processors (<i>F/V Horizon, F/V Prowler, F/V Bering Prowler, F/V Ocean Prowler</i>) and shore plants in Atka, and False Pass (under construction).
American Seafoods Inc., CVRF	The entity comprises American Seafoods' 7 AFA-eligible pollock catcher processors , 11 AFA-ineligible catcher processors, the <i>F/V Beagle</i> an H&G catcher processor, and the <i>F/V Ocean Prowler</i> .
Phoenix Processor LP, Arctic Storm Inc, Arctic Fjord Inc, and BBEDC	The entity comprises 3 AFA processing vessels <i>F/V Arctic Storm, F/V Arctic Fjord, M/V Ocean Phoenix</i> , and the <i>F/V Bristol Leader</i> , a fixed gear catcher processor.
Glacier Fish Company, which is owned 50 percent by NSEDC.	The entity comprises the <i>F/V Pacific Glacier, F/V Northern Glacier, F/V Norton Sound</i> and 3 shore plants in small shore plants in the Nome area.
Highland Light /Yard Arm Knot Holdings	The entity comprises the <i>F/V Highland Light, F/V Yardarm Knot, F/V Westward Wind</i> ; the latter are pot and fixed gear catcher processors.
Icicle Seafoods, Inc.	The entity comprises the <i>M/V Northern Victor</i> , 4 floating processors <i>M/V Arctic Star, M/V Bering Star, M/V Coastal Star, M/V Discovery Star</i> , and shore plants in Petersburg and Seward.
Maruha Corporation and its subsidiaries, (Supreme Alaska, Westward Seafood, and Western Alaska Fisheries), and Wards Cove Packing Company	The entity comprises the <i>M/V Excellence</i> , 2 AFA shore plants in Dutch Harbor , a shore plant in Kodiak, two non-AFA catcher processors (<i>F/V Titan, and F/V Pacific Knight</i>) and 14 non-AFA processing facilities owned by Wards Cove Packing.
Nichiro Corporation, its subsidiary Peter Pan Seafoods, and Seven Sea Fishing Company	The entity comprises an AFA shore plant in King Cove , the <i>M/V Golden Alaska</i> , shore plants in Valdez, Port Moller, and Dillingham, and the 2 non-AFA catcher processors <i>F/V Blue Wave, F/V Stellar Sea</i>).
Nippon Suisan, its subsidiary Unisea, Inc., and Dutch Harbor Seafoods	The entity comprises an AFA shore plant in Dutch Harbor , and 2 non-AFA processing barges in St. Paul (<i>Unisea</i>)vessels, and the floating processor <i>M/V Omnisea</i>
Trident Seafoods Corporations	The entity comprises 2 AFA shore plants one in Akutan and one in Sand Point , all of the processing facilities formerly owned by Tyson Seafoods, including 5 AFA catcher processors and 1 AFA floating processor . The entity also comprises 13 other non-AFA processing vessels, and 6 other non-AFA shore plants.

Notes: Bolded text indicates an AFA eligible processing facility.

E1.1.2 Identification of Ten Options

The analysis identifies ten different ways the processing limits could be applied. The options could be applied to the BSAI and GOA, or a different option could be selected for each area. The ten options considered in this analysis are as follows:

- Option 1 **Overall Limits Applied to All Facilities within AFA Entities.** A single, overall processing limit would be set for each species. AFA entities would be defined as an organization under which all processing facilities that are associated with AFA facilities by a 10 percent ownership and control standard. Once the overall limit is reached, no additional processing of the limited species by any included facility in any of the entities would be allowed.
- Option 2 **Overall Limits Applied to All Facilities within AFA Companies.** A single, overall processing limit would be set for each species. AFA companies would be defined as all processing facilities that are associated with AFA facilities by the 50 percent ownership and control standards.

- Option 3 **Overall Limits Applied to All AFA-eligible Facilities.** A single, overall processing limit would be set for each species. Only AFA processing facilities would be included.
- Option 4 **Sector-Level Limits Applied to All Facilities within AFA Entities.** Sector-level processing limits for each species would be imposed upon all facilities in AFA entities. Three sectors would be defined (catcher processor, mothership, and inshore) on the basis of existing inshore-offshore regulations.
- Option 5 **Sector-Level Limits Applied to All Facilities within AFA Companies.** Sector level processing limits for each species would be imposed upon all facilities in AFA companies. Three sectors would be defined on the basis of existing inshore-offshore regulations.
- Option 6 **Sector Level Limits Applied to AFA Facilities.** A processing limit for each species would be applied to each sector. Only AFA facilities would be included.
- Option 7 **Individual Entity Limits Applied to All Entity Facilities.** Individual processing limits would be imposed on each AFA entity.
- Option 8 **Individual Company Limits Applied to All Company Facilities.** Individual processing limits would be issued to each AFA company. All processing facilities owned by AFA Companies would be included.
- Option 9 **Individual Company Limits Applied to AFA Facilities.** Processing limits would be imposed on each AFA company, but only AFA-eligible facilities would be included.
- Option 10 **Individual Plant and Vessel Limits.** An individual facility-level processing limit would be imposed on each AFA plant or vessel.

Additionally, the following suboptions are examined:

- excluding catcher/processors from further processing sideboard limits
- determination of basis for calculation (TAC vs. tons processed)
- treatment of nine retired vessels' history
- CDQ exemption from sideboard limits

E1.1.3 Assessment of the Status Quo

Section 3.3 contains an assessment of the status quo with a focus on conditions that currently exist which may constrain the AFA processors from acting in a way that may be harmful to non-AFA processors, or conversely existing conditions that might increase the likelihood that AFA processors could harm non-AFA processors.

Subsection 3.3.1 contains an overview of existing regulations from AFA and from the groundfish FMPs that are relevant to the processing limit issue. In general it appears that for many fisheries existing regulations already provide some constraints on AFA processors. These constraints include the 2004 AFA expiration date, AFA harvesting sideboards, AFA restrictions on CPs in the GOA, the LLP program, Inshore-Offshore in the GOA, Pacific cod allocation in the BSAI and the PSC limits. In addition, the subsection summarizes non-fishery regulations such including loadline restrictions and a summary of regulations restricting anti-competitive behavior.

Subsection 3.3.2 the summarizes processing in eleven major fisheries in the BSAI and GOA including the longline, pot, and trawl fisheries for Pacific cod, the pollock fisheries, the flatfish fisheries and the Atka Mackerel fishery (BSAI only). The subsection indicates total reported tons of both AFA and non-AFA processors for the years from 1995 through 1999. Also included are lists of the top 40 processors in each fishery. The subsection continues with tables showing products, wholesale prices and product values and ends with a brief summary of global markets for flatfish.

E1.1.4 Assessment of Processing Limits

The analysis estimated the percentage of past processing by species group and area reported by AFA processors under the different options. Three historical periods were examined: 1995-1997, 1998-1999, and 1995-1999. Tables showing these percentages are included in Chapter 3.

The analysis also examines the effect of processing limits in a more qualitative manner from the perspective of AFA processors, non-AFA processors, non-AFA processors that may be restricted under the limits, catcher vessels, and NMFS. In all, eleven different objectives were listed, and are used to provide qualitative assessment of the 10 different options.

E1.1.4.1 Effectiveness of Limits: A Comparison of Overall, Sector, and Individual Limits

On a nominal basis, overall limits, sector-level limits, and individual limits all limit AFA processing facilities to the same percentage of each species in each area. In other words, for each species and area, the sum of the individual limits are equal to sum of the sector-level limits, which are equal to the overall limits. Therefore, on the surface, it would appear that non-AFA processors would be ambivalent between the three types of limits. However, because there are additional restrictions on catcher processor activities in the GOA within the AFA, sector-level limits would actually allow AFA processors to process less GOA groundfish than either overall limits or individual limits. With overall limits, and to a lesser extent with individual limits, AFA processors that are not restricted from participating in the GOA would be able to process the groundfish that had been processed by catcher processors during the historical period. Therefore non-AFA processors would very likely favor sector level limits over individual limits, and individual limits over overall limits.

AFA processors have indicated their preference for the status quo. But if processing limits are imposed it is unclear whether they favor overall limits or individual limits—the fact that sector-level limits would reduce the amount available to AFA shore plants in the Gulf makes it clear that sector-level limits would not be preferred.

The experience of AFA processors with individual processing limits in the BSAI opilio crab fishery in 2000 was not favorable. The very short season, the intense race for fish the lack of a real-time reporting system and the fact that NMFS placed the enforcement burden of the limits on the AFA companies made the individual processing limits difficult to accept, and the idea of overall limits more palatable.

However, an important factor for AFA processors is the specter of increased competition among AFA processors for non-pollock groundfish that could occur with overall limits. Furthermore with longer seasons and the reporting system for groundfish, the concerns of AFA processors with individual limits may be reduced. Under overall limits AFA processors will face the possibility of competing against other AFA processors to get their share before the AFA limit is reached—they will also need to compete against all non-AFA processors, who will not be restricted in any way. The intensified race for fish could be avoided if processing limits are imposed at the individual level. Although individual limits will not constitute an allocation and individual AFA processors will face continued competition from non-AFA processors, AFA processors will not need to compete with other AFA processors. In addition it is likely that individual processing limits will allow AFA processors more flexibility than with overall or sector-level limits to allocate their processing capacities and other resources, and allow them to realize more of the potential benefits of the AFA, within their historical processing shares.

Non-AFA processors have been strong supports of implementing processor sideboards. They are concerned that profits and production capacity from the rationalized BSAI pollock fishery could be used to increase the AFA processor's share in the other groundfish fisheries. They feel the increased market share could result from a variety of factors including using AFA catcher processors as motherships, or changing when they participate in various fisheries (i.e., they could focus more on processing rock sole during the roe season).

Competition appears to be the driver of catcher vessel owners' attitudes toward AFA processing limits. From the perspective of catcher vessel owners it appears that the status quo would be preferred to any limits. However, if processing limits must be imposed it appears they would favor overall limits on AFA processors. Overall limits would offer the greatest level of competition—while individual processing limits would be anathema.

Annual implementation and in-season enforcement of individual-level limits appear to be less burdensome to NMFS than overall processing limits or sector-level limits. With overall or sector level processing limits, it is likely that NMFS will have to enforce at least two types of closures in order to enforce the processing limits and to still allow the processing of limited species as bycatch. The two types of closures would be:

1. A directed processing closure when the AFA processing total reaches a pre-determined percentage of the processing limits. A closure of directed processing will allow AFA processors to retain and process limited species when they are delivered as bycatch.
2. A closure to all processing when the full processing limit is reached.

If processing limits are imposed at the sector level, NMFS may have the additional burden of determining which processing facilities belong to which sector. This additional burden will occur if sector-level limits are imposed on AFA companies or on AFA entities. If sector-level limits are imposed only on AFA-eligible facilities, then the sector definitions are predetermined.

If processing limits are imposed on individual processors, NMFS may be able to shift most of the monitoring burden onto the processors themselves. In such cases NMFS could report weekly cumulative processing totals to the processors, but the processors themselves would have the responsibility of determining when they should cease processing for directed fisheries. Under this scenario it may be possible to make enforcement a post-season process involving fines and sanctions for those processors that exceed their limits.

E1.1.4.2 Effectiveness of Limits: A Comparison of Applying Limits to Entities, Companies, or Facilities

Processing limits applied to AFA facilities will be restrictive, but less restrictive than limits applied to companies or entities. If processing limits are applied to facilities, either as a group or individually, AFA processors participating in cooperatives would not be able to increase their shares of processing of crab and groundfish species under the jurisdiction of the NPFMC. AFA facilities would, however, be able to increase their relative processing shares of species managed solely by the State of Alaska, such as salmon, herring, and other shellfish. Additionally, limiting the processing of AFA facilities would not constrain the ability of the owners of the facilities to use AFA profits to increase their non-pollock processing shares at other facilities in which the AFA owners may have an interest.

Processing limits applied to AFA companies rather than to AFA facilities will be more effective in limiting the ability of owners of AFA facilities to increase their shares of non-pollock processing. The effectiveness of processing limits on AFA companies depends largely on the ability to define AFA companies. The analysis defines AFA companies using a 50 percent ownership and control standard. Under this definition, non-AFA facilities owned by AFA companies or by subsidiaries of AFA companies are included in the processing limits. Thus if an AFA owner wishes to increase its shares of crab or groundfish other than BSAJ pollock, it would have to do so as a minority partner. The processing limits would not place a constraint on AFA companies wishing to increase their processing shares of halibut or of species managed solely by the State of Alaska, such as salmon, herring, and other shellfish.

Processing limits applied to AFA entities as defined by NMFS' 10 percent ownership and control standards would appear to be more effective than limits imposed on AFA companies. With NMFS' 10 percent ownership and control standards it will be much more difficult for AFA owners to use profits resulting from the AFA to invest in greater processing capacity. If AFA owners wish to make new capital investments in non-pollock processing, they could make investments in salmon and herring fisheries or make investments at levels less than 10 percent of the capital value of the processors in which they are investing. In addition, because of the limits AFA processors would bring, existing owners may not welcome new investment associated with AFA profits.

Imposing processing limits on AFA entities will have some unintended consequences. Processing limits imposed on AFA entities will create significantly more paperwork for NMFS and the processing industry than the other options. This additional burden will be time-consuming and expensive, and may be viewed by many as a significant intrusion of government into private affairs of industry. Additionally, if limits are imposed on AFA

entities, AFA owners will be prevented from investments in groundfish processing capacity, and may choose instead to invest in additional processing capacity in species that are not limited, such as salmon, herring and halibut. Additional competition for the same processors that are calling for the limits could result.

