


# Public Testimony Sign-Up Sheet

## Agenda Item C-6 AM80 issues

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

MEMORANDUM

TO: Council, SSC and AP Members  
FROM:  Chris Oliver  
Executive Director  
DATE: September 20, 2007  
SUBJECT: Amendment 80 Post-Delivery Transfers

ESTIMATED TIME 1 HOURS
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**ACTION REQUIRED**

Review discussion paper and take action as necessary.

**BACKGROUND**

At its June 2007 meeting, in response to public testimony, the Council requested staff to prepare a discussion paper concerning a potential amendment to the Amendment 80 cooperative program that would permit the transfer of cooperative quota (CQ) to cover overages after the time of landing. The provision would be intended to reduce the potential for enforcement actions related to unintended overages, in the event a cooperative can acquire shares to cover an overage within a reasonable time. The attached paper (Item C-6(a)) responds to the Council request. The paper begins with a brief description of the rationale and use for post delivery transfers, including a brief discussion of the use of systems of post-delivery transfers in fisheries outside of the North Pacific. The paper includes a discussion of pertinent issues, a draft purpose and need statement, and draft elements and options for Council consideration.

**Post-delivery transfers of Amendment 80 CQ  
North Pacific Fishery Management Council  
October 2007**

At its June 2007 meeting, in response to public testimony, the Council requested staff to prepare a discussion paper concerning a potential amendment to the cooperative program in the Bering Sea and Aleutian Islands established by Amendment 80 that would permit the transfer of cooperative quota (CQ) to cover overages after the time of landing. The provision would be intended to reduce the potential for enforcement actions related to unintended overages, in the event the cooperative can acquire shares to cover the overage within a reasonable time. This paper responds to the Council request. The paper begins with a brief description of the rationale and use for post delivery transfers, including a brief discussion of the use of systems of post-delivery transfers in fisheries outside of the North Pacific. The paper includes a discussion of pertinent issues, a draft purpose and need statement, and draft elements and options for Council consideration. This paper is very similar in form and content to the paper delivered to the Council at its June meeting concerning the development of post-delivery transfer provisions for the Bering Sea and Aleutian Islands crab rationalization program and the Central Gulf of Alaska rockfish pilot program.

## **Background**

Amendment 80 established a share-based management program for non-AFA non-pollock trawl catcher processors in the Bering Sea and Aleutian Islands. Under the program, cooperatives would receive allocations of six species (Atka mackerel, Pacific ocean perch, flathead sole, Pacific cod<sup>1</sup>, rock sole, and yellowfin sole). Since three separate management areas are established for both Atka mackerel and Pacific ocean perch, each cooperative will receive a total of ten allocations of these for these species. In addition to these species allocation, five allocations of prohibited species catch (PSC) will be made under Amendment 80 (halibut, Zone 1 red king crab, *C. opilio*, Zone 1 *C. bairdi*, and Zone 2 *C. bairdi*). So, each cooperative is likely to receive fifteen separate allocations under the program. Each allocation is constraining without provision for addressing or accommodating either overharvest or underharvest of the allocation.

In a share-based fishery, participants catch is limited by quota holdings. During the fishery, participants estimate catch attempting to limit catch to their available quota. Overages occur at times due to errors in catch estimates. Precisely estimating catch onboard can be difficult (and costly) due to variation in size of fish and sorting and measurement requirements. Uncertainty of catch composition and quantities when fishing also complicates catch estimation. In the Amendment 80 cooperative program, this uncertainty is compounded by the binding, multispecies allocations of retainable species and prohibited species catch. Participants will be compelled to carefully tailor effort in an attempt to fully harvest each retainable allocation without exceeding those allocations or the allocations of prohibited species catch.

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

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

Allowing post-delivery transfers in the Amendment 80 cooperative fisheries could mitigate potential overages, reducing enforcement costs and providing for more precise TAC management. Yet, some caution may be warranted in the development of a system of post-delivery transfers. Too liberal reliance on post-delivery transfers could exacerbate overages. Similarly, an unconstrained system of post-delivery transfers could complicate management and oversight of share management and enforcement of overages that are not covered by a transfer. Appropriate limits (on both the magnitude and timing of transfers) could prevent unwarranted reliance on post-delivery transfers to cover reckless overages, minimize management, oversight, and enforcement complications, and prevent potential abuses.

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

In addition, the Council is currently considering systems of post-delivery transfers for both the Bering Sea and Aleutian Islands crab rationalization program and the Central Gulf of Alaska rockfish pilot program.

