


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: January 26, 1999

SUBJECT: American Fisheries Act

ESTIMATED TIME
8 HOURS

ACTION REQUIRED

- (a) Discussion of 1999 co-op agreements.
- (b) NMFS progress report on implementation of measures for 1999.
- (c) NMFS disapproval of emergency rules and Council response.
- (d) Review progress on year 2000 amendment package, and identify final alternatives and options for analysis.

BACKGROUND

(a) 1999 Co-op agreements

The AFA stipulates that co-op contracts must be filed with the Council and the Secretary not less than 30 days prior to the start of fishing. While the AFA does not elaborate on the specific review role of the Council, it does stipulate that certain provisions of the co-op agreements, at a minimum, will be made available to the public by the Council. These minimums include the following:

- *Parties to the contract (fishing companies involved)
- *List of the vessels involved
- *Amount of pollock to be harvested by each party to the co-op
- *Amount of other groundfish to be harvested by each member of the co-op

The contracts must also contain provisions for payment of fish taxes to the State of Alaska for all pollock harvested/processed, and for 1999, the co-op agreements for catcher vessels delivering to catcher/processors must include restrictions to limit their participation in non-pollock fisheries to 'traditional' levels.

On December 20, 1998 we received copies of the contract agreements for the offshore sector co-op participants, including the catcher vessels that deliver offshore. On December 29 the Council forwarded a letter to the Secretary of Commerce which described apparent deficiencies in the co-op agreements, but acknowledged that this is a first-year learning experience and that fishing under these initial co-op agreements should proceed in 1999. That letter is included as Item C-2(a)(1), with the copies of the contracts themselves under Item C-2(a)(2).

The issues noted in the letter centered on the lack of specifics with regard to the harvest of non-pollock species and PSC amounts, as well as how the distribution of catch among co-op members would be affected by transfers within the co-op. The Council will likely want to discuss these issues and how future co-op agreements should be structured.

In addition to the requirements of the AFA, the Council has identified additional rules and regulations pertaining to the development and review of fishing co-op agreements outlined by the AFA. As expressed at the December 1998 meeting, these include:

- *Limit co-op agreements to 1-6 years
- *Prohibit linkages of membership in co-ops to delivery of non-pollock species
- *Require disclosure of catch and bycatch statistics
- *Require contracts be submitted by December 1 (as apposed to 30 days prior to the start of fishing stated in the AFA)

It is unclear whether these requirements could be implemented via regulations, or simply conveyed to the industry as the intent and expectation of the Council. The four issues outlined above do not lend themselves to quantitative analysis; rather, they appear to be policy issues for which the Council needs to express direction. Disclosure of catch and bycatch statistics is already listed in the AFA as a requirement for co-op vessels (though it does allow the Council and SOC to make such information available to the public in a manner they deem appropriate). Details of such a provision might best be considered within the broader development of a discussion paper already tasked by the Council - to examine disclosure of catch and bycatch pursuant to Section 211(d) of the AFA as it relates to satisfying bycatch reduction provisions of the Magnuson-Stevens Act. This issue will have to be considered within the context of State and Federal data confidentiality rules which are being examined. Item C-2(a)(3) is a copy of correspondence we sent to initiate this process.

Action relative to the co-op provisions is not required at this meeting, but should probably be resolved by the June meeting when the Council is scheduled to take action on a full suite of AFA related issues.

(b) Progress on 1999 implementation

At the special November Council meeting the Council took action to implement the necessary provisions of the AFA for the 1999 fisheries. This action focused on conforming the I/O3 amendment to the provisions of the AFA, and on sideboard provisions for the offshore sector which will be operating under co-op agreements in 1999. Table 1, an excerpt from our November newsletter, summarizes those actions

The relevant rulemakings to implement those measures are contained under Item C-2(b)(1). These include: (1) the FR notice establishing interim harvest specifications to implement the catcher/processor sideboard limitations; (2) an emergency rule to establish additional observer coverage requirements for those vessels, including establishing in-season authority to effect the harvest limitations for non-pollock and PSC species; (3) an emergency rule to implement the CDQ-related actions from both the AFA and the Council; (4) the final rule for Amendments 51/51 to implement the Council's inshore/offshore measures (as modified by the AFA); and, (5) the letter from NMFS describing the partial approval of those amendments. NMFS staff is available if necessary to report details of that implementation process.

(c) Disapproval of emergency rule recommendations by the Council

At the December meeting the Council requested two emergency rules under the AFA agenda item. First, the Council passed an emergency rule that deals with pollock-to-opilio crab crossover vessels. The motion was, "of those vessels qualified under the American Fisheries Act to participate in the BSAI directed fisheries for opilio

crab, only the vessels that landed opilio crab during the directed fishery for that species in 1996 or 1997 may participate in the directed fishery for that species in 1999." This action would reduce the number of vessels eligible for the opilio fishery in 1999 by approximately 30.

The second action was to "request NMFS to implement an emergency rule freezing participation in the pollock and non-pollock fisheries, in the BSAI and GOA, in place for 1999. Each gear type — trawl, trawl catcher processor, longline, longline catcher-processor, pot, pot catcher processor — would be limited to the average harvesting and processing levels achieved (as a proportion of TAC) in each GOA and BSAI non-pollock fishery for the years 1996, 1997, and 1998. Limitations under this emergency rule would not apply to (1) pollock catcher processors eligible to harvest pollock under the AFA in 1999, (2) trawl catcher vessels delivering catch to catcher processors under the AFA, or (3) to CDQ operations."

NMFS' letters explaining the disapproval of these actions, as well as related correspondence, are included under Item C-2(c)(1). We have placed this issue on the agenda so that the Council can further discuss these actions and clarify their rationale and intent with respect to these requested actions.

The Council also took formal action to put the industry on notice that 1999 will not count in determining catch histories as they pertain to developing sideboards to protect non-pollock fisheries. NMFS has published an advanced notice of proposed rulemaking alerting the industry to this action (Item C-2(c)(2)).

(d) Progress on sideboard analyses/final identification of alternatives and options

In December you developed an initial set of alternatives, elements, and options for the various sideboard amendments due for submittal to the SOC by July. At that time we were working from a 'roadmap' drafted by staff, which included the recommendations from the AP. At the Council's request, a redline version of that document was prepared which reflects the changes you made in December (Table 2). The resulting list of alternatives and options for each issue was then described in our December newsletter and these are reiterated in the discussion paper/preliminary analysis prepared for this meeting (Item C-2 Supplemental). This will be the document we work from at this meeting to describe the progress to date and to get necessary clarifications from the Council. You will need to finalize the alternatives and options at this meeting so that we can complete the analysis for initial review in April, with a final decision in June. Item C-2(d)(1) contains comments received on this issue since the December meeting.

TABLE 1.

November 1998 Actions on AFA

- **Comment to the Secretary of Commerce to revise the following IO3 regulations to be compatible with the various elements of the Act:**
 1. the allocation percentages and duration of allocations as written in the Act.
 2. the 2.5% set aside for catcher vessels delivering shoreside is no longer necessary.
 3. the exclusion of offshore catcher vessels from fishing in the CVOA during "B" season is no longer necessary.
 - **Adopted NMFS' recommendation to exempt squid from the CDQ program under emergency rule-making, and requested that the CDQ groups develop bycatch avoidance programs for other potential limiting species.**
 - **Approved an emergency rule to require two observers (at least one of which must be multispecies CDQ certified) on all eligible catcher/processors listed in the Act.**
 - **Regarding the review process for co-op contracts in the pollock fisheries, the Council initiated development of a discussion paper examining the following conditions for cooperative agreements:**
 1. limiting co-op agreements to a range of 1-6 years.
 2. prohibiting linkage of membership in co-ops to delivery of non-pollock species.
 3. requiring disclosure of information on catch and bycatch by co-op participants, per AFA.
 4. contracts must be submitted to Council by December 1 (for following year's co-op).
- These above requirements would be applicable to co-ops forming for year 2000 fisheries; for the 1999 catcher/processor co-ops, the review process will follow the basic guidelines contained in the Act.
- **The Council further requested that NOAA General Counsel clarify the Council's ability to supersede provisions in §210(b) and §208(f) of the Act. These refer to (respectively) co-op conditions for catcher vessels delivering shoreside, and eligibility requirements for shoreside processors.**
 - **Regarding catcher/processor sideboards to protect non-pollock fisheries, the Council concurred with NMFS' plan to prohibit AFA-listed vessels from exceeding the "inside critical habitat" harvest percentage of the Atka mackerel caps as spelled out in §211 paragraph (b)(2)(c). These and other catch limitations described below will be implemented via the specifications process for 1999 fisheries.**
 - **The Council approved the following guidelines for managing non-pollock target fisheries by the listed catcher/processors under AFA:**

Groundfish:

1. Non-pollock groundfish caps for listed vessels will be established on the basis of the percent of groundfish harvests in non-pollock fisheries in 1995, 96, 97 (for Pacific cod, 1997 only).
2. NMFS will determine the bycatch needs for pollock and non-pollock fisheries and allow for directed fishing for non-pollock target species such that the total catch of those species should not exceed the caps as established in #1.

PSC Caps:

1. Total PSC cap for listed vessels will be established on the basis of percentage of PSC removals in the non-pollock groundfish fisheries in 1995, 96, 97.
 2. NMFS will allow for directed fishing of non-pollock species such that the total PSC removals do not exceed the PSC cap as established in #1.
 3. The listed vessels' PSC caps will not be apportioned and will be managed under open access season apportionment closures.
- The Council also initiated an amendment to analyze pollock season opening dates (A & B season), and the removal of the stand-down provisions for inshore/offshore catcher vessels in the pollock fishery. This will be prepared in 1999 for possible application to the 1999 "B" season, and for year 2000 and beyond. For early 1999, all opening dates and stand-down provisions remain in effect.

TABLE 2.

Roadmap for Council Discussions of AFA Tasking (December 15, 1998)
(Redline version to reflect Council actions taken at December meeting)

Includes Council recommendations, timelines, and *staff notations*.

*** denotes major analysis/staff time.

Example : Strikeout indicates language deleted or replaced at the December meeting.

Example : Redline shading indicates language added at the December meeting.

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
*	Duration of GOA I/O3	Plan Amendment	1999	Council
Initiate an analysis to establish duration for GOA I/O3 to coincide with the BSAI.				
3	Monitor NMFS development of fee system	Periodic reviews at Council meetings	1999	NMFS HQ ***
<p>The Council reiterates its October 1998 recommendation on development of fee systems:</p> <p>“The Council recommends that NMFS work cooperatively with ADF&G, processors and fishermen to develop a standardized fee collecting mechanism which will provide consistency between current fee collection programs, the IFQ fee, CDQ program, and potential future fee programs.”</p> <p>“With respect to the proposed IFQ fee program, the Council recommends it not go forward until a mechanism be included which allows fishermen to submit evidence demonstrating discrepancies between standard prices charged by NMFS and actual prices received by the individual fishermen.”</p>				
6	Adjust LLP for new upgrade criteria and endorsement restrictions	Technical amendment	1999	Council
<p>Staff note: No Council action on this item. Upgrade criteria for eligible vessels are stipulated in the AFA, and are different than under current LLP. Regarding endorsement restrictions, AFA refers to vessels, while LLP will issue licenses to persons. An amendment is necessary to preclude the initial issuance of these endorsements; i.e., so that they cannot be transferred to another vessel. The Council understood that these licenses would be issued if they took no action.</p>				

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
7b	Catcher Processor Restrictions for 2000 and beyond	Plan/reg amendment package	by July of 1999	Council ***

For the year 2000 and beyond, the Council initiated an analysis for the 20 + 9 vessels listed in the AFA of their bycatch in both the directed pollock and non-pollock fisheries (95, 96, 97) and associated PSC levels. ~~The catch histories of the 20 listed vessels and the 9 vessels which are removed from the fishery and the catch in the pollock and non-pollock target fisheries will be treated separately. This will allow the Council to include either all catch or only catch in the non-pollock target fisheries (for either the 20 or 29 vessels) in the caps set for 2000 and beyond.~~

~~Add sub-option: Pelagic pollock fisheries:~~

~~Sub-options:~~

- ~~1. The caps would close both the pollock and non-pollock groundfish fisheries when reached.~~
- ~~2. The caps would close only the non-pollock groundfish fisheries when reached (only pelagic pollock fisheries would remain open).~~

~~The AP recommends the Council revisit the policy where NMFS would allow for directed fishing of pollock and non-pollock species such that the total PSC removals do not exceed the PSC caps as established in #1 of PSC Caps (on page 2 of action memo) which states, "Total PSC cap for listed vessels will be established on the basis of percentage of PSC removals in the non-pollock groundfish fisheries in 1995, 96, 97."~~

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
8	Catcher Vessel restrictions in other fisheries	Plan/Reg amendment	By July 1, 1999	Council ***

Crab Sideboards

~~AFA catcher vessel restrictions require the Council to develop conservation and management measures to prevent pollock-eligible catcher vessels (CVs) from exceeding their aggregate traditional harvest levels in other fisheries as a result of fishery cooperatives in the directed pollock fishery. The clear intent of Congress is to limit the impact of these restrictions or protective measures to catcher vessels actually participating in a co-op because there would be no reason, or need, to add restrictions on CVs that elect to fish pollock open access in the traditional manner. The CV open access pollock fishery would not have any unfair advantage to adversely impact other fisheries and may in fact depend on those other fisheries for a majority of their income.~~

~~Therefore, the interpretation of CV protective measures, i.e., that the CV protective measures be limited to protecting against adverse results of fishery co-ops on other fisheries, and therefore, would not be applied to those pollock CV's not participating in co-ops. Also, that this be sector specific.~~

Initiate analysis of the following options to mitigate impact of possible spillover effects of AFA on other fisheries:

Options For Section 208 Vessels:

1. No crossover allowed into any crab fisheries.
2. No crossover allowed in the Tanner crab fishery only (opilio and bairdi).
3. No crossovers at the endorsement level.
4. ~~Allow crossovers only into red king crab fisheries only (excludes brown and blue king crab).~~

Sub-options:

- a. Vessels which qualified based on bycatch of bairdi in red king crab would be restricted to bycatch of bairdi in the red king crab fishery (applied to #3 & 4 above).
- b. ~~Only Section 208 catcher vessels that join a co-op (applies to #1-4 above).~~

Duration sub-options:

- a. Permanent based on participation in co-op
 - b. Only for year vessel is involved in co-op.
 - c. Duration of AFA
3. Measures which would restrict pollock co-op vessels to their aggregate traditional harvest including:
 - a. Restriction to the percentage of crab harvest in all species between 1995, 96, and 97.

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
8	Catcher Vessel restrictions in other fisheries	Plan/Reg amendment	By July 1, 1999	Council ***

Groundfish Sideboards (Note: these actions were taken during the December meeting)

In further developing CV sideboards, the AP reiterates its November motion which stated that, "SB 1221 catcher vessel restrictions require the Council to develop conservation and management measures to prevent pollock-eligible catcher vessels (CVs) from exceeding their aggregate traditional harvest levels in other fisheries as a result of fishery cooperatives in the directed pollock fishery. The clear intent of Congress is to limit the impact of these restrictions or protective measures to catcher vessels actually participating in a co-op because there would be no reason, or need, to add restrictions on CVs that elect to fish pollock open access in the traditional manner. The CV open access pollock fishery would not have any unfair advantage to adversely impact other fisheries and may in fact depend on those other fisheries for a majority of their income.

Therefore, the AP recommends the Council's interpretation of CV protective measures, i.e., that the CV protective measures be limited to protecting against adverse results of fishery co-ops on other fisheries, and therefore, would not be applied to those pollock CV's not participating in co-ops. Also, that this can be sector specific." Motion carries unanimously (19/0).

This is consistent with the language in the bill (§ 211(c)(1)(A) of the American Fisheries Act). The sideboards should restrict a vessel's new opportunities resulting from the enactment of the American Fisheries Act. Sideboards should not be punitive in nature based solely upon a vessel's AFA eligibility to fish for pollock in the Bering Sea/Aleutian Islands.

Participation in a co-op is defined as ANY use of a vessel's catch history by a co-op, whether by direct harvest, lease, sale, or stacking of quota.

To Whom do Restrictions Apply

Sideboards apply to all Section 208 eligible vessels.

Suboption: Applies to Section 208 vessels only if they join a co-op.

To What BSAI Non-Pollock Fisheries the Restrictions Should Apply

1. CV restrictions should apply to those fisheries that run concurrent in time with the BSAI pollock fisheries. Priority should be given to:

- GOA pollock
- BSAI/GOA Pacific cod
- Rock sole
- Atka mackerel

Restrictions should apply to all non-pollock FMP fisheries.

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
8	Catcher Vessel restrictions in other fisheries	Plan/Reg amendment	By July 1, 1999	Council ***

Groundfish Sideboards Continued

When the CV Restrictions Should Apply

2. ~~Co-op vessels~~ Harvest levels should be restricted only during the same time periods as the normal open access pollock fishery

3. ~~At all times during the fishing year~~

Sub-option: Use 1998 open access season dates by sector as a base reference

Sub-option: Use 1999 sea lion modified season dates.

Nature of CV Restrictions

Option A: Absolute harvest amounts expressed in percentage of TAC in metric tons.

Option B: ~~Restrict degree of effort measured in fishing days.~~

Determination of "Traditional Harvest Level"

1. The definition of "traditional" in non-pollock fisheries will be determined by catch history
 - a. ~~On basis of percentage of groundfish harvest in non-pollock fisheries by species by fishery.~~
 - b. ~~On basis of percentage of total groundfish harvest by species by fishery.~~
 - c. ~~On basis of percent of TAC in non-pollock fishery by species by fishery.~~

Option A: Apply one time frame equally to all groundfish targets

Option B: ~~Apply differentially to fully utilized fisheries and fisheries in which the TAC is not taken on a regular basis.~~

Sub-option 1: Use average catch history in the years 1995, 96, and 97.

Sub-option 2: Use catch history based on years 1992-97.

Sub-option under 1 and 2: Utilize "best 2 years"

Determination of "Aggregate"

Option A: Apply and monitor by the ~~vessel class and sector~~

Option B: Apply and monitor by individual co-op

Management of Non-Pollock fisheries

~~Co-op vessels limited to target fishing for non-pollock species during those times when the open access target fishery for the non-pollock species is open.~~

Options:

1. ~~PSC and non-pollock groundfish caps would apply to all fisheries as true caps (i.e., when reached these vessels would stop fishing for all groundfish species).~~
2. ~~The caps would only close the non-pollock target fisheries.~~

The VBA Committee will develop options for PSC caps for co-op vessels in non-pollock fisheries.

1. ~~Use VIP rates to determine PSC~~
2. ~~Use a fraction of the VIP rates to determine PSC.~~

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
9	Protective measures for pollock ineligible processors	Plan/Reg amendment	By July 1, 1999	Council ***

Any conservation or management measures that are recommended to the Secretary in protecting processors not eligible to participate in the directed pollock fishery from adverse effects as a result of the Act or as a result of fishery cooperatives in the directed pollock fishery:

The analysis should consider the following:

1. list the adverse effects that the measures are aimed at protecting,
2. quantify how the measures will protect the non-eligible processor from the adverse effects, and
3. consider document that whether adverse effects have a high probability of occurring as opposed to being just perceived as a possibility of occurrence,

before any protective measures are implemented.

A discussion paper An analysis be initiated examining options to mitigate potential adverse impacts from AFA on non-pollock processors including:

1. The ability to allow processors not listed in Section 208 to process limited amounts of inshore pollock allocation, including requirement to participate in buyout provisions. Note that NOAA GC has provided an opinion that the Council is restricted under the Act from allowing additional pollock processors except when the TAC increase by 10 percent over 1997 levels, or one of the processors suffers a total or constructive loss (Section 208(f)(2)).
2. Excessive share caps on processors of 10%, 12%, 15% and 17.5%. The pollock, non-pollock groundfish, and BSAI crab fisheries should be examined. A sub-option should also be examined which allows differential caps between pollock and non-pollock processors.
3. Restricting vessels used for processing in the inshore sector to a single geographic location.
4. Measures to restrict pollock processor activity in non-pollock fisheries to no more than historic levels including options using years 1995, 96 and 97.

Initiate a data gathering program to identify the benefits and impacts of AFA. Information tracked should examine state and federal fisheries and include:

ownership patterns
processor activity
product forms
ex-vessel price
employment changes
market share

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
14	Disclose catch and bycatch info by vessel	Regulatory amendments	No time certain	Council/ NMFS
<p>The Council requests NMFS and ADF&G initiate development of a discussion paper examining what disclosure of catch and bycatch information § 211(d) of the AFA would allow that is currently restricted, any other legal impediments to such disclosure, and how that disclosure may be beneficial in implementing §301(a)(9) and §303(a)(11) of the Magnuson-Stevens Act.</p>				

LONG TERM (May be developed any time)

#	Action	Mechanism	Timeline	Tasking
10	Prevent excessive harvest/processing shares for all crab and groundfish (and excessive processing shares for pollock)	FMP/Reg amendment	No time certain	Council ***
<p>Move forward with an FMP amendment to prevent excessive harvest/processing shares for all crab and groundfish (and excessive processing shares for pollock). The analysis should examine shares of fisheries as defined in the following options:</p> <ol style="list-style-type: none"> 1. individual crab and groundfish species 2. Pollock, non-pollock groundfish, crab. <p>Staff note: <i>This analysis likely cannot be initiated until after April, though processor caps are included in the suite of potential measures recommended by the Council regarding protection of pollock-eligible processors (Section 9, page 6).</i></p> <p>The Council asked staff to examine the following and report back to the Council:</p> <ol style="list-style-type: none"> 1. Definitions used in AFA and Magnuson-Stevens for consistency. 2. The ability of pollock processors to expand their operations to other geographic locations, and 3. The ability of pollock processors to transfer their processing privileges. <p>Begin developing an amendment for species endorsements under LLP. Both the GOA and BSAI should be included in the analysis. The amendment should be based on the proposal submitted by the Groundfish Forum.</p>				
17	Report to Congress on Program Performance	Develop report	By Oct 2000	Council / NMFS ***
18	GAO Report to Council on fillet production	GAO Report	By June 1, 2000	GAO
19	Council response to GAO report	Develop amendments as needed	By late 2000	Council
<p>Staff note: <i>No Council motion. May be addressed at a later meeting.</i></p>				

OPTIONAL (may be developed as necessary - timelines vary)

#	Action	Mechanism	Timeline	Tasking
12	Recommend measures to mitigate AFA impacts	FMP and regulatory amendments	As needed	Council ***
<p>*** Add to staff tasking the framework proposal submitted by Alaska Groundfish Databank for pollock co-ops in the Gulf of Alaska. This task will not be started by staff until the Committee formed to study this issue has completed its work. It is the Council's intent to disband the Western and Central GOA committee and reform it as the GOA Sideboard Committee.</p>				
15	If necessary, change criteria for establishing Shoreside catcher vessel cooperatives in Section 210(b)(1)	Regulatory amendment to supersede legislation	Anytime	Council ***
<p>Further address in a discussion paper, options for compensation to inshore catcher vessels with catch history delivering to catcher processors that is no longer available to them under AFA. Additionally, examine inserting a clause replacing language in §210(b)(1) to add an option for determining catch history for catcher vessels on the basis of the best two of three years in 1995, 96, 97.</p> <p><i>Staff note: Clarified by staff that this likely will require regulatory action, and we will attempt to incorporate this within the "sideboard" amendment package for review in April..</i></p>				
13	Consider changing pollock CDQ %	FMP amendment for 2002-2004	Process and in 2001	Council ***
16	If necessary, allow more shoreside processors	Via NMFS permit process	If TAC up 10% If loss of plant	Council
20	Renewal of program which expires 12/31/04	Full FMP and regulatory amendments	Analysis/ Action in 2004	Council ***

THE AP APPROVED THE FOLLOWING ADDITIONAL MOTIONS

*** Initiate analysis for the following management actions for the pollock fishery in the Gulf of Alaska

1. Trip limits of 75,000 - 400,000 maximum within a 24 hour period
2. Vessel length restriction of 125 ft.
3. Superexclusive areas
4. Limit the second trimester to 15% TAC allocation.

*** Initiate a regulatory amendment for examining start dates for the pollock fisheries (both A and B seasons).

Staff note: The Council indicated that the first amendment package above has been partially resolved within the sea lion protection measures (trip limits for the W/C GOA), and the remaining issues would be considered within the GOA Sideboard Committee. Regarding the second amendment package above, the Council had already initiated an examination of season dates and standdown provisions, though that will likely be subsumed within the overall 1999 examination of future sea lion protection measures.

North Pacific Fishery Management Council

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December 29, 1998

The Honorable William Daley
U.S. Secretary of Commerce
U.S. Department of Commerce
14th & Constitution Avenue NW
Washington, DC 20230

Dear Mr. Secretary:

The North Pacific Fishery Management Council (Council) certifies that, in accordance with section 210(a)(1) of the American Fisheries Act (AFA) (Division C, Title II of Public Law 105-277), it received via e-mail on December 20, 1998, and by fax completed on December 21, 1998, a contract implementing a fishery cooperative for the catcher/processors listed in section 208(e)(1)-(20), including other, still to be specified, catcher/processors as may join under section 208(e)(21). The contract is dated December 20, 1998, and included a copy of the required business review letter to the U.S. Department of Justice. The contract was sent by overnight mail to all Council members on December 23, 1998 for their review, and the list of contract members and their percentage allocations of pollock is being made available to the public upon request.

Section 210(a)(1) of AFA requires the Council and Secretary to:

“(A) make available to the public such information about the contract, contract modifications or fishery cooperative the North Pacific Council and Secretary deem appropriate, which at a minimum shall include a list of the parties to the contract, a list of the vessels involved, and the amount of pollock and other fish to be harvested by each party to such contract; and

“(B) make available to the public in such manner as the North Pacific Council and Secretary deem appropriate information about the harvest by vessels under a fishery cooperative of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis.”

The contract appears to fulfill some but not all of the requirements of section 210(a)(1)(A): it lists the parties to the contract, the vessels involved, and the amount of pollock, as a percentage of the offshore annual directed pollock fishery allowance in the Bering Sea and Aleutians, allocated to each member of the cooperative. It does not state, however, the exact amounts of “. . . other fish to be harvested by each party to such contract . . .”, nor does it provide exact amounts of “. . . all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis” such that the Council and Secretary may make such information available to the public under paragraph (B) above.

Instead, the contract states in section 1.b (non-pollock groundfish) that “each member agrees to harvest an annual percentage of Bering Sea/Aleutian Islands non-pollock groundfish no greater than the percentages determined in accordance with Subsections 1.b.(i) and 1.b.(ii), below . . .” Those subsections attempt to describe a methodology for arriving at the amount of non-pollock groundfish available to the catcher-processors as a group that reflects the provisions of section 211(b)(2). They state in part that:

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"To facilitate compliance with the limit described in this Section, all Members shall annually allocate among themselves the amount of non-pollock groundfish allocations available for directed harvest by the Vessels in direct proportion to the catch history of the Contributing Vessels in the Base Years, or during such other year(s) as all Members may agree."

And further,

"All amounts of non-pollock groundfish reserved by NMFS for bycatch purposes shall be made available to the Vessels as a group. Each Member agrees to prevent its Vessels from harvesting at bycatch rates substantially in excess of their historical levels."

Prohibited species catch allocations are described in subsection 1.d. which states in part that:

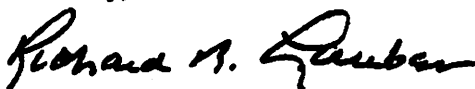
"Prohibited species catch ("PSC") apportionments for the fisheries in which the Members participate shall be made in a manner that will allow each Member, to the maximum extent possible, to prosecute pollock and non-pollock groundfish fisheries at a level equal to the Member's average harvest level during the Base Years."

It appears to us that the above language is vague, and even confusing, and would not enable the Council or the Secretary to fulfill their obligations under AFA section 210(a)(1) for publication of harvest levels of non-pollock groundfish or PSC on a member-by-member or vessel-by-vessel basis. This is further complicated by subsection 1.h which allows acquisition or transfer of harvesting allocations not only among catcher-processors, but between the catcher-processor group and the group of catcher vessels delivering to catcher processors.

Another reservation we have is that the contract does not explicitly state how allocations among members will be made to allow for harvesting by catcher/processers that may qualify under AFA section 208(e)(21) but, as of now, remain unspecified. In accordance with that subsection, those unspecified catcher processors shall be limited in aggregate to "... one-half (0.5) of a percent of the pollock apportioned for the directed pollock fishery under section 206(b)(2)."

Notwithstanding the above noted deficiencies, no Council member opposed allowing the cooperative to proceed with its fisheries as planned for 1999. We recognize that this first year is a learning experience for all of us. We will discuss the contract more fully at our early February 1999 regularly scheduled meeting, and we intend to annually review the cooperative contract provisions to ensure they comply with the American Fisheries Act and any additional requirements that may be implemented in the future.

Sincerely,



Richard B. Lauber
Chairman

copy to: NMFS Alaska Regional Administrator
Joseph Sullivan, Mundt MacGregor LLP
Trevor McCabe

MUNDT MACGREGOR L.L.P.
A T T O R N E Y S A T L A W

999 Third Avenue - Suite 4200
Seattle, Washington - 98104-4082

Telephone (206) 624-5950
Facsimile (206) 624-5469

January 21, 1999

RECEIVED

JAN 25 1999

N.P.F.M.C

VIA FACSIMILE AND U.S. MAIL

Jay H. Zulauf
Henry Howard Happel, III
Paul MacGregor
Michael J. Hyde
J. David Stahl
Matthew L. Fick
Joseph M. Sullivan
Lisa Riveland Pagán

Janet H. Cheetham
OF COUNSEL

John H. Chun
Christopher S. McNulty
Joe B. Stansell
Christopher R. M. Stanton
Libby A. Williams

Mr. Richard Lauber, Chairman
North Pacific Fishery Management Council
605 West Fourth Street, Suite 306
Anchorage, Alaska 99501-2252

Mr. William M. Daley, Secretary of Commerce
U.S. Department of Commerce
Room 5858 Herbert C. Hoover Building
14th Street & Constitution Avenue NW
Washington, DC 20230

VIA FACSIMILE AND U.S. MAIL

Re: Pollock Conservation Cooperative - Confidentiality of Membership
Agreement and Department of Justice Business Review Letter Request

Dear Chairman Lauber and Secretary Daly:

I am writing to you on behalf of Pollock Conservative Cooperative ("Cooperative") and its members. The purpose of this letter is to confirm my conversations with Dr. Clarence Pautzke of the North Pacific Fishery Management Council and Ms. Sue Salvesson of the National Marine Fisheries Service office in Juneau. On December 20, 1998, we transmitted to the Council and the Secretary of Commerce copies of the Cooperative Membership Agreement and a business review letter request submitted to the Department of Justice on behalf of the Cooperative and its members. Shortly thereafter, I had inquiries from Dr. Pautzke and Ms. Salvesson concerning the Cooperative's and its members' intentions regarding the confidentiality of some or all information contained in those documents.

As I discussed with Clarence and Sue last week, the Cooperative and its members are not asserting confidentiality with respect to any portion of the Membership Agreement. However, the Cooperative and its members are requesting that, consistent with the business review procedure set forth at 28 C.F.R. § 50.6, the business review request letter and related attachments (other than the Membership Agreement) sent to the Department of Justice's Antitrust Division be treated as

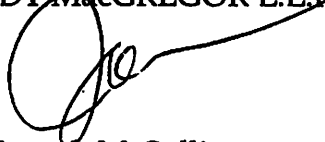
Mr. Richard Lauber
Mr. William Daley
January 21, 1999
Page 2

confidential until such time as the business review has been completed, and that an independent confidentiality determination be made at that time.

Should you have any questions or concerns regarding this matter, please feel free to contact me.

Very truly yours,

MUNDT MacGREGOR L.L.P.



Joseph M. Sullivan

JMS:twf

cc: Dr. Clarence Pautzke
Mr. Steve Pennoyer
Mr. John Bundy
Ms. Sue Salvesson

MUNDT MACGREGOR LLP.
ATTORNEYS AT LAW

999 Third Avenue · Suite 4200
Seattle, Washington · 98104-4082

Telephone (206) 624-5950
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December 20, 1998

John H. Chun
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Janet H. Cheetham
OF COUNSEL

Mr. Richard Lauber
Chairman
North Pacific Fishery Management Council
605 West Fourth Street, Suite 306
Anchorage, Alaska 99501-2252

SENT VIA FAX
SENT VIA FED EX

Mr. William M. Daley
Secretary of Commerce
U.S. Department of Commerce
Room 5858 Herbert C. Hoover Bldg.
14th Street and Constitution Avenue
Washington D.C. 20230

SENT VIA FAX
SENT VIA FED EX

Re: Pollock Conservative Cooperative

Dear Chairman Lauber and Secretary Daley:

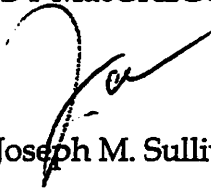
Pursuant to the requirements of Section 210 (a) of the American Fisheries Act (Division C, Title II of Public Law 105-277), enclosed are copies of (i) the Pollock Conservation Cooperative Membership Agreement, under the terms of which Alaska Ocean Seafood, L.P., Alaska Trawl Fisheries, Inc., American Seafoods Company, Arctic Fjord, Inc., Arctic Storm, Inc., Glacier Fish Company LLC, Highland Light Seafoods, LLC, Starbound Ltd. Partnership, and Tyson Foods, Inc. propose to conduct a cooperative harvesting arrangement with respect to the catcher/processor allocation of the Bering Sea/Aleutian Island pollock fishery directed fishing allowance, and certain other fisheries, and (ii) a copy of the request for business review letter being filed with the Antitrust Division of the Department of Justice in connection with the proposed cooperative harvesting arrangement. Because the attachments to the business review letter request are voluminous, we are not including them with the copy of the request being sent to you by fax. They are included with the copy of the request being sent to you via Federal Express.