Imposing processing limits on entities will also create other unintended consequences by limiting the activities of processors that may not be able to experience any of the benefits of the AFA. These consequences are perhaps most easily understood by using ownership interests of the APICDA as an example. As shown in Figure 15d APICDA has minority interest in F/V *Starbound* an AFA catcher processor. Prior to buying into the *Starbound*, APICDA had purchased ownership interests in three freezer longliners, the *Prowler*, the *Bering Prowler*, and the *Ocean Prowler*. The other partners of these vessels do not appear to be associated in any significant way with any AFA pollock processors, and would be very unlikely to benefit from any additional profits resulting from the *Starbound's* ability to participate in a pollock cooperative. However, because of APICDA's ownership in the *Starbound*, these three freezer longliners would be limited under the AFA processing limit using a 10 percent ownership standard. This potential problem could be mitigated with the CDQ exemption discussed above.

It appears that use of a 10 percent ownership and control standard in the application of processing limits will have both positive and negative impacts. On the positive side it will provide additional protection to processors that have no links or minor links to AFA owners. On the negative side it may restrict and potentially harm processors that are unlikely to actually benefit from the AFA.

In addition, limits on AFA entities could lead to increased investments in salmon and herring processing. Finally, the paperwork and enforcement if limits are applied to AFA entities will be more burdensome and expensive for both NMFS and the industry. Therefore, there is uncertainty whether the additional protection gained by applying processing limits to AFA entities outweighs the negative impacts.

Given the possibility of ambiguous results if processing limits are applied to AFA entities, the Council may wish to approve a less restrictive option in order to fulfill its mandate to protect non-AFA processors, or examine other options for defining AFA entities.

E1.1.4.3 A Comparison of Processing Limits to the Status Quo

The processing limits will place additional constraints on AFA processors from increasing their share of non-pollock groundfish. However, it is possible that some of these constraints will not be binding. AFA harvest sideboard limits, PSC limits, Inshore-Offshore regulations in the GOA, Pacific cod regulations in the BSAI, and other enforced restrictions may be more constraining than the processing limits, particularly if the processing limits are estimated as a percentage of total harvests. If processing limits are binding, they will provide additional protections for the non-AFA processors beyond those already imposed through existing regulations.

Other constraints on AFA processor's activities may be self-imposed. AFA processors will be watched carefully in the coming years, because the AFA is scheduled to sun-set at the end of 2004. The scrutiny that can be expected during the reauthorization process may serve as a limiting factor on the actions of AFA processors. If they are perceived to be taking undue advantage of the benefits that accrue to them, then it is less likely that the AFA will be reauthorized (as the program currently exists), and it is less likely that other programs similar to AFA will be enacted. The possibility that the gains achieved through AFA can be taken away as quickly as they were obtained is likely to keep AFA processors from acting in an anti-competitive nature.

E1.1.5 Decisions, Assumptions and Issues

This section describes the decisions that will be necessary to create a final alternative for AFA processing limits. The following assumptions and issues underpin the specification of options above and the analysis, and need to be carefully considered by the Council. If the Council chooses to develop a preferred processing limit alternative that could be compared to the status quo, it is recommended that they make a decision regarding each of the following points:

1. Determine whether to create overall, sector-level, or individual processing limits.

The aggregation level at which to create processing limits is first of the two key decision points that determine the specification of a processing limit alternative. If an overall limit is chosen, a single aggregate cap would be set for each species and area for all AFA processors. If sector-level limits are chosen, three caps (one each for catcher processors, motherships, and shore plants) would be set for each species and area. If individual limits are set, then each AFA processor will be capped for each species and area. Determinations of which processors are included in the limit are dealt with in the next decision point.

2. Determine whether AFA processing limits will be applied to AFA facilities, companies, or entities.

Processing limits could be applied to the processing plants and vessels that are AFA eligible to participate in BSAI pollock cooperatives. Alternatively the Council could choose to expand the number of facilities that would be constrained by the limits by including all processing facilities that are owned by companies that own AFA eligible processing facilities. If limits are applied to AFA companies, it is assumed that a 50 percent ownership and control standard would be used. Finally, the Council could choose to limit all processing facilities in AFA entities. If limits are applied to AFA entities then it is assumed that a 10 percent ownership and control standard would be used.

3. Determine whether to include catcher processors under the processing limits:

Catcher processors are currently restricted from processing any crab in the BSAI, and have relatively strict limits on groundfish processing in the GOA. The Council could choose to exclude all catcher processors from additional processing limits as proposed here. Alternatively the Council could choose to exclude only those catcher processors which are not associated with companies or entities that own AFA motherships or AFA shore plants—this would be consistent with the BSAI processing limits on crab.

4. Determine the fisheries for which processing limits will be established. (BSAI crab processing limits have been established in separate rulemaking.)

The analysis used five species groups to estimate limits of Non-pollock BSAI groundfish and six in the GOA rather than specific species. The species groups are: Pacific cod, Atka mackerel, flatfish, rockfish, other groundfish, and pollock (GOA only). The Council may wish to use different species or species grouping, or to exclude certain species.

5. Determine the areas in which to apply processing limits.

The analysis assumed that processing limits would be imposed in both the GOA and the BSAI. The council could choose to impose processing limits on more detailed subareas (Eastern Gulf, Western Gulf, Central Gulf, Bering Sea, Aleutian Islands) or they could choose to exclude areas.

6. Determine method for calculating processing limits.

The analysis uses the following generalized formula to estimate the percentage of the current year TAC of each species group in each area that AFA processors (entities, companies, or facilities) would be allowed to process:

$$\text{total reported tons from all AFA processors} \div \text{total reported tons from all processors}$$

Alternatively the Council could choose to use only retained catches in the percentage calculation. This formulation would yield lower percentages for AFA processors if AFA processors retained relatively less fish than non-AFA processors. While this formulation is not reported for each option, the effects are demonstrated in Subsection 3.4.11 for Option 4. Under this formulation, the percentages would be calculated as follows:

$$\text{total retained tons from all AFA processors} \div \text{total retained tons from all processors}$$

The Council could also choose to use the historical TACs in the denominator rather than reported or retained catch. This formulation will tend to yield lower AFA percentages for species and areas where the total TAC was not harvested due, for example, to bycatch closures or a lack of markets. This formulation will yield higher AFA percentages if total reported catch was greater than the TAC, but will reduce AFA percentage if the TAC was not fully harvested. While this formulation is not reported for each option, the effects are demonstrated in Subsection 3.4.11 for Option 4. Under this formulation, the percentages would be calculated as follows:

total reported tons from all AFA processors ÷ total historical TACs

It should be noted that if the Council chooses to use total historical TACs in the denominator, it should be very careful to specify whether reported or retained catch is to be used in the numerator. While it may seem politically correct to use only retained catch in the numerator, doing so will perhaps unduly reward non-AFA processors for their own discards. This somewhat ironic outcome results from the fact that percentages by their nature sum to 100—if AFA processors do not get credit for their discarded tons, then Non-AFA processors will get that credit. A simple example will demonstrate the issue. Assume that the entire TAC of 10,000 tons was reported, and that total reported tons were split evenly between AFA and non-AFA processors. Further assume that both groups retained 4000 tons and discarded 1000 tons. If the AFA processing limit uses retained tons in the numerator and the total TAC in the denominator, then AFA processors would be limited to 40 percent of the TAC in the future, while non-AFA processors would be allowed to process at least 60 percent of the TAC. In effect, the non-AFA processors get credited with the discarded tons of the AFA processors and do not get penalized for their own discards.

There may be some confusion regarding the calculation of processing limits and on the implementation of processing limits. It is entirely feasible that the formulas used to calculate processing limits and implement processing limits are different. For example assume that the processing limits are calculated as the total reported tons by AFA entities from 1995 through 1997, divided by the total reported tons of all processors 1995 through 1997. The resulting percentage could then be applied to the TAC available for processing in 2001 or in 2002. In this case, NMFS would set an AFA apportionment equal to the TAC (after subtracting CDQ allocations) multiplied by the processing limit percentage. The result would be a limit of a fixed amount of tonnage for the current year. In other words, even though the TAC is not used in the calculation of the limit percentages, the current year TAC would be used in the calculation of tons that AFA processors would be allowed. Regardless of how the percentage is derived, implementation of that percentage would be based on the current TAC available.

7. Determine which years to include in processing history.

The AFA indicated that the historical average of the years 1995-1997 should be used to calculate processing limits. The Council can however choose to use processing history of more recent years if it chooses. The analysis estimates AFA processing limits for three sets of years as follows:

- 1995- 1997
- 1998-1999
- 1995-1999

8. Determine whether bycatch may be retained and processed after the processing limit for that species is attained.

If a processing limit for a species is reached, the processors affected by that limit, whether at the individual, sector, or overall level, could be prohibited from processing additional amounts of that species, even if delivered as bycatch. Alternatively National Marine Fisheries Service could employ a phased approach of imposing processing limits that would allow the processing of bycatch amounts of a limited species after a predetermined threshold is reached. An additional factor to consider is whether AFA processing limits will supersede retention requirements under Improved Retention and Improved Utilization (IRIU).

9. Determine the treatment of non-pollock processing histories of the nine removed catcher processors. (This decision is not necessary if catcher processors are excluded from the limits.)

The processing histories of the nine catcher processors listed in section 209 are treated differently depending on how the processing limit is configured. For an overall limit, the histories will be included in that overall limit. For sector limits, the histories are included in the offshore catcher processor limit. If individual limits are used, the histories will go to American Seafoods as a whole or be apportioned equally among its seven remaining catcher processors. Alternatively, the Council could choose to exclude the 9 ineligible vessels. This is considered a sub-option and is examined in subsection 3.4.11.3.

10. Determine whether to include processing history of the 20 AFA catcher processors in the GOA Groundfish processing limits. (This decision is not necessary if catcher processors are excluded from the limits.)

The GOA groundfish processing limits of the 20 catcher processors listed in section 208 of AFA are included in the overall, sector, or individual catcher processors' limits, depending on options chosen. However, the AFA prohibits those 20 vessels from processing any GOA pollock, any groundfish in GOA Area 630, or more than 10% of the Pacific cod in Areas 610, 620, and 640. Non-AFA catcher processors included within AFA companies or entities will be allowed to process up to whatever limits are established. In other words the Council could choose to keep catcher processors under the AFA processing limits, and insure that the processing facilities owned by AFA companies in the GOA do not get the benefit of the history that cannot be used by AFA eligible catcher processors.

11. Determine the treatment of non-pollock processing histories of facilities that qualify under §208(e)(2.1) and §208(f)(1)(B) of the AFA.

It appears that two processing facilities, the *Ocean Peace*, and the shore plant in Kodiak owned by International Seafoods of Alaska, would qualify under these sections. Discussions with members of industry indicated that references to these facilities in the AFA were included to allow these facilities to continue to process pollock in directed fisheries as part of the allocations in §206 of the AFA, but that it was not intended that they would be limited unless they participated in cooperatives. Because it is not anticipated that these facilities will participate in cooperatives, their processing histories have not been included as AFA (in the numerator) in the calculation of processing limits—the processing of these plants is included in the denominator of the calculations.

12. Determine the treatment of processing histories of AFA-eligible facilities that choose not to participate in cooperatives.

It is possible that some AFA eligible companies may choose not to participate in AFA cooperatives, in which case the Council may choose to remove them from the processing limit calculations. Currently all eligible processors have been issued AFA permits.

13. Determine whether processing limits are fixed or are adjusted to account for changes in ownership.

If a non-AFA processing company purchases an AFA-eligible facility the new owner becomes an AFA company. If the limits are intended to preclude AFA companies from expanding their processing in non-pollock species, then it stands to reason that the new owner's processing in its non-AFA plants would be added into the AFA processing total for that species.

The Council may also wish to address the question of how to treat the processing history of new facilities (relative to the historical period used in the limits) of potential buyers. Assume for example that the new processing plant on Adak, which began operating in 1999, is a success and its owners buy an AFA catcher processor in 2001. If the historical period for determining the AFA processing limits ends in 1997, the processing history of the new Adak facility would not be included in the AFA limits, and the new owner of the AFA catcher processor would have to cut back its production at Adak in order to stay within the limits.

14. Determine whether processing are adjusted if AFA processors purchase non-AFA facilities after the date of final Council action.

It is possible that owners of AFA processors may purchase non-AFA facilities after the date of the Council's final action on AFA processing limits. The Council should indicate whether the processing histories of the newly purchased facilities are added into the calculation of limits. It should be noted that if the Council chooses to add these histories into the limits the potential effectiveness of the limits would be greatly reduced.

15. Determine the treatment of processing histories of vessels or plants that have been destroyed or replaced.

Since 1995, there have been several vessels or plants that have been destroyed or replaced. In some of those cases, catch and processing histories have been transferred to new owners who have built new vessels or processing facilities to replace the old. It is possible that AFA companies or members of AFA entities own the catch and processing histories of some of the destroyed or replaced facilities. The analysis assumes that the catch and processing histories of such destroyed or replaced facilities will be included in the calculation of AFA processing limits.

The Council should also determine the how they wish to handle processing histories of vessels or processing facilities that may be lost or destroyed after the date of final Council action.

16. Determine how to treat the processing totals of vessels that have been removed from U.S. documentation.

It is possible that some vessels that are no longer U.S.-documented fishing vessels (in addition to the nine vessels removed in the AFA) may contribute to the AFA processing limits. In some cases, the processing histories of those vessels may be sufficient to qualify replacement vessels under the LLP, and it is possible that the owners of those fishing histories have already built replacement vessels. Because of the difficulties of confirming current U.S. documentation of all vessels, the analysis includes the catch and processing of all vessels that participated in the fisheries between 1995 and 1997. If the Council chooses to exclude these vessels, then processing histories of all vessels that have given up their documentation should be removed from both the numerator and the denominator of the calculation for calculating limits. It should be noted that at least five vessels that are no longer documented are included in the calculation of the limits in the analysis. These vessels include the *Endurance* and four catcher processors that were at one time owned by American Seafoods.