### **A post-delivery transfer system**

Two possible (and opposite) effects of constraining harvest allocations could be mitigated by a post-delivery transfer provision. First, harvesters that underestimate their catch could cover any overage with a post-delivery transfer, reducing the potential for violations and TAC overages. Second, harvesters that are conservative in their estimates of catch to avoid overages may leave allocations unharvested for fear of exceeding their quota. Allowing post-delivery transfers (together with well-coordinated end of season trades among cooperatives) could reduce the amount of unharvested allocations by allowing cooperatives some latitude to address potential overages.

One consideration affecting the need for and scope of any post-delivery transfers is the extent to which fishing has consolidated in cooperatives. Consolidation of shares in fewer cooperatives will reduce the number of overages, since each cooperative oversees the harvest of a single annual allocation, based on the share holdings of its members. Typically, the last vessel fishing the cooperative's allocation is the only vessel in a cooperative that must face a potential regulatory overage.<sup>3</sup> Under Amendment 80, cooperative formation requires at least 30 percent (or nine) of the eligible vessels<sup>4</sup> in the program and at least 3 of which must have less than 10 percent common ownership. Given this threshold, at most 3

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<sup>2</sup> Nova Scotia uses share-based management programs for different gear types. Transfers across gear types are permitted only after the season closing. The rationale for permitting these cross-gear transfers is to prevent potential TAC overruns and to reduce the incentive to discard.

<sup>3</sup> Any vessel in a cooperative may overharvest the cooperative's allocation to that vessel. This type of contractual overage would be addressed internally by the cooperative under the cooperative contract. A regulatory overage only occurs, if the total harvest of cooperative members exceeds the total allocation to the cooperative.

<sup>4</sup> It should be noted that the history of a lost vessel is attributed to that vessel's original license for purposes of both cooperative formation and determining the distribution of allocations under the program. So, for purposes of meeting the vessel threshold for cooperative formation, the license of a lost vessel counts as a vessel.

cooperatives could be formed under the program. The post-delivery transfer provision would permit exchanges among any cooperatives formed to cover overages. If only two cooperative were to form, it would be only exchanges among those two cooperatives that would be affected by this proposed action. If the eligible participants elected to form a single cooperative, this provision would have no effect. In that case, with a single cooperative agreement would govern the use of all shares, no source of shares would exist for post-delivery transfers. The cooperative, through its agreement would have control of all share allocations with which to manage catch. Potential overages could occur, but those would arise only in the case of the sector's cooperative exceeding its entire cooperative allocation.<sup>5</sup> A post-delivery transfer provision would be inapplicable.

#### **Draft purpose and need statement**

To develop an appropriate provision for post-delivery transfers, the Council should be guided by a purpose and need statement. The following draft purpose and need statement could be considered by the Council:

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

#### **Alternative, elements, and options for consideration**

This section briefly reviews some considerations and elements and options and that could be used to define alternatives for analysis. The section begins by summarizing two possible approaches to the development of a post-delivery transfer provision.<sup>6</sup> These different approaches could be used by the Council to develop two distinct alternatives. The section goes on to discuss specific provisions that could be used to construct the different alternatives. The section concludes by developing two possible alternatives that could be considered by the Council for analysis. The alternatives are constructed to allow specific options to be substituted, as deemed appropriate by the Council.

#### **Approaches to developing alternatives**

Generally, the use of post-delivery transfers would be intended to allow harvesters flexibility to cover overages (or possibly coordinate share usage). A liberal approach to post-delivery transfers would allow any number of post-delivery transfers at the election of a participant. No limit on the magnitude of transfers would be applied. Two limitations could be considered. First, persons without unused CQ could be prohibited from fishing to prevent possible excessive overages. Currently, it is a violation to fish

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<sup>5</sup> Although the cooperative allocation would be exceeded in this instance, the sector would only exceed its entire allocation if the cooperative overharvest exceeds the underharvest of any limited access allocation. Whether a limited access fishery exists depends on the choices of sector members.

<sup>6</sup> In the development of similar actions for the Bering Sea and Aleutian Islands crab fisheries and the Central Gulf of Alaska rockfish fisheries at the June 2007 meeting, staff presented the Council with three possible alternatives, from which the Council selected two for analysis. In presenting this paper, staff elected to remove the third alternative (which defined a very restricted system of transfers) to focus the Council's attention on alternatives that it has elected to advance in the past. If the Council wishes to consider that alternative, staff could include that alternative in a future analysis or discussion paper.

without unused CQ. So, a person that had an overage would be required to cover that overage with a post-delivery transfer and acquire additional CQ prior to beginning a new trip. Second, all post-delivery transfers would need to be completed by a date certain after the end of the season to allow managers to finalize all share use accounting. This approach might be favoured for its simplicity and its relatively low administrative burden. Whether the approach increases the risk of overages is not clear. Since a harvester is not limited in the ability to cover an overage with a post-delivery transfer, it is possible that a harvester could fish well beyond its share holdings in hopes of covering the overage with a later transfer. On the other hand, since overages that are not covered would be subject to a penalty that would likely increase with the magnitude of the overage, harvesters may still have a significant incentive to avoid overages that they are not certain that they can cover.