Mr. Richard Laubers
Mr. William M. Dolby
December 20, 1998
Page 2

Should you have any questions or concerns regarding this matter, please feel free to contact me.

Very truly yours,

MUNDT MacGREGOR L.L.P.



Joseph M. Sullivan

JMS:dar

Enclosures

cc: Mr. Steve Pennoyer (via fax, w/encl.)
Alaska Ocean Seafood, L.P.
Alaska Trawl Fisheries, Inc.
American Seafoods Company
Arctic Fjord, Inc.
Arctic Storm, Inc.
Glacier Fish Company LLC
Highland Light Seafoods, LLC
Starbound Ltd. Partnership
Tyson Foods, Inc.

MEMBERSHIP AGREEMENT

This MEMBERSHIP AGREEMENT is entered into as of December 18, 1998 by and among ALASKA OCEAN SEAFOOD, L.P., a Washington limited partnership, ALASKA TRAWL FISHERIES, INC., a Washington corporation, AMERICAN SEAFOODS COMPANY, a Washington corporation ("American"), ARCTIC FJORD, INC., a Washington corporation, ARCTIC STORM, INC., a Washington corporation, GLACIER FISH COMPANY LLC, a Washington limited liability company, HIGHLAND LIGHT SEAFOODS, L.L.C., a Washington limited liability company, STARBOUND LTD. PARTNERSHIP, a Washington limited partnership, TYSON FOODS, INC., a Delaware corporation and any other members admitted pursuant to this Agreement (together, the "Members") and POLLOCK CONSERVATION COOPERATIVE, a Washington nonprofit corporation (the "Cooperative").

RECITALS

A. The American Fisheries Act (Div. C, Title II of Public Law 105-277) (the "Act") allocates the annual quota for the Bering Sea pollock fishery among three harvesting sectors for the years 1999 through 2004 and defines the classes of vessels eligible to harvest within each sector. Under Sections 206(b) and 208(e) of the Act, 40% of the Bering Sea pollock resource (net of a 10% allocation to the Community Development Quota program, and net of certain amounts reserved for incidental catch in non-pollock fisheries) is allocated to the catcher/processor sector (the "Catcher/Processor Allocation"), and the class of catcher/processor vessels eligible to harvest the Catcher/Processor Allocation is limited to certain named vessels and such replacement vessels as may be permitted by the Act (the "Vessels") and any catcher/processor qualifying under Section 208(e)(21) of the Act. (The Vessels are identified on Exhibit B to this Agreement.) Pursuant to Section 210(c) of the Act, not less than 8.5% of the Catcher/Processor Allocation is to be made available to be harvested by certain catcher vessels (the "Catcher Vessels").

B. American is the bareboat charterer and manager of Vessels 1 through 7 on Exhibit B. The other Members own Vessels 8 through 20.

C. The Bering Sea pollock fishery has traditionally been managed on an "open access" or "Olympic competition" basis. Under this management regime, each fishery participant has an incentive to harvest as much resource as possible as quickly as possible, because when the common pool of the relevant sector's pollock quota is consumed, that sector is required to cease fishing.

D. Because it promotes a "race for the fish", open access management encourages wasteful fishing and processing practices (as participants have an incentive to maximize harvest rather than optimize utilization of their catch), and creates a strong disincentive to employ careful fishing practices that have been demonstrated to reduce incidental catch of non-target species and increase product recovery rates.

E. The Members believe that by reaching agreement concerning the amount of the Catcher/Processor Allocation each of them will harvest, it will be feasible for them to reduce the pace of their harvesting activities, increase the amount of product produced per ton of fish harvested, and modify their fishing operations to reduce their incidental catch of non-target species.

F. To promote their compliance with the Magnuson-Stevens Fishery Conservation and Management Act standards promoting reduction of waste, discards and incidental catch of non-target species in the fisheries of the United States, and to reduce the incidental catch of non-target species in the Bering Sea fisheries, the Members desire to enter into an agreement regarding certain fish harvesting activities.

Now, therefore, the parties agree as follows:

1. Harvesting Plan. Each Member hereby agrees, subject to the terms and conditions of the Act, this Membership Agreement, the Articles of Incorporation and the Bylaws of the Cooperative, and applicable restrictions under U.S. antitrust law, to harvest an annual percentage of the Bering Sea and Aleutian Islands resources no greater than provided under this Agreement.

a. Pollock. Each Member agrees to harvest an annual percentage of the Bering Sea/ Aleutian Islands directed pollock fishing allowance no greater than that Member's percentage as set forth on the harvest schedule attached hereto as Exhibit A, (the "Harvest Schedule").

b. Non-Pollock Groundfish. Each member agrees to harvest an annual percentage of Bering Sea/ Aleutian Islands non-pollock groundfish no greater than the percentages determined in accordance with Subsections 1.b.(i) and 1.b.(ii), below

(i) Directed Catch. Section 211(b) of the Act prohibits the Vessels from, in the aggregate, exceeding the percentage of the Harvest available to the offshore component of any non-pollock Bering Sea and Aleutian Islands groundfish fishery, that is equivalent to the total harvest by the Vessels and certain named ineligible vessels (listed in Section 209 of the Act) (collectively, the "Contributing Vessels") in such fishery in 1995, 1996 and 1997 (the "Base Years"), relative to the total amount available to have been harvested by the offshore component in such fishery in the Base Years. To facilitate compliance with the limit described in this Section, all Members shall annually allocate among themselves the amount of non-pollock groundfish allocations available for directed harvest by the Vessels in direct proportion to the catch history of the Contributing Vessels in the Base Years, or during such other year(s) as all Members may agree. The provisions of Section 3 shall apply to any Member's failure to comply with such allocation.

(ii) Incidental Catch. All amounts of non-pollock groundfish reserved by NMFS for bycatch purposes shall be made available to the Vessels as a group. Each Member agrees to prevent its Vessels from harvesting at bycatch rates substantially in excess of their historical levels.

c. Management Measures. Each Member's allocation of pollock and other groundfish species shall be subject to all management measures generally applicable to the Catcher/Processor Allocation and the other groundfish allocated under Section 1.b., above (including but not limited to seasonal apportionments and area harvest restrictions) on a discreet, individual basis; i.e., each Member shall be restricted to harvesting no greater percentage of such Member's allocation in any season or area than the aggregate percentage of the Catcher/Processor Allocation permitted to be harvested in such season or area. Each Member shall have the individual authority to carry over from season to season a percentage of that Member's seasonal apportionment for each species no greater than the carry-over percentage generally applicable to the Catcher/Processor Allocation.

d. Prohibited Species Catch Allocations. Prohibited species catch ("PSC") apportionments for the fisheries in which the Members participate shall be made in a manner that will allow each Member, to the maximum extent possible, to prosecute pollock and non-pollock groundfish fisheries at a level equal to the Member's average harvest level during the Base Years. Initially, PSC will be apportioned among the pollock and non-pollock fisheries in the same proportion, on a PSC to target species ratio, as PSC limits established by the Council and NMFS for the Base Years. Any change in these initial apportionments will require the approval of all Members.

e. Annual Fishing Plan. The Members agree to meet each January prior to the opening of the trawl fishery to prepare an annual fishing plan that allocates the incidental catch referenced in Section 1.b.(ii), above and the PSC allocations referenced in Section 1.d., above among the directed fisheries in which the Members are eligible to participate. The Members agree to meet regularly to review the annual fishing plan and make appropriate adjustments.

f. Scope of Agreement. The Members agree that the Harvest Schedule and the provisions of Subsection 1.b., above govern only the harvesting activities of the Members, and, pursuant to Section 10, below, nothing in this Agreement shall be construed as limiting any Member's production from the fish it harvests (which each Member is encouraged to maximize, within the terms of this Agreement), or limiting in any respect each Member's ability to market such products on a fully competitive basis.

g. Vessel Use. Members with more than one Vessel eligible to harvest under the Catcher/Processor Allocation may elect to harvest their Harvest Schedule and non-pollock groundfish percentages with any number of Vessels.

h. Acquisition or Transfer of Harvesting Allocation. Notwithstanding the provisions of Section 1.a and 1.c. above, and subject to limits imposed by law, each Member shall have the right to transfer some or all of such Member's pollock and other groundfish allocation(s) to one or more other Members, and shall have the right to acquire pollock and other groundfish and/or the rights to harvest pollock and groundfish from the Catcher Vessels, or any of them, or an association they may form, on any terms each Member may agree upon. Members doing so shall notify the Cooperative and Sea State, Inc. or such other independent quota monitoring service as the Cooperative may retain from time to time (the "Monitoring Service") within seven (7) days, and in any case, prior to the harvest of any portion of a transferred allocation. Upon providing such notice, the relevant Members' Harvest Schedules and/or non-pollock allocation percentages shall be considered to be amended accordingly for the term of the transfer agreement.

2. Catch Monitoring. To enable each Member and the Cooperative to monitor other Members' compliance with the Act and this Agreement, each Member hereby agrees to carry the number and type of NMFS-certified observers required by law aboard each of its Vessels participating in the Bering Sea/ Aleutian Islands fisheries during the term of this Agreement, and to report each Vessel's catch on a daily basis to both the NMFS Observer Program and the Monitoring Service. Each Member agrees that absent manifest error, the catch data produced for the Cooperative by the Monitoring Service shall be presumed accurate, and that each Member's obligations under this Agreement and all related documents may be enforced to their fullest extent on the basis of such data.

3. Allocation Enforcement. Each Member acknowledges and agrees that the benefits associated with the Members' mutual harvest agreement will only accrue to the Members if each of them strictly complies with the Harvest Schedule and the non-pollock groundfish allocations determined in accordance with Section 1.b., above. Each Member acknowledges that all other Members will be taking certain significant operational and financial actions based on this Agreement, and that a breach of this Agreement by any Member would have significant adverse consequences. Therefore, to facilitate enforcement of this Agreement, each Member agrees to the procedure set forth in this Section 3.

a. Forfeiture Amount Calculation. Not less than thirty (30) days before each first annual Bering Sea trawl fishery opening for the catcher/processor sector, the Cooperative Board of Directors shall set a forfeiture amount for an unprocessed metric ton of each species covered by this Agreement (the "Forfeiture Amounts").

b. Bonding or Alternative Security. Not more than ten (10) days following announcement of the Forfeiture Amounts by the Board of Directors, each Member shall provide the Cooperative with such security as the Board may require (if any), which may include either:

(i) a bond (the "Harvest Bond") securing that Member's performance under this Agreement, in an amount equal to (i) the relevant Forfeiture Amount, multiplied by (ii) ten percent (10%) of such Member's percentage for the relevant species, multiplied by (iii) the number of tons of such species allocated for harvesting by catcher/processors; or

(ii) an alternative form of security acceptable to the Board of Directors (the "Alternative Security").

c. Overharvest Forfeiture. Following the close of the Bering Sea/ Aleutian Islands trawl fisheries to the catcher/processor sector, the Board of Directors shall review the seasonal harvest data from the Monitoring Service, and report to the Members concerning the Members' compliance with the harvest allocations made under this Agreement. Upon the Members determining in accordance with the organization's Bylaws that a Member harvested in excess of that Member's percentage, the Cooperative shall have the right to collect from such Member an amount equal to the Forfeiture Amount multiplied by the number of metric tons by which such Member's harvest exceeded that Member's allocation.

d. Voluntary Compliance. The Members and the Cooperative agree that upon the Cooperative's Members determining that a Member has overharvested any of its allocations, the Cooperative shall not enforce its rights to collect against an overharvesting Member's Harvest Bond or other collateral without first providing the overharvesting Member with fifteen (15) days advance notice of its intent to exercise its rights of collection, during which period the Member may request reconsideration of the enforcement action or may propose an alternative method of compensating the remaining Members and the Cooperative. The remaining Members may grant or deny any request for reconsideration and may approve or disapprove any alternative form of compensation in their sole discretion.

e. Enforcement. Each Member agrees to take all actions and execute all documents necessary or convenient to give effect to the enforcement procedure contemplated under this Section 3. Each Member waives all rights of legal or equitable defense, counterclaim or offset related to any enforcement action taken in compliance with this Section 3. Each Member agrees that the Cooperative shall be entitled to actual damages in addition to forfeited amount, which shall be distributed in accordance with Section 3.f., below upon award. Each overharvesting Member against whom an enforcement action is brought shall pay all costs, fees and expenses, including attorneys fees, incurred by the Cooperative in enforcing the provisions of this Section 3.

f. Distribution of Bond Proceeds and Damages. All funds forfeited or awarded to Members and or the Cooperative under this provision in excess of the costs of enforcement shall be distributed pro-rata among the Members who harvested less than their allocation of the relevant species, with each Member receiving a fraction of such funds the numerator of which is the amount by which such

Member's catch of the relevant species was less than such Member's allocation, and the denominator of which is the sum of all Members' catch shortfalls.

4. Vessel Transfer Restrictions. Each Member acknowledges that the other Members will make investments in equipment and vessel modifications designed to improve their utilization of the Bering Sea resources in reliance on this Agreement, and that a breach of this Agreement during its term by any of them may cause the remaining Members to suffer substantial adverse economic consequences. In addition, each Member acknowledges that one of the primary purposes of this Agreement is to improve all Members' abilities to avoid certain non-target species, and that failure to constrain such incidental catch could result in premature closure of certain Bering Sea or Aleutian Islands fisheries, at substantial cost to all Members.

a. Restrictions. Each Member agrees that so long as this Agreement remains in effect, no Member shall have the authority to sell, charter or transfer operating authority over a Vessel to a party not bound by this Agreement, regardless of whether such transfer is temporary or permanent, and regardless of whether such transfer is effected as part of a vessel sale or otherwise, unless (i) the proposed transferee first assumes all of the transferring Member's obligations under this Agreement with regard to the rights transferred, in which case, the transferring Member shall be released therefrom, or (ii) the transferring Member either retains the Vessel's Bering Sea/ Aleutian Islands fishing rights, or transfers such rights to the Cooperative or another Member of the Cooperative. All Members agree to negotiate in good faith to create a reasonable mechanism to prevent any transfer in violation of this Section. Each Member further agrees that should a Vessel that it owns, charters or manages be transferred to a party not bound by this Agreement, all Bering Sea/ Aleutian Islands groundfish harvested outside of this Agreement by such Vessel shall be deducted from such Member's allocation(s) under this Agreement. Any attempted or purported transfer of a Vessel or its fishing rights other than in compliance with this Section shall be void.

5. Purchase of Catcher Vessel Reserve. Section 210(c) of the Act provides that not less than 8.5% of the Catcher/Processor Allocation (the "Catcher Vessel Reserve") shall be available for harvest by the Catcher Vessels. To insure compliance with the Act, the pollock directed fishing allowance percentages reflected on the Harvest Schedule are net of the Catcher Vessel Reserve; i.e., the 36.6% total reflected in the Harvest Schedule reflects a reserve of 3.4% of the total pollock directed fishing allowance, which is 8.5% of the 40% allocated to the catcher/processor sector. To insure a competitive market for Catcher Vessel Reserve quota, each Member shall independently determine the amount of the Catcher/Processor Allocation it will purchase from Catcher Vessels, and shall conduct all related price and purchase terms negotiations independently of all other Members. To insure that the combined amounts of Members direct pollock harvest and Catcher Vessel Reserve quota purchases do not exceed the percentage of the pollock directed fishing allowance allocated to the catcher/processor sector, each Member shall report the amount of its Catcher Vessel purchases to the Monitoring Service on a daily basis, and the Cooperative shall arrange

for the Monitoring Service to issue notice to all Members when the Catcher Vessel Reserve has been fully harvested, but not before. Thereafter, quota purchases from Catcher Vessels shall be counted against the Harvest Schedule amounts of the Members making such purchases. Should the Catcher Vessels form a qualifying marketing association or cooperative, the terms and conditions of an agreement between the Catcher Vessel association and the Cooperative may supersede the provisions of this Section.

6. Term and Termination. This Agreement shall take effect as of its execution by all Members, and may be terminated by any two (2) Members upon the occurrence of any of the following events. For purposes of this Section 6, any two Members with common ownership or control of 10% or more of their equity interest shall be considered one Member. A Member whose Vessel is transferred as the result of the proceedings in Subsection b., below, shall not be counted as a terminating Member.

a. a determination by any government agency of competent jurisdiction or a reasonable determination by the Cooperative that this Agreement violates either State or Federal antitrust or unfair competition law, or unreasonably exposes any Member or the Cooperative to civil anti-trust or unfair competition litigation;

b. if, as the result of: (i) filing a petition or answer seeking reorganization, liquidation or dissolution pursuant to Chapter 7 or Chapter 11 of the U.S. Bankruptcy Code as amended from time to time, or comparable State law; (ii) becoming the subject of an order for relief in proceedings of the nature described in (i) of this Subsection; (iii) filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed in a proceeding of the nature described in (i) of this Subsection; or (iv) seeking, consenting to or acquiescing in the appointment of a liquidator or receiver of all or substantial part of that Member's property, a Member's Vessel is transferred to a party not bound by this Agreement;

c. termination or modification of the inshore/offshore allocation specified in Section 206(b) of the Act;

d. as of December 31st of any of the calendar years 2000 and thereafter, upon two (2) or more Members delivering a notice of termination to all other Members on or before September 1st of such year, if such notice of termination is not rescinded by any of the terminating Member(s) on or before September 15th of such year.

Termination of this Agreement shall not relieve any Member of its obligations to pay the damages set forth in Section 3 in connection with a pre-termination overharvest.

7. Landing Tax. Pursuant to Section 210(f) of the Act, the Members agree to make payments to the State of Alaska for any pollock harvested in

the Bering Sea/ Aleutian Islands pollock fishery which is not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. If a Member fails to make a payment in lieu of tax due under this Section, the Cooperative or any of the other Members may make such payment, and the non-paying Member shall be obligated to reimburse the paying parties within thirty (30) days. Any balance outstanding beyond such date shall bear interest in favor of the paying parties at the per annum rate equal to the prime rate of Bank of America, N.A., Seattle Branch, as the same may be announced from time to time, plus five percent (5%). Payments and interest due under this Section may be collected or reimbursed from the defaulting Member's bond or alternate security pursuant to Section 3, hereof.

8. Community Development Quota Program "Sideboards". The Members that participate in Community Development Quota ("CDQ") program ventures agree to take such actions and execute such documents as may be necessary to insure that their CDQ group counterparts will not be disadvantaged by the cooperative harvesting arrangements such Members are entering into hereunder.

9. Responsible Fishing Practices. The Members acknowledge that a primary objective of the Cooperative is to reduce bycatch and improve resource utilization. The Members further acknowledge that fishing practices can affect bycatch and utilization rates. The Members therefore agree to exercise all reasonable efforts to conduct their fishing practices responsibly, in a manner consistent with the overall goals and purposes of the Cooperative.

10. Competitive Production and Marketing. To promote the maximum benefit to consumers of the products produced from the groundfish harvested under this Agreement, and to comply with the intents and purposes of federal and state consumer protection law, each Member hereby agrees to: (i) exercise all commercially reasonable efforts to maximize production from the resources it harvests under this Agreement; (ii) to conduct all processing, marketing and sales activities (other than those conducted jointly through the United States Surimi Commission in compliance with its Certificate of Review) on a fully independent, fully competitive basis; and (iii) to the extent that such Member purchases any resources for harvesting or processing by the Vessels (including but not limited to quota purchased from Catcher Vessels), to do so on a fully independent and fully competitive basis. The Members and each of them agree to hold no joint discussions, take no joint actions, and to exchange no information concerning such purchasing, processing, marketing and sales activities, other than as appropriate in connection with meetings of the North Pacific Fishery Management Council and National Marine Fisheries Service fishery policy and management regulation development process, and as permitted within the Certificate of Review of the United States Surimi Commission.

11. Public Interest Research and Publication. The Members acknowledge that the primary purposes of the harvesting arrangement contemplated hereunder are improving their utilization of resources harvested in the Bering Sea and

Aleutian Islands pollock fisheries, reducing the incidental catch of non-target species, and promoting the adoption and continued support of resource utilization and conservation arrangements such as those contemplated under this Agreement. The Members therefore agree to contribute a per-ton amount determined by the Cooperative Board of Directors from time to time in support of such activities. All research and publication funded by the Cooperative is to be conducted in the public's interest, and the results of all such research shall be made available to the general public at no charge.

12. Membership Agreement Enforcement. Each Member agrees that the Cooperative and/or any other Member(s) may enforce this Membership Agreement on behalf of the Cooperative and/or any of its Members. The procedure for doing so shall be as provided in the Cooperative's Bylaws.

13. Remedies and Attorneys' Fees. In addition to any of the remedies provided in this Agreement, each Member and the Cooperative shall have the right to have any provision of this Agreement specifically enforced through injunction, restraining order or any other form of equitable relief. Subject to the provisions of Sections 3 and 4, above, in connection with any legal proceeding related to this Agreement, the non-prevailing party shall pay the prevailing party's reasonable costs and fees associated with the proceeding. For purposes of this Agreement, "legal proceedings" shall include arbitration, administrative, bankruptcy and judicial proceedings, including appeals therefrom.

14. Miscellaneous.

a. This Agreement contains the entire understanding of the parties as to the matters addressed herein, and supersedes all prior agreements related to the same. No amendment to this Agreement shall be effective against a party hereto unless in writing and duly executed by such party.

b. This Agreement shall be governed by and construed in accordance applicable federal law and the laws of the State of Washington.

c. This Agreement may be executed in counterparts which, when taken together, shall have the same effect as a fully executed original. Delivery of a signed copy of this Agreement by telefacsimile shall have the same effect as delivering a signed original.

d. The parties agree to execute any documents necessary or convenient to give effect to intents and purposes of this Agreement.

e. All notices to be given hereunder shall be in writing and shall be deemed given when received addressed as follows:

Alaska Ocean Seafood, L.P.
Post Office Box 190
Anacortes, Washington 98221
Attn: Mr. Jeff Hendricks
Fax: (360) 293-6232

Alaska Trawl Fisheries, Inc.
100 Second Avenue South, Suite 200
Edmonds, Washington 98020
Attn: Mr. Craig Cross
Fax: (206) 771-6570

American Seafoods Company
Market Place Tower
2025 First Avenue, Suite 900
Seattle, Washington 98121
Attn: Mr. Michael J. Hyde
Fax: (206) 448-0202

Arctic Fjord, Inc.
400 North 34th Street, Suite 306
Seattle, Washington 98103
Attn: Mr. Doug Christensen
Fax: (206) 547-3165

Arctic Storm, Inc.
400 North 34th Street, Suite 306
Seattle, Washington 98103
Attn: Mr. Doug Christensen
Fax: (206) 547-3165

Glacier Fish Company LLC
1200 Westlake Avenue North, Suite 900
Seattle, Washington 98109
Attn: Mr. John Bundy
Fax: (206) 298-4750

Highland Light Seafoods, L.L.C.
3600 15th Avenue West, Suite 300
Seattle, Washington 98119
Attn: Mr. Alan Chaffee
Fax: (206) 216-0988

Starbound Ltd. Partnership
5470 Shilshole Avenue N.W., Suite 500
Seattle, Washington 98107

Attn: Mr. Cary Swasand
Fax: (206) 784-5500

Tyson Foods, Inc.
12131 113th Avenue N.E., Suite 203
Kirkland, Washington 98034
Attn: Mr. Doug MacLeod
Fax: (425) 202-4004

The parties may from time to time change their address for notice purposes by written notice to the other parties.

f. Except for the transfer of any rights pursuant to Section 1(h) or Section 4 hereof, which transfers shall be governed by such Sections, no party may assign its rights hereunder without the prior written consent of the other parties hereto, which consent shall not be unreasonably withheld. Such consent may be conditioned upon execution of an adherence agreement by the party to whom such rights are proposed to be assigned. This Agreement shall be binding on the successors and assigns of all parties hereto.

g. This Agreement shall be construed as a whole according to its fair meaning, without a presumption that it shall be more strictly construed against the person who drafted it, as each party has participated in its preparation with the assistance of counsel.

h. The effectiveness of the Percentages of Annual Allowances set forth herein, and specifically on Exhibit A hereof, is contingent upon this Agreement being timely filed in compliance with Section 210(a) and Section 207(d)(2)(A) of the Act. If the Secretary of Commerce determines that the owner of the Vessels identified in paragraphs 10 through 14 of Section 208(e) of the Act is not entitled to the payment to be made under Section 207(d)(2)(A) of the Act, and such party does not receive equivalent compensation from the other Members within ten (10) business days of the distribution of such funds to the parties entitled to such alternative distribution under Section 207(d)(2)(B) of the Act, then the Members shall undertake, in good faith, to renegotiate such Percentages of Annual Allowances.

i. Each Member warrants that each Vessel under that Member's ownership, control or management shall be operated in accordance with this Agreement, regardless of whether such Vessel(s) remain under such Member's ownership, control or management.

j. In the event that any provision of this Agreement is held to be invalid or unenforceable, such provision shall be deemed to be severed from this Agreement, and such holding shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

ALASKA OCEAN SEAFOOD, L.P.

ALASKA TRAWL FISHERIES, INC.

Dated as of the date first set forth above.

By _____
Its _____

AMERICAN SEAFOODS COMPANY

By Michael Taylor
Its President

ARCTIC STORM, INC

By R.J. Alf
Its President

HIGHLAND LIGHT SEAFOODS, L.L.C.

By _____
Its _____

TYSON FOODS, INC.

By J. Lee Mott
Its Vice President
Seafood Group

By _____
Its _____

ARCTIC FJORD, INC

By R.J. Alf
Its President

GLACIER FISH COMPANY LLC

By George
Its CEO

STARBOUND LTD. PARTNERSHIP

By _____
Its _____

FOLCK CONSERVATION
COOPERATIVE

By [Signature]
Its [Signature]

Dated as of the date first set forth above.

ALASKA OCEAN SEAFOOD, L.P.

ALASKA TRAWL FISHERIES, INC.

By _____
Its _____

By _____
Its _____

AMERICAN SEAFOODS COMPANY

ARCTIC FJORD, INC.

By _____
Its _____

By B.L. Clit
Its President

ARCTIC STORM, INC.

GLACIER FISH COMPANY LLC

By B.L. Clit
Its President

By [Signature]
Its CEO

HIGHLAND LIGHT SEAFOODS, L.L.C.

STARBOUND LTD. PARTNERSHIP

By _____
Its _____

By _____
Its _____

TYSON FOODS, INC.

POLLOCK CONSERVATION
COOPERATIVE

By J. [Signature]
Its Vice President
SEAFOOD GROUP

By [Signature]
Its Authorized Agent

ALASKA TRAWL FISHERIES, INC.

By _____
Its _____

ARCTIC FJORD, INC.

By _____
Its _____

GLACIER FISH COMPANY LLC

By _____
Its _____

STARBOUND LTD. PARTNERSHIP

By _____
Its _____

POLLOCK CONSERVATION
COOPERATIVE

By _____
Its _____

ALASKA OCEAN SEAFOOD, L.P.

By _____
Its _____

AMERICAN SEAFOODS COMPANY

By _____
Its _____

ARCTIC STORM, INC.

By _____
Its _____

HIGHLAND LIGHT SEAFOODS, L.L.C.

By _____
Its _____

TYSON FOODS, INC.

By _____
Its _____

Dated as of the date first set forth above.

Dated as of the date first set forth above.

ALASKA OCEAN SEAFOOD, L.P.

By [Signature]
Its General Manager

ALASKA TRAWL FISHERIES, INC.

By _____
Its _____

AMERICAN SEAFOODS COMPANY

By _____
Its _____

ARCTIC FJORD, INC.

By _____
Its _____

ARCTIC STORM, INC.

By _____
Its _____

GLACIER FISH COMPANY LLC

By _____
Its _____

HIGHLAND LIGHT SEAFOODS, L.L.C.

By _____
Its _____

STARBOUND LTD. PARTNERSHIP

By _____
Its _____

TYSON FOODS, INC.

By _____
Its _____

POLLOCK CONSERVATION
COOPERATIVE

By _____
Its _____

Dated as of the date first set forth above.

ALASKA OCEAN SEAFOOD, L.P.

By _____
Its _____

AMERICAN SEAFOODS COMPANY

By _____
Its _____

ARCTIC STORM, INC.

By _____
Its _____

HIGHLAND LIGHT SEAFOODS, L.L.C.

By _____
Its _____

TYSON FOODS, INC.

By _____
Its _____

ALASKA TRAWL FISHERIES, INC.

By _____
Its _____

ARCTIC FJORD, INC.

By _____
Its _____

GLACIER FISH COMPANY LLC

By _____
Its _____

STARBOUND LTD. PARTNERSHIP

By Cary K. Swanson
Its Managing Partner

POLLOCK CONSERVATION
COOPERATIVE

By _____
Its _____

Dated as of the date first set forth above.

ALASKA OCEAN SEAFOOD, L.P.

By _____
Its _____

AMERICAN SEAFOODS COMPANY

By _____
Its _____

ARCTIC STORM, INC.

By B. P. Clit
Its President

HIGHLAND LIGHT SEAFOODS, L.L.C.

By _____
Its _____

TYSON FOODS, INC.

By J. P. [Signature]
Its Vice President
SEAFOOD GROUP

ALASKA TRAWL FISHERIES, INC.

By [Signature]
Its PRESTON

ARCTIC FJORD, INC.

By B. P. Clit
Its President

GLACIER FISH COMPANY LLC

By [Signature]
Its CEO

STARBOUND LTD. PARTNERSHIP

By _____
Its _____

FOLLOCK CONSERVATION
COOPERATIVE

By [Signature]
Its Authorized Agent

EXHIBIT A

POLLOCK CONSERVATION COOPERATIVE

BERING SEA/ ALEUTIAN ISLANDS POLLOCK FISHERY
HARVEST SCHEDULE

<u>Members</u>	<u>Percentage of Annual Bering Sea/ Aleutian Islands Directed Pollock Fishery Allowance</u>
Alaska Ocean Seafood, L.P.	2.891%
Alaska Trawl Fisheries, Inc.	1.375%
American Seafoods Company	15.949%
Arctic Fjord, Inc.	1.725%
Arctic Storm, Inc.	1.772%
Glacier Fish Company, LLC	3.097%
Highland Light Seafoods, L.L.C.	1.698%
Starbound Ltd. Partnership	1.525%
Tyson Foods, Inc.	6.568%
TOTAL	36.600%

EXHIBIT B
LIST OF VESSELS

1. AMERICAN DYNASTY (Official No. 951307);
2. KATIE ANN (Official No. 518441);
3. AMERICAN TRIUMPH (Official No. 646737);
4. NORTHERN EAGLE (Official No. 506694);
5. NORTHERN HAWK (Official No. 643771);
6. NORTHERN JAEGER (Official No. 521069);
7. OCEAN ROVER (Official No. 552100);
8. ALASKA OCEAN (Official No. 637856);
9. ENDURANCE (Official No. 592206);
10. AMERICAN ENTERPRISE (Official No. 594803);
11. ISLAND ENTERPRISE (Official No. 610290);
12. KODIAK ENTERPRISE (Official No. 579450);
13. SEATTLE ENTERPRISE (Official No. 904767);
14. US ENTERPRISE (Official No. 921112);
15. ARCTIC STORM (Official No. 903511);
16. ARCTIC FJORD (Official No. 940866);
17. NORTHERN GLACIER (Official No. 663457);
18. PACIFIC GLACIER (Official No. 933627);
19. HIGHLAND LIGHT (Official No. 577044); and
20. STARBOUND (Official No. 944658)

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OFFSHORE POLLOCK CATCHER COOPERATIVE

VIA FAX: 20 December 1998:

**NPFMC- 907 271 2817
US DOC- 202 482 2741**

December 20, 1998

William M. Daley
Secretary of Commerce
U.S. Department of Commerce
Room 5858 Herbert C. Hoover Building
14th Street & Constitution Avenue
Washington, DC 20230

Rick Lauber, Chairman
North Pacific Fisheries Management Council
605 West Fourth Ave, Suite 306
Anchorage, AK 99501-2252

Dear Sirs:

A cooperative, The Offshore Pollock Catcher Cooperative (OPCC), has been formed by the owners of the catcher vessels identified in Section 208(b) of the American Fisheries Act of 1998.

Pursuant to Section 210(a), we are filing with you the following documents:

1. "Membership Agreement";
2. Letter requesting a business review by the Department of Justice Anti-Trust Division.

The catcher-processors as identified in Section 208(e) have also formed a cooperative. In order to assist NMFS in the management of the fishery, an inter-cooperative agreement between OPCC and the CP cooperative is being discussed and, if executed, a copy will be sent to you immediately.

Please contact me if you have questions regarding this matter.