17. Determine whether or not processing histories are transferable.

It is possible that an AFA processor may wish to consolidate its processing at a single facility rather than have it spread over several facilities. In this case, it may wish to sell the facility that it is no longer utilizing to a non-AFA processor and retain the applicable processing history so that the AFA processing limits remain unchanged.

18. Determine the annual process of defining AFA facilities, companies, and entities. (This decision is not necessary if limits are applied only to AFA facilities.)

The Council should indicate whether National Marine Fisheries Service should use the same methodology for defining the facilities that will be included under the AFA processing limits as it currently uses for the BSAI crab processing limits. The Council should an alternative method if desired.

E1.2 Excessive Share Caps on Pollock

Chapter 4 examines an excessive share cap for pollock in the BSAI on AFA processors. The AFA directs the Council to establish a cap on AFA processors, as a means to ensure competition in the pollock fisheries. This chapter examines the goals and objectives of an excessive processing share cap for BSAI pollock, and examines the impacts of setting the cap at levels ranging from 10 percent to 30 percent. The examination also includes 3 sub-options:

- 1) apply the cap to AFA companies using a 50 percent ownership and control standard rather than to entities defined with a 10 percent ownership and control standard
- 2) include CDQ pollock within the excessive share cap
- 3) allow processors that exceed the cap in the past to continue at previous levels (a grandfather clause)

E1.2.1 Goals and Objectives of Excessive Processing Share Caps for Pollock

Language in the AFA implies that the goal of excessive share caps is to preserve competition in the fishing and processing industry of the BSAI. Market share has often been used as an indicator of markets that are less than competitive, and it is a very useful indicator. However, a disproportionate market share by itself does not always indicate that an anti-competitive situation exists. Barriers to entry into a particular market are perhaps a more important factor in market control. With a high market share and barriers to entry, it is more likely that company will be able to influence prices paid for input such as raw fish, as well as prices paid for finished products to produce abnormally high profits.

The AFA erected significant barriers to entry into the pollock processing and harvesting markets. Therefore it appears reasonable to set policies that regulate how much of the pollock processing and harvesting markets individual firms or entities can control. Since there are several substitutes for pollock products in world market it is less likely that AFA processors will be able to significantly influence the prices of finished products. However, the supply of raw pollock is relatively localized, and therefore the effectiveness of excessive share caps on pollock are judged according to whether or not the cap increases or reduces the likelihood that a given processor will be able to influence the prices it pays for raw pollock.

E1.2.2 Impacts of Setting the Cap at Various Levels

The Council requested that an excessive share cap on pollock processing be examined at three levels: 10 percent, 20 percent and 30 percent. The Council has also stated that these levels represent a range and that the Council may choose any level between 10 and 30 percent. The effects of the cap at any given level depend on two factors:

- 1) How many entities would be constrained by the cap
- 2) How much would the constrained entities have to cut back production in order to stay within the cap

Table 2 shows the percentage point difference of the three cap levels and the percentage processed in 1999 by the AFA pollock entities as defined in Table 1. Entities are given a code to protect the confidential nature of the data. The code does not correspond to the order of the entities in Table 1. A plus sign (+) indicates how much the entity could increase its processing and still remain under the cap. A shaded cell with a minus sign (-) indicates that the entity exceeded the cap in 1999 and would have to reduce its processing by the amount shown to come under compliance of the cap. If the cap were set at 10 percent four entities would have to cut back their processing. With a 20 percent cap only one entity would have to cut back, and with a 30 percent no entity would be constrained.

Table 2. Cap Levels Compared to 1999 BSAI Pollock Processing Percentages

Entity #	Percentage Points Above (+) or Below (-) the Cap in 1999		
	10 percent cap	20 percent cap	30 percent cap
1	+6.6	+16.6	+26.6
2	-12.3	-2.3	+7.7
3	+7.8	+17.8	+27.8
4	+7.8	+17.8	+27.8
5	+0.6	+10.6	+20.6
6	+7.3	+17.3	+27.3
7	-8.0	+2.0	+12.0
8	+9.4	+19.4	+29.4
9	-6.8	+3.2	+13.2
10	-3.1	+6.9	+16.9
11	+6.7	+16.7	+26.7
12	+7.6	+17.6	+27.6

Notes:

- 1) Processing shares do not include CDQ pollock, which has been excluded from both the numerator and the denominator in the calculations.
- 2) Plus signs (+) indicate the percentage points the entity could gain and still remain under the cap.
- 3) Shaded cells with minus signs (-) show entities that were above the cap in 1999, and how many percentage points they would have to cut to be in compliance with the cap.

E1.2.3 Impacts on Competition of Excessive Share Caps

If the cap is set at a level that requires entities to scale back their processing, there could be impacts on competition particularly in the market for raw fish. The impacts will depend on malleability of the processing capacity of the particular entity. An entity that consist of a single pollock shorebased processing plant has much less malleable processing capacity than an entity that consists of several processing vessels. If an entity that consists of several vessels must cut back processing, it will likely to try to sell one or more of it vessels. If an entity consists of a single shorebased processing plant, then it is likely that the entity will be forced to reduce the throughput through its existing plant. The latter situation is more likely than the former to create a reduction in the price of raw fish.

The four large AFA shore plants in Dutch Harbor and Akutan averaged 10.2 percent of the non-CDQ pollock in 1999. Therefore, if the excessive share cap for AFA pollock processing was set at 10 percent, then even if each shore plant was the only pollock facility in an entity, at least some of those four would have to cut back on production, creating the potential for lower ex-vessel prices for raw fish.

If the cap were set at 20 percent, only one entity would be constrained. While the analysts cannot predict exactly how this entity would behave, it is likely that it would wish to divest itself of less efficient and more malleable processing capacity to get below the cap. Divestiture is probably less likely to create downside pressures on raw pollock prices. Furthermore if the caps are set at 20 percent it appears unlikely, given the average percentages of the large shore plants, that there would be additional aggregations of these facilities.

If the excessive share cap for BSAI pollock processing is set at 30 percent, none of the entities as they currently exist would have to cut back on processing. A 30 percent cap would, however, allow an entity to be formed consisting of three of the four larger shorebased processors without forcing the entity to dramatically cut back on throughput. If such an entity were formed, it is likely that at least 90 percent of the inshore pollock allocation would be processed within two AFA entities. This would tend to create downward pressures on ex-vessel prices.

For the catcher processor sector the issue of excessive share caps that allows existing entities to expand may be less of an issue than for entities that control motherships and shorebased plants. This is because in general catcher

processors do not purchase raw fish from delivery vessels, and therefore localized competitive concerns are less likely.

In summary, the analysts conclude that if caps are set too low there is likely to be downward pressure on ex-vessel prices for pollock. If caps are set too high it is possible that the inshore pollock allocations could be controlled by as few as two entities—a situation that is also likely to be put downward pressure on ex-vessel prices. Therefore the analysts would recommend a cap at or near levels of the leading processors.

E1.2.4 Impacts of Options to the Excessive Share Cap

Apply Caps to Companies Rather than to Entities: There does not appear to be any significant impact of setting a BSAI pollock processing excessive share cap on AFA companies rather than on AFA entities under the current ownership patterns. However, setting excessive share caps on companies rather than on entities would allow a greater level of concentration of ownership of pollock processing facilities in the future. This greater concentration of ownership might make it more likely that AFA processors would be able to act in non-competitive ways that might influence prices for delivered pollock or for finished products. Furthermore a consistent definition of ownership and control between excessive share caps and AFA processing limits will be easier to implement, monitor and enforce.

Inclusion of CDQ Processing within the Cap: If the excessive share cap includes CDQ processing of pollock then it is likely that incentives to form partnerships with CDQ organizations may be reduced, which could translate to fewer benefits coming to CDQ organizations.

Grandfather Clause: It does not appear that a grandfather clause that allows processors over the cap to continue to process at that level would negatively affect competition. However, it is recommended that if the Council chooses to include a grandfather provision, they also specify the circumstances under which the grandfathered processors can continue to operate above the excessive share cap.

E1.2.5 Summary and Conclusions on BSAI Pollock Processing Excessive Share Cap

If a BSAI pollock processing excessive share cap is set too low there is likely to be downward pressure on ex-vessel prices for pollock. If a cap is set too high then it is possible that the inshore pollock allocations could be controlled by as few as two entities—a situation that is also likely to be put downward pressure on ex-vessel prices. Therefore the analysts would recommend a cap at or near those of the leading processors.

It does not appear that a grandfather clause that allows processors that exceed the cap in 1999 to continue to process at that level would negatively affect competition. However, the circumstances in which a processor is allowed to continue to operate above the cap should be specified.

If a BSAI pollock processing excessive share cap includes CDQ processing then it is likely that incentives to form partnerships with CDQ organizations may be reduced, particularly with processors that are at or near the cap. This could translate to fewer benefits coming to CDQ organizations.

There does not appear to be any significant impact of setting a BSAI pollock processing excessive share cap on AFA companies rather than on AFA entities under the current ownership patterns. However, setting excessive share caps on companies rather than on entities would allow a greater level of concentration of ownership of pollock processing facilities in the future. This greater concentration of ownership could make it more likely that AFA processors would be able to act in non-competitive ways that might influence prices for delivered prices for delivered pollock or for finished products. Furthermore a consistent definition of ownership and control between excessive share caps and AFA processing limits will be easier to implement, monitor and enforce.

E1.2.6 Decisions for the BSAI Pollock Excessive Share Cap

In order to develop a complete program for the BSAI pollock excessive share cap, the Council should address the following decision points.

- 1) Determine the level at which to set the BSAI pollock processing excessive share cap.

The Council has selected a range of alternative from 10 to 30 percent of the BSAI pollock TAC. The Council has indicated that they will consider any percentage within that range. Data for 1999 indicated that one AFA company processed approximately 23 percent of the BSAI pollock available for non-CDQ harvests.

- 2) Determine whether to apply the cap to AFA Companies using the 50 percent ownership and control standard, to AFA entities using the 10 percent ownership and control standard, or whether to use a different ownership and control standard.

Under current ownership patterns in the industry there would be no significant impact of using a 50 percent standard rather than a 10 percent standard—only the entity comprising the *Ocean Phoenix*, the *Arctic Storm*, and the *Arctic Fjord* would be directly affected, and this entity is currently well below all the but lowest cap levels.

- 3) Determine whether to include the processing of CDQ pollock within the cap

The analysts concluded that if CDQ processing is included under the BSAI pollock processing excessive share cap it could reduce the importance of CDQ pollock to AFA processors that would be near the level of the cap without CDQ processing.

- 4) Determine whether to require processors that exceeded the cap in the most recent year of processing to reduce their processing down to the level of the cap, or to allow them to continue to process at the level attained in the most recent year prior to the establishment of the cap—this is the commonly referred to as the excessive share cap grandfather clause.
- 5) Determine whether processors that are grandfathered in above the excessive share cap have a fixed limit or whether that limit is adjusted downward if processing in a future year represents a smaller percentage of the total than the grandfathered level. In other words, are grandfathered processors limited to the minimum of: 1) the percentage obtained in the most recent year, or 2) the level at which they were initially grandfathered?
- 6) Determine whether grandfathered processors may continue to process above the excessive share cap if they choose to consolidate their processing at fewer facilities than contributed to their initial level.
- 7) Determine whether grandfathered processors may continue to process above the excessive share cap if one of its BSAI pollock processing facilities is lost or destroyed, or should their grandfathered level be reduced by the amount processed by the lost facility.
- 8) Determine whether grandfathered processors may continue to process above the excessive share cap if they choose to sell a facility that contributed to their initial level, or should their grandfathered amount be reduced by the amount processed by the facility that was sold.
- 9) If CDQ processing of pollock is included under the excessive share cap (decision point 3), determine whether grandfathered processors that used CDQs to attain their initial level can continue to process at the grandfather percentage if they choose to reduce the amount of CDQ pollock they process.

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September 25, 2000

RE: Processor sideboards and other approaches to protecting non-AFA processors

Dear Dave:

The comments that follow outline our thoughts on existing and alternative options for protecting processors not qualified to participate in the directed pollock fishery from the effects of cooperatives or other aspects of the American Fisheries Act. As you may recall, recognizing some of the acknowledged problems with "processor sideboards", the Council invited comment on alternative ways to provide adequate protection for non-AFA processors.

At this point, we feel that one alternative approach (a modification to the IR/IU regulations for flatfish as described in "potential solution #3" below), while somewhat afield of the approaches described in the current E.A., may effectively achieve adequate "protection" or at least "preservation" of our overall ability to compete with AFA-qualified processors, while avoiding inherent problems with existing alternatives described in the E.A. Should the Council want to explore this alternative direction, we would hope that consideration of processor sideboards be put on hold and the Council would direct further analysis to focus on a modification to the IR/IU plan as described in "potential solution #3" below. That solution works from the perspective of combined effects of the AFA, cooperatives, and IR/IU on non-AFA processors. We thank the Council in advance for considering our ideas on this matter.

The need for protection:

Section 211c(1)(B) of the American Fisheries Act states that the North Pacific Council must "protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of this Act or fishery cooperatives in the directed pollock fishery". The Council's current (July 14th version) analysis of "groundfish processor sideboards" provides credible evidence for the possibility that AFA processors could make use of the advantages afforded by cooperatives and the ability to redirect processing capacity under a rationalized fishery to increase their proportional amount of processing of non-pollock species. While to date there has not been an influx of AFA processing capital into flatfish fisheries and some people think that current markets for existing product forms do not portend such an increase, Groundfish Forum members do

not share this view. Time and again, we have seen that capital in the fishing business always flows to its next best alternative within the groundfish sector off Alaska. In our view, flatfish fisheries are clearly the next best alternative and we need to have proactive measures in place to prevent negative impacts on non-AFA sector processors.