A second approach could be to choose a system of moderate constraints, intended to balance participants' interests in making reasonable use of post-delivery transfers to cover overages against the need to limit any incentive to fish in excess of quota holdings. In developing such an approach, the potential for any limits on the use of transfers to add to administrative and enforcement burdens should also be considered relative to the benefits to participants and risks of abuse that are likely to arise under the system.

#### **Limits on the magnitude of a post-delivery transfer**

It is possible that allowing post-delivery transfers could lead some fishermen to unreasonable rely on the provision, leading to excessive overages that they are unable to cover through post-delivery transfers. To prevent potential unreasonable reliance on post-delivery transfers, the Council could limit the magnitude of permitted transfers.

One (or both) of two approaches to limiting transfers could be considered. Transfers could either be limited to less than a fix amount of pounds or less than a certain percentage of the CQ used on a trip. Imposing a percentage limit could be appropriate for ensuring that a person did not have an excessive overage, given the available CQ for the trip. In imposing a percentage limit, the Council could consider that applying the limit either on a species basis (limiting the transfer of a single species to a percentage of that species CQ used on the trip) or on an aggregate basis (limiting the transfer of all CQ to cover an overage to a percentage of all CQ used on the trip).

Some participants in the fishery might favour high transfer limits to allow a cooperative to cover a tow that is composed primarily of an unexpected species (between 50 to 100 metric tons). Some stakeholders might oppose allowing large transfers for fear that they could lead to less care in targeting and more flagrant overages. Allowing a transfer to cover such an overage could mitigate any impact of the tow on the stock, since the catch would be counted against available quota in the fishery. Furthermore, in the long run, prices of quota for less available species are likely to rise to a level that creates a disincentive for poor targeting practices. The Council could also consider limiting post-delivery transfers of PSC to limit potential flagrant overages. These limits should be set at a level adequate to allow for inadvertent overages, but not so liberal as to support careless fishing practices.

In considering whether to include a provision limiting the magnitude of post-delivery transfers, the Council should consider whether harvesters are likely to overharvest their CQ holdings without a relatively high certainty of being able to cover the catch with a post-delivery transfer of CQ. Share pricing for post-delivery transfers could be a reasonable disincentive for overages that might threaten the TAC, (without direct limits on post-delivery transfers). Overharvests are likely to leave a harvester with a choice of either paying the market price for a post-delivery transfer of CQ or accepting enforcement consequences. If enforcement consequences are punitive, harvesters may be unlikely to engage in fishing that cannot be covered with a post-delivery transfer.

### Possible options

*A post-delivery transfer of allocated retainable species shall be limited to:*

*Option 1: a. 15 percent*

*B. 20 percent*

*c. 25 percent*

*of the CQ used on the trip*

*Suboption 1. on a species basis*

*Suboption 2. on an aggregate basis (i.e., CQ of all species)*

*Option 2. a. 25 metric tons of CQ*

*b. 50 metric tons of CQ*

*c. 100 metric tons of CQ*

*Suboption 1: on an aggregate basis*

*Suboption 2. on a species basis*

*(both options could be selected)*

*A post-delivery transfer of halibut PSC shall be limited to:*

*Option 1. 5,000 pounds*

*Option 2. 10,000 pounds*

*Option 3. 15,000 pounds*

*A post-delivery transfer of red king crab PSC shall be limited to:*

*Option 1. 1,000 animals*

*Option 2. 2,000 animals*

*Option 3. 3,000 animals*

*A post-delivery transfer of bairdi PSC (each zone) shall be limited to:*

*Option 1. 5,000 animals*

*Option 2. 7,000 animals*

*Option 3. 10,000 animals*

*A post-delivery transfer of opilio PSC shall be limited to:*

*Option 1. 15,000 animals*

*Option 2. 25,000 animals*

*Option 3. 35,000 animals*

### **Limits on the number of post-delivery transfers**

Limits on the number of post-delivery transfers could be used to contain administrative costs associated with allowing these transfers. To prevent this potential excessive burden, the Council could limit the number of post-delivery transfers that a cooperative could receive. Two factors could be considered by the Council in assessing these limits. First, under the Amendment 80 program rules, no more than 3 cooperatives can form. Given that the fishery is likely to have relatively few cooperatives, the potential burden of allowing multiple post-delivery transfers is limited. A second factor to consider is the potential importance and benefit of multiple transfers. With 11 allocated species, it is possible that participants may need multiple post-delivery transfers to cover overages. It is possible that a cooperative may have an overage of a species on a trip with substantial remaining quota for other species. Allowing these cooperatives to continue fishing after covering the overage (possibly making several additional trips) might be reasonable provided that the cooperative has or acquires quota to cover its catch.<sup>7</sup>