Sincerely,



Charles E. Yates

Encl: 1. Membership Agreement
2. Letter Requesting a Business Review

CEY/dp

MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT is entered into as of December 19, 1998, by and among FORUM STAR, INC., AMERICAN SEAFOODS COMPANY, HARVESTER ENTERPRISES, INC., MUIR MILACH, INC., TRACY ANNE, INC., NEAHKAHNE FISHERIES, INC., AND SEA STORM, INC., and any other Member admitted pursuant to this agreement (together, the "Members") and Offshore Pollock Catchers Cooperative, a Washington nonprofit corporation.

RECITALS

A. The 1998 American Fisheries Act, ("the Act"), provides that, after an allocation of ten percent (10%) of the total allowable catch of Pollock in the Bering Sea and Aleutian Islands Management Area to the Western Alaska community development quota program and certain bycatch reserves, forty percent (40%) of the remaining quota is allocated to catcher/processors and catcher vessels harvesting Pollock for processing by catcher/processors. Of this 40%, at least eight and one half percent (8.5%) shall be available to the catcher vessels listed in section 208(b) of the Act (the "Catcher Vessel Share").

B. The Members of the Cooperative own or charter all of the vessels that qualify under section 208(b) of the Act.

C. The BS/AI Pollock Fishery has been traditionally managed on an "open access" or "Olympic Competition" basis. Under this management regime, each fishery participant has an incentive to harvest as much resource as possible as quickly as possible, because when the common pool of the relevant sector's Pollock Fishery quota is consumed, that sector is closed to all participants.

D. Because it promotes a "race for the fish," open access management encourages wasteful fishing and processing practices (as participants have an incentive to maximize harvest rather than optimize utilization of their catch), and creates a strong disincentive to employ careful fishing practices that have been demonstrated to reduce incidental catch of non-target species.

E. The Members believe that by reaching agreement regarding the amount of the allocation to which each of them will be entitled, it will be possible to maximize the value obtained from the fish and to reduce the incidental catch of non-targeted species.

F. The Act requires that in the event that a catcher vessel cooperative is formed by the Members of this Agreement, the Agreement must provide penalties to prevent the Members from exceeding in 1999, the traditional levels harvested by such vessels in all other fisheries in the exclusive economic zone of the United States.

Now, therefore, the parties agree as follows:

1. Entitlement to Harvest.

- a. Allocations: To enable each of them to extract the maximum amount of value from the fish that is available for harvest, and to provide each of them with the opportunity to take bycatch avoidance measures without adversely affecting their ability to remain competitive, each Member hereby agrees, subject to the terms and conditions of this Membership Agreement, the Articles of Incorporation and the Bylaws of the Cooperative, to harvest or arrange for the harvest of not more than the percentage of BERING SEA and ALEUTIAN ISLANDS Directed Pollock fishery as defined in Section 205(4) of the Act, listed on the schedule attached hereto as Exhibit A and incorporated herein by reference (the "Harvest Schedule").
- b. Management Measures. Each Member's allocation of Pollock and other groundfish species shall be subject to all management measures generally applicable to the catcher/processor and catcher vessel Section 206(2) allocation allocated under Section 1.a., above (including but not limited to seasonal apportionments and area harvest restrictions) on a discreet, individual basis; i.e., each Member shall be restricted to harvesting no greater percentage of such Member's allocation in any season or area than the aggregate percentage of the catcher/processor and catcher vessel Section 206(2) allocation permitted to be harvested in such season or area. Each Member shall have the individual authority to carry over from season to season a percentage of that Member's seasonal apportionment for each species no greater than the carry-over percentage generally applicable to the catcher/processor and catcher vessel Section 206(2) allocation.
- c. Acquisition or Transfer of Harvesting Allocation. Notwithstanding the provisions of Section 1.a and 1.b. above, and subject to limits imposed by law, each Member shall have the right to transfer some or all of such Member's Pollock and other groundfish allocation(s) to one or more other Members or members of any catcher-processor Pollock cooperative, and shall have the right to acquire Pollock and other groundfish and/or the rights to harvest Pollock and groundfish from the catcher vessels, or catcher-processors or any of them, or an association they may form, on any terms each Member may agree upon. Member doing so shall notify the Cooperative and Sea State, Inc. or such other independent quota monitoring service as the Cooperative may retain from time to time (the "Monitoring Service") within seven (7) days, and in any case, prior to the harvest of any portion of a transferred allocation. Upon providing such notice, the relevant Members' Harvest Schedules and/or non-Pollock allocation percentages shall be considered to be amended accordingly for the term of the transfer agreement.
- d. Limitation on Participation in Fisheries Other Than Pollock: Each Member agrees to identify its traditional fisheries and its historical level of participation in those fisheries. The board shall then determine which vessels and to what extent each Member may participate in each fishery so that the traditional

levels of harvest, as defined in Section 205(5) of the Act, by the Members in 1999 does not exceed the traditional levels harvested by section 208(b) vessels in other fisheries in the exclusive economic zone of the United States. The board shall then assign entitlement to participate in a fishery based upon prior participation. Priority shall be based on the extent of prior participation.

Upon the Board of Directors or two or more Members in good standing concluding that a Member may have participated in a fishery in which he was not entitled, Section 4.4 of the Bylaws shall be implemented for a determination of whether there has been an unauthorized participation, and if so, the penalty to be assessed. To determine the proper penalty, the forum shall be guided by the penalties assessed by judicial forums for illegal participation in similar fisheries. All revenue resulting from the assessment of penalties shall be used as determined by the Board of Directors.

2. Harvest Entitlement Monitoring. To enable each Member and the Cooperative to monitor other Members' compliance with Paragraph 1 above, each Member hereby agrees that it shall require in each contract for sale of its share of the harvest as provided for in paragraph 1 above, that the purchaser shall provide to Sea State, Inc. or such other independent monitoring service as the Cooperative may retain from time to time, (the "Monitoring Service"), all data and forms, including private and governmental forms that reflect the quantities of harvest entitlement purchased. Additionally, each Member shall waive any confidentiality entitlement that it may have regarding data that any U.S. or state governmental agency may have regarding its Pollock catch and by-catch records and information regarding participation in other fisheries, after the date of this agreement, and shall direct the U.S. and/or state agencies to provide such information to the Monitoring Service. Each Member agrees that absent manifest error, the data produced for the Cooperative by the Monitoring Service shall be presumed accurate, and that, absent manifest error, each Member's obligations under this agreement and all related documents may be enforced to their fullest extent on the basis of such data.

3. Harvest Schedule Enforcement. Each Member acknowledges and agrees that the benefits associated with the Member's mutual harvest agreement will only accrue to the Members if each of them strictly complies with the Harvest Schedule. Each Member acknowledges that all other Members will be taking certain significant operational and financial actions based on this Agreement, and that a breach of this Agreement by any Member would have significant adverse consequences. Therefore, to facilitate enforcement of this Agreement, each Member agrees to the procedures set forth in this Section 3.

a. Forfeiture Amount Calculation. Not less than twenty (20) days before each Pollock Fishery opening, the Cooperative Board of Directors shall establish a penalty amount per ton of Pollock (the "Value").

b. Bonding or Alternative Security. Not more than ten (10) days following announcement of the Value by the Board of Directors, each Member shall post with the Cooperative either:

(i) a bond (the "Harvest Bond") securing that Member's performance under this Agreement, in an amount equal to (i) the Value multiplied by (ii) fifty percent (50%) of the tons of Pollock available to such Member in the following calendar year based on such Member's Harvest Schedule percentage,

or

(ii) an alternative security acceptable to the Board of Directors (the "Alternative Security").

c. Over-harvest Forfeiture. Following the close of each Pollock Fishery season, the Board of Directors shall review the seasonal harvest data from the Monitoring Service and NMFS, and report to the Members concerning the Members' compliance with the Harvest Schedule. Upon the Members determining in accordance with the organization's Bylaws that a Member has provided for the harvest of an amount of Pollock from the Pollock Fishery in excess of that Member's percentage of the quota, as determined with reference to NMFS seasonal allocation (as the same may have been modified during the respective season) and the Harvest Schedule, the Cooperative shall have the right to collect from such Member an amount equal to the Value multiplied by the number of metric tons by which such Member's harvest exceeded that Member's allocation. This amount may be collected through any reasonable process, including but not limited to forfeiture of the Member's Harvest Bond or Alternative Security

d. Voluntary Compliance. The Members and the Cooperative agree that upon the Cooperative's Members determining that a Member has over-harvested its Harvest Schedule percentage, the Cooperative shall provide the over-harvesting Member with fifteen (15) days advance notice of its intent to exercise its rights of collection against an over-harvesting Member's Harvest Bond, during which period the Member may request reconsideration of the enforcement action or may propose an alternative method of compensating the remaining Members and the Cooperative for the damages suffered as the result of such Member's over-harvest. The remaining Members may grant or deny any request for reconsideration and may approve or disapprove any alternative form of compensation in their sole discretion.

e. Actual Damages and Enforcement Expenses. Each Member agrees that in the case of an over-harvest that results in a forfeiture amount in excess of the value of the Member's bond, the Cooperative shall be entitled to actual damages in addition to the forfeited amount, which shall be distributed in accordance with Section 3.g., below upon the collection of the arbitrators' award. The prevailing party in an enforcement action shall be entitled to an award of its reasonable costs, fees and expenses, including attorneys and arbitrator fees, incurred in the action by said party.

f. Bond Enforcement. Each Member agrees to take all actions and execute all documents necessary or convenient to give effect to the Harvest Bond enforcement procedure contemplated under this Section 3.

g. Distribution of Bond Proceeds and Damages. All funds forfeited or awarded to Members and or the Cooperative under this provision shall be distributed pro rata among the Members whose harvest share was less than their Harvest Schedule allocation, with each Member receiving a fraction of such funds the numerator of which is the amount by which such Member's Pollock Fishery catch was less than such Member's Harvest Schedule allocation, and the denominator of which is the sum of all Members' catch shortfalls.

4. Term and Termination. This Agreement shall take effect as of its execution by all Members and may be terminated by any Member upon the occurrence of one or more of the following:

a. on or after September 1, 2000, NMFS implements or enforces a regulation that excludes a Member from participating in one of the below listed fishery in which he has traditionally participated as a result of that Member's participation in this Cooperative, and as a result thereof, at least fifty percent of the Membership, in writing, request the termination of this Agreement. The request must be filed before September 15 of the year in which it is filed and the termination shall be effective on December 31 of the year in which the notice is filed.

1. Bering Sea Cod;
2. Alaska Scallops
3. Bristol Bay King Crab ; or

b. there is a determination by any government agency of competent jurisdiction or the Cooperative that this Agreement violates either State or Federal antitrust or unfair competition law, or unreasonably exposes any Member or the Cooperative to civil antitrust or unfair competition; or

c. a vessel other than those listed on Exhibit A is legally authorized to harvest Pollock from the allocation to vessels under Section 208 (b) of the Act unless the operator of such vessel has agreed to be bound by the terms of this Agreement; or,

d. ownership or control of a vessel listed in Exhibit A is transferred to a party that is not a Member and that party has not agreed to be bound by the terms of this Agreement; or

e. termination or modification of the inshore/offshore allocation specified in Section 206 (b) of the Act; or

- f. as of December 31st of any of the calendar years 2000 and thereafter, at least 50% or more of Members delivering a notice of termination to all other Members on or before September 1st of such year, if such notice of termination is not rescinded by any of the terminating Member(s) on or before September 15th of such year; or

Termination of this Agreement shall not relieve any Member of its obligations to pay the damages set forth in Section 3 in connection with the determination of over-harvest.

5. Public Interest Research and Publication. The Members acknowledge that the primary purposes of the harvesting arrangement contemplated hereunder are improving their utilization of resources harvested in the Pollock Fishery, reducing the incidental catch of non-target species, promoting local employment in the Pollock Fishery, and promoting the adoption and continued support of resource utilization and conservation arrangements such as those contemplated under this Agreement. The Members therefore agree to contribute to research and publication concerning these issues. The amount shall be determined by the board at the beginning of each year. All such research and publication is to be conducted in the public's interest, and the results of all such research shall be made available to the general public at no charge.

6. Bycatch. Each Member acknowledges and agrees that reducing incidental catch of non-target species to the maximum reasonable extent is a primary objective of the Members and the Cooperative. Each Member therefore agrees to employ such reasonable bycatch avoidance techniques as the Board of Directors and/the Monitoring Service and/or other Cooperative agents may recommend from time to time.

7. Membership Agreement Enforcement. Each Member agrees that the Board of Directors of the Cooperative may enforce this Membership Agreement on behalf of the Cooperative and/or any of its Members. The procedure for doing so shall be as provided in the Cooperative's Bylaws.

8. Vessel Transfer Restrictions. Each Member acknowledges that the other Members will make investments in equipment and vessel modifications designed to improve their utilization of the Bering Sea resources in reliance on this Agreement, and that a breach of this Agreement during its term by any of them may cause the remaining Members to suffer substantial adverse economic consequences. In addition, each Member acknowledges that one of the primary purposes of this Agreement is to improve all Member's abilities to avoid certain non-target species, and that failure to constrain such incidental catch could result in premature closure of certain Bering Sea or Aleutian Islands fisheries, at substantial cost to all Members.

- a. Each Member agrees that so long as this Agreement remains in effect, no Member shall have the authority to sell, charter or transfer operating authority over a Vessel to a party not bound by this Agreement, regardless of whether such transfer is temporary or permanent, and regardless of whether such transfer is effected as part of a vessel sale or otherwise, unless the proposed

transferee first assumes all of the transferring Member's obligations under this Agreement. Each Member further agrees that should a Vessel that it owns, charters or manages be transferred to a party not bound by this Agreement, all BSAI groundfish harvested outside of this Agreement by such Vessel shall be deducted from such Member's allocation(s) under this Agreement. Any attempted or purported transfer of a Vessel other than in compliance with this Section shall be void.

- b. Each Member warrants that each Vessel under that Member's ownership, control or management shall be operated in accordance with this Agreement, regardless of whether such Vessel(s) remain under such Member's ownership, control or management.

9. Remedies and Attorneys' Fees. In addition to any of the remedies provided in this Agreement, each Member and the Cooperative shall have the right to have any provision of this Agreement specifically enforced through injunction, restraining order or any other form of equitable relief. In connection with any legal proceeding related to this Agreement, the non-prevailing party shall pay the prevailing party's reasonable costs and fees associated with the proceeding. For purposes of this Agreement, "legal proceedings" shall include arbitration, administrative, bankruptcy and judicial proceedings, including appeals therefrom.

10. Miscellaneous.

- a. This Agreement contains the entire understanding of the parties as to the matters addressed herein, and supersedes all prior agreements related to the same. No amendment to this Agreement shall be effective against a party hereto unless in writing and duly executed by such party.

- b. This Agreement shall be governed by and construed in accordance applicable federal law and the laws of the State of Washington. Venue for any action related to this Agreement shall be in King County, Washington.

- c. This Agreement may be executed in counterparts which, when taken together, shall have the same effect as a fully executed original. Delivery of a signed copy of this Agreement by telefacsimile shall have the same effect as delivering a signed original.

- d. The parties agree to execute any documents necessary or convenient to give effect to intents and purposes of this Agreement.

- e. All notices to be given hereunder shall be in writing and shall be deemed given upon the earlier of when received or three days after mailing addressed as follows:

MUIR MILACH, INC.
F/V MUIR MILACH
David Fraser
120 Lakeside, Suite 230
Seattle, WA 98122

TRACY ANNE, INC
F/V TRACY ANNE.
Charles Yates
120 Lakeside, Suite 230
Seattle, WA 98122

SEA STORM, INC.
F/V SEA STORM
Doug Christensen
400 North 34th, Suite 306
Seattle, WA 98103

FORUM STAR, INC.
F/V FORUM STAR
Jim Chase
PO Box 4280
Portsmouth N.H. 03802

NEAHKAHNIE FISHERIES, INC.
F/V NEAHKAHNIE
Frank Bohannon
56648 Lunar DR.
PO Box 3529
Sunriver, OR 97707

AMERICAN SEAFOODS, INC.
F/V AMERICAN CHALLENGER
Mike Hyde
American Seafoods, Inc.
2025 First Ave.
Seattle, WA 98121

HARVESTER ENTERPRISES
F/V OCEAN HARVESTER
Kaare Ness
20117 15th Ave.NW
Shoreline, WA 98177


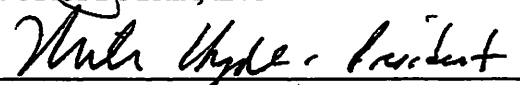
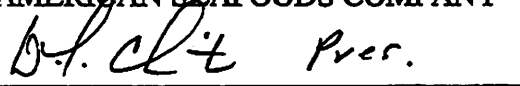
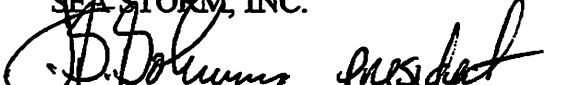
The Members may from time to time change their address for notice purposes by written notice to the other Member.

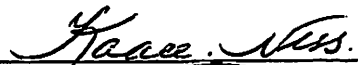

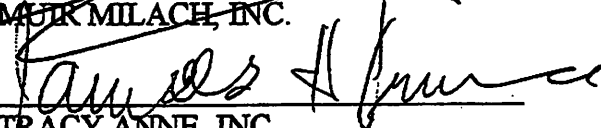
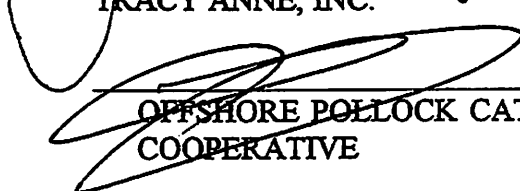
f. This Agreement shall be binding on the successors and assigns of all parties hereto.

g. This Agreement shall be construed as a whole according to its fair meaning, without a presumption that it shall be more strictly construed against the person who drafted it, as each party has participated in its preparation with the assistance of counsel.

h. In the event that any provision of this Agreement is held to be invalid or unenforceable, such provision shall be deemed to be severed from this Agreement, and such holding shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

Dated as of the date first set forth above.


FORUM STAR, INC

AMERICAN SEAFOODS COMPANY

SEA STORM, INC.

NEAHKAHNIE FISHERIES, INC.


HARVESTER ENTERPRISES, INC.

MILK MILACH, INC.

TRACY ANNE, INC.

OFFSHORE POLLOCK CATCHER
COOPERATIVE

**EXHIBIT A
HARVEST SCHEDULE**

BERING SEA / ALEUTIAN ISLANDS POLLOCK FISHERY HARVEST SCHEDULE

Members	Percentage of Annual Bering Sea / Aleutian Islands Directed Pollock Fishery as Defined in Section 205(4) of the Act
Forum Star, Inc. F/V FORUM STAR, ON 925863	.2441%
American Seafoods Company F/V AMERICAN CHALLENGER, ON615085	.3149%
Harvester Enterprises F/V OCEAN HARVESTER, ON 549892	.4325%
Muir Milach, Inc. F/V MUIR MILACH, ON 611524	.4538%
Tracy Anne, Inc. F/V TRACY ANNE, ON 904859	.4642%
Neahkahnie Fisheries, Inc. F/V NEAHKAHNIE, 599534	.6679%
Sea Storm, Inc. F/V SEA STORM, ON 628959	.8226%
TOTAL:	3.4%

MUNDT MACGREGOR LLP.
A T T O R N E Y S A I L A W

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Henry Howard Happel, III
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January 20, 1999

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Mr. Clarence G. Pautzke
Executive Director
North Pacific Fishery Management Council
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Anchorage, Alaska 99510

VIA FACSIMILE

Ms. Sue Salvesson
Assistant Regional Administrator for Sustainable Fisheries
National Marine Fisheries Services
709 West 9th Street, Room 453
Juneau, Alaska 99801

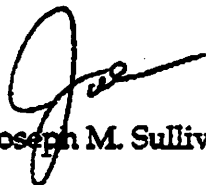
VIA FACSIMILE

Dear Clarence and Sue:

Enclosed for your information is a copy of a "housekeeping" amendment to the Offshore Pollock Catcher Cooperative Membership Agreement. Please feel free to call if you have any questions or concerns.

Very truly yours,

MUNDT MacGREGOR L.L.P.


Joseph M. Sullivan

JMS:twf

Enclosure

cc: Dave Fraser (via fax, w/enclosure)

AMENDMENT TO MEMBERSHIP AGREEMENT

THIS AMENDMENT TO MEMBERSHIP AGREEMENT is made and entered into effective as of the 14th day of January, 1999, by and among FORUM STAR, INC., AMERICAN SEAFOODS COMPANY, HARVESTER ENTERPRISES, INC., MUIR MILACH, INC., TRACY ANNE, INC., NEAHKAHNE FISHERIES, INC., AND SEA STORM, INC. (together, the "Members") and OFFSHORE POLLOCK CATCHERS COOPERATIVE, a Washington nonprofit corporation (the "Cooperative").

RECITALS

A. The Members and the Cooperative entered into that certain Membership Agreement dated as of December 19, 1998 (the "Membership Agreement").

B. The Members desire to amend the Membership Agreement to include certain provisions related to landing taxes, as required under the 1998 American Fisheries Act (Division C, Title II of Public Law 105-277), and to modify certain provisions in the Membership Agreement pertaining to the Members' initiation of enforcement actions.

Now, therefore, the Members and the Cooperative agree as follows:

1. Enforcement Actions Related to Entitlements. The first sentence of the second paragraph of Section 1.d of the Membership Agreement shall be amended to read as follows:

Upon the Board of Directors or a majority of Members in good standing concluding that a Member may have participated in a fishery in which he was not entitled, Section 4.4 of the Bylaws shall be implemented for a determination of whether there has been an unauthorized participation, and if so, the penalty to be assessed.

The remainder of Section 1.d of the Membership Agreement shall remain unchanged.

2. Landing Taxes. A new Section 5 shall be added to the Membership Agreement, as follows:

5. Landing Taxes. Pursuant to Section 210(f) of the Act, the Members agree to make payments to the State of

Alaska for any pollock harvested in the Bering Sea/Aleutian Islands pollock fishery which is not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. If a Member fails to make a payment in lieu of tax due under this Section, the Cooperative or any of the other Members may make such payment, and the non-paying Member shall be obligated to reimburse the paying parties within thirty (30) days. Any balance outstanding beyond such date shall bear interest in favor of the paying parties at the per annum rate equal to the prime rate of Bank of America, N.A., Seattle Branch, as the same may be announced from time to time, plus five percent (5%). Payments and interest due under this Section may be collected or reimbursed from the defaulting Member's bond or alternate security pursuant to Section 3, hereof.

The existing Sections 5 through 10 of the Membership Agreement shall be renumbered Sections 6 through 11, respectively. In all other respects, the Membership Agreement shall remain unchanged and in full force and effect.

Dated as of this 14 day of January, 1999.

FORUM STAR, INC.

By _____
Its _____

AMERICAN SEAFOODS COMPANY

By Murphy J. Chyl
Its President

SEA STORM, INC.

By A. Cl. t
Its President

HARVESTER ENTERPRISES, INC.

By Frank. Ness
Its owner

MUIR MILACH, INC.

By [Signature]
Its president

TRACY ANNE, INC.

By [Signature]
Its vice president

NEAHKAHNE FISHERIES, INC.

OFFSHORE POLLOCK CATCHER
COOPERATIVE

By _____
Its _____

By _____
Its _____ *president*

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Alaska for any pollock harvested in the Bering Sea/Aleutian Islands pollock fishery which is not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. If a Member fails to make a payment in lieu of tax due under this Section, the Cooperative or any of the other Members may make such payment, and the non-paying Member shall be obligated to reimburse the paying parties within thirty (30) days. Any balance outstanding beyond such date shall bear interest in favor of the paying parties at the per annum rate equal to the prime rate of Bank of America, N.A., Seattle Branch, as the same may be announced from time to time, plus five percent (5%). Payments and interest due under this Section may be collected or reimbursed from the defaulting Member's bond or alternate security pursuant to Section 3, hereof.

The existing Sections 5 through 10 of the Membership Agreement shall be renumbered Sections 6 through 11, respectively. In all other respects, the Membership Agreement shall remain unchanged and in full force and effect.

Dated as of this 4th day of January, 1999.

FORUM STAR, INC.

By [Signature]
Its [Signature]

AMERICAN SEAFOODS COMPANY

By _____
Its _____

SEA STORM, INC.

By [Signature]
Its President

HARVESTER ENTERPRISES, INC.

By [Signature]
Its OWNER

MUIR MILACH, INC.

By [Signature]
Its president

TRACY ANNE, INC.

By [Signature]
Its vice president

North Pacific Fishery Management Council

Richard B. Lauber, Chairman
Clarence G. Pautzke, Executive Director



605 West 4th Avenue, Suite 306
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Visit our website: <http://www.fakr.noaa.gov/npfmc/npfmc.htm>

December 23, 1998

Mr. Steven Pennoyer
Administrator, NMFS Alaska Region
P.O. Box 21668
Juneau, AK 99802-1668

Mr. David Benton
Deputy Director, ADF&G
P.O. Box 25526
Juneau, AK 99802-5526

Dear Steve and Dave:

Passage of the American Fisheries Act (AFA) has brought several changes to North Pacific fisheries. One new provision under the AFA allows information, on a vessel by vessel basis, to be made available to the general public. There are two sections of the AFA that deal directly with the release of harvest and processing data, previously considered confidential in both the Federal and State systems. The first is under Section 210(a)(1)(B), which states "but taking into account the interest of parties to any such contract (co-op) in protecting the confidentiality of proprietary information, the North Pacific Council and the Secretary shall - make available to the public in such a manner as the North Pacific Council and Secretary deem appropriate information about harvest by vessels under a fishery cooperative of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis." The second is under Section 211(d). That section of the AFA states that "the North Pacific Council may recommend and the Secretary may approve, under such terms and conditions as the North Pacific Council and the Secretary deem appropriate, the public disclosure of any information from the groundfish fisheries under the authority of such Council that would be beneficial in the implementation of Section 301(a)(9) or Section 303(a)(11) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(9) and 1853(a)(11))."

Because of these provisions in the AFA, the Council is requesting that the Alaska Department of Fish and Game and the National Marine Fisheries Service jointly develop a discussion paper on the process which could be used to make this information publicly available. As I see them, the issues that need to be addressed in the paper are:

- 1) What regulations need to be changed for the Council and Secretary to implement such a data release program?
- 2) How can the regulations be changed and what would be an approximate time frame for changing the regulations?
- 3) How would releasing the data be beneficial in implementing Section 301(a)(9) or Section 303(a)(11) of the Magnuson-Stevens Act?
- 4) What information does your agency feel is appropriate to release?
- 5) How often should the data be released?
- 6) What mechanisms should be used to make the information available? These could include such things as AKFIN's web page, NMFS's web page, CFEC's web page, hard copies via the mail, or any one of several other options.

The Council is planning to take this issue up for initial discussion at their meeting in February 1999. At that time the discussion paper should be ready for presentation to the Council, Advisory Panel, and Statistical and Scientific Committee. The Council will then decide how to meld the report into the overall amendment package that is scheduled for initial review in April and a final decision in June.

Steven Pennoyer
David Benton
December 23, 1998
Page 2

I request that you notify me by January 6, 1999 regarding who, within your agency, has been tasked with this project. This will allow the Council to better coordinate the many projects under the AFA umbrella that are scheduled for review in February.

Since this is a joint project involving both ADF&G and NMFS, it may be appropriate to deal with items three through six under the AKFIN umbrella. The AKFIN Steering Committee is scheduled to meet January 7-8 in Juneau. If AKFIN is an appropriate vehicle to help with this task, the timing may work, in terms of getting the appropriate people together.

A related issue is the Council's request to initiate a data collection effort to aid in the development of the AFA report to Congress. Currently economists at the Alaska Fisheries Science Center are working closely with the Council's Social and Economic Data Committee to develop those kinds of data collection programs. A report from the Committee is already on the Council's agenda in February, and a planning meeting is scheduled for January 19-21 at the Center. To better coordinate our data collection efforts and impose less of a burden on industry, it may be appropriate to task the Committee with this effort.

Thank you for your help in this important project. I look forward to working with your teams on this task.

Sincerely,



Darrell Brannan
Senior Economist

cc: R. Marasco
J. Balsiger
S. Salveson
S. Allen
P. Murphy

Federal Register on December 30, 1998, and provide the opportunity for public comment. The interim specifications will be effective January 1, 1999.

Because these interim specifications are not required to be issued with prior notice and opportunity for public comment, the analytical requirements of the Regulatory Flexibility Act do not apply. Consequently, no regulatory flexibility analysis has been prepared.

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

Dated: December 28, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 98-34729 Filed 12-28-98; 4:55 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222313-8320-02; I.D. 122198A]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Interim 1999 Harvest Specifications for Groundfish

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

ACTION: Interim 1999 harvest specifications for groundfish.

SUMMARY: NMFS issues interim 1999 total allowable catch (TAC) amounts for each category of groundfish, Community Development Quota (CDQ) amounts, and prohibited species catch (PSC) amounts for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to conserve and manage the groundfish resources in the BSAI and is intended to implement the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: The Interim Specifications are effective from 0001 hours, Alaska local time (A.l.t.), January 1, 1999, until the effective date of the final 1999 harvest specifications for BSAI groundfish, which will be published in the Federal Register.

ADDRESSES: The preliminary 1999 Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1998, is available from the North Pacific

Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501-2252, telephone 907-271-2809. The Final Supplemental Environmental Impact Statement as well as the Environmental Assessment (EA) for the 1999 Groundfish Harvest Specifications is available from the Alaska Region NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 that govern the groundfish fisheries in the BSAI implement the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it, under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations that also pertain to the U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council met in October 1998 to review scientific information concerning groundfish stocks. The Council adopted for public review the preliminary SAFE Report for the 1999 BSAI groundfish fisheries. The preliminary SAFE Report, dated September 1998, provides an update on the status of stocks. Copies of the SAFE Report are available from the Council (see ADDRESSEES). The preliminary TAC amounts for each species are based on the best available biological and socioeconomic information. The Council recommended a preliminary total acceptable biological catch (ABC) of 2,379,976 metric tons (mt) and a preliminary total TAC of 1,925,000 mt for the 1999 fishing year.

Under § 679.20(c)(1), NMFS published in the December 30, 1998 Federal Register, proposed harvest specifications for BSAI groundfish for the 1999 fishing year. That document contains a detailed discussion of the 1999 groundfish harvest specifications and of the proposed 1999 TACs, initial TACs (ITACs) and related apportionments, ABC amounts, overfishing levels, PSC amounts, and associated management measures of the BSAI groundfish fishery including detailed information on the implementation of the American Fisheries Act (AFA).

This action provides Interim harvest specifications and apportionments thereof for BSAI groundfish for the 1999 fishing year that will become available on January 1, 1999, and remain in effect until superseded by the final 1999 harvest specifications.

NMFS notes that the Council at its December 1998, meeting requested NMFS to implement an emergency interim rule establishing conservation measures to mitigate impacts of the BSAI pollock fishery on Steller sea lions and their critical habitat. NMFS is currently preparing an emergency rule to implement parts of the Council's recommendations as well as other measures necessary to ensure that the pollock trawl fishery does not jeopardize the continued existence, or adversely modify the critical habitat, of Steller sea lions. These emergency measures will likely revise these interim specifications for pollock.

Establishment of Interim TACs

Fifteen percent of the TAC for each target species or species group, except for the hook-and-line and pot gear allocation of sablefish, is automatically placed in a non-specified reserve (§ 679.20(b)(1)). The remainder is the initial TAC (ITAC). The AFA supersedes this provision for pollock because the 1999 TAC for this species is required to be fully allocated among the CDQ program, incidental catch allowance, and inshore, catcher/processor, and mothership directed fishery allowances.

Regulations at § 679.20(b)(1)(iii) require that one-half of each TAC amount placed in the non-specified reserve be allocated to the groundfish CDQ reserve, and that 20 percent of the hook-and-line and pot gear allocation of sablefish, be allocated to the fixed-gear sablefish CDQ reserve. The AFA requires that 10 percent of the pollock TAC be allocated to a pollock CDQ reserve (section 206). The groundfish and pollock CDQ reserves are not further apportioned by gear. Fifteen percent of the groundfish CDQ reserve established for squid, arrowtooth flounder, and "other species" is apportioned to a non-specific CDQ reserve. Regulations governing the use and release of the non-specific CDQ reserve are found at § 679.31(g). Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as prohibited species quota (PSQ) reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at § 679.30 and § 679.31.

After subtraction of the CDQ reserves, the remainder of the non-specified reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

Regulations at § 679.20(c)(2)(ii) require that one-fourth of each proposed ITAC amount and apportionment thereof (not including the first seasonal allowance of pollock), one-fourth of each prohibited species catch (PSC) allowance established under § 679.21, and the first seasonal allowance of pollock TAC become effective 0001 hours, A.I.t., January 1, on an interim basis and remain in effect until superseded by the final groundfish harvest specifications.

A proposed rule was published in the Federal Register on November 9, 1998, (63 FR 60288) that would implement measures to mitigate effects of the Atka mackerel fishery on Steller sea lion critical habitat. NMFS anticipates that a final rule will be effective by January 20, 1999, the start of the 1999 trawl season, that will seasonally apportion the Atka mackerel TACs and revise the interim specifications for this species.