While the Act's mandate for protection of non-AFA processors suggests remedies that reach all the way to the possibility of the prevention of operation of cooperatives if adequate protections are not in place, the Act does not actually state in any way that processing sideboards are the only approach to protection. While AFA processor sideboards could be used to hold AFA-qualified processors to some measure of their current percentage of non-pollock species (paralleling past Council actions on catch sideboards), there may be alternative approaches that avoid the unintended consequences and implementation hurdles detailed in the analysis. In its June 2000 motion to send the modified analysis out to public comment, the Council invited alternatives for providing protection to non-AFA processors while avoiding some of the problems identified with processing sideboards.

Background information on the problem facing non-AFA processors

When considering the existing structure of the non-pollock groundfish fisheries, flatfish fisheries are probably the only remaining fisheries where growth of the AFA processing sector can occur. While flatfish fisheries are not currently achieving their entire harvest allowances, therefore not achieving full processing of the catch, flatfish fisheries are greatly constrained by bycatch caps for halibut and crab as well as markets that are sensitive to quantity produced. The class of non-AFA processors equates generally to the "head and gut" catcher processor vessels that depend on flatfish fisheries for most of their annual income. While head and gut vessels normally have some fishing and processing cost advantages in the low-volume flatfish fisheries, an unfettered AFA sector would have considerable new advantages over existing non-AFA players under coops and especially once IR/IU is implemented.

Coops in pollock will undoubtedly provide AFA processors the ability to time their access to the market for flatfish more effectively. From our experience, we know that markets for yellowfin sole and other flatfish are significantly affected by the quantity of product supplied during the year. Groundfish Forum members went to great lengths this spring to provide audited sales data to the Council to help your staff quantify this price effect, but the unfortunate lack of full cooperation in providing data by some companies outside our group basically thwarted this analytical exercise. Even if we cannot quantify the price effect, there is no reason to dismiss its potential importance. Further, the AFA sector under coops for pollock can delegate pollock fishing and processing to a portion of its boats and plants. Through delegation, operations within the AFA sector designated for flatfish can effectively start processing flatfish earlier in the year to garner a larger piece of the market prior to the market's inevitable downward response to quantity. In our opinion, this alone is a big gain and yet no attempt has been made in the analysis to elucidate this type of advantage.

The next area where we see large potential for economic effects as a result of measures in the Act stems from the combination of IR/TU regulations on flatfish retention and excess processing capacity from AFA plants. Excess processing capacity was effectively liberated from the pollock fishery when the Act became effective because that capacity was no longer needed in the pollock fishery once the race for fish ended. That capacity is now available and we are concerned about our ability to compete with it given the difference in the way upcoming regulations for IR/TU affect our sector compared to the AFA sector. While the IR/TU retention rules for flatfish were admittedly going to be a significant challenge for our fleet to accommodate, the magnitude of that challenge has increased many fold with the downstream effects of the American Fisheries Act. This is because AFA-sector processing capital is now available to come into flatfish and nearly all of the vessels and plants in the AFA sector can accommodate full retention of flatfish by sending unmarketable fish to the fish meal plant.

Our sector has been actively engaged in devising a gear solution to reduce catches of unmarketable fish for several years. That same challenge does not exist for most of the AFA sector engaged in flatfish fisheries due to their access to fish meal production capacity. Since head and gut vessels cannot make fish meal, lacking some sort of protection, AFA processors, who formerly had very limited access to flatfish due to the past necessity to tie plants up with competitive pollock fishing, now actually hold a considerable advantage in flatfish processing. Some industry spokesmen claim not to see the inextricable link between these issues, but to the existing flatfish-dependent processing sector, the connection is crystal clear.

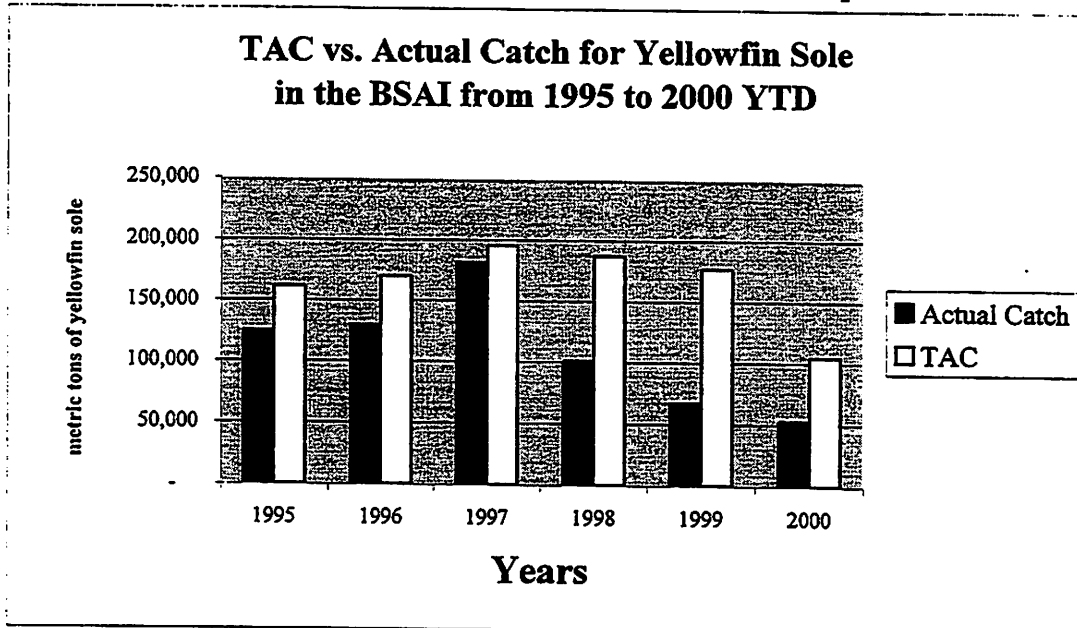
Potential solutions:

Given that the form of "protections" is not specified in Section 211 of the Act, we feel that the Council has wide latitude to modify elements of the overall suite of regulations affecting AFA and non-AFA sectors to address this matter. We see three possible solutions, which would provide the protection mandated in the Act. Our preference, as you will see, is for the third potential solution described below:

Potential Solution 1: Processing sideboards that apply to the total amount of flatfish processed by the AFA sector as a whole or by individual sub-sector within the AFA categories of CPs, motherships, and shoreside. Note: this limit would only be enforced on a sector or sub-sector level and would not constrain individual companies or entities to their actual historical processing history unless the AFA sector(s) set up those kinds of constraints in their internal contracting.

Given that we feel our market for flatfish products (round, kirimi, H&G, and including fish that are sold to companies that cut fillets for the once frozen (refreshed) or twice frozen fillet markets) has already been affected by the quantities of flatfish produced in years when AFA sector processors were rather active in flatfish fisheries, we believe that if the Council is going to move forward with this approach to protection, they should consider basing processing limits on the period from 1998-1999. That quantity of processing by AFA sector processors has not seemed to have as much effect on prices compared to the quantity of product produced from 1995-1997 (see chart below). We

preface this statement with the caveat that it appears to be accurate, given the degree to which we understand the market and can attribute price effects without a quantitative analysis. The table below illustrates the large increase in catch of yellowfin sole in 1995-1997. We feel that basing aggregate AFA processor limits on the years 1995-1997 would actually lock in AFA processing shares at a level that already can cause significant price effects. This is particularly true if the AFA sector continues to produce products that compete directly with ours, instead of producing surimi, for example.



Potential Solution 2: Consider a prohibition on making IR/TU flatfish species into fishmeal as a primary product. The intent of this would be to require that IR/TU flatfish species be made into primary products other than fish meal so that processors would not be able to simply make small, unmarketable flatfish into fishmeal. This would effectively eliminate the fish meal advantage in flatfish fisheries. While the AFA sector would still have the ability to direct redundant processing capital into flatfish, and the ability to time the market more effectively, flatfish harvesting, whether shoreside or at-sea, would at least have to face the same constraints and costs associated with having to use large mesh to reduce catch of flatfish that are unmarketable for human consumption.

Regarding our efforts to date to find ways of reducing catch of unmarketable flatfish, we have unfortunately experienced a disproportionately high loss of marketable size flatfish when using nets that exclude some of the small flatfish. We believe this is due in part to the "hydrodynamic" effects of large diamond mesh in conjunction with the lower swimming capacity of smaller flatfish vis a vis larger ones. We have also experienced troubling reductions in the effectiveness of our pollock exclusion devices with the use of large mesh panels that are designed to reduce some of the catch of small flatfish. The problem appears to be that square mesh reduces pollock catches while diamond mesh is more effective at flatfish reduction, but catches more pollock.

Based on our experience, under this alternative, reductions in catch of small flatfish will be at a high cost to everyone (bordering on infeasibility at many times of the year) and gains made in reduction of pollock bycatch could be squandered. While we have brought this option forward in our comments, given its high cost in lost efficiency for everyone, we are not currently advocating for this approach and view it as "lowering" the playing field rather than leveling it.

Potential Solution 3: Modifications to IR/TU for flatfish to continue to promote reduction in catch of small flatfish without crushing the economics of flatfish fisheries.

We feel an adjustment to the IR/TU regulations for flatfish, which are scheduled to go into effect in 2003, may be the best way to allow the non-AFA sector to compete with the AFA sector on a reasonably fair and level playing field while avoiding the unintended consequences of processor sideboards as described in the analysis. Such an approach would also prevent the necessity of considering a prohibition of production of fish meal as a primary product from flatfish. According to NMFS' Alaska Region data, average retention of yellowfin sole and rock sole in recent years has been approximately 80% and 40% respectively. We propose that the requirement be 85% and 50% respectively, which amounts to a fleet-wide increase of six percent for yellowfin sole (where discard is already considerably lower), and a 25% increase in retention for rocksole. For head and gut boats, which currently attain less than the fleet-wide average, the actual increase in retention percentage for those boats may be as high as 25% and 40% for yellowfin and rocksole respectively. The overall reduction in discard percentage under this scenario would be more than the percentage increase that occurred in the pollock fishery under IR/TU (where discard rates were approximately 5% prior to IR/TU).

We feel this modification to IR/TU regulations set to go into effect in 2003 would institute tangible and achievable progress toward the goal of increased utilization in flatfish while allowing those who do not have fishmeal plants to have some chance to continue to stay in business. While somewhat afield of the original form of "protection" contemplated by the Council, our view is that this modification under proposed solution 3 is likely to be superior because it avoids some of the negative effects inherent in the processor sideboard proposal and the proposed solution 2 above. We feel under this alternative, an IR/TU modification would be adequate as a stand alone measure instead of processor sideboards and that the playing field would be sufficiently returned to the balance that existed prior to the creation of AFA.

Thank you for the opportunity to comment on measures to protect non-AFA processors from the effects of the Act.

Best regards,



John R. Gauvin

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January 31, 2001

Mr. David Benton, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, AK 99501-2252

Re: February Meeting
Item C-4(c) - American Fisheries Act

Dear Mr. Benton,

I am writing on behalf of Omar Allinson (F/V MISS LEONA), Steve Aarvik (F/V WINDJAMMER), and Charles Burrece (F/V LONE STAR).

There has been no agreement between my clients and the AFA industry members, as to ways to resolve the adverse impacts of the AFA. The inter-coop group has proposed to my clients that they will limit the daily on-grounds participation of AFA cooped non-exempt vessels fishing in area 655430 (my clients' traditional fishing ground) to a maximum of 21 boats prior to March 1. Together with the 10 cod-exempt AFA boats, and my clients 3 boats, this would be a total of at least 34 boats on the grounds at one time, as opposed to an average of only 11 boats on the grounds during the first 5 weeks of the cod fishery in the five pre-AFA years (1995-1999). Please see:

Exhibit A: Chart (prepared by Alaska Groundfish Databank);

Exhibit B: Graph depicting the figures in Exhibit A.

Because no agreement has been reached, we request that the Council take the management measures set forth below.

BACKGROUND

All three of these vessels are small vessels for the Bering Sea fishery, ranging in length overall from 75 to 88 feet. All have beams under 24 feet. They have fished for cod in the Bering Sea since the 1970's (Charles Burrece), 1980's (Steve Aarvik), and 1991 (Omar Allinson),

respectively.

In prior Council meetings my clients have testified as to the extremely adverse effects caused by an unprecedented increase in the number of vessels fishing in January and February in the year 2000 BSAI Pacific cod fishery. Because of the AFA, the number of vessels fishing in their traditional fishing grounds in Area 517 (and especially Statistical Area 655430) increased from no more than 15 vessels (including these 3 vessels and the 10 AFA cod-exempt vessels) to up to 40 vessels on those grounds in January and February of 2000. Please see:

Exhibit C: Data prepared by Alaska Groundfish Databank.

Because of the resulting race for fish, my clients had to fish in extremely dangerous weather conditions for their small vessels, including hurricane force winds. They were constantly passed by the much larger AFA vessels.

Section 211(a) of the AFA provides as follows:

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

(a) General.-- The North Pacific Council shall recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.

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

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

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

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

The comments of Senator Stevens were wholly consistent:

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

Paragraph (3) of subsection (c) directs the Pacific Council to submit any measures that may be necessary to protect fisheries under its authority by July 1, 2000 and allows the Secretary of Commerce to implement measures if the Council does not submit measures or if the measures submitted are determined by the Secretary to be inadequate. [At page 12781].

Thus, Congress' intent was that the Council would determine the adverse impacts and take measures under Section 211(a), which are in addition to sideboards. It was also Congress' intent that protections be put in place for any adverse impacts on non-AFA fishermen, and that the Council will ensure that other fisheries are held harmless to the maximum extent possible.

We believe that the protections sought today are mandated by the AFA, as well as by National Standard 10.