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<sup>7</sup> In the event the Council elects to allow a cooperative to receive multiple post-delivery transfers, the current regulation requires that the cooperative have quota of all species prior to beginning a new fishing trip. No minimum

### Possible options

*For each species, a cooperative is limited to covering:*

*Option 1. one overage with post-delivery transfers*

*Option 2. three overages with post-delivery transfers*

*Option 3. five overages with post-delivery transfer*

*Option 4. unlimited post-delivery transfers*

### **Limits on the time to undertake a post-delivery transfer**

An effective and efficient system of post-delivery transfers should allow a harvester a reasonable period of time to cover an overage with transfer. The time period should be long enough to allow the harvester to find a seller, but short enough so that administrators can finalize records for purposes of documenting catch and share usage in the fishery. A time period that is too short may circumvent the purpose of the provision by not accommodating search time needed to find a seller of shares and complete the transaction (including obtaining notarized signatures as are currently required). A period that is too long could add to administrative burdens and also induce lax reliance on the provision that could lead more uncovered overages. An appropriate period for post-delivery transfers could adopt a time limit that balances these competing considerations.

Since share accounting is not finalized until the end of a fishing season, an alternative approach is to allow post-delivery transfers at any time until the season ends. Allowing this longer window to cover an overage could simplify share use accounting arising from allowing post delivery transfers. In extending the time to cover an overage to the end of a season, the Council should consider the length of the current seasons and the timing of fishing. If an overage does not need to be covered until after the end of the season, some participants could neglect covering an overage believing the extended period of time would allow adequate time to do so.

### Possible options

*Option 1. Post-delivery transfers will be permitted after a weekending date for a period of:*

*Suboption a. 1 week*

*Suboption b. 15 days*

*Suboption c. 30 days*

*Option 2. A post-delivery transfer will be permitted at any time until the fishing season ends (December 31<sup>st</sup>).*

### **Possible alternatives**

Below are possible alternatives that the Council could consider for analysis of post-delivery transfers in the Amendment 80 cooperative fisheries. After the alternatives, a table summarizes the differences between the various suggested alternatives (see Table 1 **Error! Reference source not found.**).

#### **Alternative 1 – Status Quo (no post-delivery transfers)**

#### **Alternative 2 – Unlimited post-delivery transfers**

#### **Limits on the magnitude of a post-delivery transfer**

*None*

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quota holdings are specified for beginning a new trip. If the Council wishes to change this requirement, it should include such a provision in its motion.



Limits on the number of post-delivery transfers

None

Limits on the time to undertake a post-delivery transfer

A post-delivery transfer will be permitted at any time until the fishing season ends (December 31<sup>st</sup>).

Alternative 3 – Moderate limited post-delivery transfers

Limits on the magnitude of a post-delivery transfer

A post-delivery transfer of allocated retainable species shall be limited to:  
100 metric tons of CQ on a species basis

A post-delivery transfer of halibut PSC shall be limited to:  
15,000 pounds

A post-delivery transfer of red king crab PSC shall be limited to:  
3,000 animals

A post-delivery transfer of bairdi PSC (each zone) shall be limited to:  
10,000 animals

A post-delivery transfer of opilio PSC shall be limited to:  
35,000 animals

Limits on the number of post-delivery transfers

For each species/area allocation, a cooperative is limited to receiving post-delivery transfers to cover five overages.

No person shall be permitted to begin a fishing trip, unless the person holds unused CQ.

Limits on the time to undertake a post-delivery transfer

Post-delivery transfers will be permitted after a weekend date for a period of 30 days.

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

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

### **Conclusion**

Persons eligible for the Amendment 80 cooperative program have suggested that a provision for post-delivery transfer of cooperative quota to cover overages could simplify catch management, prevent inadvertent overages, and reduce discards. If the Council wishes to consider adoption of provisions for post-delivery transfers to cover overages in the program, it could develop purpose and need statements and elements, options, and alternatives, and task staff to begin an analysis at this time.