Apportionment of Pollock TAC to Vessels Using Nonpelagic Trawl Gear

Regulations at § 679.20(a)(5)(i)(B) authorize NMFS, in consultation with

the Council, to limit the amount of pollock that may be taken in the directed fishery for pollock using nonpelagic trawl gear. At its June 1998 meeting, the Council adopted management measures that, if approved by NMFS, would prohibit the use of nonpelagic trawl gear in the directed fishery for pollock and reduce specified prohibited species bycatch limits by amounts equal to anticipated savings in bycatch or bycatch mortality that would be expected from this prohibition. The Council did not take specific action to allocate zero amounts of pollock to the 1999 directed fishery for pollock with nonpelagic trawl gear under § 679.20(a)(5)(i)(B) because implementation of the Council's June action in time for the 1999 fishery was assumed.

NMFS recognizes that the Council's proposed prohibition on the use of nonpelagic trawl gear in the BSAI pollock fishery will not be effective in time for the 1999 pollock "A" season fishery that starts on January 20. Therefore, NMFS allocates 0 mt of the

BSAI pollock TAC to the directed fishery for pollock with nonpelagic trawl gear. The action is necessary to reduce unnecessary bycatch in the 1999 pollock fishery and to carry out the Council's intent for this fishery. For further discussion of this action see the proposed 1999 harvest specifications for BSAI groundfish published in the Federal Register on December 30, 1998.

Interim 1999 BSAI Groundfish Harvest Specifications

Table 1 provides interim TAC and CDQ amounts and apportionments thereof. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for the non-trawl sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota (IFQ) management plan. As a result, fishing for the non-trawl allocation of CDQ sablefish and sablefish harvested with fixed gear is prohibited until the effective date of the Final 1999 Groundfish Specifications.

TABLE 1.—INTERIM 1999 TAC AMOUNTS FOR GROUNDFISH AND APPORTIONMENTS THERE FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA ^{1,2}

Species and component (if applicable)	Area and/or gear (if applicable)	Interim TAC	Interim CDQ
Pollock ²			
Inshore	BS	197,012	
Catcher/processor	BS	157,610	
Mothership	BS	39,402	
CDQ	BS		46,575
Inshore	AI	10,067	
Catcher/processor	AI	8,054	
Mothership	AI	2,013	
CDQ	AI		2,380
Inshore	BogDist	423	
Catcher/processor	BogDist	338	
Mothership	BogDist	85	
CDQ	BogDist		100
Total Pollock		415,005	49,055
Pacific Cod ³			
.....	Jlg	893	
.....	H/L & Pot	22,759	
.....	Trawl C/Vs	10,487	
.....	Trawl C/Ps	10,487	
CDQ			3,938
Total Pacific cod		44,625	3,938
Sablefish ^{4,5}			
.....	BS-Trawl	138	12
.....	BS-H/L & Pot	N/A	N/A
.....	AI-Trawl	73	6
.....	AI-H/L & Pot	N/A	N/A
Total Sablefish		211	18
Atka mackerel ⁶			
.....	Western AI	5,738	506
.....	Central AI	4,760	420
.....	Eastern AI/BS	3,166	279
.....	Jlg gear	32	
.....	Other gear	3,135	
Total Atka mackerel		13,664	1,205
Yellowfin sole	BSAI	46,750	4,125
Rock sole	BSAI	21,250	1,875

TABLE 1.—INTERIM 1999 TAC AMOUNTS FOR GROUND FISH AND APPORTIONMENTS THERE FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA^{1,2}—Continued

Species and component (if applicable)	Area and/or gear (if applicable)	Interim TAC	Interim CDQ
Greenland turbot	BS	2,136	188
	AI	1,052	93
Total Greenland turbot		3,188	281
Arrowtooth flounder	BSAI	3,400	255
Flathead sole	BSAI	21,250	1,875
Other flatfish ⁷	BSAI	19,005	1,677
Pacific ocean perch	BS	298	26
	Western AI	1,186	105
	Central AI	733	65
	Eastern AI	652	57
Total Pacific ocean perch		2,869	253
Other red rockfish ⁸	BS	57	5
Sharpchin/Northern	AI	899	79
Shorthead/Rougheye	AI	205	18
Other rockfish ⁹	BS	78	7
	AI	146	13
Total other rockfish		224	20
Squid	BSAI	419	31
Other Species ¹⁰	BSAI	5,483	411
Non-specified CDQ reserve ¹¹	BSAI		123
Total interim TAC		601,668	65,246

¹ Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified. With the exception of pollock, and for purposes of these specifications, the BS includes the Bogoslof District (BogDist).

² After subtraction of the pollock CDQ amount (10 percent of the TAC) and the incidental catch allowance (6 percent of the remainder of the TAC), the ITAC amounts of pollock for each subarea or district are then divided into A and B seasonal allowances. (See § 679.20(a)(5)(i).) For the BS subarea, the A and B seasonal apportionments are 45 and 55 percent of the pollock ITAC amounts, respectively. The AI subarea and the Bogoslof District receive 100 percent of their respective ITAC seasonal allowances during the A season with the remainder of the respective TAC seasonal allowance during the B season. Component allocations of the ITAC amounts are 50 percent for the inshore, 40 percent for listed catcher/processors, and 10 percent to vessels delivering to Motherships. The first seasonal allowance of the pollock component allocations are in effect on January 1 as an interim TAC. NMFS, under regulations at § 679.20(a)(5)(i)(B), allocates 0 mt of pollock to nonpelagic trawl gear. This action is based on Council intent to prohibit the use of nonpelagic trawl gear in 1999 because of concerns of unnecessary bycatch with bottom trawl gear in the pollock fishery.

³ After subtraction of the reserves, the ITAC amount for Pacific cod is allocated 2 percent to vessels using jig gear, 51 percent to H/L gear, and 47 percent to Trawl. The Pacific cod allocation to trawl gear is split evenly between catcher vessels and catcher/processor vessels (See § 679.20(a)(7)(i)). Pacific cod ITAC seasonal apportionments to vessels using H/L or pot gear are not reflected in the interim TAC amounts. One-fourth of the ITAC gear apportionments are in effect on January 1 as an interim TAC.

⁴ Sablefish gear allocations are as follows: In the BS subarea, trawl gear is allocated 50 percent and H/L and pot gear is allocated 50 percent of the TAC. In the AI subarea, trawl gear is allocated 25 percent, and H/L and pot gear is allocated 75 percent of the TAC (See § 679.20(a)(4)(iii) and (iv)). Fifteen percent of the sablefish trawl gear allocation is placed in the nonspecific reserve. One-fourth of the ITAC amount for trawl gear is in effect January 1 as an interim TAC amount.

⁵ The sablefish H/L gear fishery is managed under the IFQ program and subject to regulations contained in subpart D of 50 CFR part 679. Twenty percent of the sablefish H/L and pot gear final TAC amount will be reserved for use by CDQ participants. (See § 679.31(c).) Existing regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for the CDQ sablefish reserve or for an interim specification for sablefish managed under the IFQ program. In addition, in accordance with § 679.7(f)(3), retention of sablefish caught with fixed gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 1999, IFQ permits and IFQ cards will not be valid prior to the effective date of the 1999 final specifications. Thus, fishing for sablefish with fixed gear is not authorized under these interim specifications. See subpart D of 50 CFR part 679 and § 679.23(g) for guidance on the annual allocation of IFQ and the sablefish fishing season.

⁶ Regulations at § 679.20 (a)(8) require that up to 2 percent of the Eastern AI area ITAC be allocated to the jig gear fleet. The amount of this allocation is 1 percent and was determined by the Council based on anticipated harvest capacity of the Jig gear fleet. The jig gear allocation is not apportioned by season.

⁷ "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, arrowtooth flounder, and yellowfin sole.

⁸ "Other red rockfish" includes shorthead, rougheye, sharpchin, and northern rockfish in the BS subarea.

⁹ "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shorthead, and rougheye rockfish.

¹⁰ "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

¹¹ Fifteen percent of the groundfish CDQ reserve established for squid, arrowtooth flounder, and "other species" is allocated to a non-specific CDQ reserve (§ 679.31(g)).

Pollock Allocations Under the AFA

The AFA specifies the manner in which the BSAI pollock TAC must be allocated among industry components. Under section 206 of the AFA, 10 percent of the BSAI pollock TAC is allocated as a directed fishing allowance

to the CDQ program. The remainder of the BSAI pollock TAC, after the subtraction of an allowance for the incidental catch of pollock by vessels harvesting other groundfish species, is allocated: 50 percent to catcher vessels harvesting pollock for processing by the inshore component, 40 percent to listed

catcher/processors and listed catcher vessels harvesting pollock for processing by listed catcher/processors in the offshore component, and 10 percent to catcher vessels harvesting pollock for processing by listed motherships in the offshore component (Table 1). For 1999, NMFS has proposed

an incidental catch allowance of 6 percent of the pollock TAC after subtraction of the 10 percent CDQ reserve. The considerations leading to this proposal are discussed in the proposed 1999 harvest specifications for BSAI groundfish which was published in the Federal Register on December 30, 1998.

The AFA also contains three specific pollock allocations that must be specified annually. First, paragraph 208(e)(21) of the AFA specifies that catcher/processors qualifying to fish for pollock under this paragraph are prohibited from harvesting in the aggregate a total of more than one-half (0.5) percent of the pollock allocated to vessels for processing by offshore catcher/processors. Second, section 210(c) of the AFA requires that not less than 8.5 percent of the pollock allocated

to vessels for processing by offshore catcher/processors be available for harvest only by offshore catcher vessels harvesting pollock for processing by offshore catcher/processors listed in section 208(b). Third, section 210(e)(1) prohibits any particular individual, corporation, or other entity from harvesting a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery. The interim allocations and catch limits are equal to the proposed pollock "A" season specifications set out in Table 2 of the proposed specifications.

Interim Allocation of PSC Limits for Crab, Halibut, and Herring

Under § 679.21 (e), annual PSC limits are specified for red king crab, *Chionoecetes (C.) bairdi* Tanner crab, and *C. opilio* crab in applicable Bycatch

Limitation Zones (see § 679.2) of the BS subarea, and for Pacific halibut and Pacific herring throughout the BSAI. Regulations under § 679.21 (e) authorize the apportionment of each PSC limit into PSC allowances for specified fishery categories. Under § 679.21 (e)(1)(i), 7.5 percent of each PSC limit specified for halibut, crab, and salmon is reserved as a PSQ reserve for use by the groundfish CDQ program.

Regulations at § 679.20(c)(2)(ii) require that one-fourth of each proposed PSC and PSQ allowance be made available on an interim basis for harvest at the beginning of the fishing year, until superseded by the final harvest specifications. The fishery specific interim PSC allowances for halibut and crab are specified in Table 2 and are in effect at 0001 hours, A.l.t., January 1, 1999.

TABLE 2.—INTERIM 1999 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

Trawl Fisheries	Prohibited species and zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1 ¹	C. opilio (animals) COBLZ ²	C. bairdi (animals)	
					Zone 1 ¹	Zone 2 ¹
Yellowfin sole	232	66	4,625	759,656	63,898	221,487
Rock sole/oth.flat/flat sole ³	184	5	24,688	187,313	68,462	73,829
RKCSS ⁴			10,000			
Turbot/sablefish/arrowtooth ⁵				10,406		
Rockfish	17	2		10,406		1,448
Pacific cod	358	5	3,469	31,219	30,808	40,327
Midwater trawl pollock		305				
Pollock/Atka/other ⁶	81	38	3,469	41,625	10,269	97,198
Total Trawl PSC	873	421	46,250	1,040,625	173,437	434,288
Non-Trawl Fisheries						
Pacific cod	187					
Other non-trawl	21					
Groundfish pot & jig	exempt					
Sablefish hook & line	exempt					
Total Non-Trawl	208					
PSQ Reserve⁷	88		3,750	84,375	14,063	35,212
Grand Total	1,169	421	50,000	1,125,000	187,500	469,500

¹ Refer to § 679.2 for definitions of areas.

² *C. opilio* Bycatch Limitation Zone. Boundaries are defined at § 679.21(e)(7)(iv)(B).

³ Rock sole, other flatfish, and flathead sole category.

⁴ The Council at its October 1998 meeting allocated 10,000 red king crab to the RKCSS (§ 679.21(e)(3)(ii)(B)).

⁵ Greenland turbot, arrowtooth flounder, and sablefish fishery category.

⁶ Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

⁷ With the exception of herring, 7.5 percent of each PSC limit is allocated to the multi-species CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

NMFS will issue fishery closures based on these interim specifications if the Regional Administrator, Alaska Region, NMFS, determines that interim TAC amounts are required as incidental catch to support other anticipated groundfish fisheries or if the PSC allowance for a fishery has been reached. NMFS may also issue other

closures based on the final 1999 harvest specifications.

Protections for Other Fisheries Under the AFA

Section 211(b)(2)(A) of the AFA prohibits listed catcher/processors from harvesting more than a specified amount of each non-pollock groundfish

species in the BSAI. Non-pollock groundfish that is delivered to listed catcher/processors by catcher vessels would be deducted from the open access groundfish allocations and would not be deducted from the 1999 interim harvest limits for the listed catcher/processors. Except for Atka mackerel, the catch limitations specified for the

listed catcher/processors are equivalent to the percentage of non-pollock groundfish harvested in the non-pollock fisheries by the listed catcher/processors and those listed under section 209 of the AFA during 1995, 1996, and 1997. The groundfish harvest amounts by these vessels in the BSAI from 1995 through 1997 are shown in Table 3. These data were used to calculate the relative amount of non-pollock groundfish TACs harvested by listed catcher/processors in the non-pollock fisheries, and then used to determine the proposed harvest limits for non-pollock groundfish by listed catcher/processors in the 1999 BSAI fisheries.

These annual limits may be higher than the interim TAC, which is 25 percent of the ITAC. If the interim TAC is less than the listed catcher/processor limit then the listed catcher/processors would be prohibited from exceeding a harvest amount greater than the interim TAC as specified in Table 1. However, listed catcher/processors are not restricted to 25 percent of their 1999 limit (Table 3) under the interim TAC specifications.

NMFS intends to establish by emergency rule inseason authority necessary to manage the harvest of groundfish by listed catcher/processors so that the 1999 non-pollock harvest

limits are not exceeded. Under the emergency rule authority, NMFS likely will limit directed fishing by the listed catcher/processors to Atka mackerel, Pacific cod, and yellowfin sole. The interim 1999 harvest limits for other species may not be sufficient to allow for both a directed fishery and for incidental catch requirements in other directed fisheries. NMFS intends to manage conservatively the listed catcher/processor harvest limitations consistent with the intent of the AFA to limit the ability of these vessels to redistribute fishing effort into non-pollock fisheries in which they have not historically participated.

TABLE 3.—INTERIM HISTORICAL CATCH RATIO, 1999 AGGREGATE CATCH LIMITS, AND 1999 CATCH LIMITS FOR VESSELS LISTED UNDER SECTION 208 OF THE AMERICAN FISHERIES ACT ¹

Target species ²	Area	1995-1997			1999 ITAC available to trawl C/Ps	1999 harvest limit ⁴
		Total catch	Available TAC	Ratio ³		
Atka mackerel ⁵	Eastern AI/BS					
	Central AI			0.115	19,040	2,190
	Western AI			0.200	22,950	4,590
Arrowtooth flounder	BSAI	788	36,873	0.021	13,600	291
Other flatfish	BSAI	12,145	92,428	0.131	76,019	9,989
Flathead sole	BSAI	3,030	87,975	0.034	85,000	2,927
Greenland turbot	AI	31	6,839	0.005	4,208	19
	BSAI	168	16,911	0.010	8,543	85
Other species	BSAI	3,551	65,925	0.054	21,930	1,181
Pacific Cod trawl ⁶	BSAI	13,547	51,450	0.263	41,948	11,045
Pacific ocean perch ⁷	BSAI	58	5,760	0.010	1,190	12
	Central AI	95	6,195	0.015	2,933	45
	Eastern AI	112	6,265	0.018	2,610	47
	Western AI	356	12,440	0.029	4,743	136
Other rockfish	AI	95	1,924	0.049	582	29
	BS	39	1,026	0.038	314	12
Rock sole	BSAI	14,753	202,107	0.073	85,000	6,205
Sablefish trawl ⁸	AI	1	1,135	0.001	293	0
	BS	8	1,736	0.005	553	3
Sharpchin/Northern	AI	1,034	13,254	0.078	3,596	280
Squid	BSAI	7	3,670	0.002	1,675	3
Shortraker/Rougheye	AI	68	2,827	0.024	314	8
Other red rockfish	BS	75	3,034	0.025	227	6
Yellowfin sole	BSAI	123,003	527,000	0.233	187,000	43,646

¹ The AFA specifies the manner in which the BSAI pollock TAC must be allocated among industry components and prohibits catcher/processors listed under paragraphs 1-20 of section 208(e) from exceeding the historical non-pollock harvest percentages by such catcher/processors and those listed under section 209 relative to the total available in the offshore component in BSAI groundfish fisheries in 1995, 1996, and 1997. Amounts are in metric tons.

² For further definitions of target species see Table 1.

³ The ratio is calculated by dividing the total catch by the available TAC.

⁴ The 1999 harvest limit for listed catcher/processors is calculated by multiplying the historic catch ratio by the 1999 proposed ITAC available to trawl catcher/processors.

⁵ In section 211(b)(2)(C) of the AFA, catcher/processors listed in paragraphs 1-20 of section 208(e) are prohibited from harvesting Atka mackerel in excess of 11.5 percent of the available TAC in the Central Aleutian Islands area and 20 percent in the Western Aleutian Islands area. It is prohibited for listed catcher/processors to harvest Atka mackerel in the Eastern Aleutian Islands and Bering Sea subarea.

⁶ For Pacific cod, 47 percent of the ITAC is allocated to trawl, and of that 50 percent is available for catcher/processors. Separate catcher/processor and catcher/vessel allocations became effective in 1997, therefore only data from 1997 was used to calculate the historic ratio.

⁷ Apportionments to western, central, and eastern Aleutian Islands subareas began in 1996, therefore only data from 1996 and 1997 was used to calculate the historic ratio.

⁸ 25 percent of the Sablefish ITAC is allocated to trawl in the AI subarea, 50 percent is allocated to trawl in the BS subarea.

Section 211(b)(2)(A) of the AFA prohibits listed catcher/processors from harvesting more than a specified amount of each prohibited species in the BSAI. These amounts are equivalent

to the percentage of prohibited species bycatch limits harvested in the non-pollock fishery by the listed catcher/processors and those listed under section 209 during 1995, 1996, and

1997. Prohibited species amounts harvested by these catcher/processors in BSAI non-pollock fisheries from 1995 through 1997 is shown in Table 4. These data were used to calculate the relative

amount of prohibited species bycatch limits harvested by listed catcher/processors, and then used to determine the proposed prohibited species harvest limits for listed catcher/processors in the 1999 non-pollock fisheries. Regulations at § 679.21(e)(7)(vii) and (viii) do not provide for fishery-specific management of the salmon bycatch limits. Therefore, NMFS is not including salmon catch limits for the listed catcher/processors during 1999.

The Council at its November 1998 meeting proposed that prohibited species caught by listed catcher/processors and listed catcher vessels while fishing for pollock accrue against either the midwater pollock or the pollock/Atka mackerel/other species fishery categories (Table 2). However, PSC that is caught by listed catcher/processors participating in groundfish fisheries other than pollock (Table 3), shall accrue against the 1999 PSC limits

for the listed catcher/processors as outlined in section 211(b)(2)(B) of the AFA (Table 4). The emergency rule being prepared by NMFS to manage the AFA harvest limitations specified for listed catcher/processors will provide authority to close directed fishing for groundfish to the listed catcher/processors once a 1999 PSC limitation listed in Table 4 is reached.

TABLE 4.—PROPOSED PSC LIMITS FOR VESSELS LISTED UNDER SECTION 208 OF THE AMERICAN FISHERIES ACT¹

PSC species	1995–1997			1999 PSC available to C/Ps	1999 limit ³
	PSC catch	Total PSC	Ratio ²		
Halibut mortality	955	11,325	0.084	3,492	294
Herring	62	5,137	0.012	1,685	20
Red king crab	7,641	473,750	0.016	185,000	2,984
C. bairdi					
Zone 1	385,978	2,750,000	0.140	693,750	97,372
Zone 2	406,860	8,100,000	0.050	1,737,150	87,256
C. opilio	2,323,731	15,139,178	0.153	4,162,500	638,907

¹The AFA specifies the manner in which the BSAI pollock TAC must be allocated among industry components and prohibits catcher/processors listed under sections 1–20 of section 208(e) from exceeding the historical harvest percentages of prohibited species by such catcher/processors and those listed under section 209 relative to the total available in the offshore component in BSAI groundfish fisheries in 1995, 1996, and 1997. Amounts are in metric tons.

²The ratio is calculated by dividing the PSC catch by the total PSC available.

³The 1999 prohibited species catch limit for listed catcher/processors is calculated by multiplying the historic ratio by the PSC available in 1999. The 1999 PSC limit is based on an annual amount and is not reduced on an interim basis.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Pursuant to section 7 of the Endangered Species Act, NMFS has completed a consultation on the effects of the pollock and Atka mackerel fisheries on listed and candidate species, including the Steller sea lion, and designated critical habitat. The biological opinion prepared for this consultation, dated December 3, 1998, concludes that the pollock fisheries in the BSAI and the GOA jeopardize the continued existence of Steller sea lions and adversely modify their designated critical habitat. The biological opinion contains reasonable and prudent alternatives (RPAs) to mitigate the adverse impacts of the pollock fisheries on Steller sea lions. Specific measures necessary to implement the RPAs were discussed at the December 1998 Council meeting. On December 16, 1998, NMFS issued revised reasonable and prudent alternatives based on the Council's recommendations adopted during its December meeting, which adhere to the principles identified in the December 3, 1998, Biological Opinion. NMFS will implement measures necessary to comply with the RPAs prior to the start of the 1999 pollock trawl fishery. If these measures are not in place by the

scheduled regulatory opening on January 20, 1999, then NMFS will close the pollock trawl fishery.

NMFS also initiated consultation on the effects of the 1999 BSAI groundfish fisheries (excluding pollock and Atka mackerel) on listed and candidate species, including the Steller sea lion and listed seabirds, and on designated critical habitat. The Biological Opinion prepared for this consultation, dated December 22, 1998, concludes that groundfish fisheries in the BSAI (excluding pollock and Atka mackerel) are not likely to jeopardize the continued existence of the listed and candidate species, or to adversely modify designated critical habitat.

NMFS has also initiated consultation on the effects of the 1999 BSAI groundfish fisheries on listed and candidate species, including the Steller sea lion and listed seabirds, and on designated critical habitat. This consultation will be concluded prior to the start of fishing on January 1, 1999, under the 1999 interim specifications. Pending determinations under this consultation, NMFS may initiate emergency rulemaking to mitigate any adverse impacts resulting from the BSAI groundfish fisheries on listed and candidate species and designated critical habitat.

The Assistant Administrator, NMFS (AA), finds for good cause under 5

U.S.C. 553(b)(B) that the need to establish interim total allowable catch levels and other management measures for fisheries in the BSAI, effective on January 1, 1999, makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. Likewise, the AA finds for good cause under 5 U.S.C. 553(d)(3) that the need to establish interim TACs levels and other management measures in the BSAI, effective January 1, 1999, makes it impractical and contrary to the public interest to delay the effective date of the limits and measures for 30 days. Regulations at § 679.20(c)(2) require NMFS to specify interim harvest specifications to be effective on January 1 and remain in effect until superseded by the final specifications in order for the BSAI groundfish fishing season to begin on January 1 (see § 679.23). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in unnecessary closures and disruption within the fishing industry. Because the stock assessment reports and other information concerning the fisheries in the BSAI became available only recently, NMFS is not able to provide an opportunity for comment on the interim specifications. NMFS anticipates that the interim specifications will be in

effect for only a short period of time before they are superseded by the final specifications. The proposed 1999 harvest specifications for groundfish of the BSAI were published in the **Federal Register** on December 30, 1998 and provide the opportunity for public

comment. The interim specification will be effective January 1, 1999.

Because these interim specifications are not required to be issued with prior notice and opportunity for public comment, the analytical requirements of the Regulatory Flexibility Act do not apply. Consequently, no regulatory flexibility analysis has been prepared.

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

Dated: December 28, 1998.

Gary C. Matlock,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

[FR Doc. 98-34728 Filed 12-28-98; 4:23 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990113011-9011-01; I.D. 010699A]

RIN 0648-AM06

Fisheries of the Exclusive Economic Zone Off Alaska; Observer and Inseason Management Requirements for Pollock Catcher/Processors

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

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS issues an emergency interim rule to establish additional observer coverage requirements for 20 catcher/processor (C/P) vessels identified in the American Fisheries Act (AFA). NMFS also is establishing inseason authority to manage the non-pollock harvest limitations required under the AFA for these 20 vessels. These actions are necessary to monitor and manage the harvest of the listed C/Ps. Their goal is to comply with the intent of the statutory provisions promulgated under the AFA for these vessels in 1999.

DATES: Effective January 20, 1999, through July 19, 1999. Comments must be received by February 8, 1999.

ADDRESSES: Comments may be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment prepared for this emergency rule may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Sue Salvesson, 907-586-7228.

SUPPLEMENTARY INFORMATION: MFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) in the Exclusive Economic Zone (EEZ) pursuant to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations implementing

the FMP appear at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

On October 20, 1998, the President signed the AFA into law. The AFA specifies the manner in which the BSAI pollock fishery must be managed, as well as measures to limit activity of pollock vessels in non-pollock fisheries. Section 208(e)(1) through (20) of the AFA lists C/Ps that are subject to specific harvest limitations for pollock and non-pollock species starting in 1999 (listed C/Ps). These harvest limitations will be established for 1999 as part of the 1999 groundfish specification process authorized under regulations at 50 CFR § 679.20. NMFS must implement additional observer coverage and inseason management authority necessary to monitor and manage these harvest limitations at the start of the 1999 fishing season. By regulation, the fishing season begins on January 20, 1999. At its November 1998 meeting, the Council recommended that these measures be implemented by emergency rule. The justification for, and a description of, these measures are discussed below.

Observer Coverage for Listed C/Ps

For the 1999 fishing year, section 211(b)(6) of the AFA requires only those listed C/Ps that are approved to participate in the 1999 multispecies groundfish community develop quota (MSCDQ) program to carry two observers and weigh catch on a scale on board approved by NMFS. For the 2000 fishing year, the AFA statutory provisions state that all 20 listed C/Ps shall (1) have two observers aboard at all times while groundfish are being harvested, processed, or received from another vessel in any fishery under the authority of the Council; and (2) weigh their catch on board on a NMFS-approved scale while harvesting groundfish in fisheries under the Council's authority.

CDQ groups have proposed that twelve of the twenty listed C/Ps participate in the 1999 MSCDQ program. The AFA requires that each of these 12 vessels that is approved to participate in the 1999 MSCDQ program have two observers aboard and weigh its catch on NMFS-approved scales at all times the vessel is used to fish for groundfish in 1999. These additional observer coverage requirements under the AFA for listed C/Ps do not change current observer coverage requirements for these vessels during their participation in the 1999 MSCDQ fisheries.

Current regulations at 50 CFR § 679.50 require the remaining eight listed C/Ps

to have only one observer aboard at all times the vessel is used to fish in 1999. NMFS does not believe that one observer can adequately monitor the catch and associated harvest limitations specified for the listed C/Ps. Furthermore, a contract implementing a fishery cooperative under section 210 of the AFA among listed C/Ps and catcher vessels eligible to deliver pollock to listed C/Ps was filed with the Council and the Secretary of Commerce on December 20, 1998. NMFS believes that the reliance on observer data for compliance monitoring and on management of pollock catch amounts taken by listed C/Ps in the directed fishery for pollock or as incidental catch in non-pollock fisheries becomes increasingly important under such a fishery cooperative. Under a fishery cooperative, contract agreements would be established that essentially allocate specific amounts of pollock to individual vessels for purposes of directed fishing. Amounts of the non-pollock groundfish harvest limitations specified for the listed C/Ps also would be allocated under the fishery cooperative among individual vessels. Although NMFS does not intend to actively manage individual vessel groundfish harvests under the cooperative, it is challenged to ensure that overall groundfish or prohibited species catch harvest limitations are not exceeded and that the incidental catch of pollock taken in non-pollock groundfish fisheries is not credited against the pollock directed fishing allowance established under section 206(b) of the AFA for vessels harvesting pollock for processing by the listed C/Ps. To meet these management challenges, more than one observer must be aboard to sample and provide information on an increased number of hauls. NMFS, therefore, is implementing by this emergency interim rule a requirement that two NMFS-certified observers be aboard each of the 20 listed C/Ps at all times the vessel is used to fish for groundfish in the EEZ off Alaska.

In addition to the requirement that each listed C/P carry two NMFS-certified observers, NMFS requires that at least one of the observers aboard each listed C/P have successfully completed the additional training necessary to be certified to observe in the MSCDQ fisheries. This requirement for at least one MSCDQ-certified observer is necessary to ensure that the compliance monitoring role of the observers aboard the listed C/Ps can be successfully accomplished. The AFA (section 211(b)) requires that the C/Ps abide by harvest

limitations that apply only to the C/Ps. In order to monitor and enforce these newly imposed limitations, observers with more experience and training must be aboard C/Ps. NMFS-certified MSCDQ observers have that experience and training. MSCDQ observers receive special training in sampling for species composition in situations where bycatch may be limiting, in working with vessel personnel to resolve access to catch and other sampling problems, and in using flow scales for catch weight measurements. Monitoring by MSCDQ-certified observers is essential for accurate catch accounting, given the fact that a fishery cooperative has been established and that the potential exists for fishing to be curtailed when either groundfish or prohibited species harvest limitations specified for listed C/Ps have been reached.

Under this emergency interim rule, only one of the two observers is required to be MSCDQ certified so that the supply of these observers to the MSCDQ program is not jeopardized in 1999. NMFS notes that subsequent rulemaking establishing observer coverage requirements for listed C/Ps after 1999 could require both observers to be MSCDQ certified. Also, the MSCDQ-certified observer required by this emergency rule is not required to be trained as a "lead CDQ observer" as described at 50 CFR § 679.50(h)(1)(i)(E). A detailed discussion on the justification for additional observer training and certification criteria for individual vessel monitoring programs was provided both in the preamble to the proposed rule (62 FR 43866, August 15, 1997) and in the preamble to the final rule (63 FR 30381, June 4, 1998) implementing the MSCDQ program.

Inseason Authority to Manage Listed C/P Harvest Limits

Congress was concerned that, given the ability to form fishery cooperatives in 1999, listed C/Ps may utilize the benefits realized from fishery cooperatives and enter into or increase fishing effort in fisheries other than the pollock fishery. Section 211(b) of the AFA seeks to protect non-pollock fisheries from major and non-traditional redistributed fishing effort by listed C/Ps. To accomplish this, provisions under section 211(b)(2) establish harvest limitations for non-pollock groundfish and prohibited species that apply to listed C/Ps and that are based on historical catch amounts. These harvest limitations will be specified in the 1999 proposed, interim, and final BSAI groundfish specifications under 50 CFR § 679.20. Many of these harvest limitations are small amounts of fish

that will not support a directed fishery for those species or species groups.

Current regulations do not clarify the inseason action NMFS will implement to maintain the harvest of non-pollock by listed C/Ps within specified harvest limitations mandated by the AFA under section 211(b). With clarification under this emergency rule, NMFS announces its intent to set a directed fishing allowance and close a groundfish species to directed fishing by the listed C/Ps when a harvest limitation specified for that species has been or will be reached. Additionally, NMFS lacks the regulatory authority to apply a directed fishing closure only to the 20 listed C/Ps when one or more of these non-pollock species may be available to directed fishing by other vessels. Furthermore, NMFS lacks regulatory authority under § 679.21(e)(7) to close directed fishing for all non-pollock groundfish by the listed C/Ps if NMFS determines that these vessels have reached a prohibited species harvest limitation.

This action is necessary to provide NMFS with the inseason management tools necessary to ensure that the management of specified harvest limitations will minimize the potential of a limit being exceeded while optimizing the opportunity to harvest the pollock directed fishing allowance allocated to vessels under section 206(b)(2) of the AFA for processing by the listed C/Ps.

Under this emergency rule, NMFS will establish directed fishing allowances for the non-pollock groundfish harvest limitations when it appears that one or more of these amounts have been or will be reached. The attainment of a non-pollock groundfish or prohibited species harvest limitation established under section 211(b)(2) of the AFA will not prohibit the listed C/Ps from participating in the directed fishery for pollock with pelagic trawl gear. However, the attainment of a non-pollock groundfish species harvest limitation established under section 211(b)(2) of the AFA will prohibit the listed C/Ps from participating in the directed fishery for that species. Also, the attainment of a prohibited species harvest limitation while fishing for non-pollock groundfish species will result in the closure of the applicable area to directed fishing for all non-pollock groundfish species. Bycatch or bycatch mortality of prohibited species taken by the listed C/Ps while participating in the pollock fishery will be credited against the respective prohibited species bycatch allowances specified for the pollock fishery. Consistent with existing

regulations, attainment of a bycatch allowance specified for the pollock fishery will result in closure of a specified area to directed fishing for pollock with non-pelagic trawl gear.