Under National Standard 10 (50 CFR §600.355), conservation and management measures must, to the extent practicable, promote safety of human life at sea. The regulations implementing National Standard 10 provide, in part, as follows:

"Typically, larger vessels can fish farther offshore and in more adverse weather

conditions than smaller vessels. An FMP should try to avoid creating situations that result in vessels going out farther, fishing longer, or fishing in weather worse than they generally would have in the absence of management measures. Where these conditions are unavoidable, management measures should mitigate these effects, consistent with the overall management goals of the fishery.”
§600.355(c)(1).

The safety concerns articulated under National Standard 10 precisely reflect the dangerous conditions which are faced by these 3 small vessels. All 3 vessels are non-AFA, so they do not have the ability of AFA vessels to shift their cod catch to a larger coop vessel. Nor do they enjoy the pollock allocations held by AFA vessels, which give those vessels alternate Bering Sea fisheries, or alternate sources of income through leasing pollock quota. All three fishermen have long-term dependency on the directed cod fisheries (and not the pollock fishery) in the Bering Sea. Because of their vessels' small size, none of these three vessels can safely fish in winter outside of Critical Habitat.

Thus, without the protection mandated by the AFA and by National Standard 10, the MISS LEONA, the LONE STAR, and the WINDJAMMER will be forced once again to engage in an “A” season winter fishing derby. This is especially true in light of the extreme limitations on catch which will be imposed in Critical Habitat (Area 7) under the RPA's. They will be unavoidably compelled to fish in a situation which will subject them to the dangers which National Standard 10 is intended to prevent.

The regulations under National Standard 10 note that “derby” fisheries can create serious safety consequences, including fishing in bad weather and overloading a vessel with catch. Section 600.355(c)(3) therefore requires as follows:

“Where these conditions exist, FMPs should attempt to mitigate these effects and avoid them in new management regimes, as discussed in paragraph (e) of this section.”

Among the measures set forth in paragraph (e) of the regulation are:

- Limiting the number of participants in the fishery. §600.355(e)(6).
- Implementing management measures that reduce the race for fish and the resulting incentives to take additional risks with respect to vessel safety. §600.355(e)(8).

REQUEST FOR ACTION:

We respectfully request that the Council, in order (1) to comply with the Section 211(a)

requirements to determine and submit measures to protect non-AFA fishermen from any adverse impacts of the AFA or of the pollock cooperative system, and (2) to fulfill the policies set forth in National Standard 10, take the following actions:

1. That the Council recommend to the Secretary of Commerce that regulations be implemented as soon as possible to hold these three long-time cod vessels harmless from the adverse effects of the AFA and the coop system by:

A. Limiting access to the directed trawl fishery for Pacific cod to the cod-exempt AFA vessels and to open access vessels which have a history of economic dependency upon the winter Bering Sea Pacific cod fisheries, as demonstrated by average January and February deliveries of at least 500,000 pounds for 4 out of the 5 pre-AFA years of 1995-1999 (or such other measure of dependency as the Council deems fit), and

B. Allocating a minimum of 5,000,000 pounds (with no cap) of Pacific cod to non-AFA vessels which meet the criteria set forth in paragraph A above.

2. That the Council task Council staff to determine the nature and extent of any adverse impacts on other fisheries or participants in those other fisheries caused by the AFA or the fishery cooperatives in the directed pollock fishery, including:

- A. Increased safety problems,
- B. Decreased catch per unit of effort,
- C. Increased fishing time required,
- D. Loss of earnings, and
- E. The measures which are necessary to ensure that participants in other fisheries

are held harmless to the maximum extent possible.

3. That the Council recommend to the Secretary of Commerce and/or the U.S. Congress that the groundfish license limited entry program be amended to allow trawl vessels to use longline or pot gear in order to harvest their Pacific cod.

Thank you for your consideration of these requests.

Respectfully submitted,



Russell W. Pritchett

Attachments

#111/AFA-FED

Number of Trawl Catcher Vessels targeting Pacific cod by Stat Week in NMFS Reporting Area - 509 & 517

**NMFS Reporting Area - 509
Catcher Vessel**

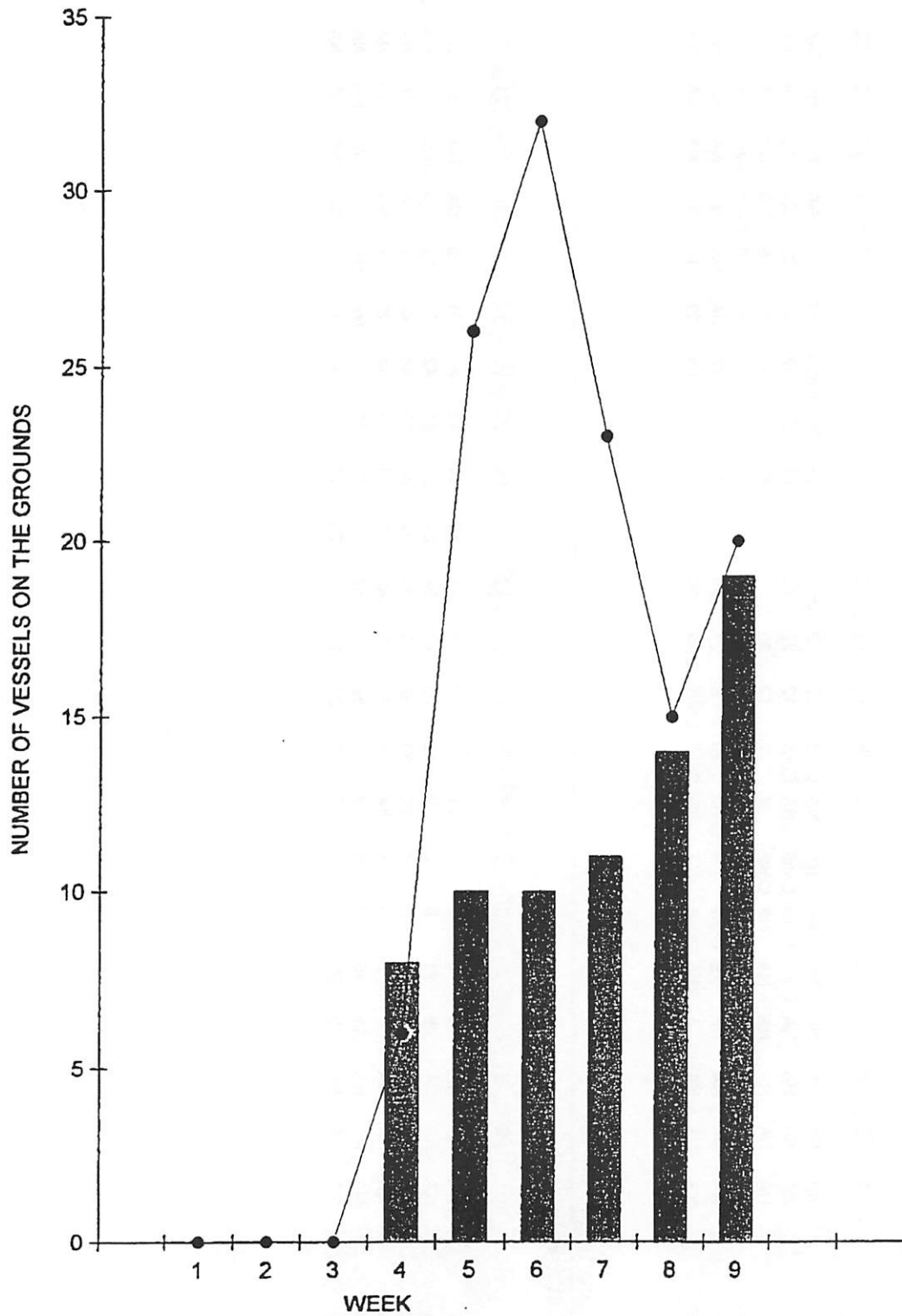
Statistical Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Number of Vessels																									
1995	NA	NA	NA	NA	NA	NA	NA	NA	Cnfdl	32	9	Cnfdl	5	NA	NA	Cnfdl	Cnfdl	NA	NA	NA	NA	NA	NA	NA	NA
1996	NA	NA	NA	NA	Cnfdl	Cnfdl	Cnfdl	NA	Cnfdl	12	27	43	56	41	51	47	47	28	20	10	NA	NA	NA	NA	NA
1997	NA	NA	NA	NA	NA	NA	NA	Cnfdl	4	7	12	30	47	44	43	46	42	47	8	NA	NA	NA	NA	NA	NA
1998	NA	NA	NA	Cnfdl	NA	NA	Cnfdl	NA	Cnfdl	20	33	55	57	13	41	32	21	10	Cnfdl	Cnfdl	NA	NA	NA	NA	NA
1999	NA	NA	NA	NA	5	Cnfdl	4	Cnfdl	10	5	27	29	9	42	29	10	NA	NA	NA	NA	NA	NA	NA	NA	NA
2000	NA	NA	NA	NA	NA	NA	NA	NA	Cnfdl	Cnfdl	Cnfdl	10	7	17	25	24	23	14	NA	NA	NA	NA	NA	NA	NA

**NMFS Reporting Area - 517
Catcher Vessel**

Statistical Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Number of Vessels																									
1995	NA	NA	NA	7	9	9	9	11	22	30	31	41	40	44	43	45	31	Cnfdl	NA	NA	NA	NA	NA	NA	NA
1996	NA	NA	NA	8	11	9	10	9	12	29	40	34	24	37	44	42	38	10	3	Cnfdl	NA	NA	NA	NA	NA
1997	NA	NA	NA	6	7	9	8	12	30	36	35	34	24	24	39	44	44	21	NA	NA	NA	NA	NA	NA	NA
1998	NA	NA	NA	8	8	9	15	14	13	35	25	42	40	18	53	44	20	4	NA	NA	NA	NA	NA	NA	NA
1999	NA	NA	NA	11	15	15	15	23	17	39	50	47	19	41	37	24	NA	NA	NA	NA	NA	NA	NA	NA	NA
2000	NA	NA	NA	6	26	32	23	15	20	20	27	33	25	16	28	30	18	15	NA	NA	NA	NA	NA	NA	NA



NUMBER OF TRAWL VESSELS TARGETING COD EFFECTS OF THE AFA - AREA 517



■ 95-99 Av. ● 2000

EXHIBIT
B

Number of Trawl Vessels targeting Pacific cod by Stat Week in State Stat Reporting Area - 655430

STATISTICAL AREA 655430

Number of Vessels ¹ by Year and Month		
Year	Month	# of Vessels
1995	January	8
	February	16
	March	62
	April ²	52
1996	January	9
	February	18
	March	72
	April ²	73
1997	January	7
	February	33
	March	64
	April ²	66
1998	January	8
	February	19
	March	60
	April ²	61
1999	January	15
	February	30
	March	61
	April ²	45
2000	January	36
	February	40
	March	43
	April ²	39

¹ All vessel types, catcher and catcher/processor have been combined to comply with confidentiality SOP

² April and May data combined to comply with confidentiality SOP



[FR Doc. 01-1744 Filed 1-18-01; 3:25 pm]
BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010111009-1009-01; I.D. 122600A]

RIN 0648-AO72

Fisheries of the Exclusive Economic Zone Off Alaska; Emergency Interim Rule to Revise Certain Provisions of the American Fisheries Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS issues emergency interim regulations to supersede certain provisions of the American Fisheries Act (AFA). The elements of this emergency interim rule include a revised definition of "qualified catcher vessel" for the purpose of determining eligibility for inshore cooperatives, a revised formula to allocate the Bering Sea and Aleutian Islands Management Area (BSAI) pollock total allowable catch (TAC) among inshore cooperatives, a revised formula for establishing crab processing sideboard limits, revised observer coverage requirements for catcher/processors and motherships participating in the AFA and Community Development Quota program (CDQ) pollock fisheries, and revised authority to publish and manage AFA catcher/processors and AFA catcher vessel groundfish harvesting sideboards. This action is necessary to implement requirements of the AFA for the 2001 fishing year. The intended effect of this action is to further the socioeconomic objectives of the AFA.

DATES: Effective January 18, 2001 through July 17, 2001. Comments on this emergency interim rule must be received by February 21, 2001.

ADDRESSES: Comments must be sent to Sue Salvesson, Assistant Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Gravel. Comments may also be sent via facsimile (fax) to (907) 586-7465. Comments will not be accepted if sent

by e-mail. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from Alaska Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228 or kent.lind@noaa.gov

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI and Gulf of Alaska (GOA) under the fishery management plans (FMPs) for groundfish in the respective areas. With Federal oversight, the State of Alaska manages the commercial king crab and Tanner crab fisheries in the BSAI and the commercial scallop fishery off Alaska under the FMPs for those fisheries. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

American Fisheries Act—Background Information

The AFA (Div. C, Title II, Subtitle II, Pub. L. No. 105-277, 112 Stat. 2681 (1998)) enacted on October 21, 1998, made profound changes to the BSAI pollock fishery and, to a lesser extent, to the groundfish and crab fisheries within the EEZ off Alaska. The major provisions of the AFA were implemented on an interim basis by emergency rule published January 28, 2000 (65 FR 4520, extended 65 FR 39107, June 23, 2000). Detailed information on the AFA may be found in the January 2000 emergency interim rule and in the EA/RIR developed for that emergency interim rule. The Council has prepared FMP Amendments 61/61/13/8 to implement the major provisions of the AFA (Amendment 61 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 61 to the FMP for Groundfish of the Gulf of Alaska, Amendment 13 to the FMP for the King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands, and Amendment 8 to the FMP for the Scallop Fishery off Alaska). If the amendments are approved, implementing regulations are expected to be effective by mid-2001. This emergency interim rule gives immediate effect to certain revisions necessary for the start of the groundfish fisheries in 2001.

Development of Emergency Interim Rule

The measures contained in this emergency interim rule were developed over the course of several Council meetings held June through October 2000.