NMFS anticipates that this emergency rule will limit the listed C/Ps' opportunity to participate in non-pollock groundfish fisheries. For example, in order for the listed C/Ps to participate in a directed fishery for a non-pollock groundfish species, the specified harvest limit for this species must be sufficiently large to support a directed fishery by the listed C/Ps. If NMFS determines that the amount is not sufficiently large to support a directed fishery by the listed C/Ps, directed fishing for the non-pollock groundfish species will be closed. When directed fishing for a non-pollock groundfish species is closed, the listed C/Ps may continue to retain amounts of that species up to the maximum retainable bycatch amounts established in regulations at § 679.20(e) and (f).

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 and other applicable laws.

Because prior notice and opportunity for public comment are not required for this 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.

This emergency interim rule has been determined to be not significant for purposes of E.O. 12866.

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). This action is necessary to implement the requirements of the AFA as they relate to the pollock fishery. Delaying the start of the pollock fishery beyond its scheduled regulatory start date of January 20, 1999, would conflict with investment-backed expectations of the regulated community and could disrupt supply of seafood products to U.S. markets and consequently would be contrary to the public interest. Likewise, the need to avoid delaying the start of the pollock season constitutes good cause to waive, pursuant to authority set forth at 5 U.S.C. 553(d)(3) the thirty-day delay in effective date otherwise required by 5 U.S.C. 553(d). In addition, the regulated industry has been aware that these new requirements would be necessary since the October 1998 Council meeting and have had ample

time to prepare for coming into compliance making a thirty-day delay in effective date unnecessary.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 15, 1999.

Andrew A. Rosenberg,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

50 CFR CHAPTER VI

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, a definition of "American Fisheries Act" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

American Fisheries Act (AFA) (applicable through July 19, 1999) means Title II—Fisheries, Subtitles I and II, as cited within the Omnibus Appropriations Bill FY99 (Pub. L. 105-277).

* * * * *

3. In § 679.20, paragraph (d)(1)(iv) is added to read as follows:

§ 679.20 General limitations.

* * * * *

(d) * * *

(1) * * *

(iv) *American Fisheries Act harvest limitations (applicable through July 19, 1999)*. (A) If the Regional Administrator determines that any harvest limitation of groundfish other than pollock, established under section 211(b)(2) (A) or (C) of the American Fisheries Act for catcher/processors identified in section 208(e)(1) through (20) of that Act, has been or will be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group applicable only to those identified catcher/processors.

(B) In establishing a directed fishing allowance under paragraph (d)(1)(iv)(A) of this section, the Regional

Administrator shall consider the amount of the harvest limitation established under section 211(b)(2) (A) or (C) of the American Fisheries Act that will be taken as incidental catch by those catcher/processors identified in section 208(e) (1) through (20) of that Act in directed fishing for other species.

4. In § 679.21, paragraphs (e)(3)(v) and (e)(7)(ix) are added to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(3) * * *

(v) *American Fisheries Act prohibited species catch limitations (applicable through July 19, 1999)*. The aggregate amounts of any crab, halibut or herring trawl PSC limit caught by the catcher/processors identified under section 208(e)(1) through (20) of the American Fisheries Act and counted against the bycatch allowances specified for the fishery categories defined under paragraphs (e)(3)(iv)(B) through (E) of this section shall be limited to the amounts established under section 211(b)(2)(B) of that Act and published in the **Federal Register** under paragraph (e)(6) of this section.

* * * * *

(7) * * *

(ix) *Closures under the American Fisheries Act prohibited species catch limitations (applicable through July 19, 1999)*. When the Regional Administrator determines that the catcher/processors identified under section 208(e)(1) through (20) of the American Fisheries Act have caught the amount of any crab, halibut, or herring prohibited species catch limitation specified under paragraph (e)(3)(v) of this section, directed fishing for groundfish by those vessels will be prohibited in the applicable area defined under this paragraph (e)(7), except for pollock with pelagic trawl gear.

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5. In § 679.50, paragraph (c)(5) is added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 21, 2000.

* * * * *

(c) * * *

(5) *Observer coverage under the American Fisheries Act (applicable through July 19, 1999)*. Any catcher/processor listed under section 208(e)(1) through (20) of the American Fisheries Act is required to have two observers aboard the vessel any day it harvests, receives, or processes groundfish. One of the two observers must meet the

qualifications described at paragraph (h)(1)(i)(D) of this section.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990115017-9017-01; I.D. 011199A]

RIN 0648-AM08

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Pollock Fisheries Off Alaska

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

ACTION: Emergency interim rule; revision to 1999 interim harvest specifications; technical amendment to Steller sea lion no-trawl zones; request for comments.

SUMMARY: NMFS issues an emergency interim rule implementing reasonable and prudent alternatives to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat. This emergency rule would implement three types of management measures for the pollock fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA): Measures to temporally disperse fishing effort, measures to spatially disperse fishing effort, and pollock trawl exclusion zones around important Steller sea lion rookeries and haulouts. These emergency measures are necessary and must be effective before the start of the BSAI and GOA pollock fisheries on January 20, 1999, or NMFS will be obligated under the Endangered Species Act to close all fishing for pollock until such measures are in place.

DATES: Effective January 20, 1999, through July 19, 1999. Comments must be received by February 22, 1999.

ADDRESSES: Comments may be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Biological Opinion

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980817221-9020-02; I.D. 072898A]

RIN 0648-AL22

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

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

ACTION: Final rule; emergency interim rule.

SUMMARY: NMFS issues a final rule to implement Amendment 45 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) and an emergency interim rule to implement requirements of the American Fisheries Act (AFA) related to the 1999 Western Alaska Community Development Quota (CDQ) Program. These actions permanently extend the allocation of pollock to the CDQ Program, remove squid from the CDQ Program, and revise pollock CDQ catch accounting regulations. This action is necessary to implement Amendment 45 and CDQ Program-related provisions of the AFA.

DATES: Effective January 21, 1999, except the definitions for "Directed fishing for pollock CDQ" and "Groundfish CDQ fishing (applicable through December 31, 1998)", at § 679.2 and the amendment to §§ 679.20(b)(1)(iii)(A) and (b)(1)(iii)(D), 679.32(a)(2) through (a)(4), and 679.32(g) of the emergency interim rule are effective January 21, 1999 through July 20, 1999. Comments on the emergency interim rule must be submitted by February 25, 1999.

ADDRESSES: Comments may be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis prepared for Amendment 45 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the emergency interim rule may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Management Background and Need for Action

In Amendment 45, the North Pacific Fishery Management Council (Council) recommended permanent extension of the allocation of 7.5 percent of the pollock total allowable catch (TAC) in the Bering Sea and Aleutian Islands management area (BSAI) to the Western Alaska CDQ Program. In addition, Amendment 45 removes the pollock CDQ Program from the inshore/offshore section of the FMP and reorganizes three separate CDQ-related sections of the FMP into one section.

A notice of availability (NOA) for Amendment 45 was published in the *Federal Register* on August 5, 1998 (63 FR 41782), and the proposed rule was published on September 3, 1998 (63 FR 46993). The public comment period on the NOA ended on October 5, 1998, and the public comment period on the proposed rule ended on October 19, 1998. NMFS received four comments on the NOA and the proposed rule, one expressing general support for the amendment and three from other Federal agencies expressing "no comment." No changes were made to this rule as a result of the comments. NMFS approved Amendment 45 on November 4, 1998. The reasons for implementing Amendment 45 are stated in the preamble of the proposed rule.

The AFA was signed into law by the President on October 20, 1998, as part of the Omnibus Appropriations Bill FY99, (Pub. L. 105-277). Additional requirements for the pollock CDQ fisheries in the AFA supplement the requirements of Amendment 45 and must be implemented by NMFS before the start of the pollock CDQ fisheries on January 20, 1999. Specifically, section 206(a) of the AFA requires that 10 percent of the TAC of pollock in the BSAI shall be allocated as a directed fishing allowance to the CDQ program. Section 206(b) of the AFA requires that pollock bycatch in non-pollock CDQ fisheries will not accrue against the pollock CDQ allocation created in section 206(a). Finally, section 213(a) of the AFA, with one limited exception at section 213(c)(2), requires that the 10-percent pollock CDQ allocation remain in effect until December 31, 2004.

The AFA's requirement to allocate 10 percent of the pollock TAC to the pollock CDQ reserve through December 31, 2004, has the effect of supplementing the Council's recommendation in Amendment 45 to permanently allocate 7.5 percent of the

pollock TAC to a pollock CDQ reserve. In this final rule implementing Amendment 45, NMFS will retain the 7.5-percent allocation of the pollock TAC to the pollock CDQ reserve. NMFS will implement the AFA's 10-percent allocation of the pollock TAC to the pollock CDQ reserve through the BSAI groundfish specifications for 1999. Later in 1999, NMFS intends to initiate proposed and final rulemaking that would implement through regulation the AFA's 10-percent allocation for the years 2000 through 2004. If, at the end of 2004, the Council has not taken action to extend the 10-percent pollock CDQ allocation, the paragraph specifying a 10-percent allocation will expire and the pollock CDQ allocation will revert to 7.5 percent of the pollock TAC starting in 2005.

NMFS has determined that two types of changes to the Multispecies (MS) CDQ Program regulations must be implemented through an emergency interim rule in order for the CDQ Program-related provisions of the AFA to be effective by January 1999. These two regulatory changes are (1) to allow pollock bycatch in the non-pollock groundfish CDQ fisheries to accrue against the allowance for incidental catch of pollock established by section 206(b) of the AFA, and (2) to remove the allocation of squid from the CDQ Program in order to allow the CDQ groups to maximize the possibility that the pollock CDQ directed fishing allowance will be fully harvested.

The AFA requires that NMFS implement these CDQ Program-related provisions of the AFA by January 1999. This deadline could not be met if the provisions were implemented through notice-and-comment rulemaking. At its November 1998 meeting, the Council concurred with NMFS's recommendation on this emergency interim rule.

Accounting for the Catch of Pollock in the CDQ Fisheries

The AFA requires that NMFS distinguish between pollock harvested in a directed fishery for pollock CDQ and pollock harvested in the non-pollock groundfish CDQ fisheries. Pollock harvested in the directed fisheries for pollock CDQ will accrue against the CDQ group's pollock CDQ allocation. Pollock harvested in other groundfish CDQ fisheries will not accrue against the CDQ group's pollock CDQ. This pollock catch will accrue against the pollock incidental catch allowance, established under section 206(b) of the AFA, for the incidental catch of pollock in groundfish fisheries other than pollock, including the non-

pollock open access fisheries and the non-pollock CDQ fisheries.

NMFS considered two options for defining directed fishing for pollock CDQ. The first option was to define directed fishing for pollock CDQ on the basis of the amount of pollock that is retained by a vessel while CDQ fishing. If pollock retention exceeded the maximum retainable bycatch (MRB) amount, then the vessel would be considered directed fishing for pollock CDQ. If pollock retention were below the MRB amount, any catch of pollock by the vessel would not accrue against the pollock CDQ. However, NMFS decided not to pursue this option for two reasons. First, using MRB amounts would lead to regulatory discards by vessels that catch pollock but do not want to have their pollock catch accrue to the pollock CDQ. Second, several sections of the regulations governing directed fishing and the calculation of MRB amounts for the open access fisheries would have to be revised to accommodate the application of MRBs in the CDQ fisheries. These revisions would add further complexity to already complex regulations and would increase the difficulty of managing the open access and CDQ fisheries.

The second option for defining directed fishing for pollock CDQ is to base the definition on the species composition of the haul by catcher/processors or of the delivery by catcher vessels. If the haul or delivery of pollock exceeds a certain percentage, the vessel will be considered directed fishing for pollock CDQ. NMFS selected this option because it does not require revisions to regulations governing the open access fisheries; it is simple to understand and apply; and it will not require regulatory discards of pollock.

In the EA/RIR prepared by NMFS for the emergency interim rule (see **ADDRESSES**), NMFS examined data from the 1998 pollock CDQ fisheries and the non-pollock open access groundfish fisheries in the BSAI to determine the appropriate percentage of pollock in the catch that will distinguish directed fishing for pollock CDQ from other groundfish CDQ fishing. This percentage will minimize situations in which (1) a haul or delivery by a vessel intending to target pollock does not meet the definition of directed fishing for pollock CDQ, and (2) a haul or delivery by a vessel not intending to target pollock CDQ does meet the definition of directed fishing for pollock CDQ. However, regardless of the percentage threshold selected, some pollock vessels intending to target pollock will catch pollock in hauls or deliveries that do not meet the

definition of directed fishing for pollock CDQ and will, therefore, accrue against the pollock incidental catch allowance. The opposite situation will also occur. Some vessels not intending to target pollock CDQ will catch pollock in hauls or make deliveries that exceed the selected percentage, in which case, this pollock will accrue against the CDQ group's pollock CDQ allocation.

Based on the data examined in the EA/RIR for the emergency interim rule, NMFS selected 40 percent as an appropriate threshold percentage to distinguish directed fishing for pollock from directed fishing for other species in the CDQ fisheries. Data from the 1998 pollock CDQ fisheries show that, if the 40-percent threshold had been applied in 1998, approximately 10 percent of the hauls and 0.20 percent of the pollock catch would not have been defined as occurring in the directed fishery for pollock CDQ. The 115 mt of pollock caught in these hauls, which did accrue to the 1998 pollock CDQ, would not have accrued to the pollock CDQ under the 40-percent threshold definition of directed fishing for pollock CDQ.

Observer data from ten trawl catcher/processors eligible for the MS CDQ fisheries during their 1998 BSAI groundfish open access fisheries also were examined to provide information about the percent pollock represents in hauls from non-pollock groundfish fisheries. These data showed that 3 percent of the hauls and 26 percent of the total pollock catch by these catcher/processors in the 1998 BSAI non-pollock groundfish fisheries would have met the 40-percent pollock threshold. Although the future groundfish CDQ fisheries may not have the same amounts of total catch, catch composition, or fishing conditions, the distribution of pollock in the 1998 non-pollock fisheries is the best data available to predict the results of using a 40-percent threshold.

Based on this information, NMFS believes that the 40-percent threshold provides a balance. It will result in most of the pollock catch by vessels intending to target pollock accruing to the pollock CDQ, and it will minimize the amount of pollock caught by vessels not intending to engage in directed fishing for pollock accruing to the pollock CDQ. Therefore, a new definition for directed fishing for pollock CDQ will be added under this emergency interim rule. Directed fishing for pollock CDQ will be defined as fishing that results in the following catch composition:

(1) For each haul by a catcher/processor, the round weight of pollock represents 40 percent or more of the

total round weight of all groundfish in the haul.

(2) For each delivery by a catcher vessel, the round weight of pollock represents 40 percent or more of the total round weight of all groundfish delivered to a processor from a fishing trip.

The CDQ groups will be required to examine the catch composition of each haul or delivery by vessels using trawl gear and to determine whether the haul or delivery meets the definition of directed fishing for pollock CDQ. If the haul or delivery meets this definition, the CDQ group must report this pollock catch to NMFS on its CDQ catch report. NMFS will subtract this pollock catch from the amount available under the pollock CDQ allocation. If the haul or delivery does not meet the definition of directed fishing for pollock CDQ, the CDQ group is not required to report any pollock catch on the CDQ catch report for that particular haul or delivery. NMFS will examine observer data from all CDQ vessels to (1) verify the accuracy of the CDQ catch report and (2) add up the pollock caught by CDQ vessels that were not directed fishing for pollock CDQ and subtract that amount from the pollock incidental catch allowance.

Uncertainty exists concerning the appropriate percentage threshold because NMFS does not know how CDQ harvesting operations will be conducted under the new MS CDQ Program or how they may be affected by new conservation measures that NMFS will implement in 1999 to mitigate impacts of the pollock fisheries on Steller sea lions. NMFS intends to evaluate the impact of the 40-percent pollock threshold in the 1999 MS CDQ fisheries under this emergency interim rule. An adjustment to this threshold could be implemented under separate rulemaking if this percentage creates unanticipated constraints for the MS CDQ Program or creates an unintended opportunity for vessels participating in the MS CDQ fisheries to increase catch of pollock that will not accrue against the CDQ group's pollock CDQ allocation.

This action does not implement any changes to the current Improved Retention/Improved Utilization (IR/IU) regulations under which all vessels fishing CDQ are required to retain all pollock.

Accounting for the Catch of Other Groundfish CDQ or PSQ Species in the Pollock CDQ Fisheries

Under the regulations implementing Amendment 45, the pollock CDQ program will be integrated with the MS CDQ Program starting in 1999. One

change resulting from this integration is that incidental catch of non-pollock groundfish CDQ species in the directed pollock CDQ fishery will accrue against a CDQ group's allocation for those species. The AFA is silent concerning the accounting for incidental catch of non-pollock groundfish CDQ species in the pollock CDQ fishery and addresses only the accounting for incidental catch of pollock in the non-pollock groundfish CDQ fishery. As a result, the incidental catch of non-pollock groundfish CDQ species or prohibited species with a prohibited species quota (PSQ) in the pollock CDQ fishery must be subtracted from the CDQ group's CDQ and PSQ allocations.

Removing Squid as a CDQ Species

The current 7.5-percent squid CDQ allocation has been identified in public comment to NMFS and the Council as a likely constraint to the full harvest of the current 7.5-percent pollock CDQ allocation. Most of the squid caught in the CDQ fisheries will be caught in the pollock CDQ fishery. Changes in fishing practices to reduce the incidental catch of squid in other groundfish CDQ fisheries are not expected to prevent attainment of the 7.5-percent squid CDQ allocation before attainment of the 7.5-percent pollock CDQ allocation. Therefore, an increase in the pollock CDQ allocation to 10 percent of the pollock TAC without an increase in the squid CDQ allocation is very likely to constrain harvest of the AFA's allocation of pollock CDQ.

Squid bycatch in the 1998 pollock CDQ fisheries through November 6, 1998, was examined in the EA/RIR prepared for the emergency interim rule (see ADDRESSES). Approximately 339 mt of squid were caught in the 1998 pollock CDQ fisheries. The allocation of squid to the MS CDQ program in 1998 was 148 mt. In 1998, squid bycatch in the pollock CDQ fisheries did not accrue against the squid CDQ allocation. However, starting in 1999, under regulations implemented prior to the AFA, all squid bycatch in the pollock CDQ fisheries will accrue against the squid CDQ. Current regulations prohibit the CDQ groups from exceeding their squid CDQ. Starting in 1999, if the squid CDQ is reached before the pollock CDQ, existing CDQ regulations require the CDQ groups to stop fishing in any groundfish CDQ fisheries in which additional squid bycatch would be expected. Given existing regulations and the AFA increase in the pollock CDQ, the bycatch of squid likely will prevent the CDQ groups from catching their full pollock CDQ allocation. Based on the information in the EA/RIR, no other

CDQ or PSQ allocation is likely to result in the same type of limitation on the catch of pollock CDQ.

An increase in the squid CDQ allocation corresponding to the AFA's increased pollock CDQ allocation is not an available management measure. Section 305(i)(1)(C)(ii)(II) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that, until October 1, 2001, the percentage of a groundfish TAC allocated to the CDQ Program cannot exceed the amount approved by the Council prior to October 1, 1995. Therefore, in order to implement the increased pollock CDQ allocation of the AFA and the Magnuson-Stevens Act CDQ provisions not superceded by the AFA, NMFS must remove squid from the CDQ Program. Removal of squid from the CDQ Program will eliminate this likely constraint to harvest of the AFA's pollock CDQ allocation and will further the ability of the CDQ Program to accomplish its economic, social, and developmental goals. By removing squid from the CDQ Program, the catch of squid by vessels CDQ fishing will accrue against the overall squid TAC, which will continue to be managed to ensure that catch in CDQ and non-CDQ fisheries remains within the TAC and does not exceed the overfishing limit and that no CDQ fishery will be constrained by a squid CDQ quota.

Changes From the Proposed Rule

The following regulatory amendments were contained in the proposed rule but are not implemented in the final rule because they conflict with elements of the emergency interim rule implemented to comply with the AFA:

1. In § 679.31, the separate paragraph (a) specifying the pollock CDQ reserve is not removed but is revised by removing the expiration date. Paragraphs (b) through (g) are not redesignated because the AFA requires specification of the pollock CDQ reserve separately from the other groundfish CDQ reserves.

2. The proposed revision to the definition of the halibut CDQ reserve in § 679.2 is not implemented because reference to a new paragraph number for the halibut CDQ reserve in § 679.31 is not necessary.

3. The separately specified pollock CDQ reserve in § 679.20(b)(1)(iii)(A) is not removed. The pollock CDQ reserve must continue to be specified separately from the other groundfish CDQ reserves because the percentage allocation for pollock CDQ under the AFA (10 percent) differs from the percentage

allocation for most other groundfish CDQ species (7.5 percent).

The following changes are made in the final rule:

1. A new definition is added for the American Fisheries Act.

2. A December 31, 1998, expiration date is removed from the definition for "Community Development Quota Program." This sunset date was implemented under the inshore/offshore allocations and should have been proposed to be permanently extended under the proposed rule for Amendment 45.

3. The preamble to the proposed rule stated that NMFS was proposing to revise the definition of "CDQ reserve" so that it applied to any CDQ species (groundfish, halibut, or crab) rather than to groundfish CDQ only. However, NMFS inadvertently left out the revised definition in the proposed regulatory text. NMFS is including this definition in the final rule because it clarifies and corrects a definition without implementing a restriction. The public was provided with an opportunity to comment on the change as described in the preamble of the proposed rule.

4. The following definition for groundfish CDQ fishing expired on December 31, 1998: "groundfish CDQ fishing means fishing by an eligible vessel listed on an approved CDP that results in the catch of any CDQ or PSQ species other than pollock CDQ, halibut CDQ, and fixed gear sablefish CDQ." This definition was necessary because the pollock CDQ fisheries, fixed gear halibut and sablefish CDQ fisheries and the MS groundfish CDQ fisheries were managed under different regulations through December 31, 1998. Under current regulations, pollock and fixed gear sablefish are integrated with the MS groundfish CDQ fisheries starting in 1999, although the AFA has since superceded some aspects of this integration. A slightly revised definition is necessary to support the current MS groundfish CDQ regulations and should have been included in the proposed rule for Amendment 45. The revised definition states that "groundfish CDQ fishing means fishing by an eligible vessel listed on an approved CDP that results in the catch of any groundfish CDQ species." The revised definition does not conflict with separate definitions for directed fishing for pollock CDQ under the emergency interim rule. A new definition for halibut CDQ fishing will be addressed in a future proposed rulemaking.

5. The prohibition currently at § 679.7(d)(24), which applies only in 1998 and prohibits the use of other than pelagic trawl gear in the pollock CDQ

fisheries, is removed. This prohibition was recommended by the Council at its meeting in April 1996 to minimize the amount of bycatch in the 1998 pollock CDQ fisheries that would accrue against TAC and prohibited species catch limits for the moratorium groundfish fisheries. This recommendation was made because bycatch in the 1998 pollock CDQ fisheries did not accrue against the multispecies groundfish CDQs or against the prohibited species quotas. The Council had recommended that the current prohibition be implemented only for 1998. However, at its June 1998 meeting, the Council recommended that NMFS prepare proposed rulemaking that would prohibit using other than pelagic gear in all BSAI pollock fisheries. If implemented, this prohibition would apply to the pollock CDQ fisheries in the future. Furthermore, the 1999 annual groundfish specifications allocate zero amounts of pollock to the directed fishery for pollock using non-pelagic trawl gear under § 679.20(a)(5)(i)(B). This prohibition will also apply to the 1999 pollock CDQ fishery.

6. In § 679.32(a)(1), the applicability paragraph is revised to remove reference to paragraphs (a)(2) and (a)(3) of this section which expired on December 31, 1998. See below for an explanation of a new paragraph (a)(4) that is added under this emergency interim rule.

7. In § 679.50(c)(4), reference to § 679.32(e) at the beginning of the paragraph is removed because it referred to the section that sunset on December 31, 1998.

The following emergency interim rule is implemented to comply with the AFA. These requirements are effective for 180 days after January 21, 1999.

1. A new definition is added for "Directed fishing for pollock CDQ." This definition and the reason for it was discussed in a previous section.

2. The definition for "Groundfish CDQ fishing (applicable through December 31, 1998)" is amended to remove a separate reference to pollock CDQ fishing and fixed gear that applied through December 31, 1998.

3. Section 679.20(b)(1)(iii)(A) is suspended and a new paragraph (b)(1)(iii)(D) is added to remove squid as a CDQ species.

4. In § 679.32, paragraphs (a)(2) and (a)(3) expired on December 31, 1998, and are suspended. In § 679.32, a new paragraph (a)(4) is added to reference requirements for pollock CDQ under the emergency interim rule in paragraph (g) of this section.

5. Section 679.32(e) expired on December 31, 1998 and is suspended. Under this emergency interim rule, a

new § 679.32(g) is added to address the accounting of pollock in the groundfish CDQ fisheries. Section 679.32(g)(1) requires that pollock caught by vessels directed fishing for pollock accrue against the pollock CDQ and that this pollock CDQ must be reported on the CDQ catch report. Section 679.32(g)(2) requires that pollock caught by vessels that are not directed fishing for pollock does not accrue against the pollock CDQ. This pollock catch must not be reported on the CDQ catch report. Section 679.32(g)(3) reiterates that all pollock caught in any groundfish CDQ fishing must be retained under the IR/IU regulations.

Compliance Guide for Small Entities

The Small Business Regulatory Enforcement Fairness Act requires NMFS to prepare a compliance guide that explains how small entities must comply with the regulations implemented in this final rule and this emergency interim rule.

The small entities affected by this rule are the 6 CDQ groups, the 56 western Alaska communities eligible for the CDQ program, 4 of the Alaskan communities whose residents participate in the BSAI pollock fisheries but are not eligible for the CDQ program, 140 catcher vessels using trawl gear, 31 catcher/processors using trawl gear, 3 motherships, and 8 shoreside processing plants (see additional discussion of impacts in the Classification section).

All of these small entities are affected by the permanent 7.5-percent extension of the pollock CDQ allocation. Direct participants in the fisheries, including the CDQ groups, their harvesting and processing partners, and the vessels and processors that participate in the open access pollock fisheries are required to conduct their pollock fisheries so that the catch of pollock does not exceed the quotas established by this rule and by other regulations governing the BSAI pollock quotas.

The CDQ groups are required to monitor and accurately report the catch of pollock CDQ. They must evaluate each haul by a catcher/processor or delivery by a catcher vessel to determine whether pollock represents 40 percent or more of the total groundfish catch weight. If this criteria is met, the pollock catch must be reported on the CDQ catch report subtracted from the CDQ group's available pollock CDQ. If the haul or delivery does not meet the 40 percent threshold, the CDQ group must not report this pollock catch on the CDQ catch report. This pollock catch will be monitored by NMFS through data

collected by the CDQ observer and will be subtracted from the amount of pollock available to the CDQ and non-CDQ fisheries in the incidental catch allowance.

The removal of squid as a CDQ species does not result in any additional requirements on any participant in the CDQ or non-CDQ fisheries.

No additional recordkeeping or reporting requirements are placed on the vessels or processors participating in the pollock or other MS groundfish CDQ fisheries or on the communities affected by the pollock CDQ allocation.

Classification

The Administrator, Alaska Region, NMFS, (Regional Administrator) determined that the final rule implementing Amendment 45 and the emergency interim rule implementing parts of the AFA are necessary for the conservation and management of the groundfish fisheries of BSAI. The Regional Administrator also determined that this final rule and emergency interim rule are consistent with the Magnuson-Stevens Act and other applicable laws.

The final rule and the emergency interim rule have been determined to be not significant for purposes of E.O. 12866.

NMFS prepared a final regulatory flexibility analysis for Amendment 45. Amendment 45 is necessary to continue the allocation of pollock to the CDQ Program after December 31, 1998. NMFS received no comments on the Initial Regulatory Flexibility Analysis.

The analysis estimates that the total universe of entities affected by regulations governing the BSAI pollock fishery is 249. Of these, 130 are small entities. The total universe comprises 6 CDQ groups, 56 western Alaska communities eligible for the CDQ program, 5 communities whose residents participate in the BSAI pollock fisheries but are not eligible for the CDQ program, 140 catcher vessels using trawl gear, 31 catcher/processors using trawl gear, 3 motherships, and 8 shoreside processing plants. The small entities are the 6 CDQ groups, the 56 western Alaska communities eligible for the CDQ program, 4 of the Alaskan communities whose residents participate in the BSAI pollock fisheries but are not eligible for the CDQ program, and 64 of the catcher vessels.

The 64 catcher vessels participating in the BSAI pollock fisheries could be significantly impacted by the pollock CDQ allocation because a 7.5-percent reduction in the pollock TAC may reduce the annual gross revenues of these vessel owners by more than 5

percent relative to the alternative of not allocating pollock to the CDQ program. The impact of the pollock CDQ allocation on the four Alaskan non-CDQ communities (Unalaska, Sand Point, King Cove, and Kodiak) is not known but could be significant depending on the amount of annual revenue lost because pollock CDQ may be processed at different plants than pollock from the open access fisheries. The 64 catcher vessels and four non-CDQ communities represent 52 percent of the small entities in the BSAI pollock fisheries.

The 6 CDQ groups representing 56 western Alaska communities derive a significant portion of their CDQ revenues from the pollock CDQ allocation. Allocating 7.5 percent of the pollock TAC to the CDQ program will allow these small entities to continue to benefit from the pollock CDQ fisheries. Not reauthorizing the pollock CDQ allocation would have a significant impact on these small entities.

NMFS considered two alternatives that could have mitigated the negative economic impacts on the small entities affected by this action. The first alternative would be to allocate 3.5 percent of pollock TAC to the CDQ reserve. Although this alternative would benefit the small entities not receiving CDQ allocation, the benefits accruing to the 56 CDQ communities would be considerably less. The alternatives that those communities have for generating income and investment are so small that the reduction from 7.5 percent to 3.5 percent reserve would be likely to produce significant negative economic impacts on these small entities. The trade off is clear; by reserving 3.5 percent instead of 7.5 percent, the catcher vessels gain at the expense of the CDQ communities. However, because of the relative absence of alternative economic bases in the CDQ communities, those communities will experience a relatively greater economic impact than would other regions of the State and the country in general.

The second alternative would be to let the present reserve of 7.5 percent of pollock TAC expire at the end of 1998. This action would result in a further shift of impacts from one set of small entities to another. It would benefit the non-CDQ participants in the fishery while cutting revenues of the CDQ groups.

Because the CDQ program is allocative by nature, any approved alternative will affect small entities. If the 7.5 percent allocation alternative were found to be inconsistent with the Magnuson-Stevens Act, NMFS could only disapprove it. Reconsideration of the 3.5 percent or other allocation

alternatives by the Council and the public would be time consuming and disruptive to the ongoing CDQ program. Because this rule is an allocation from one group of small entities to another, the Council weighed the economic and social effects and selected its preferred alternative as a legal alternative for achieving its statutory objective of allocating the TAC of pollock in the Bering Sea and Aleutian Islands fishery to the CDQ program.

A copy of this analysis is available from NMFS (see ADDRESSES).

The portions of this rule implemented as an emergency interim rule are exempt from the procedures of the Regulatory Flexibility Act because these portions of the rule are issued without opportunity for prior public comment.

NMFS finds that good cause, under the authority contained in 5 U.S.C. 553(d)(3), exists to waive the 30-day delay in effective date for the provisions implemented by the final rule. The primary provision of the final rule is to permanently extend the 7.5% pollock CDQ allocation. This provision, which must be effective to coincide with the effective date of the emergency interim rule provisions prior to the start of the pollock CDQ fisheries on January 20, 1999, would not require any regulated entities to take any steps to come into compliance. As such, a delay in effective date is both unnecessary and contrary to the public interest.

NMFS also finds that the emergency portion of this rule implementing mandatory provisions of the AFA must be effective by January 20, 1999. The AFA was enacted October 20, 1998, and contains provisions which must be in place prior to the start of the pollock fishery on January 20, 1999. Given this very short time between enactment and the opening of the fishery, there was not sufficient time to accept prepromulgation comment on these provisions. Further, if the procedure for promulgating these rules went beyond January 20, the fishing season could not begin as scheduled. As such, there is good cause to waive the requirement to provide prior notice and the opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. Similarly, the need to implement these emergency measures by January 20, 1999, the opening of the pollock fishery, so that the CDQ groups may fully harvest their pollock CDQ and properly account for their pollock bycatch as established in the AFA, constitutes good cause under the authority contained in 5 U.S.C.

553(d)(3) to waive the 30-day delay in effective date.

The emergency interim rule contains a reduction in a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB control number 0648-0269. Shoreside processors and CDQ groups currently are required to report all pollock harvested in the CDQ fisheries on CDQ delivery reports and CDQ catch reports. This emergency interim rule requires that the incidental catch of pollock in non-pollock CDQ fisheries not be reported on the CDQ delivery report and the CDQ catch report.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 20, 1999.

Andrew A. Rosenberg,
Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out 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 definitions for "Community Development Quota Program (CDQ Program)(applicable through December 31, 1998)", "Community Development Quota Reserve (CDQ Reserve) (applicable through December 31, 1998)", "Pollock CDQ fishing" and "Sablefish CDQ reserve" are removed; the definitions for "CDQ allocation", "Community Development Quota", "PSQ allocation", and "PSQ species" are revised; the definition for "Groundfish CDQ fishing (applicable through December 31, 1998)" is suspended; and new definitions for "American Fisheries Act (AFA)", "Community Development Quota Program (CDQ Program)", "Community Development Quota Reserve", "Groundfish CDQ fishing", "Directed fishing for pollock CDQ", and

"Fixed gear sablefish CDQ reserve" are added in alphabetical order to read as follows:

§ 679.2 Definitions.

American Fisheries Act (AFA) means Title II—Fisheries Subtitles I and II, as cited within the Omnibus Appropriations Bill FY99 (Pub. L. 105-277).

CDQ allocation means a percentage of a CDQ reserve specified under § 679.31 that is assigned to a CDQ group when NMFS approves a proposed CDP.

Community Development Quota (CDQ) means the amount of a CDQ species established under § 679.31 that is allocated to the CDQ program.

Community Development Quota Program (CDQ Program) means the Western Alaska Community Development Quota Program implemented under subpart C of this part.

Community Development Quota reserve (CDQ reserve) means a percentage of a total allowable catch for groundfish, a percentage of a catch limit for halibut, or percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ program.

Directed fishing for pollock CDQ means fishing that results in the following:

(1) For each haul by a catcher/processor, the round weight of pollock represents 40 percent or more by weight of the total round weight of all groundfish in the haul.

(2) For each delivery by a catcher vessel, the round weight of pollock represents 40 percent or more by weight of the total round weight of all groundfish delivered to the processor.

Fixed gear sablefish CDQ reserve means 20 percent of the sablefish fixed gear TAC for each subarea in the BSAI for which a sablefish TAC is specified under § 679.20(b)(1)(iii)(B). See also § 679.31(b).

Groundfish CDQ fishing means fishing by an eligible vessel listed on an approved CDP that results in the catch of any groundfish CDQ species.

PSQ allocation means a percentage of a PSQ reserve specified under § 679.21(e)(1)(i) and (e)(2)(ii) that is assigned to a CDQ group when NMFS approves a proposed CDP. See also § 679.31(d).

PSQ species means any species that has been assigned to a PSQ reserve under § 679.21(e)(1)(i) and (e)(2)(ii) for purposes of the CDQ program. See also § 679.31(d).

§ 679.7 [Amended]

3. In § 679.7, paragraph (d)(24) is removed and paragraphs (d)(25) through (d)(28) are redesignated as paragraphs (d)(24) through (d)(27), respectively.

4. In § 679.20, paragraphs (b)(1)(iii)(A) is suspended and paragraph (b)(1)(iii)(D) is added to read as follows:

§ 679.20 General limitations.

- (b) * * *
(1) * * *
(iii) * * *

(D) Groundfish CDQ. Except as limited by § 679.31(a) and section 206(a) of the AFA, one half of the nonspecified reserve established by paragraph (b)(1)(i) of this section for all species except squid is apportioned to the groundfish CDQ reserve.

5. In § 679.30, paragraph (a)(4) is revised to read as follows:

§ 679.30 General CDQ regulations.

- (a) * * *

(4) Request for CDQ and PSQ allocations. A list of the percentage of each CDQ reserve and PSQ reserve, as described at § 679.31 that is being requested. The request for allocations of CDQ and PSQ must identify percentage allocations requested for CDQ fisheries identified by the primary target species of the fishery as defined by the qualified applicant and the gear types of the vessels that will be used to harvest the catch.

§ 679.31 [Amended]

6. In § 679.31, paragraph (a) is amended by removing parenthetical "(applicable through December 31, 1998)".

7. In § 679.32, paragraph (a)(1) is revised, paragraphs (a)(2), (a)(3), and (e) are suspended and new paragraphs (a)(4) and (g) are added to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

(a) Applicability. (1) The CDQ group, the operator of a vessel, and the manager of a shoreside processor must comply with the requirements of paragraphs (b) through (d) of this section while groundfish CDQ fishing as defined at § 679.2. In addition, the CDQ group is responsible for ensuring that

vessels and processors listed as eligible on the CDQ group's approved CDP comply with all requirements of this section while harvesting or processing CDQ species.

(4) Requirements for the accounting of pollock while CDQ fishing are at paragraph (g) of this section.

(g) Pollock CDQ—(1) Directed fishing for pollock CDQ. Owners and operators of vessels directed fishing for pollock CDQ as defined at § 679.2 and processors taking deliveries from vessels directed fishing for pollock CDQ must comply with all applicable requirements of paragraphs (a) through (d) of this section. Pollock catch by vessels directed fishing for pollock CDQ will accrue against the pollock CDQ for the CDQ group. The CDQ group must report all pollock caught by vessels directed fishing for pollock CDQ on the CDQ catch report.

(2) Catch of pollock by vessels not directed fishing for pollock CDQ. Pollock catch by vessels groundfish CDQ fishing, but not directed fishing for pollock CDQ as defined at §

679.2, will not accrue against the pollock CDQ for the CDQ group. The CDQ group must not report this pollock catch on the CDQ catch report.

(3) Vessel operators must retain all pollock caught in any groundfish CDQ fishery as required at § 679.27 (IR/IU).

8. In § 679.50, paragraph (c)(4) is revised to read as follows.

§ 679.50 Groundfish Observer Program applicable through December 31, 2000.

- (c) * * *

(4) Groundfish CDQ fisheries. The owner or operator of a vessel groundfish CDQ fishing as defined at § 679.2 must comply with the following minimum observer coverage requirements each day that the vessel is used to harvest, transport, process, deliver, or take deliveries of CDQ or PSQ species. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

(F) Specifications of the fishing gear(s) used from January 1, 1988, through February 9, 1992, and, if necessary, the fishing gear(s) used from February 10, 1992, through December 11, 1994;

(G) Specification of the vessel as either a catcher vessel or a catcher/processor vessel;

(H) If applicable, transfer authorization if a permit request is based on the transfer of moratorium qualification pursuant to paragraph (c)(9) of this section; and

(I) Signature of the person who is the owner of the vessel or the person who is responsible for representing the vessel owner.

(iii) An application for a moratorium permit received after December 31, 1998, will be denied unless it is based on a moratorium qualification for which a moratorium permit was issued on or before December 31, 1998.

(7) *Moratorium qualification—(i) Qualification by landings.* A vessel has moratorium qualification if:

(A) The vessel is an original qualifying vessel based on a legal landing of moratorium species between January 1, 1988, and February 9, 1992;

(B) The vessel is not a moratorium exempt vessel under paragraph (c)(2) of this section;

(C) The vessel's moratorium qualification has not been transferred; and

(D) A moratorium permit for the vessel's moratorium qualification has been issued based on an application submitted on or before December 31, 1998.

(ii) *Qualification by transfer.* A vessel has moratorium qualification if:

(A) The vessel receives a valid moratorium qualification by a transfer approved by the Regional Administrator under paragraph (c)(9) of this section;

(B) The vessel is not a moratorium exempt vessel under paragraph (c)(2) of this section;

(C) The moratorium qualification received by transfer has not been subsequently transferred; and

(D) A moratorium permit for the vessel's moratorium qualification has been issued based on an application submitted on or before December 31, 1998.

(iii) *Expiration of moratorium qualification.* A vessel's moratorium qualification will expire on December 31, 1998, unless a moratorium permit has been applied for on or before December 31, 1998, and subsequently issued based on that moratorium qualification.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981021263-9019-02; I.D. 090898D]

RIN: 0648-AK12

Fisheries of the Exclusive Economic Zone Off Alaska; Inshore-Offshore Allocations of Pollock and Pacific Cod Total Allowable Catch; Inshore-Offshore Allocation of 1999 Interim Groundfish Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 51 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 51 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). This action is necessary to implement the approved portions of Amendments 51/51. The rules re-establish the catcher vessel operational area (CVOA) in the Bering Sea and the allocations of total allowable catches (TACs) of pollock and Pacific cod in the GOA between inshore and offshore components of the fisheries through 2001. Accordingly, the 1999 interim groundfish specifications are revised to reflect these allocations. This action is intended to promote the goals and objectives of the FMPs.

DATES: Effective January 20, 1999.

ADDRESSES: Copies of the Environmental Assessment, Regulatory Impact Review and Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action are available from the Alaska Region, NMFS, P.O. Box 21688, Juneau, AK 99802, Attn: Lori J. Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries off Alaska under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Federal regulations appearing at 50 CFR parts 600 and 679, respectively contain general regulations governing U.S. fisheries and implement the FMPs.

Background

The TACs for pollock in the BSAI and for pollock and Pacific cod in the GOA have been allocated between inshore and offshore components of the groundfish fisheries since 1992. The Council repeatedly has recommended inshore-offshore allocations of limited duration to allow for periodic review of the performance of these management measures relative to the fishery conservation and management problems they are designed to resolve. The original inshore-offshore allocations were effective from 1992 through 1995. Amendments 38 and 40 to the BSAI and GOA FMPs, respectively, reestablished inshore-offshore allocations that expired at the end of 1998.

At its meeting in June 1998, the Council took final action to adopt Amendments 51/51 to the FMPs. By proposing these FMP amendments, the Council intended to change the inshore-offshore allocations in the BSAI but to continue the existing allocations in the GOA. Some other changes in the inshore-offshore regime also were proposed as part of these amendments. The Council transmitted Amendments 51/51 to NMFS on September 4, 1998, and NMFS published a notice of availability (NOA) of the amendments and supporting analyses on September 16, 1998 (63 FR 49540). The public comment period on the NOA ended on November 16, 1998. NMFS published proposed implementing rules for Amendments 51/51 on October 29, 1998, (63 FR 57996). The comment period on the proposed rules ended on December 14, 1998. Additional background information appears in the NOA and proposed rule notices.

On October 21, 1998, the President signed the American Fisheries Act (AFA) into law (Pub. L. 105-277). The AFA, among other things, allocated the BSAI pollock TACs differently than the Council had recommended. The Council held a special meeting November 10-13, 1998, in part to discuss the effects of AFA on its inshore-offshore proposal and other management programs. In light of the AFA, the Council recommended specific changes to its Amendment 51/51 proposal. Under the Magnuson-Stevens Act (section 304), NMFS has authority only to approve, disapprove, or partially approve an FMP or amendment; NMFS cannot change a proposed FMP or FMP amendment once it has been submitted for review, even if requested to do so by the Council that submitted it. NMFS must base a decision to approve, disapprove, or partially approve an FMP or FMP amendment on inconsistencies between

the disapproved parts and the Magnuson-Stevens Act or other applicable law. On December 15, 1998, the Alaska Regional Administrator, NMFS, (RA) partially approved BSAI Amendment 51, fully approved GOA Amendment 51, and notified the Council of this decision. The RA's decision not to approve parts of BSAI Amendment 51 is consistent with the Council's intent for achieving consistency with the AFA as expressed at its meeting in November 1998.

Elements of Amendments 51/51 Approved and Disapproved

BSAI Amendment 51

As adopted by the Council in June 1998, this amendment contemplated four changes to the current inshore-offshore allocation regime. These changes are discussed below with reasons for approval or disapproval of each change.

1. **Pollock allocation—disapproved.** This part of the amendment would have changed the proportional allocation of the BSAI pollock TACs, after subtraction of the reserves. The inshore allocation would have increased from its current 35 percent to 39 percent; the offshore allocation would have reciprocally decreased from its current 65 percent to 61 percent. Because Amendment 45 to the BSAI FMP removed the 7.5 percent Community Development Quota (CDQ) program allocation from the inshore-offshore allocations, Amendment 51 did not include a CDQ allocation.

NMFS disapproved the amendment's pollock allocation because it was inconsistent with AFA section 206. This section of the AFA specifically mandates an allocation of 10 percent of the pollock TAC to a directed fishing allowance for the CDQ program plus an additional allocation of pollock for incidental catches in all non-pollock fisheries. Of the remaining pollock TAC, the law stipulates the following allocations: 50 percent to the inshore component, 40 percent to the offshore component (catcher/processors), 10 percent to the offshore component (motherships).

The allocations specified by the AFA will be implemented in 1999 through the annual groundfish specification process. Proposed and interim specifications were published, respectively, on December 30, 1998 (63 FR 71867), and January 4, 1999 (64 FR 50).

2. **Small vessel set aside—Disapproved.** This part of the amendment would have set aside a portion of the inshore component

pollock allocation for use by catcher vessels less than 125 ft (38.1 m) length overall immediately before the pollock B season, starting about August 25. The amount reserved in the set aside would have been equal to 2.5 percent of the BSAI pollock TACs, after subtraction of reserves.

NMFS disapproved this part of Amendment 51 because it was inconsistent with several sections of the AFA and National Standard 7 of the Magnuson-Stevens Act which requires that conservation and management measures shall where practicable minimize cost and avoid unnecessary duplication. Section 206 of the AFA specifically mandates allocations among CDQ and inshore and offshore components of the BSAI pollock fishery. The proposed set aside conflicts with these AFA-specified allocations because it would have been based on the TAC; not simply a sub-allocation of the inshore component allocation. Further, sections 208(a) and 210(b) of the AFA appear to provide the market erosion protections for small vessels that the TAC set aside was designed to provide. Section 208(a) establishes increased restrictions on entry into the inshore catcher vessel fishery, and section 210(b) allows inshore catcher vessels to form an exclusive cooperative. Moreover, the AFA provides the entire inshore component with a substantially increased allocation of the pollock TAC (about 30 percent) relative to its allocation from 1992 through 1998. The small vessels that operate in the inshore component likely will benefit to some degree from this increased allocation. Therefore, in light of the AFA, the proposed small vessel set aside provisions would duplicate existing provisions and impose unnecessary regulatory costs on the pollock fisheries.

3. **Catcher vessel operational area (CVOA)—Partially Approved.** This part of Amendment 51 will continue the CVOA specified in the existing regulations with respect to the geographic area and its effectiveness during the B season (50 CFR 679.22(a)(5)). Amendment 51, however, would have changed the existing CVOA rules by excluding from the CVOA all catcher vessels that deliver pollock to the offshore component. This would have prevented catcher vessels from conducting directed fishing in the CVOA for pollock for delivery to motherships or catcher/processors (the offshore component) during the B season. Under the current CVOA regulation, all catcher vessels, regardless of whether they deliver to inshore or offshore components, may fish in the CVOA.

The NMFS has approved all of the proposed amendment text pertaining to the CVOA with the exception of the phrases that would have excluded from the CVOA catcher vessels catching pollock for processing by the offshore component. The reason for selectively disapproving such text is its inconsistency with national standard 7. The Council intended the disapproved text to establish parity between the motherships and the catcher/processor vessels within the offshore component. Motherships have been allowed to operate within the CVOA, receiving and processing pollock harvested by catcher vessels. Catcher/processor vessels are not allowed to harvest pollock in the CVOA during the B season. In recommending the CVOA portion of Amendment 51, the Council attempted to create parity between motherships and catcher/processor vessels. As stated in the preamble to the proposed rule (63 FR 58000–58001), the Council noted that the proportion of catch taken by mothership operations increased at the expense of catcher/processors during the period 1991–96, and that motherships may have had a competitive advantage over catcher/processors. The AFA, however, specifies separate allocations of the pollock TACs for the mothership and catcher/processor sectors, thereby achieving the parity intended by the Council. Hence, the exclusion of catcher vessels from the CVOA that deliver to the offshore component was an unnecessary duplication of an AFA provision. As such, it was inconsistent with national standard 7.

Disapproval of the offshore catcher vessel text does not prevent the implementation of the CVOA provision. In fact, it makes the approved CVOA more closely resemble the CVOA provision in effect during 1996–98. In addition, at its meeting in November 1998, the Council indicated its desire to remove this more restrictive provision from its Amendment 51 proposal and return to the previous CVOA rule.

Although the approved CVOA provisions are effectively the same as they were from 1996–98, further restrictions on fishing in the CVOA will be implemented in 1999 to mitigate the effects of pollock fishing on Steller sea lions and their critical habitat, within which much of the CVOA lies. These restrictions will have the effect of dispersing the pollock fishery in time and area and will be made by separate regulatory action.

4. **Duration—Disapproved.** As proposed, the pollock allocations in Amendment 51 would have been effective for the 3-year period, January

1, 1999, through December 31, 2001. This period is inconsistent with the effective period of the inshore-offshore allocations specified in the AFA of January 1, 1999, through December 31, 2004 (sec. 206 and 213). No duration limit was specified in the proposed amendment text for the CVOA provision. Hence, this provision will continue in effect until changed by action of the Council and NMFS.

GOA Amendment 51

As adopted by the Council in June 1998, this amendment reestablishes, without change, the current inshore-offshore allocation regime in the GOA through December 31, 2001. These provisions are discussed below with reasons for approval of each change.

1. **Pollock allocation—Approved.** This part of the amendment will maintain the current allocation of the pollock TACs of 100 percent to the inshore component. This allocation is consistent with the Magnuson-Stevens Act and other applicable law.

2. **Pacific cod allocation—Approved.** This part of the amendment will maintain the current allocation of the Pacific cod TACs of 90 percent to the inshore component and 10 percent to the offshore component. These provisions are consistent with the Magnuson-Stevens Act and other applicable law.

3. **Duration—Approved.** The effective period for the allocations in Amendment 51 is extended for another 3 years, from January 1, 1999, through December 31, 2001. Section 213 of the AFA does not apply to the GOA allocations proposed by the Council. Therefore, the proposed duration of the amendment is not inconsistent with AFA, the Magnuson-Stevens Act or other applicable law.

Changes From the Proposed Rule

As indicated above, the AFA substantially changed the statutory climate in which the Council was acting when it adopted Amendments 51/51 in June 1998. The proposed implementing rule for Amendments 51/51, published on October 29, 1998 (63 FR 57996), represented the amendments as the Council had submitted them and discussed anticipated AFA provisions in the preamble. Hence, differences between the proposed rule and this final rule are due to the partial approval of the amendments, as discussed earlier above, and result principally from the effect of the AFA. A detailed discussion of these differences follows.

1. **Definitions.** The terms "inshore component" and "offshore component" are changed to reflect the AFA meaning

of these terms in the BSAI as distinct from their meaning in the GOA and to prescribe different duration dates in the BSAI and the GOA. The AFA's definition of "inshore component" for pollock fishing in the BSAI does not include vessels that process pollock or GOA Pacific cod in a single geographic location in Alaska State waters. Rather the AFA considers such vessels to be "shoreside processors" (AFA sec. 208(f)(1)(A)). For the GOA pollock fishery, however, the "inshore component" definition remains as proposed. Also, the duration of the AFA provisions continues through December 31, 2004 (AFA sec. 213(a)), whereas the duration of the GOA inshore-offshore provisions, as recommended by the Council and approved, continue through December 31, 2001. This final rule clarifies these differences between the AFA and approved inshore-offshore provisions for the GOA by prescribing 4 separate definitions for the BSAI and GOA inshore and offshore components.

2. **Prohibitions.** The inshore-offshore prohibitions paragraph (§ 679.7(a)(7)) is expanded to accommodate the differences between the inshore and offshore component definitions in the BSAI and the GOA, respectively, as explained above. The final rule prohibitions are substantially the same as those in the proposed rule, however, in that they prohibit the operation of a vessel in more than one category of the inshore component or in the inshore and offshore component during the same fishing year.

3. **Allocations specified.** The specific allocations of the pollock TACs in the BSAI in § 679.20(a)(6)(i) are changed for consistency with the AFA. This final rule references section 206(b) of the AFA as governing these allocations instead of explicitly specifying the AFA inshore and offshore allocations. These allocations will be made effective for 1999 through the annual specifications notices required under § 679.20(c). Likewise, § 679.20(b)(1)(iv) is allowed to expire because non-specific reserve amounts of pollock are superceded by the AFA. The Council may submit another FMP amendment during 1999 to formally integrate the AFA provisions into the FMP for the Groundfish Fishery of the BSAI.

With respect to the GOA allocations, no substantive changes are made in this final rule. Minor changes were made, however, in light of the new defined terms for inshore and offshore components. Similar editorial changes are made in the final rule paragraphs (b)(2) and (c)(4) of § 679.20 to differentiate the duration dates and inshore and offshore component terms

defined for the BSAI and GOA, respectively.

The proposed BSAI pollock TAC "set-aside" for vessels less than 125 ft (38.1 m) LOA, is not included in the final rule because NMFS has disapproved this part of Amendment 51 (see above).

4. **Area closures.** The proposed duration date for the CVOA is omitted in this final rule because the approved BSAI Amendment 51 text does not explicitly state an expiration date for the CVOA. In addition, the proposed exclusion of "vessels catching pollock for processing by the offshore component" from the CVOA (in proposed § 679.22(a)(5)(ii)) is removed from this final rule because this part of the Amendment 51 CVOA proposal was disapproved. In effect, the approved CVOA provision as implemented by this rule is the same as the CVOA provision in effect during 1996 through 1998.

5. **Seasons.** The effective duration date is changed for the restrictions that apply to the offshore component in the BSAI (at § 679.23(e)(2)(ii)). This change is made to achieve consistency with the AFA. In addition, the proposed season beginning date for vessels less than 125 ft (38.1 m) LOA fishing for the pollock "set-aside" is not included in this final rule because this part of Amendment 51 was disapproved. This provision was proposed at § 679.23(e)(2)(iii) which is removed from this final rule. As a result, proposed § 679.23(e)(2)(iv), the B season fair start provision, is redesignated as § 679.23(e)(2)(iii) and edited to remove reference to the "set-aside" season provision.

NMFS anticipates that the restrictions on season start dates for the offshore component in the BSAI set forth at § 679.23(e)(2)(ii) and (iii) will be subject to change under subsequent rulemaking to implement Steller sea lion mitigation measures.

Response to Comments

The public comment period on Amendments 51/51 ended on November 16, 1998, as announced in the NOA published September 16, 1998 (63 FR 49540). The comment period on the proposed rules to implement the amendments ended on December 14, 1998, as announced in the proposed rule published on October 29, 1998 (63 FR 57996). All comments received on the amendments and the proposed rule are summarized and responded to below. A total of 71 letters of comment were received. Of the total, 65 letters essentially made the same comment and are summarized under Comment 1. One letter responded with no comment and one letter asked for an extension of the comment period which was denied.

Comment 1. The existing allocation of 35 percent inshore and 65 percent offshore has worked well since 1992. Both sectors of the pollock processing industry have been able to prosper under this allocation. Moving more pollock from the offshore to the inshore sector will hurt employment in the offshore sector. Comment writers were fearful of the negative economic effects on their families and their communities of allocating pollock TAC away from the offshore vessels and supported maintaining the 35/65 split of the pollock TACs for inshore-offshore allocation.

Response. NMFS appreciates the economic significance of the pollock fishing and processing industry. Passage of the AFA, however, removed the pollock allocation decision from the Council's and NMFS's authority, and NMFS is not making the BSAI reallocations in this final rule. NMFS expects to implement the APA-mandated allocations through the final specifications and other proposed and final rules. NMFS will analyze the economic impacts of such allocations at the time of those rulemakings.

Comment 2. The small vessel set-aside adversely restricts access to a certain portion of the Bering Sea pollock resource based on the size of catcher vessels. The analyses do not support a decision to approve the set-aside, especially in light of the AFA. The root cause of the market erosion experienced by smaller vessels is not adequately identified. The small vessel set-aside will increase the amount of pollock caught without observers aboard because vessels under 125 ft (38.1 m) LOA have less observer coverage than larger vessels. Increased catches by smaller vessels will increase operating inefficiencies and safety problems.

Response. The partial approval of BSAI Amendment 51 did not include the proposed small vessel set-aside provision. NMFS determined that this provision was unnecessary in light of the AFA. The Council also reached this conclusion at its meeting in November 1998 (see Comment 5).

Comment 3. Concern was expressed about the proposal to prohibit catcher vessels that deliver pollock to the offshore sector from operating in the CVOA. Moving the catcher vessels that deliver to motherships out of the CVOA during the B season may pose an increased safety risk. Accident records of the U.S. Coast Guard for the last 5 years indicate more vessels under 124 ft (37.8 m) were lost outside of the CVOA than were lost inside the CVOA.

Response. NMFS did not approve the offshore catcher vessel prohibition part of the CVOA proposal (see above).

Comment 4. Council discussion of the issue of prohibiting catcher vessels from the CVOA if they deliver to motherships centered on the contention that catcher/processors were disadvantaged by the motherships ability to operate in the CVOA. This contention is wrong because catcher/processors are allowed to operate in the CVOA if they operate in the same manner as motherships (i.e. do not catch pollock but only receive pollock from catcher vessels). Mothership operations have no competitive advantage over catcher/processor inside the CVOA. Catcher/processors normally choose to fish outside of the CVOA for economic, not regulatory, reasons. With the passage of the AFA, the Council's proposal regarding offshore catcher vessels in the CVOA becomes moot because it fixes the allocation of pollock between motherships and catcher/processors.

Response. NMFS agrees and did not approve the offshore catcher vessel prohibition part of the CVOA proposal (see above).

Comment 5. The Council commented on its BSAI Amendment 51 proposal in light of the AFA and based on Council discussions at its special meeting in November 1998. The Council recommended substituting the pollock allocation percentages and duration provisions of the AFA for those proposed in BSAI Amendment 51. The Council also recommended that the TAC set-aside for small vessels and the exclusion of offshore catcher vessels from the CVOA be found unnecessary given the explicit allocations under the AFA that increase the inshore component's share of the TAC and allow the inshore component to form cooperative agreements under the AFA. Although originally submitted as a non-severable FMP amendment proposal, the passage of the AFA represents a unique situation which requires partial disapproval of the Council's earlier recommendations.

Response. NMFS agrees and has disapproved the proposed provisions for a small vessel set-aside and the exclusion of offshore catcher vessels from the CVOA. The Magnuson-Stevens Act does not allow NMFS to substitute new provisions for those recommended by a Regional Council. The Act allows only the approval, disapproval, or partial approval of the Council's recommended provisions. The AFA-mandated allocations of the pollock TACs, however, will be implemented in 1999 through the annual specification process. A letter from NMFS indicating

the approved and disapproved portions of Amendments 51/51 was sent to the Council on December 15, 1998.

Interim Specifications

Regulations at § 679.20(c)(1) require annual publication of proposed specifications of catch limits in the BSAI and GOA groundfish fisheries for the next fishing year. The 1999 proposed specifications for the BSAI and the GOA were published on December 30, 1998 (63 FR 71867 and 71876, respectively). Interim specifications (§ 679.20(c)(2)) provide for groundfish fisheries that start in early January each year and remain in effect until superceded by publication of the final specifications. Interim specifications for the BSAI and GOA groundfish fisheries were published on January 4, 1999 (64 FR 50 and 46, respectively). The AFA authorizes the interim specification of inshore and offshore amounts for the BSAI pollock fisheries. This final rule makes effective the interim allocations of inshore and offshore amounts for the GOA pollock and Pacific cod fisheries.

Classification

This action has been determined to be not significant under E.O. 12866, based on the EA/RIR/FRFA prepared for this action (see ADDRESSES).

The Council prepared an IRFA on the proposed rule to implement amendments 51/51. However, as explained above, NMFS has disapproved substantial portions of the proposed amendments and is consequently implementing only a portion of the provisions described in the proposed rule. NMFS has prepared an FRFA that considers only those aspects of the proposed rule that are now being implemented.

This final rule would apply to about 1,508 vessels that participated in the GOA groundfish fisheries in 1996, an unknown number of which are small entities. The number is unknown because the data source for this number, i.e., permit records, does not have any data regarding whether the vessel is a small entity. The proportion of these vessels that participate in the inshore sector versus the offshore sector is unknown. However, NMFS believes that most of these vessels are likely inshore small entities because there is virtually no offshore fishery in the GOA; 100 percent of the pollock fishery is allocated to the inshore component, and ninety percent of the Pacific cod fishery is also allocated to the inshore component. The portion of the rule implementing the CVOA would apply only to the independent catcher vessels

that participate in the BSAI pollock fishery. The FRFA estimates those vessels to consist of about 50 independent catcher vessels all of which are small entities.

The final rule imposes no new reporting, record keeping, or other compliance requirements. A description of the need for this action, as well as summaries of and responses to public comments, appear in this preamble, above. The comment most relevant to the IRFA was Comment one. Although the allocations mandated by the AFA may have even more pronounced economic impacts than the proposed rule may have had, those impacts are no longer associated with this rule. NMFS expects to implement these AFA allocations through the final specifications or other proposed and final rules. NMFS will analyze the economic impacts of those allocations for these future rule makings.

The approved portions of the amendments (the CVOA and the GOA allocations) would benefit the inshore component to the detriment of the offshore component. Because most of the small entities affected by this final rule participate in the inshore component, while the offshore component consists mainly of large entities, the main impacts of this final rule are likely to be beneficial to small entities. The allocations in the GOA maintain the status quo, but the CVOA allocations in the BSAI exclude the catcher processors, which has the effect of conveying benefits to small entities. Because NMFS expects actions to be beneficial to small entities, NMFS has taken no steps to minimize the significant economic impacts on small entities.

Pursuant to section 7 of the Endangered Species Act, NMFS initiated consultation on the effects of proposed Amendments 51/51 and the BSAI and GOA pollock fisheries on listed and candidate species, including the Steller sea lion and designated critical habitat. The biological opinion prepared for this consultation, dated December 3, 1998, and revised December 16, 1998, concludes that the BSAI and GOA pollock fisheries jeopardize the continued existence of Steller sea lions and adversely modify their designated critical habitat. The biological opinion contains reasonable and prudent alternatives (RPAs) to mitigate the adverse impacts of the pollock fisheries on Steller sea lions. Specific measures to implement the RPAs were discussed by the Council at its meeting in December 1998 and will be implemented by NMFS through emergency rulemaking before the start

of the BSAI and GOA pollock fisheries in 1999. The effects of Steller sea lion mitigation measures on the pollock allocations created under the AFA and GOA Amendment 51 are uncertain.

This rule contains no new collection-of-information requirements subject to the Paperwork Reduction Act.

The Assistant Administrator for Fisheries, NOAA, finds there is good cause under the authority contained in 5 U.S.C. 553(d) to waive the 30-day delay in effective date because the immediate effectiveness of this rule is required to prevent the offshore component in the GOA from exceeding its statutory allocations of pollock and Pacific cod when directed fisheries for these species open in January 1999.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 19, 1999.

Rolland A. Schmitten,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out 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: 773 *et seq.*, 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definitions of "Inshore component" and "Offshore component" are removed and the definitions of "Inshore component in the BSAI", "Inshore component in the GOA", "Offshore component in the BSAI", and "Offshore component in the GOA" are added, in alphabetical order, to read as follows:

§ 679.2 Definitions.

* * * * *

Inshore component in the BSAI (applicable through December 31, 2004) means the following categories that process groundfish harvested in the BSAI:

- (1) Shoreside processors, including those eligible under section 208(f) of the American Fisheries Act; and
- (2) Vessels less than 125 ft (38.1 m) LOA that process less than 126 mt per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod.

Inshore component in the GOA (applicable through December 31, 2001) means the following three categories of the U.S. groundfish fishery that process

groundfish harvested in the BSAI or GOA:

- (1) Shoreside processing operations;
- (2) Vessels less than 125 ft (38.1 m) LOA that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod; and
- (3) Vessels that process pollock or Pacific cod, harvested in a directed fishery for those species, at a single geographic location in Alaska State waters during a fishing year.

* * * * *

Offshore component in the BSAI (applicable through December 31, 2004) means all vessels not included in the definition of "inshore component in the BSAI" that process groundfish in the BSAI.

Offshore component in the GOA (applicable through December 31, 2001) means all vessels not included in the definition of "inshore component in the GOA" that process groundfish in the BSAI or GOA.

* * * * *

3. In § 679.7, paragraph (a)(7) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *
(7) *Inshore-offshore*—(i) (Applicable through December 31, 2004). Operate any vessel in the BSAI in more than one of the two categories included in the definition of "inshore component in the BSAI," in § 679.2, during any fishing year.

(ii) (Applicable through December 31, 2004). Operate any vessel in the BSAI under both the "inshore component in the BSAI" and the "offshore component in the BSAI" definitions in § 679.2 during the same fishing year.

(iii) (Applicable through December 31, 2001). Operate any vessel in the BSAI under both the "inshore component in the GOA" and the "offshore component in the BSAI" or under both the "offshore component in the GOA" and the "inshore component in the BSAI" definitions in § 679.2 during the same fishing year.

(iv) (Applicable through December 31, 2001). Operate any vessel in the GOA in more than one of the three categories included in the definition of "inshore component in the GOA," in § 679.2, during any fishing year.

(v) (Applicable through December 31, 2001). Operate any vessel in the GOA under both the "inshore component in the GOA" and the "offshore component in the GOA" definitions in § 679.2 during the same fishing year.

(vi) (Applicable through December 31, 2001). Operate any vessel in the GOA

under both the "inshore component in the GOA" and the "offshore component in the BSAI" or under both the "offshore component in the GOA" and the "inshore component in the BSAI" definitions in § 679.2 during the same fishing year.

(vii) (Applicable through December 31, 2001). Operate any vessel that processes pollock or Pacific cod, harvested in a directed fishery for those species, at a single location in Alaska State waters under the "inshore component in the BSAI" and the "inshore component in the GOA" definitions in § 679.2 during the same fishing year.

* * * * *

4. In § 679.20, paragraphs (a)(6), (b)(2), and (c)(4) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(i) *BSAI pollock (applicable through December 31, 2004)*. The apportionment of pollock in each BSAI subarea or district and season between the inshore component in the BSAI and the offshore component in the BSAI will be the same as that specified in section 206(b) of the American Fisheries Act.