In June 2000, the Council examined the AFA definition of "qualified catcher vessel" in paragraph 210(b)(3) of the AFA and recommended that the definition be superseded by the revision contained in this emergency interim rule to allow a retired or inactive vessel to maintain membership in an inshore cooperative. In addition, the Council examined the AFA formula used to establish allocations for inshore cooperatives and the inshore "open access" fishery and recommended that the formula be superseded by a new formula set out in this emergency interim rule.

In September 2000, the Council examined proposed changes to crab processing sideboard limits and adopted a revision to the years used to calculate crab processing sideboard amounts by using 1995 through 1998 to determine crab processing history and counting the 1998 processing year twice (double weight).

In October 2000, the Council reviewed the implementation schedule for Amendments 61/61/13/8 and determined that its previous recommendations with respect to the definition of "qualified catcher vessel," the inshore cooperative allocation formula, and the crab processing sideboard limits should be implemented by emergency interim rule in order to be effective by the start of the 2001 pollock fishery. In addition, the Council recommended that the change in observer coverage for catcher/processors and motherships participating in the pollock CDQ fishery should be revised. These recommendations, along with the 2001 catcher/processor and catcher vessel harvesting sideboards publishing authority, comprise the elements of this action.

This emergency interim rule would be superseded by the final rule to implement FMP Amendments 61/61/13/8, if such a final rule is approved by NMFS. FMP Amendments 61/61/13/8 supersede some of the requirements found in the AFA. All the management measures implemented by this emergency interim rule are the same as a number of the management measures in FMP Amendments 61/61/13/8. The primary five elements of this emergency interim rule are summarized below.

1. Definition of Qualified Catcher Vessel

In June 2000, the Council adopted a definition of "qualified catcher vessel" that would supersede the definition contained in the AFA. Paragraph 210(b)(3) of the AFA currently defines "qualified catcher vessel" as follows:

QUALIFIED CATCHER VESSEL. For the purposes of this subsection, a catcher vessel shall be considered a "qualified catcher vessel" if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock to the shoreside processor to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.

This definition effectively prevents the retirement of catcher vessels that are no longer needed to harvest a cooperative's annual allocation of pollock because each vessel is required to make a qualifying landing every year to remain in a cooperative in each subsequent year. The Council is recommending that this definition be replaced with a new definition of "qualified catcher vessel." Under this new definition, an inactive vessel would remain qualified to join the cooperative that is associated with the processor to which it delivered more pollock than any other inshore processor during the last year in which the vessel participated in the inshore sector of the BSAI-directed pollock fishery. The Council's recommended change would not affect vessels that were active in the BSAI pollock fishery during the year prior to the year in which the cooperative fishing permit will be in effect.

The Council derives its authority to supersede certain provisions of the AFA and to recommend an alternative definition of "qualified catcher vessel" from paragraph 213(c)(1) of the AFA. Paragraph 213(c)(1) provides that:

CHANGES TO FISHERY COOPERATIVE LIMITATIONS AND POLLOCK CDQ ALLOCATION. The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act—

(1) that supersede the provisions of this title, except for sections 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery;

In making the recommendation to supersede the AFA definition of "qualified catcher vessel," the Council determined that this change meets the

criteria set out in paragraph 213(c)(1) of the AFA because the action would mitigate adverse effects on owners of fewer than three catcher vessels in the directed pollock fishery. Such vessels are smaller, on average, than the processor-owned catcher vessel fleets, and most of the smallest AFA catcher vessels are independently owned. Many of these smaller independently owned vessels may be less safe to operate in the wintertime at great distances from shore under new Steller sea lion protection measures that have restricted fishing in most nearshore areas to protect Steller sea lion critical habitat (65 FR 3892, January 25, 2000, extended 65 FR 36795, June 12, 2000). Maintaining the existing requirement that all such vessels fish each year to remain qualified to join a cooperative each following year could force small catcher vessel owners to take unnecessary risks.

In addition, some catcher vessels that are eligible to fish for pollock under the AFA have since been lost or may no longer be safe to operate without major rebuilding. Under this change, the owners of such vessels could remain in cooperatives without the need to rebuild or deploy new vessels into the BSAI pollock fishery. In making this recommendation, the Council noted that a primary objective of the AFA is to reduce excess capacity in the BSAI pollock fishery and that changing the definition of "qualified catcher vessel" will further that objective.

Finally, the Council determined that special circumstances existed in the fishery that made immediate emergency action necessary. During the 2000 fishery, the owners of a number of smaller AFA catcher vessels had intended to fish for BSAI pollock during the C/D season in order to qualify for cooperatives. However, on August 7, 2000, the United States District Court for the Western District of Washington issued an Order enjoining all groundfish trawling within Steller sea lion critical habitat west of 144° W. long. until further order of the Court. The injunction became effective at 11 a.m. Alaska time on August 8, 2000. As a result of the injunction prohibiting trawling in critical habitat, the owners of many of the smaller AFA catcher vessels chose not to fish during the C/D season due to the distances from shore required to fish under the injunction. These vessel owners believed that the Council's action to supersede the AFA definition of qualified catcher vessel would allow them to maintain membership in their cooperatives without the need to participate in the 2000 C/D season under the injunction. The Council noted

that emergency action would be required to allow such vessels to remain in cooperatives for the 2001 fishing year and determined that such emergency action was warranted, given the extraordinary and unforeseen circumstances of the injunction.

2. Inshore Cooperative Allocations

Subparagraph 210(b)(1)(B) of the AFA sets out a specific formula for determining the allocation of pollock to each inshore cooperative as follows:

...the Secretary shall allow only such catcher vessels...to harvest the aggregate percentage of the directed fishing allowance under section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent to the aggregate total amount of pollock harvested by such catcher vessels...in the directed pollock fishery for processing by the inshore component during 1995, 1996, and 1997 relative to the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component during such years and shall prevent such catcher vessels...from harvesting in aggregate in excess of such percentage of such directed fishing allowance.

In other words, under the AFA, each inshore cooperative's pollock allocation is a percentage of the inshore sector allocation that is equal to the aggregate inshore landings by all member vessels in the cooperative from 1995 through 1997 relative to the total inshore landings during that period.

However, paragraph 213(c)(3) of the AFA provides the Council with the authority to recommend an alternative allocation formula:

The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act...that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph.

Using this authority, the Council is recommending three changes that would supersede the inshore cooperative allocation formula set out in the AFA. These changes are contained in this emergency interim rule and described below.

a. *Offshore compensation.* The first change would allow inshore catcher vessels to receive inshore catch history credit for landings made to catcher/processors if the vessel made cumulative landings to catcher/processors of more than 499 mt of BSAI pollock during the 1995 through 1997 qualifying period. The Council is recommending this change to assist the cooperatives in meeting the intent of paragraph 210(b)(4) of the AFA, which requires that:

Any contract implementing a fishery cooperative under paragraph (1) which has been entered into by the owner of a qualified catcher vessel eligible under section 208(a) that harvested pollock for processing by catcher/processors or motherships in the directed pollock fishery during 1995, 1996, and 1997 shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified catcher vessel.

The Council believes that catcher vessels with sustained participation delivering to catcher/processors, but excluded from delivering to catcher/processors under subsection 208(b) of the AFA, should not be disadvantaged by the new management regime. The Council chose 499 mt as the threshold based on information presented in an analysis, which indicated that 499 mt provided a reasonable distinction between vessels with significant history of delivering to catcher/processors and vessels that had only incidental deliveries to catcher/processors during the 1995 through 1997 qualifying period. Only deliveries to catcher/processors would be considered for such "compensation" and not deliveries made to the three motherships listed in subsection 208(d) of the AFA because any vessel with more than 250 mt of pollock deliveries to one of the three AFA motherships during the qualifying period earned an endorsement to deliver pollock to AFA motherships under the AFA and "lost" no fishing privileges as a result of the AFA.

b. *Using the best 2 of 3 years from 1995-1997.* The second change would modify the allocation formula so that the share of the BSAI pollock TAC that each catcher vessel brings into a cooperative would be based on average annual pollock landings in its best 2 out of 3 years from 1995 through 1997. This change, along with the offshore compensation formula, was unanimously endorsed by industry representatives during public testimony. These changes are viewed as a more equitable method of allocating pollock catch because some vessels may have missed all or part of the inshore fishery in a given year due to such unavoidable circumstances as vessel breakdowns or lack of markets.

c. *Revised open access formula.* Finally, the third change to the allocation formula would reduce the denominator in the formula from "the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component" to "the aggregate total amount of pollock harvested by AFA catcher vessels with inshore sector endorsements." The effect of this change is to eliminate from the formula

all 1995 through 1997 catch history made by vessels that are not AFA catcher vessels with inshore sector endorsements. One consequence of the current formula is that all inshore catch history made by non-AFA vessels and by AFA catcher vessels without inshore endorsements defaults to the open access sector. The Council believes that this results in an inshore open access allocation that is unfairly inflated to the detriment of vessels in cooperatives. Inflating the open access quota in such a manner provides incentives for vessels to leave cooperatives, which could prevent rationalizing the BSAI pollock fishery, an objective of AFA. Under this recommended change, the cooperative and the open access sectors would be treated equally, and allocations to both sectors would be based only on the fishing histories of the vessels in each group. All three of these changes will be incorporated into proposed FMP Amendments 61/61/13/8 as Council recommendations that supersede the AFA and are included in this emergency interim rule for implementation in 2001.

3. *Crab Processing Sideboards*

Subparagraph 211(c)(2)(A) of the AFA establishes limits on crab processing by AFA inshore processors and AFA motherships that receive pollock harvested by a fishery cooperative:

Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, 1997. For the purposes of this subparagraph, the term "facilities" means any processing plant, catcher/processor, mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.

These crab processing limits were intended by Congress to prevent negative spillover effects of AFA on other fisheries, hence the term "sideboards." NMFS first implemented these limits by emergency interim rule published January 28, 2000 (65 FR 4520, extended at 65 FR 39107). However, in September 2000 the Council recommended that the years used to calculate crab processing sideboard amounts be revised by adding 1998 and by giving it a double weight. This action

was based, in part, on concerns expressed by some crab fishermen and AFA processors that too many non-AFA processors have left the crab fisheries since 1997 and that the 1995 through 1997 years did not accurately reflect the composition of the crab processing industry at the time of passage of the AFA. Some crab fishermen testified to the Council that AFA crab processing limits were restricting markets for crab fishermen and having a negative effect on exvessel prices. By adding 1998 and by giving it a double weight relative to 1995 through 1997, the Council believes that the crab processing limits would more accurately reflect the status of the crab processing industry at the time of passage of the AFA and that such a change to supersede this provision of the AFA is warranted to mitigate adverse effects on markets for crab fishermen.

4. *CDQ and AFA Observer Requirements*

Under the emergency interim rules governing the AFA pollock fishery in 1999 and 2000, AFA catcher/processors and motherships were required to have one lead CDQ observer at all times, but the second observer requirement could be filled by any NMFS-certified observer. However, the CDQ program imposed a higher requirement of one lead CDQ observer and a second CDQ observer for catcher/processors and motherships participating in the CDQ pollock fishery. Under this emergency interim rule, the observer requirements for catcher/processors and motherships in the AFA and CDQ pollock fisheries would use the same standard requiring at least one lead CDQ observer aboard at all times, but allow the second observer position to be filled by any NMFS-certified observer.

Observer requirements in the AFA program and the directed pollock fishery in the CDQ program are reasonably consistent. The data quality needs for CDQ and AFA pollock catch accounting are virtually identical. Further, vessels will often fish for CDQ and AFA-allocated pollock during the same fishing trip, and similar observer requirements will simplify observer deployment logistics. Therefore, NMFS is amending the current observer requirements under the CDQ program for only those catcher/processors and motherships participating in the directed fishery for pollock CDQ to be consistent with the AFA observer requirements for those vessel classes.

5. *Catcher/Processor and Catcher Vessel Groundfish Sideboards*

Section 211(a), (b), and (c) of the AFA requires NMFS to establish sideboard

limits for AFA catcher/processors and AFA catcher vessels. This requirement of the AFA was implemented through the emergency interim rule published January 28, 2000 (65 FR 4520, extended 65 FR 39107, June 23, 2000). Upon recommendation of the Council, this emergency interim rule takes a more streamlined approach for publishing and managing sideboard amounts. Under this action, NMFS will simply publish catcher/processor and catcher vessel groundfish sideboard amounts based on recommendations from the Council and manage these sideboards through directed fishing closures. This approach is distinct from the previous emergency rule, which specified each individual sideboard amount in regulation although the practical effect will be the same. The Council determined that emergency action is necessary to implement the AFA-mandated sideboard measures for the start of the 2001 fishing year. In the absence of sideboards, participants in other fisheries could be severely disadvantaged by an influx of unregulated fishing effort from AFA vessels.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act, AFA, and other applicable laws.

Pursuant to the National Environmental Policy Act, an EA/RIR was developed for this action. The EA/RIR may be obtained from the Alaska Regional Office (see ADDRESSES).

This emergency interim rule has been determined to be not significant for the purposes of Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this emergency interim rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

NMFS finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B) as such procedure would be impracticable and contrary to the public interest. This action is necessary to provide participants in the BSAI groundfish fishery the opportunity to reorganize inshore catcher vessel cooperatives for the 2001 fishing year in the manner recommended by the Council and requested by the industry. This action is also necessary to implement sideboard restrictions to protect participants in

other Alaska fisheries from negative impacts as a result of fishery cooperatives formed under the AFA. The need to avoid delaying the start of the pollock season to implement these measures constitutes good cause to waive, pursuant to authority set forth at 5 U.S.C. 553(d)(3), the 30-day delay in effective date otherwise required by 5 U.S.C. 553(d).

On November 30, 2000, NMFS issued a new programmatic Biological Opinion under section 7 of the Endangered Species Act. This opinion is comprehensive in scope and considers the fisheries and the overall management framework established by the respective FMPs to determine whether that framework contains necessary measures to ensure the protection of listed species and critical habitat. The opinion determines whether the BSAI or GOA groundfish fisheries, as implemented under the respective FMPs, jeopardize the continued existence of listed species in the areas affected by the fisheries (i.e., the action areas) or adversely modify critical habitat of such species. NMFS determined that fishing activity under the FMPs is likely to jeopardize the continued existence of the western population of Steller sea lions and is likely to adversely modify their designated critical habitat. NMFS has developed a reasonable and prudent alternative (RPA) with multiple components for the groundfish fisheries in the BSAI and GOA. The components of the RPA address (1) the harvest strategy for fish removal at the global or FMP level and (2) the protection of Steller sea lions from groundfish fisheries at global and regional scales and in both temporal and spatial dimensions. Nothing in this action is expected to impact endangered or threatened marine mammals and fish or bird species in ways that were not considered in the current or previous consultations.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 16, 2001

Penelope D. Dalton,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition of "AFA qualified catcher vessel" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

AFA qualified catcher vessel (applicable through July 17, 2001) is a vessel that delivered more pollock to the AFA inshore processor that is associated with the inshore catcher vessel cooperative that the vessel wishes to join than to any other inshore processor in the last year in which the vessel engaged in directed fishing for pollock in the BSAI for delivery to the inshore sector. Notwithstanding the definition of this term at paragraph 210(b)(3) of the AFA, and for purposes of determining eligibility to participate in an AFA inshore cooperatives under § 679.20(a)(5)(i)(D).

* * * * *

3. In § 679.20, paragraphs (a)(5)(i)(D), (a)(5)(i)(E), and (c)(3)(iv) are added, and (d)(1)(iv) is suspended and (d)(1)(v) is added to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(D) *AFA sectoral allocations*

(applicable through July 17, 2001). Allocations of BSAI pollock to the CDQ program and to the inshore, catcher/processor, and mothership sectors will be made in accordance with section 206 of the AFA except that:

(1) *Inshore cooperative membership.* Participation in inshore catcher vessel cooperatives formed under paragraph 210(b)(1) of the AFA is limited to "AFA-qualified catcher vessels" as defined in § 679.2.

(2) *Inshore cooperative allocation formula.* NMFS will allocate Bering Sea Subarea pollock to each inshore cooperative according to the formula set out in paragraph 210(b)(1) of the AFA with the following changes and according to the following steps:

(i) *Determination of official catch history.* NMFS will establish an official catch history for each AFA inshore catcher vessel that is equal to the sum of the 2 highest years of inshore sector pollock landings made by such vessel from 1995 to 1997.

(ii) *Offshore compensation.* If an inshore catcher vessel made more than 499 mt of BSAI pollock landings to catcher/processors in the aggregate during the period 1995 through 1997, all BSAI pollock landings made to catcher/processors by such vessel would be

added to its official catch history prior to determination of the vessel's best 2 of 3 years.

(iii) *Cooperative allocation formula.* Each inshore catcher vessel cooperative approved by NMFS under paragraph 210(b)(1) of the AFA will receive an allocation of the interim and final Bering Sea subarea inshore pollock TAC that is equal to the sum of each member vessel's official catch histories divided by the sum of official catch histories of all AFA inshore catcher vessels, multiplied by the interim and final TAC allocations, respectively.

(E) AFA crab processing sideboards (applicable through July 17, 2001). NMFS will determine crab processing sideboard limits for each AFA entity in accordance with the formula set out in subparagraph 211(c)(2)(A) of the AFA, except that the years used to calculate crab processing sideboard amounts will also include 1998 processed amounts, and NMFS will give the 1998 amounts double-weight in the formula.

* * * * *

(c) * * *
(3) * * *

(iv) Sideboard publication (applicable through July 17, 2001). NMFS will publish AFA sideboard limits for AFA catcher vessels and AFA catcher/processors for each groundfish species and groundfish species group for which final specifications are published under paragraph (c)(3)(i) of this section. Sideboard amounts will be based on recommendations from the Council consistent with section 211 of the AFA.

* * * * *

(d) * * *
(1) * * *

(v) *AFA sideboard closures* (applicable through July 17, 2001). If the Regional Administrator determines that any sideboard harvest limit for a group of AFA vessels published under § 679.20 (c)(3)(iv) has been or will be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group applicable only to the identified group of AFA vessels. In establishing a directed fishing allowance, the Regional

Administrator shall consider the amount that will be taken as incidental catch by those vessels in directed fishing for other species.

* * * * *

4. In § 679.50, paragraphs (c)(4)(i), (c)(5), and (d)(5) are suspended, and paragraphs (c)(4)(vi), (c)(6), and (d)(6) are added to read as follows:

§ 679.50 Groundfish observer program applicable through December 31, 2002.

* * * * *

(c) * * *
(4) * * *

(vi) *Motherships or catcher/processors using trawl gear* (applicable through July 17, 2001). (A) A mothership or catcher/processor using trawl gear to participate in a directed fishery for pollock CDQ must have at least two NMFS-certified observers aboard the vessel, at least one of whom must be certified as a lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section.

(B) A mothership or catcher/processor using trawl gear to participate in a directed fishery for other than pollock CDQ must have at least two CDQ observers as described at paragraphs (h)(1)(i)(D) and (E) of this section aboard the vessel, at least one of whom must be certified as a lead CDQ observer.

(6) *AFA catcher/processors and motherships (applicable through July 17, 2001)—(i) Coverage requirement.*

(A) (Applicable through July 17, 2001). Unrestricted AFA catcher/processors and AFA motherships. The owner or operator of an unrestricted AFA catcher/processor or AFA mothership must provide at least two NMFS certified observers for each day that the vessel is used to harvest, process, or take deliveries of groundfish. More than two observers are required if the observer workload restriction at § 679.50(c)(5)(iii) would otherwise preclude sampling as required under § 679.62(a)(1).

(B) (Applicable through July 17, 2001). Restricted AFA catcher/processors. The owner or operator of a restricted AFA catcher/processor must

provide at least two NMFS certified observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or takes deliveries of pollock harvested in the BSAI. When a restricted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving deliveries of pollock harvested in the BSAI, the observer coverage requirements at § 679.50(c)(1)(iv) apply.

(ii) (Applicable through July 17, 2001). Certification level. At least one of the observers required under paragraphs (c)(5)(i)(A) and (B) of this section must be certified as a lead CDQ observer as specified in paragraph (h)(1)(i)(E)(1) of this section.

(iii) (Applicable through July 17, 2001). Observer work load. The time required for the observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24-hour period, and, the observer may not sample more than 9 hours in each 24-hour period.

(d) * * *

(6) *AFA inshore processors* (applicable through July 17, 2001).—(i) Coverage level. An AFA inshore processor is required to provide a NMFS certified observer for each 12 consecutive hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BSAI. A processor that takes delivery of or processes pollock for more than 12 consecutive hours in a calendar day is required to provide two NMFS-certified observers for each day.

(ii) (Applicable through July 17, 2001). Multiple processors. An observer deployed to an AFA inshore processor may not be assigned to cover more than one processor during a calendar day in which the processor receives or processes pollock harvested in the BSAI directed pollock fishery.

* * * * *

Pritchett
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2/01

NUMBER OF TRAWL VESSELS TARGETING COD EFFECTS OF THE AFA - AREA 517

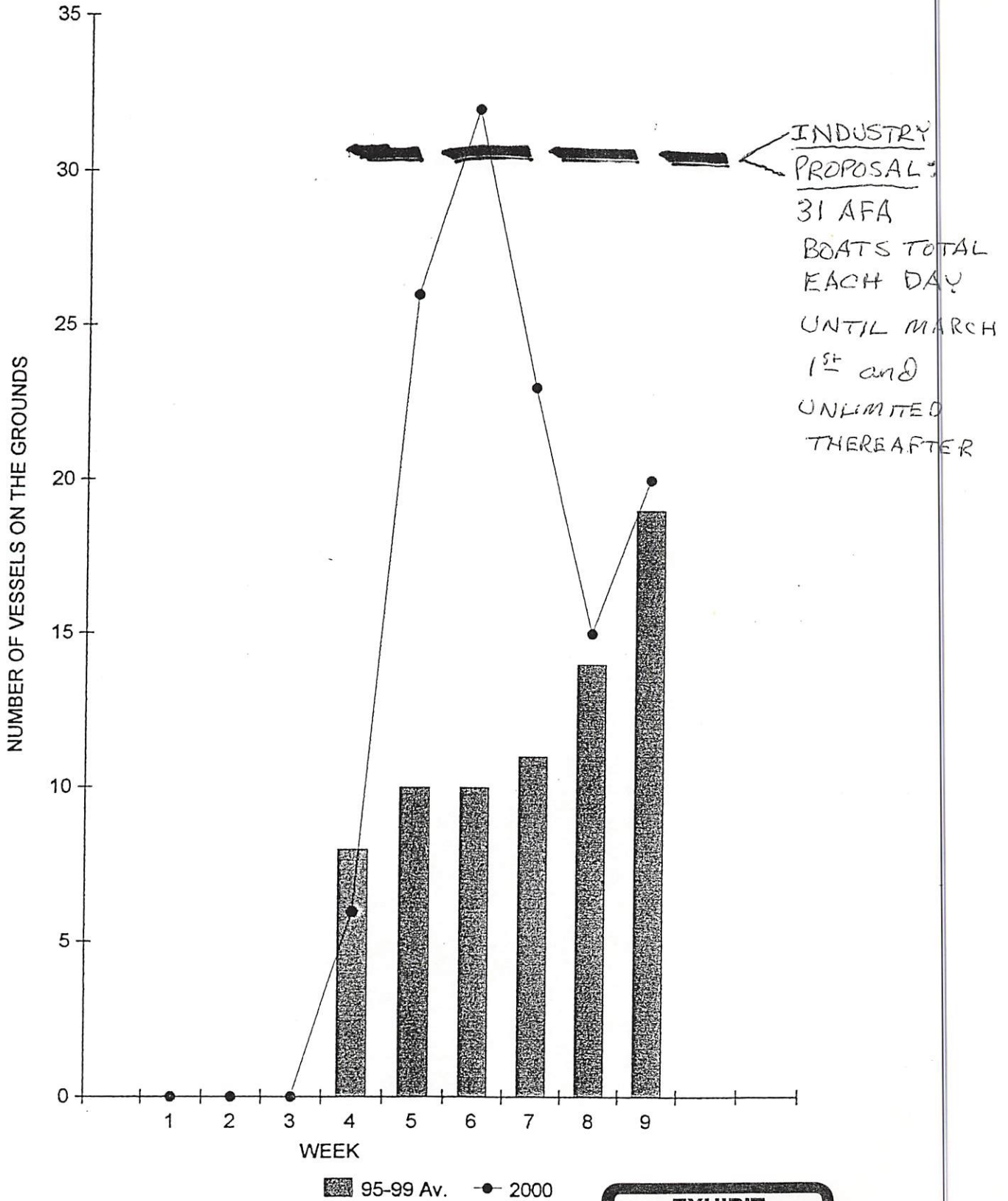


EXHIBIT
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THREE COD VESSELS COMBINED

A. CATCH BY YEAR IN POUNDS DURING THE PRE-AFA YEARS*

1995 - 6,013,303

1996 - 5,155,624

1997 - 5,208,417

PRE-AFA AVERAGE: 5,459,115 pounds per year

2000 Catch: 3,890,714

* 1998 is excluded because the Alaska Groundfish Database study indicated that in 1998 there was greatly reduced purchasing of cod by shoreside processors, especially in the first period of 1998. That was apparently due to processors using capacity for pollock due to the pre-AFA race for pollock. As a result only one of the three vessels actively pursued Bering Sea cod in 1998, and one had to move entirely to another area for his operations in 1998.

B. CATCH BY TIME PERIOD IN POUNDS

(PERIOD 1: About January 20 to February 20)

1995 2,400,130

1996 1,940,215

1997 2,454,906

PRE-AFA AVERAGE: 2,265,084 pounds in period 1

2000 Catch: 1,330,004

C. CATCH BY TIME PERIOD IN PERCENT

(For PERIOD 1: About January 20 to February 20)

PRE-AFA AVERAGE: 41.49%

2000: 34.18*

* Even this significantly lower catch both in terms of pounds and percent in Period 1 of Year 2000 was reached only by fishing in extremely severe weather in which the 3 boats normally would not fish, as the fishermen testified previously.