(ii) *GOA pollock (applicable through December 31, 2001)*. The apportionment of pollock in all GOA regulatory areas and for each season allowance described in paragraph (a)(5)(ii) of this section will be allocated entirely to vessels catching pollock for processing by the inshore component in the GOA after subtraction of an amount that is projected by the Regional Administrator to be caught by, or delivered to, the offshore component in the GOA incidental to directed fishing for other groundfish species.

(iii) *GOA Pacific cod (applicable through December 31, 2001)*. The apportionment of Pacific cod in all GOA regulatory areas will be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component in the GOA and 10 percent to vessels catching Pacific cod for processing by the offshore component in the GOA.

* * * * *

(b) * * *

(2) * * *

(i) *Pollock inshore-offshore reapportionment (applicable through December 31, 2001)*. Any amounts of the GOA reserve that are reapportioned to pollock as provided by this paragraph (b) must be apportioned between the inshore component in the GOA and the offshore component in the GOA in the same proportion specified in paragraph (a)(6)(ii) of this section.

(ii) *Pacific cod inshore-offshore reapportionment (applicable through December 31, 2001)*. Any amounts of the GOA reserve that are reapportioned to Pacific cod as provided by this paragraph (b) must be apportioned between the inshore component in the GOA and the offshore component in the GOA in the same proportion specified in paragraph (a)(6)(iii) of the section.

* * * * *

(c) * * *

(4) *Inshore-offshore allocations—(i) BSAI pollock (applicable through December 31, 2004)*. The proposed, interim, and final specifications will specify the allocation of pollock for processing by the inshore component in the BSAI and the offshore component in the BSAI, and any seasonal allowances thereof, as authorized under paragraphs (a)(5) and (a)(6) of this section.

(ii) *GOA pollock and Pacific cod (applicable through December 31, 2001)*. The proposed, interim, and final specifications will specify the allocation of GOA pollock and GOA Pacific cod for processing by the inshore component in the GOA and the offshore component in the GOA, and any seasonal allowances thereof, as authorized under paragraphs (a)(5) and (a)(6) of this section.

* * * * *

5. In § 679.22, paragraph (a)(5) is revised to read as follows:

§ 679.22 Closures.

(a) * * *

(5) *Catcher Vessel Operational Area (CVOA)*. The CVOA is defined as that part of the BSAI that is south of 56°00' N. lat. and between 163°00' W. long. and 167°30' W. long. (Figure 2 to part 679).

(i) *Effective time period*. The CVOA is established annually during the B season, defined at § 679.23(e)(2)(I)(B), from September 1 until the date that NMFS closes the B season allocation for the inshore component in the BSAI to directed fishing.

(ii) *Offshore component in the BSAI restrictions*. A catcher/processor vessel in the offshore component is prohibited from conducting directed fishing for pollock in the CVOA unless it is operating under a CDP approved by NMFS.

(iii) *Fisheries other than pollock*. A vessel that harvests or processes groundfish in directed fisheries for species other than pollock may operate within the CVOA consistent with the other provisions of this part.

* * * * *

6. In § 679.23, paragraph (e)(2) is revised to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(2) *Directed fishing for pollock*. (i) Subject to other provisions of this part, and except as provided in paragraphs (e)(2)(ii) and (e)(2)(iii) of this section, directed fishing for pollock is authorized only during the following two seasons:

(A) *A season*. From 0001 hours A.l.t. January 1 through 1200 hours A.l.t. April 15.

(B) *B season*. From 1200 hours A.l.t. September 1 through 1200 hours A.l.t. November 1.

(ii) *Offshore component in the BSAI restrictions (applicable through December 31, 2004)—(A) Offshore A season*. Subject to other provisions of this part, directed fishing by the offshore component in the BSAI, or by vessels catching pollock for processing by the offshore component in the BSAI, is authorized from 1200 hours A.l.t. January 26 through 1200 A.l.t. April 15.

(B) *Offshore A season "fair start" requirement*. Directed fishing for pollock by the offshore component in the BSAI, or by vessels catching pollock for processing by the offshore component in the BSAI, is prohibited through 1200 hours A.l.t., February 5, for any vessel that is used to fish in a non-CDQ fishery for groundfish in the BSAI or GOA, or for king or Tanner crab in the BSAI prior to 1200 hours, A.l.t., January 26 of the same year.

(iii) *B season "fair start" requirement*. Directed fishing for pollock is prohibited from 1200 hours, A.l.t., September 1, through 1200 hours, A.l.t., September 8, for any vessel that is used to fish for groundfish with trawl gear in a non-CDQ fishery in the BSAI or GOA between 1200 hours, A.l.t., August 25, and 1200 hours, A.l.t., September 1.

* * * * *

[FR Doc. 99-1529 Filed 1-20-99; 12:36 pm] BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222314-8321-02; I.D. 012099B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod and pollock in the Gulf of Alaska

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



C-2(c)(1)

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

December 15, 1998

RECEIVED
DEC 18 1998

N.P.F.M.C

Mr. Richard B. Lauber, Chairman
North Pacific Fishery Management Council
605 West Fourth Avenue, Suite 306
Anchorage, AK 99501-2252

Dear Rick:

I have partially approved Amendment 51 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and fully approved Amendment 51 to the FMP for Groundfish of the Gulf of Alaska under authority of the Magnuson-Stevens Fishery Conservation and Management Act.

At its meeting in June 1998, the Council adopted Amendments 51/51 to the FMPs. These amendments were intended by the Council to extend and revise the current inshore-offshore allocations of pollock in the Bering Sea and Aleutian Islands management area (BSAI), and to extend unchanged the inshore-offshore allocations of pollock and Pacific cod in the Gulf of Alaska (GOA).

The Council submitted Amendments 51/51 for Secretarial review on September 4, 1998. A notice of availability (NOA) and request for comments on the Amendments was published on September 16, 1998 (63 FR 49540), and proposed implementing rules were published for public comment on October 29, 1998 (63 FR 57996). A total of 69 letters of comment were received during the NOA comment period. Most of these (65 letters or 94 percent), were opposed to changes in the current BSAI pollock allocation of 35 percent inshore and 65 percent offshore. All comments will be summarized and responded to in the preamble to the final rule implementing the approved parts of Amendments 51/51.

The American Fisheries Act (AFA), signed into law on October 21, 1998, substantially changed the statutory climate in which the Council was acting in June 1998. Hence, some parts of the Amendments must be disapproved to reconcile differences with the AFA. Specific parts of the Amendments I have approved and those I have disapproved are discussed below.



ELEMENTS OF AMENDMENTS 51/51 APPROVED AND DISAPPROVED

BSAI Amendment 51. As adopted by the Council in June 1998, this amendment contemplated four changes to the current inshore-offshore allocation regime. These changes are discussed below with reasons for approval or disapproval of each change.

- Pollock allocation-DISAPPROVED. This part of the amendment would have changed the proportional allocation of the BSAI pollock total allowable catch (TAC), after subtraction of the reserves. The inshore allocation would have increased from its current 35 percent to 39 percent; the offshore allocation would have reciprocally decreased from its current 65 percent to 61 percent. The 7.5 percent allocation to the Community Development Quota (CDQ) program was removed from the inshore-offshore allocation provisions by BSAI Amendment 45 and was not a part of Amendment 51.

The pollock allocation proposed by the amendment is disapproved because it is inconsistent with AFA section 206. This section specifically mandates an allocation of 10 percent of the pollock TAC for a directed fishing allowance for the CDQ program plus an additional allocation of pollock for incidental catches in non-pollock fisheries. Of the remaining pollock TAC, the law stipulates the following allocations:

- 50 percent to the inshore component,
- 40 percent to the offshore component (catcher/processors),
- 10 percent to the offshore component (motherships).

The allocations specified by the AFA will be implemented in 1999 through the annual groundfish specification process.

- Small vessel set aside-DISAPPROVED. This part of the amendment would have set aside a portion of the inshore component pollock allocation for use by catcher vessels less than 125 ft length overall immediately before the pollock B season, starting about August 25. The amount reserved in the set aside would be equal to 2.5 percent of the BSAI pollock TAC, after subtraction of reserves.

This part of Amendment 51 is disapproved because it is inconsistent with AFA section 206 and national standard 7. AFA section 206 specifically mandates allocations among CDQ and inshore and offshore components of the BSAI pollock fishery. The proposed set aside conflicts with these AFA-specified allocations because it would have been based on the TAC; not simply a sub-allocation of the inshore

component allocation. Further, AFA sections 208(a) and 210(b) appear to provide the market erosion protections for small vessels that the proposed TAC set aside was designed to provide. Under the AFA, catcher vessels that deliver pollock to inshore processors will enjoy the benefits of increased restrictions on entry into that fishery (sec. 208(a)) and of forming an exclusive cooperative (sec. 210(b)). Moreover, the AFA provides the entire inshore component with a substantially increased allocation of the pollock TAC (about 30 percent) relative to its allocation from 1992 through 1998. The small vessels that operate in the inshore component likely will benefit to some degree from this increased allocation. Therefore, in light of the AFA, the proposed small vessel set aside provisions would duplicate existing provisions and impose unnecessary regulatory costs on the pollock fisheries.

• Catcher vessel operational area (CVOA)-PARTIALLY APPROVED. This part of Amendment 51 will continue the CVOA specified in the existing regulations with respect to the geographic area and its effectiveness during the B season (50 CFR 679.22(a)(5)). Amendment 51, however, would have changed the existing CVOA rules by excluding all catcher vessels that deliver pollock to the offshore component. This would have prevented catcher vessels from directed fishing in the CVOA for pollock for delivery to motherships or catcher/processors (the offshore component) during the B season. Under the current CVOA regulation, all catcher vessels, regardless of their delivery to inshore or offshore components, may fish in CVOA.

All of the proposed amendment text is approved with the exception of the phrase in the third sentence that excludes from the CVOA catcher vessels catching pollock for processing by the offshore component. Specifically, the disapproved text is in italics and brackets as follows:

Vessels in the offshore component [*or vessels catching pollock for processing by the offshore component*] are prohibited from conducting directed fishing for pollock in the CVOA unless they are participating in a CDQ fishery.

The reason for selectively disapproving the indicated text is its inconsistency with national standard 7. The intent of the indicated text was to achieve parity between the motherships and the catcher/processor vessels within the offshore component. Motherships have been allowed to

operate within the CVOA, receiving and processing pollock harvested by catcher vessels. Catcher/processor vessels are not allowed to harvest pollock in the CVOA during the B season. In recommending the CVOA portion of Amendment 51, the Council was attempting to "level the playing field." As stated in the preamble to the proposed rule (63 FR 58000-58001), the Council noted that the proportion of catch taken by mothership operations increased at the expense of catcher/processors during the period 1991-1996, and that motherships may have had a competitive advantage over catcher/processors. The AFA, however, specifies separate allocations of the pollock TACs for the mothership and catcher/processor sectors, thereby achieving the parity intended by the Council. Hence, the exclusion of catcher vessels from the CVOA that deliver to the offshore component is an unnecessary duplication of an AFA provision. As such, it is inconsistent with national standard 7.

Selecting only the above indicated text for disapproval would not obviate the implementation of the CVOA provision. In fact, it would make the proposed CVOA more closely resemble the current CVOA provision. In addition, at its meeting in November 1998, the Council indicated its desire to remove this more restrictive provision from its Amendment 51 proposal and return to the existing CVOA rule.

- Duration-DISAPPROVED. As proposed, the pollock allocations in Amendment 51 would have been effective for the three-year period, January 1, 1999, through December 31, 2001. This period is inconsistent with the effective period of the inshore-offshore allocations specified in the AFA of January 1, 1999, through December 31, 2004 (sec. 213). No duration limit was specified in the proposed amendment text for the CVOA provision. Hence, this provision would continue in effect until changed by action of the Council and NMFS.

GOA Amendment 51. As adopted by the Council in June 1998, this amendment reestablishes without change the current inshore-offshore allocation regime in the GOA through December 31, 2001. These provisions are discussed below with reasons for approval of each change.

- Pollock allocation-APPROVED. This part of the amendment will maintain the current allocation of the pollock TAC of 100 percent to the inshore component. This part is consistent with the Magnuson-Stevens Act and other applicable law. This allocation was not controversial at

the time of the Council's action to adopt it, and no public comment was received in opposition to this allocation.

- Pacific cod allocation-APPROVED. This part of the amendment will maintain the current allocation of the Pacific cod TAC of 90 percent to the inshore component and 10 percent to the offshore component. This part is consistent with the Magnuson-Stevens Act and other applicable law. This allocation was not controversial at the time of the Council's action to adopt it, and no public comment was received in opposition to this allocation.
- Duration--APPROVED. The effective period for the allocations in Amendment 51 is extended for another three years, from January 1, 1999, through December 31, 2001. The section 213 provisions of the AFA do not apply to the GOA allocations proposed by the Council. Therefore, the proposed duration of the amendment is not inconsistent with AFA, the Magnuson-Stevens Act or other applicable law.

Under section 304(a)(4) of the Magnuson-Stevens Act, the Council may submit a revised amendment in response to disapproved parts of an amendment proposal. Any inshore-offshore allocation measures that the Council may now wish to submit must be consistent with the AFA as well as the Magnuson-Stevens Act and other applicable law. I recommend that the Council submit an FMP amendment that would make the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area consistent with the AFA with respect to pollock allocations. The Council may further wish to amend its December 31, 2001, sunset date for pollock and Pacific cod allocations in the GOA to be consistent with the AFA sunset date of December 31, 2004.

Sincerely,



Steven Pennoyer
Administrator, Alaska Region



AGENDA C-2(c)(1)
FEBRUARY 1999
UNITED STATES DEPARTMENT
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

December 29, 1998

RECEIVED

JAN - 4 1999

N.P.F.M.C

Mr. Richard B. Lauber
Chairman, North Pacific
Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Rick,

We wish to inform the North Pacific Fishery Management Council (Council) of our response to the Council's request at its December 1998 meeting to implement three new emergency rules.

The first emergency rule request to implement Steller sea lion mitigation measures is a priority activity that we are pursuing. Mitigation measures that implement the reasonable and prudent alternatives contained in the December 3, 1998, biological opinion (and as revised on December 16, 1998), must be implemented prior to the start of the 1999 pollock trawl fisheries on January 20. We will provide you a separate letter informing you of the specifics of the emergency rule action as we intend to implement it.

The second and third emergency rule requests were intended by the Council to prevent vessels from participating in other fisheries in 1999 to the extent they have not participated in those fisheries in recent years. We believe the Council has not offered sufficient justification for NMFS to pursue these actions and that serious technical and procedural impediments exist to accomplish their intent. For the specific reasons given below, NMFS at this time is not pursuing the Council's request to implement these socioeconomic emergency rules.

The second emergency rule adopted by the Council is intended to prevent vessels eligible to fish for Bering Sea pollock in the year 2000 under the American Fisheries Act (AFA) from participating in the C. opilio crab fishery in 1999 unless those vessels landed C. opilio crab in 1996 or 1997. The Alaska Crab Coalition (ACC) has argued strenuously that the Council's action in October to reduce latent crab licences did not eliminate a sufficient number of vessels from the crab license limitation program (LLP). The Council currently is scheduled to reconsider its vote on this action at its April 1999 meeting. At the December 1998 Council meeting, the ACC also testified that the AFA creates additional incentives for catcher vessels to establish 1999 harvest participation in other fisheries in the event the Council chooses to use 1999 harvest activity in determining future harvest limitations for AFA eligible vessels. In response to this concern, the Council voted unanimously to request NMFS to publish in the Federal Register a control date notice that expresses the Council's intent not to consider 1999 harvest activity as "traditional harvest" when developing AFA



protection measures for the year 2000 and beyond. Nonetheless, the ACC and its membership asserted that an emergency rule is needed to prohibit AFA eligible pollock vessels that have not recently fished for C. opilio crab from doing so in 1999.

This emergency rule request poses legal and policy concerns. Currently, about 40 of the AFA-eligible catcher vessels may be authorized under the vessel moratorium and the LLP to participate in the crab fisheries. Less than 5 of these vessels participated in the C. opilio fishery in 1996 or 1997. The Council stated that it did NOT intend this recency criterion to be applied to all vessels currently authorized under the moratorium to fish for crab, only pollock catcher vessels. General Counsel-Alaska Region has raised legal concerns with the Council's action that stem from the inability to provide displaced vessels with procedural due process. Insufficient time exists to determine AFA eligibility and to provide vessels currently eligible to fish for all crab species under a moratorium permit with pre-deprivation procedures concerning the denial of the use of that permit in the 1999 C. opilio fishery. Without such procedural due process protections afforded prior to enforcement of the emergency rule, enforcement efforts would be ineffective.

We voted against this emergency rule subsequent to informing the Council of the following concerns:

- The C. opilio fishery starts on January 15 and lasts about 2 months. Pollock catcher vessels targeted by the Council's emergency rule are not allowed to form a fishery cooperative under the AFA until the year 2000. The degree to which pollock vessels will choose to enter the 1999 C. opilio fishery during the peak of the pollock roe season is unknown. Testimony by pollock fishermen indicated that only limited participation in the C. opilio fishery by AFA eligible vessels is likely for practical and logistical reasons. Thus, arguments that the current situation created by the AFA poses an emergency seems to be more directed at concern with the Council's ultimate action on crab LLP than a real emergency.
- The AFA requires the Council to assess "traditional harvest levels" by AFA eligible pollock vessels and develop by mid 1999 protection measures to forestall the ability of these vessels to participate in other fisheries beyond these traditional levels. NMFS is challenged to implement these measures by the year 2000 when inshore and mothership pollock fishery cooperatives would be authorized under the AFA. The Council request to NMFS to implement 1999 limited access protection measures by emergency rule appear premature and pose due process concerns under the existing vessel moratorium.
- NMFS has not yet identified the vessels eligible to fish for pollock under sections 208 (a) or 208(c)(20) of the AFA. Difficulties exist, therefore, in enforcing a prohibition on

fishing for C. opilio if NMFS does not yet know to which specific vessels this prohibition would apply.

- The Council intends that this emergency rule be effective January 15, the start of the 1999 C. opilio fishery. Given other priority tasks that we must accomplish to assure the opening of the 1999 fisheries, we informed the Council that we would not likely meet this implementation schedule. The Council acknowledged this concern.

The third emergency rule requested by the Council was initiated by a general concern that the AFA could spark initiatives by all vessels, not just AFA eligible pollock vessels, to enter groundfish fisheries in 1999 that they traditionally have not participated in. This emergency rule would attempt to limit the harvest of each groundfish species in the BSAI and GOA by catcher vessels and catcher/processors using trawl, hook-and-line and pot gear based on the relative proportion that each gear/harvesting mode caught of each total allowable catch amount (TAC) in 1996-98. Essentially, each species or species group TAC would be divided into 6 different harvest limitations defined by gear and harvesting mode. The Council indicated its desire to have this emergency rule in place by January 1, 1999, although the Council again acknowledged that meeting this schedule would be nearly impossible.

The Council acknowledged it's previous action to request NMFS to publish a control date notice expressing Council intent under the AFA to establish fishery protection measures based on other than 1999 harvest activity. The impetus for the third emergency rule, however, seemed to be more focused on potential impacts on 1999 fishery participants rather than future actions by the Council under the AFA. Although the Council's action on the emergency rule was taken under the AFA agenda item, the effect of this action would extend far beyond the potential entry of the AFA-eligible vessels into other fisheries. Prior to the Council vote on this emergency rule, we again expressed our concerns about emergency rule justification as well as timing issues.

We do not intend to implement the Council's second and third emergency rules for lack of adequate justification, because the limited entry perspective of these action would be better developed and implemented under a more deliberative process, and because the third emergency rule affecting all groundfish fisheries is vague relative to Council intent on existing gear/mode groundfish allocations. If you desire, we will be prepared to speak more fully of these concerns at the Council's February 1999 meeting.

Sincerely,



Steven Pennoyer
Administrator, Alaska Region



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

January 15, 1999

RECEIVED
JAN 22 1999
N.P.F.M.C.

Richard B. Lauber
Chairman
North Pacific Fishery Management Council
605 West Fourth Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Rick,

We would like to update you on our consideration of emergency rules recommended by the Council in December. As we have discussed, the National Marine Fisheries Service (NMFS) did not pursue two of the rules requested by the Council during the December 1998 Council meeting due primarily to the need for more information and justification, and to our concerns about the use of emergency rules to direct allocations among user groups.

We recognize and appreciate that these two emergency rules were suggested as temporary precautionary measures to prevent unintended shifts in fishing efforts resulting from the recent enactment of the American Fisheries Act (AFA). One of the emergency rules would have limited access to the *C. opilio* crab fishery by AFA-eligible pollock vessels in recognition that the AFA may create further incentives for pollock catcher vessels to enter the crab fishery during 1999 to establish a crab harvest history for future harvest limitations. Increased effort would exacerbate over-capitalization problems in the *C. opilio* fishery. The second emergency rule resulted from similar concerns. Vessels from all Alaska fisheries might enter groundfish fisheries in 1999 to expand their harvest histories in anticipation of future limitations based on past participation.

In addition to these emergency actions, the Council requested that NMFS publish a Notice to express the Council's intent NOT to consider 1999 crab harvest as "traditional harvest" levels when developing AFA protection measures for the year 2000 and beyond. NMFS filed an Advanced Notice of Proposed Rulemaking (ANPR) on January 13, 1999, establishing this date for use as a basis for determining historical or traditional participation in all Alaska non-salmon fisheries this year, including the crab fisheries. Section 211(c)(1) of the AFA requires the Council to recommend to NMFS, by July 1, 1999, conservation and management measures to protect other fisheries from potential increased harvest caused by fishing cooperatives allowed under the AFA. The January 13, 1999, control date does not, in itself, regulate fishing or constrain future rulemaking decision. However, the ANPR provides notice to the Bering Sea pollock fishing operations that management regimes may be developed to further control access.



into non-salmon fisheries by those vessels that have not historically (at least before January 13, 1999) participated in those fisheries. In other words, the ANPR is a vehicle that preserves the status quo participation prior to the 1999 fisheries if it is followed this year by a Council action amending the limited-access systems.

You have identified your concerns about the effectiveness of control dates based on your observations that they are not always used. Ineffective use of control dates by some Councils has resulted from failure to utilize the control date in a timely manner, not from any fundamental weakness in the basis for the ANPR. Given the Council's request for the ANPR, your stated intent to use the control date, and the July 1999, deadline for developing conservation and management measures to protect these fisheries, we believe the ANPR provides the Alaska fishing industry with fair notice that this date is a likely component of future limited access programs, and should discourage speculative entry into non-salmon fisheries.

NMFS is committed to working with the Council to address the problem with transfer of effort into other fisheries. We intend to make every effort to ensure that all Bering Sea pollock vessel permit holders are notified of the January 13 control date and its importance.

Sincerely,



Steven Pennoyer
Regional Administrator

United States Senate
WASHINGTON, DC 20510

January 20, 1999

The Honorable William M. Daley
Secretary
Department of Commerce
(Via Facsimile (202) 482-2741)

RECEIVED
JAN 21 1999
N.P.F.M.C

Dear Secretary Daley:

We request that the National Marine Fisheries Service (NMFS) reconsider its decision not to implement emergency rules which the North Pacific Fisheries Management Council proposed to address some of the potential direct and indirect effects of the American Fisheries Act (AFA). We believe these steps are necessary to prevent fishermen from redirecting their efforts toward --and further overcapitalizing --fisheries in which they have little historical participation.

When we passed the AFA, we realized that it would likely affect not only the Bering Sea/Aleutian Islands pollock fishery, but other Alaska and West Coast fisheries as well. For this reason, the AFA requires the North Pacific and Pacific Councils to recommend, and the Secretary to consider and approve, measures to protect other fisheries. Shortly after the enactment of the AFA, we wrote to the North Pacific Council urging it to take meaningful and swift action at its December meeting to prevent direct and indirect adverse impacts that would otherwise occur in fisheries which open as early as this month. We are concerned about the potential for increased participation by pollock fishermen in other fisheries (in which they have little or no historical participation) as a result of the formation of pollock fishery cooperatives. We are also concerned, however, about potential indirect effects of the AFA like the "race" by fishermen to establish catch history in fisheries during 1999 before entry in those fisheries is further limited.

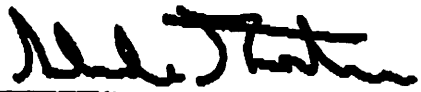
The North Pacific Council appreciated the need for immediate action, and recommended two emergency rules in December. The first rule would limit participation in the *C. opilio* crab fishery to those who participated in 1996 or 1997. The second would prevent immediate and major shifts in effort among gear and vessel types in other North Pacific groundfish fisheries by temporarily limiting the harvest of each vessel and gear type to the proportion it caught during 1996, 1997, and 1998. We believe these emergency rules would satisfy the mandates of the AFA until the North Pacific Council can recommend, and the Secretary consider and approve, permanent measures.

While we were pleased with the publication in the Federal Register of the notice indicating that the North Pacific Council will not consider 1999 harvest activity in developing future AFA protective measures, we believe that the only way to prevent adverse impacts *during* 1999 is to

adopt the emergency measures recommended by the Council. We strongly disagree with the suggestion that the Council "has not offered sufficient justification for NMFS to pursue" these emergency measures - in fact, full justification is provided by the AFA mandate to the Council and Department of Commerce. While we appreciate some of the concerns NMFS raised, we believe the agency does not fully appreciate the need to prevent major dislocations and redirection of effort and should take steps, if necessary, to assist the Council in modifying the proposed emergency rules so that they can be implemented.

We urge you to reconsider the decision not to implement the emergency rules, and to work with the North Pacific and Pacific Councils to execute Congress' mandate to protect other fisheries from any negative consequences of the AFA.

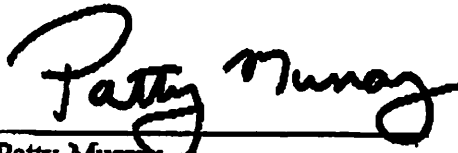
Sincerely,



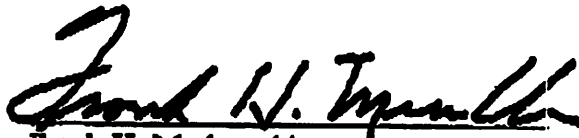
Slade Gorton
United States Senator



Ted Stevens
United States Senator



Patty Murray
United States Senator



Frank H. Murkowski
United States Senator

**The Honorable Slade Gorton
The Honorable Patty Murray
The Honorable Ted Stevens
The Honorable Frank Murkowski**

December 21, 1998

Dear Senators:

The North Pacific Fisheries Management Council adopted on December 14th a motion requesting National Marine Fisheries Service (NMFS) to implement an emergency rule to mitigate the effects of The American Fisheries Act on other fisheries. This rule would freeze non-co-op groundfish fisheries by gear type at their average harvest rates for 1996, 1997, and 1998. We, the undersigned owners and representatives of longliner catcher/processors, would like to urge you to communicate to NMFS your support to obtain approval and prompt implementation of this emergency rule.

NMFS has been very clear about its opposition to this emergency rule, and it may be that their concerns include a heavy staff workload or conflicts between the emergency rule and existing Fishery Management Plan provisions. NMFS might have reservations about this emergency rule in that, in their opinion, the American Fisheries Act has not created conditions that create an emergency of a nature that is addressed by the Council's request.

Nobody can accurately predict what effects the American Fisheries Act will have on other fisheries. We believe that in the absence of thorough analysis, emergency action is appropriate to protect the other non-pollock fisheries and to freeze any speculative harvesting by vessels trying to build catch histories in anticipation of future actions by the Council and NMFS.

This emergency action is justified and is in keeping with the request put forward in your letter to the Council dated December 8, 1998. The emergency rule will help to stabilize the north Pacific fisheries and give the Council and industry the time it needs to develop and implement long-term measures to further protect these important fisheries.

It is unfortunate that other matters, such as stellar sea lions, have taken a great deal of the Council's and NMFS' attention. However, we hope that such other activities are not used as justification for not taking prompt action to protect non-pollock fisheries.

Sincerely yours,

William C. Arkin
Bill Arkin,
Alaska Frontier Company

Nick Delaney
Nick Delaney, Alaska Leader Fisheries, Inc.

Doug Wells
Doug Wells, Baranof Fisheries

Mike Burns
Mike Burns, Blue North Fisheries

Mason Williams
Mason Williams, CJW Fisheries, Inc.

Dave Little
Dave Little, Clipper Seafoods, Ltd.

Hollens Park
Hollens Park, Fishermen's Finest

Mike Szymanski
Mike Szymanski,
The Fishing Company of Alaska, Inc.

Eric Brehvik
Eric Brehvik, Glacier Seafoods, Inc.
ERIK BREVIK

Mary Beggs
Mary Beggs, Gulf Mist, Inc.

Don Iverson
Don Iverson, Jubilee Fisheries, Inc.

Dale Dier
Dale Dier, Northern Aurora Fisheries, Inc.

Rudy Peterson
Rudy Peterson, North Pacific Fishing, Inc.

John Winther
John Winther, F/V Prowler

John Sjog
John Sjog, Regal Fish Company

Rick Shelton
Rick Shelton, Shelton's Boat, Ltd.

Erling Skar
Erling Skar, Star Offshore, Inc.

Dated: January 12, 1999.

J.E. Shkor,

ADM, United States Coast Guard, Chief Counsel.

[FR Doc. 99-998 Filed 1-15-99; 8:45 am]

BILLING CODE 4910-15-M

PRESIDIO TRUST

36 CFR Parts 1001, 1002, 1003, 1004, 1005 and 1006

RIN 3212-AA01

Management of the Presidio

AGENCY: The Presidio Trust.

ACTION: Partial abeyance of proposed rule; proposed rule.

SUMMARY: This action holds in abeyance until further notice a portion of the proposed rule published in the *Federal Register* on September 18, 1998 (63 FR 50024-50055) concerning management of the area under the administrative jurisdiction of the Presidio Trust (proposed 36 CFR Parts 1001, 1002, 1003, 1004 and 1006). The period for public comment on a portion of this proposed rule (proposed 36 CFR Parts 1007, 1008 and 1009) closed on November 17, 1998, and the period for public comment on the remaining portion of this proposed rule (proposed 36 CFR Parts 1001, 1002, 1003, 1004 1005 and 1006) closed on January 8, 1999.

FOR FURTHER INFORMATION CONTACT:

Karen A. Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052. Telephone: 415-561-5300.

SUPPLEMENTARY INFORMATION: By publication in the *Federal Register* on November 18, 1998 (63 FR 64023), the Presidio Trust extended until January 8, 1999, the comment period on a portion of the proposed rule which had been published on September 18, 1998 (63 FR 50024-50055) concerning management of the area under administrative jurisdiction of the Presidio Trust (proposed 36 CFR Parts 1001, 1002, 1003, 1004, 1005 and 1006). The Presidio Trust hereby gives notice that proposed regulations 36 CFR Parts 1001, 1002, 1003, 1004 and 1006, will be held in abeyance until further notice. Any further action on these proposed regulations will be noticed in the *Federal Register* and subject to additional public comment. In the meantime, the Presidio Trust's final interim regulations at 36 CFR Parts 1001, 1002, 1003 and 1004, which were adopted by the Presidio Trust and published in the *Federal Register* on

June 30, 1998 (63 FR 35694), will remain in effect.

The comment period on Part 1005 of the proposed regulations closed on January 8, 1999, and the Presidio Trust expects to issue final regulations on this topic following consideration of comments received.

Authority: Pub. L. 104-333, 110 Stat. 4097 (16 U.S.C. 460bb note).

Dated: January 11, 1999.

Karen A. Cook,

General Counsel.

[FR Doc. 99-1073 Filed 1-15-99; 8:45 am]

BILLING CODE 4310-R-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 428

RIN 1006-AA38

Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Bureau of Reclamation is extending for 30 days the public comment period on our proposed rule titled "Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land."

DATES: We must receive your comments on the proposed rule by February 18, 1999. We will not necessarily consider comments received after the above date during our review of the proposed rule.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Administrative Record, Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, D.C. 20240. You may also comment via the Internet to epetacchi@usbr.gov (see Public Comment Procedures under **SUPPLEMENTARY INFORMATION** in the November 18, 1998, notice at 63 FR 64154). In addition, you may hand-deliver comments to Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Erica Petacchi, (202) 208-3368, or Richard Rizzi, (303) 445-2900.

SUPPLEMENTARY INFORMATION: We published the proposed rule on

November 18, 1998, at 63 FR 64154-65165. We asked for public comments until January 19, 1999. Because several people have requested that we extend that deadline, we will now accept comments through February 18, 1999.

Dated: January 13, 1999.

Patricia J. Beneke,

Assistant Secretary—Water and Science.

[FR Doc. 99-1135 Filed 1-15-99; 8:45 am]

BILLING CODE 4310-94-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990112009-9009-01; I.D. 010899A]

RIN 0648-AM18

Fisheries of the Exclusive Economic Zone Off Alaska; Fishing Participation in 1999

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NMFS announces that anyone participating in any non-salmon fishery under the authority of the North Pacific Fishery Management Council (Council) during the calendar year 1999, will not be assured of receiving participation credit for future access to that fishery pursuant to section 211 of the American Fisheries Act (AFA) or under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) if a management regime that limits the number of participants is developed and implemented under those authorities. This document is necessary to publish the stated intent of the Council that participation credit would not be granted for fishing in a non-salmon fishery in 1999. This document is intended to promote public awareness that potential eligibility criteria for future access to the affected fisheries may be developed and to discourage new entrants into those fisheries based on economic speculation while the Council considers further controls on access to those fisheries.