ALL THREE VESSELS PACIFIC OYSTER CATCH HISTORIES COMBINED

PART A. Catch by Year - POUNDS

Year	Total Catch	Discard sea	Discard plant	retained
1990	4360585	98000	39880	4222705
1991	3415098	0	0	3415098
1992	3072321	0	0	3072321
1993	2332290	112850	0	2219440
1994	5030043	25660	0	5004383
1995	6013303	130341	1942	5881020
1996	5155624	36922	0	5118702
1997	5208417	36854	0	5171563
1998	1495636	0	0	1495636
1999	3276742	0	0	3276742
2000	3890714	4281	0	3886433
all Total	43250773	444908	41822	42764043
all AVE/YR	3931888	40446	3802	3887640
Total 95-97	16377344	204117	1942	16171285
AVE 95-97	5459115	68039	647	5390428
Total 98-00	8663092	4281	0	8658811
AVE 98-00	2887697	1427	0	2886270

PART B. Total Catch by Year - PERCENT

Year	Total Catch	95-00 Tot
1990	10.08	
1991	7.90	
1992	7.10	
1993	5.39	
1994	11.63	
1995	13.90	24.01
1996	11.92	20.59
1997	12.04	20.80
1998	3.46	5.97
1999	7.58	13.09
2000	9.00	15.54
Total	100.00	100.00

ALL THREE VESSELS PACIFIC O CATCH HISTORIES COMBINED

PART A. Catch by time in POUNDS

Year	Period A	Period 1	Period 2	Period 3	Period 4	Period 5	All else	Total
1990	545516	1233262	1266275	429229	554826	291920	39557	4360585
1991	247528	1321730	565306	707867	572667	0	0	3415098
1992	0	2025555	245199	609577	191990	0	0	3072321
1993	0	654845	742039	766446	168960	0	0	2332290
1994	0	1300118	1371366	1278913	1079646	0	0	5030043
1995	0	2400130	1949206	1303667	360300	0	0	6013303
1996	0	1940215	1323928	1033721	857760	0	0	5155624
1997	0	2454906	994551	1234391	524569	0	0	5208417
1998	0	205059	462751	250621	103774	0	473431	1495636
1999	0	1001028	1370744	448444	0	0	456526	3276742
2000	0	1330004	1149497	946457	464757.5	0	0	3890715.4
all total	793044	15866852	11440862	9009333	4879249	291920	969514	43250774
all AVE /YR	72095	1442441	1040078	819030	443568	26538	88138	3931888.6
Total 95-97	0	6795251	4267685	3571779	1742629	0	0	16377344
AVE 95-97	0	2265084	1422562	1190593	580876	0	0	5459115
Total 98-00	0	2536091	2982992	1645521.8	568531.5	0	929957	8663093.4
AVE 98-00	0	845364	994331	548507	189510	0	309986	2887698

PART B. Catch by time in PERCENT

Year	Period A	Period 1	Period 2	Period 3	Period 4	Period 5	All else	Total
1990	12.51	28.28	29.04	9.84	12.72	6.69	0.91	100.00
1991	7.25	38.70	16.55	20.73	16.77	0.00	0.00	100.00
1992	0.00	65.93	7.98	19.84	6.25	0.00	0.00	100.00
1993	0.00	28.08	31.82	32.86	7.24	0.00	0.00	100.00
1994	0.00	25.85	27.26	25.43	21.46	0.00	0.00	100.00
1995	0.00	39.91	32.41	21.68	5.99	0.00	0.00	100.00
1996	0.00	37.63	25.68	20.05	16.64	0.00	0.00	100.00
1997	0.00	47.13	19.10	23.70	10.07	0.00	0.00	100.00
1998	0.00	13.71	30.94	16.76	6.94	0.00	31.65	100.00
1999	0.00	30.55	41.83	13.69	0.00	0.00	13.93	100.00
2000	0.00	34.18	29.54	24.33	11.95	0.00	0.00	100.00
all total	1.83	36.69	26.45	20.83	11.28	0.67	2.24	100.00
TOT 95-97	0.00	41.49	26.06	21.81	10.64	0.00	0.00	100.00
TOT 98-00	0.00	29.27	34.43	18.99	6.56	0.00	10.73	100.00

C-4



PACIFIC SEAFOOD PROCESSORS ASSOCIATION

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Seattle, WA 98119

(206) 281-1667

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February 1, 2001

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N.P.F.M.C

Chris Oliver
Acting Executive Director
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Chris,

I am writing in response to your letter of December 14th regarding the Council's request for product form and recovery information from AFA processors. The information requested by the Council is on the attached page, and includes both 1999 and 2000 aggregated sectoral data. The data includes the AFA members of PSPA as well as Icicle and Trident.

We were also asked to discuss any trends that we felt were evident in the data. In comparing PRR's there was an improvement of 11% for the motherships and 5% for the on-shore processors from 1999 to 2000. While it may be intuitive to attribute some or all of those recovery rate improvements to the benefits of co-op's, other factors may also be in play. No other trends were identified.

We hope this data will help the Council in their discussions regarding co-op managed fisheries.

Best regards,

Glenn Reed
President

1999 & 2000 Product Mix and Recovery for the Mothership and On-Shore Sectors.Mothership Sector

Product Form	1999 Percentage by weight	2000 Percentage by Weight
Surimi	79%	76%
Roe	4%	4%
Fishmeal	17%	20%
Totals	100%	100%

Total Product Recovery Rate	23%	27%
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On-Shore Sector

Product Form	1999 Percentage by weight *	2000 Percentage by weight
Surimi	52%	54%
Fillets - Skinless	5%	7%
Fillets - Deep Skin	5%	3%
Roe	3%	3%
Fish Meal	24%	23%
Other**	11%	10%
Total	100%	100%

Total Product Recovery Rate	37%	39%
-----------------------------	-----	-----

*1999 numbers include 4 of the 6 AFA processors, 2000 numbers include all 6 AFA processors.

1999 data for the Northern Victor is not included because the vessel missed the A Season due to a fire.

**This category includes but may not be limited to H & G, salt pollock, mince, oil, bonemeal, and entrails.

1999 & 2000 Product Mix and Recovery for the Mothership and On-Shore Sectors.

Mothership Sector

Product Form	1999 Percentage by weight	2000 Percentage by Weight
Surimi	79%	76%
Roe	4%	4%
Fishmeal	17%	20%
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Product Form	1999 Percentage by weight *	2000 Percentage by weight
Surimi	52%	54%
Filletts - Skinless	5%	7%
Filletts - Deep Skin	5%	3%
Roe	3%	3%
Fish Meal	24%	23%
Other**	11%	10%
Total	100%	100%

Total Product Recovery Rate	37%	39%
-----------------------------	-----	-----

*1999 numbers include 4 of the 6 AFA processors, 2000 numbers include all 6 AFA processors.
 1999 data for the Northern Victor is not included because the vessel missed the A Season due to a fire.
 **This category includes but may not be limited to H & G, salt pollock, mince, oil, bonemeal, and entrails.

North Pacific Fishery Management Council

David Benton, Chairman
Chris Oliver, Acting Executive Director

Telephone: (907) 271-2809

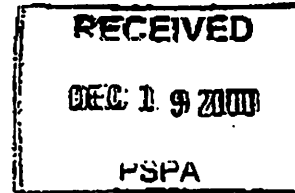


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Visit our website: <http://www.fakr.noaa.gov/npfmc>

December 14, 2000



Glenn Reed, President
Pacific Seafood Processors Association
300 Elliott Ave. W, Suite 360
Seattle, WA 98119

Dear Glenn:

During the Council discussion of agenda item C-6 Co-op performance reports, the issue of processor level information was addressed. As a result of that discussion, I have been asked by the Council to request AFA processors provide some production information relative to co-op operations in 2000 and to the extent possible, comparative information for 1999. Essentially, we want to see the relative amounts produced of each major product form, estimates of overall product recovery rates (utilization), and how these have changed from the pre-co-op period.

A report, aggregated by industry sector, similar to table 7 on page 17 of the "Preliminary Joint Report of the Pollock Conservation Cooperative and High Seas Catchers' Cooperative 2000" would be desirable, along with a brief discussion of trends.

I understand that the PSPA membership includes all but two AFA processors but that you are willing to work with Icicle Seafoods and Trident Seafoods in order to aggregate the requested information. We would need the report submitted to our office by January 26, 2001 in order to include in the Council's briefing book. Please contact me if you have additional questions.

Sincerely,

Chris Oliver
Acting Executive Director

SUMMARY and STATUS REPORT of the INTERCOOPERATIVES

PILOT "OTHER SALMON" BYCATCH PROGRAM

February 10, 2001

The pollock intercooperative group (composed of representatives from the nine catcher vessel cooperatives and PCC) is developing the following "Other Salmon" bycatch management program for the Bering Sea pollock fishery.

Goal: Implement a rate-based program for reducing "Other Salmon" (Chum) bycatch by restricting pollock harvest in areas of Chum bycatch to vessels with low bycatch rates as an incentive to promote cleaner fishing practices.

Overview: The rate-based program sets thresholds that categorize coops into various classes based on their cumulative bycatch performance. Likewise, areas of the Bering Sea are monitored on a fleet wide basis and categorized by bycatch rate. Those zones with excessive bycatch rates are closed to some or all coops.

The fishing cooperatives created by the AFA are the key component of this program. By promoting bycatch reduction on a coop by coop basis, coops are given incentives to develop clean fishing practices. Fleet wide regulations cause fishermen with low bycatch rates to bear the consequences of poor performance by others.

Coop Bycatch Rates: Each coop is monitored individually and categorized by their seasonal performance. The performance rate is the coop chum catch to date divided by the pollock harvest to date. How these rates are categorized can be very simple or very complex. Currently the coops are reviewing two multi-level programs, one with two levels of bycatch performance and another with three levels of bycatch performance. Also under review is a single level system that restricts all coops equally regardless of their individual coop bycatch rate.

Area Bycatch Ranges: Areas of the Bering Sea are monitored and categorized individually by the fleet bycatch rate for the area over discrete periods of fishing activity (i.e., 3 days and/or weekly). An area's bycatch rate is calculated by dividing the amount of chums taken from the area in the relative period by the pollock harvest in the area for the same period. Currently coops are considering two methods of categorizing areas. One method would classify areas as either "good" or "bad", while the other would classify them as "good", "exercise caution", or "bad".

Originally, ADF&G statistical blocks were chosen as the basis for area management. However, there is great interest in subdividing these areas into quadrants. Monitoring the fleet to this level requires a reliable source of real-time data for all vessels. The offshore fleet is expected to use existing observer coverage and reporting systems. Catcher vessels delivering to shore plants are developing a system for gathering and reporting tow by tow data.

Single Level Bycatch Program: Areas that exceed the bycatch threshold ("bad" areas) become closed for fishing by all coops for an initial closure period. At the end of the closure period the areas re-open for fishing by all coops. This is the simplest form of a rate-based bycatch program. While it would result in reduced bycatch, this program does not reward coops with cleaner bycatch practices with more fishing opportunity than those with poorer performances.

Two Level Bycatch Program: Coops are placed into one of two categories; "Tier 1", i.e. coops performing under the bycatch threshold or "Tier 2", i.e. coops performing over the bycatch threshold. The threshold that decides a coop's tier will be determined by the coop cumulative bycatch rate, as compared to thresholds set before the season opens. It may be appropriate to recalculate this threshold as the season progresses.

Statistical blocks, whether whole or quadrants, would also have two access levels assigned to them based on the bycatch rate in the area during the current reporting period. Areas above the threshold would be coded as red ("bad") and those below the threshold would be coded as green ("good"). The coops are in the process of modeling past years bycatch patterns to be done by Sea State, Inc. in order to determine the most sensible approach in setting these thresholds.

The mechanics of the Two Level Bycatch Program are much simpler than the task of setting appropriate thresholds. Initially, areas over the bycatch threshold (red areas) are closed to fishing by all coops; areas under the threshold (green areas) are open to fishing by all coops. After an initial closure period a red area is opened for fishing to the Tier 1 coops (those coops performing under the coop bycatch threshold rate). The Tier 2 coops (those coops fishing over the coop bycatch rate) continue to fish only in the green areas. If at the end of the next closure period the Tier 1 coops have fished under the threshold rate in the previously closed area, or if no fishing has occurred in the area, it is upgraded to green status and becomes open to all coops. If the Tier 1 coops experience bycatch rates over the threshold, the area re-closes to all fishing for the next closure period.

Three Level Bycatch Program: While similar to the previous program, the coop performance and the area access rates are spread across three levels, increasing

the fishing opportunity for exceptionally "clean" coops and decreasing fishing opportunity for coops that have bycatch rates outside the acceptable range. Additionally, coops that are performing in line with the bycatch cap are not categorized with poor performing coops as in the two level program.

While the three level system may seem fairer in how it rewards or restricts a coops bycatch performance when compared to the two level program, it is more complex to understand. Coops have expressed concerns regarding how well the system can be managed and the heightened chance of confusion for vessel operators.

Summary of Items Needing "Council Assistance":

1. Assistance from observers aboard inshore catcher vessels towards producing accurate daily on-grounds reports.
2. Access to historical data on salmon bycatch.

Summary of Items Needing Further Statistical Modeling for Analysis:

1. Threshold for separating Tier 1 and Tier 2 coops under the Two Level Bycatch Program.
2. Threshold for separating bycatch hotspots for the Two Level Bycatch Program.
3. Thresholds for separating Tier 1, Tier 2, and Tier 3 coops under the Three Level Bycatch Program.
4. Thresholds for separating bycatch hotspots for the Three Level Bycatch Program.
5. Determine how often the thresholds should be recalculated in the course of a season.

This status report is not only intended to supply the Council with information on the group's progress, but is also an invitation for Council to provide input in the process. The pollock intercooperative group is committed to implementing a chum salmon bycatch program for the 2001 C/D season. The group has met five times since the December Council meeting and intends on presenting a final program at the April Council meeting. Sea State, Inc. is supplying the group

with catch data and statistical modeling as program options are narrowed, but this is a time consuming process. Additionally, coops are seeking the advice of their fishermen as options are reviewed. With the A/B season underway this information exchange take time, but is considered critical in developing a truly effective program.

Fred Yeck
C-4
7/01

NUMBER OF TRAWL CATCHER VESSELS TARGETING PACIFIC COD BY STAT WEEK IN NMFS REPORTING AREA 517

Year	Statistical Week													
	4	5	6	7	8	9	10	11	12	13	14	15	16	17
1995	7	9	9	9	11	22	30	31	41	40	44	43	45	31
1996	8	11	9	10	9	12	29	40	34	24	37	44	42	38
1997	6	7	9	8	12	30	36	35	34	24	24	39	44	44
1998	8	8	9	15	14	13	35	25	42	40	18	53	44	20
1999	11	15	15	15	23	17	39	50	47	19	41	37	24	NA
2000	6	26	32	23	15	20	20	27	33	25	16	28	30	18
Average Number of Vessels 95-99	8	10	10	11	14	19	34	36	40	29	33	43	40	33

Data Source: From testimony of Russel Pritchett as submitted to the North Pacific Management Council by letter on January 31, 2001.

AVERAGE NUMBER OF CATCHER VESSELS FISHING AREA 517 FROM 1995-1999 VS. CATCHER VESSELS FISHING 517 IN 2000