DATES: Comments must be received by February 18, 1999.

ADDRESSES: Comments should be addressed to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Sustainable Fisheries

Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228

SUPPLEMENTARY INFORMATION: The AFA, Pub. L. 105-277, was signed into law on October 21, 1998. The stated objectives of the AFA are (1) to give U.S. interests a priority in the harvest of U.S. fishery resources and (2) to significantly reduce fishing capacity in the Bering Sea pollock fishery. The AFA provides the ability to eligible participants in the Bering Sea pollock fishery to form fishery cooperatives to optimize harvesting and processing opportunities. Enhanced efficiencies in the Bering Sea pollock fishery resulting from fishery cooperatives could lead to increases in participation and/or capital investments in other fisheries. The U.S. Congress recognized and provided for this potential result. Section 211 of the AFA directs the Council to recommend for approval by the Secretary of Commerce such conservation and management measures as it determines are necessary to protect other fisheries under its authority and the participants in those fisheries, including processors, from adverse impacts caused by the AFA or fishery cooperatives in the directed pollock fishery.

During the Council's December 1998 meeting, various sectors of the fishing industry voiced their concern about the potential for speculative entry into fisheries in 1999. The primary cause of this concern was that fishing operations eligible to participate in the Bering Sea

directed pollock fishery under fishery cooperatives allowed under the AFA could have greater flexibility to enter other fisheries in an effort to establish "traditional harvest levels" for future access to those fisheries. In an effort to address this concern, the Council stated its intent that it would not use participation in a fishery in 1999, as an indicator of a fishing operation's "traditional harvest" in that fishery. Further, the Council recommended that NMFS publish a notice in the *Federal Register* that participation in 1999 would not be taken into account by the Council in determining catch histories for any future limited access programs under the AFA and/or the Magnuson-Stevens Act.

The Council intends to address whether and how to further limit access to the non-salmon fisheries under its authority. Further, section 211(c)(1) of the AFA requires the Council to recommend to NMFS, by July 1, 1999, conservation and management measures to prevent Bering Sea pollock fishing operations from exceeding in the aggregate the traditional harvest levels of those fishing operations in other fisheries under the authority of the Council as a result of fishing cooperatives. This document is intended to discourage speculative entry into the non-salmon fisheries while potential management regimes to further control access into those fisheries are discussed and possibly developed by the Council. In developing future limited access programs, the Council may choose different and variably weighted methods to qualify

participants based on the type and length of participation in the subject fisheries or other methods of determining dependence on those fisheries. The potential eligibility criteria may be based on historical participation. Therefore, current participants in non-salmon fisheries under the authority of the Council should locate and preserve records that substantiate and verify participation in those fisheries. These fisheries include, but are not limited to, the groundfish fishery of the Bering Sea and Aleutian Islands Management Area, the groundfish of the Gulf of Alaska, the scallop fishery off Alaska, and the commercial king and Tanner crab fishery in the Bering Sea and Aleutian Islands Area.

This notification establishes January 13, 1999 for potential use as a basis for determining historical or traditional participation in any non-salmon fishery in 1999. This action does not commit the Council to develop or adopt any particular management regime or to use any specific criteria for determining entry into any of those fisheries. Any further action by the Council on this issue will be taken pursuant to the requirements of the AFA and/or the Magnuson-Stevens Act.

Authority: 16 U.S.C. 1801 *et seq.*, and Pub. L. 105-277.

Dated: January 12, 1999.

Rolland A. Schmitten,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 99-1105 Filed 1-13-99; 4:04 pm]

BILLING CODE 3510-22-F

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 25526
JUNEAU, ALASKA 99802-5526
PHONE: (907) 465-4100
FACSIMILE: (907) 465-2332

January 27, 1999

Mr. Darrell Brannan
Senior Economist
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Dear Mr. Brannan:

Thank you for your letter to David Benton dated December 23, 1998 concerning the release of vessel-by-vessel data to the public pursuant to passage of the American Fisheries Act (AFA). As David continues to have a heavy travel schedule, I have been asked to provide a response to you. Your letter described the need for NMFS and ADF&G to prepare a discussion paper that addresses six questions concerning the release of such data collected by the state. Below are answers to your questions:

1. *What regulations need to be changed for the Council and Secretary to implement such a data release program?*

The release of confidential data by ADF&G is strictly regulated by Alaska Statute 16.05.815 (enclosed), so passage of the AFA does not, in and of itself, change our ability to release confidential data to the public. Therefore, a change in this statute is necessary for the State of Alaska to comply with this AFA requirement. Failing a statutory change, the only other way to meet AFA requirements would be for vessels to sign waivers allowing release of confidential data on their operations.

2. *How can the regulations be changed and what would be an appropriate time frame for changing the regulations?*

A change in the State of Alaska confidential statute requires an amendment to AS 16.05.815. For this to occur, an amendment must be drafted and submitted to the Alaska Legislature. As the deadline for submissions by state agencies has already passed, a bill would need to be sponsored by the Governor or one or more legislators in order to introduce the proposed changes during the 1999 legislative session. Once introduced, legislative hearings would be conducted, and the amendment would need to be voted on and approved. The timetable for passage of the amendment depends on how controversial it is, how much support it has, and what other issues control the legislative calendar. Our Division of Commercial Fisheries is currently forming an in-house committee to review AS 16.05.815 for needed changes, so this committee could be a vehicle to start the process. One of the changes needed is to update this statute so that the Alaska Fisheries Information Network (AKFIN) is formally included among the list of approved recipients of confidential data.

Mr. Darrell Brannan

2

January 27, 1999

3. *How would releasing the data be beneficial in implementing Section 301(a)(9) or Section 303(a)(11) of the Magnuson-Stevens Act?*

The release of such information should be consistent with Section 301(a)(9) and 303(a)(11) of the Magnuson-Stevens Act to provide better data to achieve better management. National Standard 9 requires that management shall, to the extent practicable, minimize bycatch and bycatch mortality. Of course, all fisheries with fishery management plans (FMPs) must comply with these standards. For FMP fisheries, access to vessel-specific data is needed by the Council to evaluate the net benefits of a cooperative fishery with respect to bycatch and bycatch mortality. Alaska Statute 16.05.815 already allows the State to provide vessel-specific data "for preparation and implementation of the fishery management plans." In the case of cooperative fisheries, the AFA holds these vessels to a higher standard of public accountability regarding bycatch.

4. *What information does your agency feel is appropriate to release?*

The type of data most appropriate to understanding the benefits arising from cooperative fishing activities include all catch and bycatch information from participating vessels.

5. *How often should the data be released?*

The Council should determine the schedule for public release of such data. Whether these releases are annually or quarterly depend upon the Council's need to address problems arising from a cooperative fishery.

6. *What mechanisms should be used to make the information available?*

Provided that participating vessels sign appropriate waivers or that AS 16.05.815 is changed so that vessel-specific confidential data can be made available to the public, the State of Alaska believes that the mechanism for such releases of standardized data should be AKFIN. We defer to AKFIN regarding the appropriate vehicle for these releases. Their web site may be a good mechanism for providing public access.

If you have additional questions on this topic, please contact Earl Krygier.

Sincerely,



Gordon H. Kruse
Marine Fisheries Scientist

cc: David Benton

Enclosure

Enclosure to Darrell Brannan Letter

1

January 27, 1999

AS 16.05.815. CONFIDENTIAL NATURE OF CERTAIN REPORTS AND RECORDS.

- (a) Except as provided in (b) and (c) of this section, records required by regulations of the department concerning the landings of fish, shellfish, or fishery products, and annual statistical reports of buyers and processors required by regulation of the department are confidential and may not be released by the department except as set out in this subsection. The department may release the records and reports set out in this subsection to the recipients identified in this subsection if the recipient, other than a recipient under (4) - (6) of this subsection, agrees to maintain the confidentiality of the records and reports. The department may release
- (1) any of its records and reports to the National Marine Fisheries Service and the professional staff of the North Pacific Fishery Management Council as required for preparation and implementation of the fishery management plans of the North Pacific Fishery Management Council within the exclusive economic zone;
 - (2) any of its records and reports to the Department of Revenue and to the Alaska Commercial Fisheries Entry Commission to assist them in carrying out their statutory responsibilities;
 - (3) records or reports of the total value purchased by each buyer to a municipality that levies and collects a tax on fish, shellfish, or fishery products if the municipality requires records of the landings of fish, shellfish, or fishery products to be submitted to it for purposes of verification of taxes payable;
 - (4) such records and reports as necessary to be in conformity with a court order;
 - (5) on request, the report of a person to the person whose fishing activity is the subject of the report;
 - (6) fish tickets and fish ticket information to the division of fish and wildlife protection, Department of Public Safety; and
 - (7) fish tickets and fish ticket information regarding halibut to the International Pacific Halibut Commission;
- (b) Except as provided in (c) of this section, records or reports received by the department which do not identify individual fishermen, buyers, or processors or the specific locations where fish have been taken are public information.
- (c) Crab stock abundance survey information that reveals crab catch by sampling location is confidential and is not subject to inspection or copying under AS 09.25.110 - 09.25.120 until the close of the fishing season for which the survey was conducted.
- (d) Except as otherwise provided in this section, the department shall keep confidential (1) personal information contained in fish and wildlife harvest and usage data; and (2) the records of the department that concern (A) telemetry radio frequencies of monitored species; (B)

Enclosure to Darrell Brannan Letter

2

January 27, 1999

denning sites; (C) nest locations of raptors that require special attention; (D) the specific location of animal capture sites used for wildlife research or management; and (E) the specific location of fish and wildlife species. The department may release records and information that are kept confidential under this subsection if the release is necessary to comply with a court order, if the requestor is a state or federal agency, if the requestor is under contract with the state or federal agency to conduct research on a fish or wildlife population, or if the requestor has been authorized by the department to perform specific activities and agrees to use the records and information only for purposes as provided under a contract or agreement with the department. After 25 years, the records and information that are kept confidential under this subsection become public records subject to inspection and copying under AS 09.25.110 - 09.25.140 unless the department determines that the release of the records or information may be detrimental to the fish or wildlife population. In this subsection, "personal information" has the meaning given in AS 44.99.350.

MIDWATER TRAWLERS COOPERATIVE

1626 N. COAST HIGHWAY * NEWPORT, OREGON 97365

Captain R. Barry Fisher, President

Phone: (541) 265-9317 Fax: (541) 265-4557



MTC

RECEIVED

JAN 20 1999

N.P.F.M.C

January 16, 1999

Mr. Richard Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Ave., Suite 306
Anchorage, AK 99501

RE: C-2 American Fisheries Act - Section 210(b)(1) Changes

Dear Chairman Lauber and Council Members:

In the year 2000 shoreside pollock vessels will be allowed to form cooperatives based on their catch histories in the years 1995, 1996 and 1997. However, catcher vessels (CVs) with history split between the inshore sector and the CV to catcher/processor (CP) sector (but which did not qualify to fish in the CV to CP sector in the future) in essence lost the catch history in the CP sector because without amendment the AFA does not create a mechanism for these CVs to obtain credit for that catch history in any sector.

This dilemma arose because essentially the qualifying years as well as the base years for determining quota being brought into a cooperative for inshore vessels, was based on a 3 year period. However, the time frame for qualifying a CV to fish in the CP sector was based upon only 1 year, so if a CV failed to fish in the CP sector in 1997 not only did it not qualify to fish in the CP sector in the future but lost all of its previous catch history to CPs and is prevented from benefiting from that history in any sector. This is a result of Section 210(b)(1) which provides that only a CV's catch delivered to the inshore sector will be considered by the Secretary in determining the amount of quota to allocate to an inshore cooperative. Therefore, a CV in the inshore sector with a portion of its catch history (1995-1997) in the CP sector will be seriously disadvantaged when inshore cooperatives are formed. An example:

A CV fishes for a CP in 1995 and 1996 and then fishes for a shore plant in 1997. That catcher vessel is not eligible under the AFA for the future to deliver to CPs. The vessel is eligible to fish for the inshore sector, but when cooperatives are formed will only receive credit for the fish delivered in 1997, while most other members will receive

credit for 1995, 1996 and 1997. As a result the CV in this example will be seriously disadvantaged and will not likely be able to continue in the fishery.

The AFA provides that these CVs should, to the extent practical, be treated on a fair and equitable basis, however, no mechanism to achieve that end is provided. However, Section 213(c)(3) provides that the Council may correct this injustice by modifying the criteria by which the Secretary determines how much quota is allocated to a cooperative.

The following change to Section 210(b)(1)(B) would remedy the problem for these CVs:

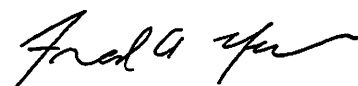
... the Secretary shall allow only such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) to harvest the aggregate percentage of the directed fishing allowance under Section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent to the aggregate total amount of pollock harvested by such catcher vessels (and by such catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) in the directed pollock fishery for processing by the inshore component, together with the amount harvested by such vessels for processing by catcher/processors in the offshore 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 together with the aggregate total amount harvested by all catcher vessels (excluding those eligible under 208(b)) for processing by catcher/processors in the offshore component during such years and shall prevent such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) from harvesting in the aggregate in excess of such percentage of such directed fishing allowance.

The number of vessels suffering from this dilemma are few in number and the total tonnage is also relatively small and, therefore, the impacts on other AFA qualified CVs will be minimal. In addition, the modification does not change in any way the sector allocations, i.e., 50% inshore, 40% CPs and CVs harvesting for CPs, and 10% to CVs harvesting for the mothership sector.

The Council has already authorized Staff to prepare a discussion paper on this issue which, hopefully, will be before the Council at the February Council meeting. We would ask the Council to move this matter forward for further analysis on specific provisions to correct this inequity.

Sincerely,

MIDWATER TRAWLERS COOPERATIVE



Fred A. Yeck
Technical Director

MIDWATER TRAWLERS COOPERATIVE

1626 N. COAST HIGHWAY * NEWPORT, OREGON 97365

Captain R. Barry Fisher, President

Phone: (541) 265-9317 Fax: (541) 265-4557



MTC

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JAN 20 1999

N.P.F.M.C

January 16, 1999

Mr. Richard Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Ave., Suite 306
Anchorage, AK 99501

RE: Agenda Item C-2 American Fisheries Act - Sideboards

Dear Chairman Lauber and Council Members:

The Council was charged by the AFA to recommend to the Secretary sideboards to protect non-Bering Sea pollock fisheries from adverse impacts caused by the AFA. The MTC membership includes full time Bering Sea pollock boats, part time Bering Sea pollock boats and trawlers that are not qualified for Bering Sea pollock. MTC is interested in advocating reasonable protection measures which will protect other fisheries but at the time same time not overly restrict legitimate continuation by pollock boats of their historical participation in other fisheries.

First Issue: Bering Sea Cod

One of the fisheries which we believe deserves protection is the catcher vessel trawl fishery for Bering Sea cod. It is unique in that it has historically been a split fishery with the early portion of the fishery (that historically conducted during A Season) primarily being conducted by smaller boats that did not fish A Season pollock, and then after the closure of the A pollock season these smaller boats were joined on the cod grounds by a substantial portion of the pollock fleet. It is our position that the cod fishery should be protected so it can continue in this historical fashion.

It is, therefore, our proposal that prior to March 1 (which in recent times has included a majority of the A pollock season) that the fishery would be protected so that the smaller trawlers who have depended upon the cod fishery can continue to depend upon that fishery as they have in the past without significant competition from pollock vessels. After March 1 we would suggest that the restrictions would be lifted so that cod trawlers and pollock trawlers would continue to compete in an open access fishery as they have in the past. Specific language that which we would propose for analysis would include:

AFA qualified pollock catcher vessels, that during pollock A Season historically had a majority of their catch in pollock, would be limited to the collective share of the cod fishery prior to March 1 of each year that these same vessels collectively harvested historically prior to March 1. The base period for determining historical shares of the cod fishery would be the same base period as used by the AFA for a vessel's pollock qualification and would be established by pollock CV sector (i.e., inshore, CV to CP and mothership). Collective shares would be based on tons of harvest. After March 1 there would be no restriction.

The language establishes the class of vessel to which the proposed restrictions will apply based on those pollock CVs that historically had a majority of their catch in pollock during pollock A Season for the reason that a substantial number of the cod boats that fish cod during A Season are, in fact, AFA qualified pollock catcher vessels because they have historically fished pollock on a part time basis during primarily the B Season. Therefore, it is important with regard to this cod sideboard to recognize that many of the dedicated A Season cod boats are, in fact, pollock qualified even though most have not participated in any meaningful way in the pollock A Seasons.

Second Issue: Gulf Pollock, Cod and Flatfish

Sideboards will be necessary for the Gulf pollock, cod and flatfish fisheries although at this time we are not prepared to recommend specific language other than to say that these sideboards need to be of a nature which will protect Gulf catcher vessels from the adverse affects of the AFA.

Third Issue: Classification of Vessels (AFA Full Time vs. Part Time)

MTC would also propose an analysis which would examine the impacts of sideboards on different classes of vessels. For example, the vast majority of AFA qualified pollock vessels have historically participated in the pollock fishery on a full time basis in both A and B pollock seasons. However, there is also a substantial number (although they are in the minority) of smaller pollock boats which can be more appropriately considered part time Bering Sea pollock boats and whose catch history will be relatively small. Some of these smaller catcher vessels traditionally fished in the Gulf with some Bering Sea pollock participation primarily in B Season while others participated primarily in the Bering Sea cod fishery during A Season and then fished pollock during B Season. What these part time pollock vessels have in common, however, is that because of their split catch history it would be impossible for them to survive if they were restricted to their history in Bering Sea pollock alone. These vessels require special

Page 3
Mr. Richard Lauber, Chairman NPFMC
Agenda Item C-2 American Fisheries Act - Sideboards
January 16, 1999

consideration because in many cases these vessels are extremely dependent on non-Bering Sea pollock fisheries for a substantial (if not majority) of their income.

It would seem reasonable to recognize the difference between what can be referred to as a full time AFA qualified pollock boat versus a part time AFA qualified pollock vessel and depending upon the fishery and the sideboard at issue, it may well be that it would be appropriate to apply sideboard restrictions differently based upon these vessel classifications. Options to analyze could be based on the catch history tonnage and/or vessel size so as to create an objective classification to equitably accommodate these smaller vessels. We believe that the results of this analysis will show a very distinct separation in the average quantity of catch history between full time and part time catcher vessels, which will add justification for this proposal.

Thank you for considering our comments.

Sincerely,

MIDWATER TRAWLERS COOPERATIVE



Fred A. Yeck
Technical Director

CARNEY
BADLEY
SMITH &
SPELLMAN

Clifford A. Webster

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JAN - 7 1999

N.P.F.M.C

January 5, 1999

LAW OFFICES
A PROFESSIONAL SERVICE CORPORATION

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The Honorable Slade Gorton
United States Senate
Washington, D.C. 20510

The Honorable Ted Stevens
United States Senate
Washington, D.C. 20510

The Honorable Patty Murray
United States Senate
Washington, D.C. 20510

The Honorable Frank Murkowski
United States Senate
Washington, D.C. 20510

Re: The American Fisheries Act

Dear Senators:

This firm has been working with the owners of freezer long-line vessels engaged in groundfishing in the Bering Sea and Aleutian Islands to determine what legislative or administrative relief may be needed to protect this industry from the negative effects of the recently enacted American Fisheries Act. Nearly all of the active fleet vessel owners in the freezer long-line fleet are participating in this undertaking.

This group of vessel owners employs more than 600 crew members and 100 office and support staff. They harvest groundfish in the Bering Sea and Aleutian Islands valued annually at more than \$100 million.

These companies appreciate the support for the industry demonstrated by your joint letter to the North Pacific Fishery Management Council of December 8, 1998. The letter urged the Council to act promptly to protect other fisheries that could be adversely affected by the Act. We share the concerns expressed in your letter, and we were pleased that the Council acted favorably in response to your letter.

Our concern now is the recent decision by the National Marine Fisheries Service (NMFS) to disregard the Council's request to proceed with an emergency rule-making. The reasons to proceed with a rule-making on an emergency basis are explained in the accompanying joint letter from the vessel owners who are participating in the discussions I have mentioned. The NMFS decision fails to recognize the urgency of

January 5, 1999
Page 2

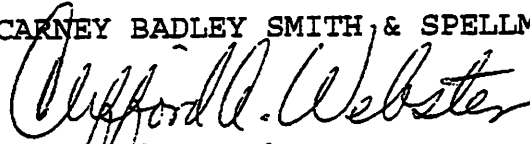
the economic situation facing the freezer long-line industry and other fisheries affected by the American Fisheries Act.

The vessel owners identified in the enclosed letter ask your assistance in urging NMFS to accept the Council's recommendation to implement an emergency rule to freeze non-co-op groundfish fisheries by gear type at their average harvest rates for 1996, 1997 and 1998. Such action is necessary to protect against speculative harvesting.

We look forward to working with you.

Very truly yours,

CARNEY BADLEY SMITH, & SPELLMAN, P.S.



Clifford A. Webster

attor\caw\nmfs.Lt@

MEZICH ALLEGIANCE INC.

7215 156th S.W.
Edmonds, Washington 98026
425 742 7456
425 742 7712 FAX

RECEIVED
JAN 25 1999
N.P.F.M.C

January 21, 1999

Mr. Rick Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

RE: COMMENT ON AGENDA ITEM C-2, AMERICAN FISHERIES ACT
FV FIERCE ALLEGIANCE, MVP #7304B

Dear Mr. Lauber:

I am writing to introduce our fishing vessel company, *Mezich Allegiance Inc.* owned by my husband, Rick Mezich and I since 1992. Rick has been a Bering Sea crab vessel owner/operator since 1978. Our vessel the *Fierce Allegiance*, has been continuously involved in Bering Sea king and tanner crab fishing since 1987, under the previous names, *Duffy Sea and Allegiance*. The vessel ADF&G number is 55111 and the MVP number is 7304B. Immediately following the purchase of the vessel in 1992, we converted it to a crabber/trawler and we entered it into the pollock B season that same year. The vessel also fished the Bristol Bay king crab and bairdi seasons in the fall. Since then, the vessel has fished Bristol Bay king crab, every year it has been open, and it has fished the opilio crab seasons and the pollock B seasons every year, 1992 through 1998. The vessel is currently fishing opilio crab in 1999 and it is one of the unique AFA qualified pollock catcher vessels that meets the 1996 and/or the 1997 opilio landing requirement for the NPFMC proposed Emergency Rule to prohibit crossovers into the 1999 opilio fishery.

To the best of our knowledge, the *Fierce Allegiance* is an American Fisheries Act qualified shorebased pollock catcher vessel, and thus it is subject to the NPFMC proposed restrictions for pollock vessels involved in other fisheries. As such, we are very concerned about the potential impacts of the restrictions on the ability of our vessel to fish in the BSAI king, bairdi and opilio crab fisheries. Unlike most of the offshore and shorebased pollock catcher vessels, our vessel revenue since 1992, has been much more dependent on crab fisheries than the pollock fishery. In fact, due to its regular participation in crab fisheries, it is fully qualified for Alternatives 2 - 8 in the LLP, not just the nominal qualification of one landing in 96, 97 or 98, as required for recent participation under Alternative 9. Apparently, this is the preferred alternative of most of the pollock catcher vessels that only sporadically participate in the Bristol Bay king crab

fishery. Our company supports the Alternative 4 landing requirement, because we feel there are too many vessels speculating on the sale of limited entry permits in the upcoming crab LLP, that are not regular participants.

At the December 1998 NPFMC meeting, Dr. Scott Matulich made a presentation to the NPFMC about the relative economic dependency between dedicated crab vessels and pollock crossover crab vessels. Mr. Matulich showed that in the case of opilio crab, there were only three pollock crossover vessels that account for 53% of the total opilio crab revenue of all 39 pollock crossover vessels during 1995-1997. The same three vessels also accounted for 30% of all crab revenue for the 39 crossover vessels for the same period. The *Fierce Allegiance* is one of the three vessels identified by Dr. Matulich.

In reviewing our bookkeeping records recently, I compared the *Fierce Allegiance*' gross income from crab and pollock fisheries for the period 1992 through 1998 to determine the relative economic dependency between the fisheries. During this period of time, the vessel earned on average, 60% of its income from crab and 34% from pollock. During the AFA pollock qualifying period, 1995-1997, the vessel earned 54% of its income from crab and 36% from pollock.

In conclusion, we wish to request that our vessel the *Fierce Allegiance*, be excluded from the list of vessels subject to AFA restrictions in BSAI crab fisheries. This request is based on the unique ability of the vessel to meet the most stringent of crab landing requirements in the crab LLP alternatives, and for which we can produce IRS records to document that the vessel earns the majority of its income from crab fisheries.

Thank you for your consideration.

Sincerely,



Mary Mezich
Mezich Allegiance Inc.

Cc: Steve Pennoyer, RD, NMFS, AK Region

Mar Del Norte, Inc.**F/V Mar Del Norte**P. O. Box 805
Kodiak, AK 99615
509-884-8318**RECEIVED**

JAN 27 1999

N.P.F.M.C

January 27, 1999

Rick Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Ave., Suite 306
Anchorage, AK 99501

Re: SB1221

Dear Chairman Lauber,

We have owned and operated the 86' trawler/longliner Mar Del Norte, out of Kodiak, since 1976. Through the years we have chosen to fish shrimp, crab, halibut and groundfish in the waters surrounding Kodiak, with only a few brief forays into the Bering Sea. The fisheries resources in the Kodiak area are our livelihood.

We are very concerned about the impact that SB1221 is having on our local fisheries. We read in Section 211 (a) of SB 1221 that the council has been given the task of guarding against adverse impacts of this act or fishery cooperatives on other participants in the directed pollock fishery. Since the beginning of the year we have seen a substantial increase in the number of large Bering Sea vessels who have moved into the Kodiak area. We would like to see the council take such action as to prevent these vessels from coming into the Gulf, taking the "cream of the crop" and then moving back into the Bering Sea. We believe that Exclusive Area Registration by Quarter would be an effective management tool. Vessels would have to declare at the beginning of each quarter whether they intend to fish the entire quarter in the Bering Sea or Gulf of Alaska.

It is our understanding that the 300,000# trip limit that has been established for the Gulf of Alaska has been done under emergency ruling which will sunset in 180 days. It is essential that the trip limit regulation become permanent. We feel that a trip limit of 250,000# would be more appropriate for the Gulf of Alaska.

Thank you for your efforts on the behalf of our Alaskan fisheries.

Sincerely,

Robert L. Krueger
President, Mar Del Norte, Inc

Alaska Groundfish Data Bank

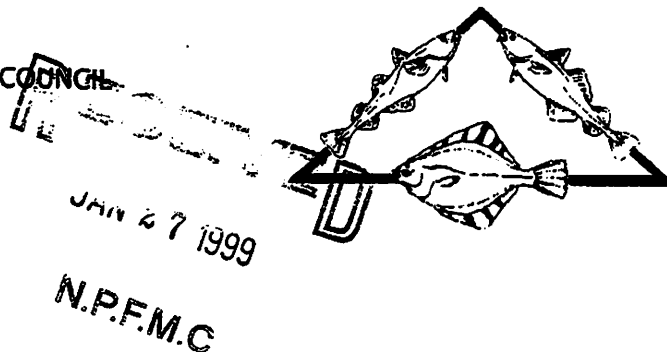
P.O. Box 2298 • Kodiak, Alaska 99615

TO: RICK LAUBER, CHAIRMAN
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

RE: COMMENTS ON AFA SIDE BOARDS
FOR CATCHER VESSELS

DATE: JANUARY 27, 1999

SENT BY FAX: 2 PP



COMMENTS ON SIDE BOARDS FOR AMERICAN FISHERY ACT CATCHER VESSELS SUBMITTED BY ALASKA GROUND FISH DATA BANK

These comments address three issues regarding American Fisheries Act (AFA) eligible catcher vessels. Our comments apply to all AFA eligible catcher vessels -- those delivering to factory trawlers, motherships and shorebased.

1. Whether sideboards should apply to all AFA eligible vessels or only to eligible vessels participating in a co-op.
2. Whether any limitations on AFA vessels' catch of non-pollock groundfish should be considered a cap or an allocation.
3. Appropriate sideboards to guard against effort shifts by AFA co-op vessels which may negatively impact non-AFA vessels.

APPLICATION OF SIDE BOARDS

AGDB SUPPORTS APPLYING SIDE BOARDS ONLY TO AFA CATCHER VESSELS PARTICIPATING IN A CO-OP

Since it is only the ability of vessels actually involved in an AFA co-op to stack quotas or arrange their pollock fishing time to increase their effort in non-pollock fisheries it seems reasonable to apply side boards only to AFA catcher vessels actively participating in a co-op.

NATURE OF ANY LIMITATIONS ON AFA VESSELS' CATCH OF NON-POLLOCK GROUND FISH AGDB SUPPORTS CONSIDERING ANY NON-POLLOCK CATCH LIMITATIONS FOR AFA CO-OP VESSELS AS CAPS, NOT AS ALLOCATIONS

The reason for sideboards is to prevent AFA pollock co-op catcher vessels from taking advantage of the potential opportunity to increase effort in non-pollock groundfish fisheries to the disadvantage of fleets and vessels not eligible for a pollock co-op.

Allocating any non-pollock groundfish catch to AFA co-op vessels has the potential to further disadvantage vessels not eligible for a pollock co-op. Considering any limitations on AFA pollock co-op vessels' catch of non-pollock fisheries as caps comes as close as possible to preventing effort shifts in the non-pollock open access groundfish fisheries.

AGDB COMMENTS ON SIDE BOARDS FOR AFA VESSELS -- JAN. 27, 1998 --- PAGE 2 OF 2**PROPOSED SIDE BOARDS FOR AFA CO-OP CATCHER VESSELS
AGDB SUPPORTS LIMITS ON NON-POLLOCK GROUND FISH CATCH BY AFA CO-OP POLLOCK
CATCHER VESSELS IN THE GULF OF ALASKA**

FOR THE GULF OF ALASKA AGDB PROPOSES THE FOLLOWING SIDE BOARDS

1. GENERAL SIDE BOARDS FOR GULF OF ALASKA FISHERIES

- A. AFA pollock co-op catcher vessel may only participate in fisheries in which they have a history.
- B. History will be based on the average catch of AFA pollock co-op catcher vessels based on the years 1995, 1996 and 1997.
- C. "Fishery" is defined as a target species and by season if the fishery's TAC or PSC is released seasonally. For example, history in the Gulf of Alaska's third quarter shallow flatfish fishery could not be used in the first, second or fourth quarters.

2. TARGET SPECIFIC PROPOSALS

A. GULF OF ALASKA FLATFISH

Halibut bycatch is the restraint on the flatfish fisheries in the Gulf of Alaska rather than the TAC. AGDB suggests that the sideboards for flatfish, if needed, be based on halibut bycatch calculated as follows:

Historic average target catch 1995, 1996, 1997 multiplied by the average halibut bycatch rate and current mortality rate to determine the halibut mortality available to the AFA pollock co-op vessels.

Separate calculations would be made for the Deep Water Flatfish and Shallow Water Flatfish complexes since each of the two complexes has separate halibut caps.

This method seems necessary since it is any excessive take of halibut bycatch, not the tonnage of flatfish taken, which could impact the non-pollock co-op groundfish vessels.

B. GULF OF ALASKA NON-FLATFISH TARGETS

AGDB suggests the target catch of each non-flatfish species available to AFA pollock co-op vessels be limited to the average catch, by target species, based on the average catch history for the years 1995, 1996 and 1997.

BERING SEA/ALEUTIANS

AGDB SUPPORTS THE PROPOSALS MADE BY MIDWATER TRAWLERS AND GROUND FISH FORUM. AGDB HAS NO COMMENTS ON LIMITATIONS OF CATCH BY AFA CO-OP VESSELS IN THE BERING Sea crab fisheries.

AFA FACTORY TRAWLERS

The American Fisheries Act (AFA) prohibits catcher/processors participating in a pollock co-op from fishing in the Gulf of Alaska and also limits their catch of non-pollock species in the Bering Sea to the aggregate of the average catch 1995, 1996 and 1997. Also prohibited is processing groundfish in the Kodiak Area (630). We consider that these catcher/processor limitations provide adequate protections for the Gulf regarding catcher/processors.

Thank you for your attention to our concerns


Chris Blackburn, Director
Alaska Groundfish Data Bank

F/V HAZEL LORRAINE

Mr. Richard Lumber
Chairman, NPFMC
605 West 4th Avenue
Anchorage, Alaska 99501-2252

January 27, 1999

RECEIVED
JAN 27 1999
N.P.F.M.C

Re: SB 1221, please stop the fallout for the small boat fleet in the GOA

Dear Richard,

The pollock fishery in Kodiak has been underway for a week, with boats making deliveries from three different management areas. The canneries have been up to their ears in pollock, with boats waiting from 24-36 hours to unload their catches. This sounds good on the surface to anyone looking at a town hungry for groundfish after the unexpected early fourth quarter closures in 1998.

Before the season started, several Bering Sea catcher vessels lined the Kodiak waterfront. Most of "those" vessels were committed to making one or two deliveries in Kodiak before departing for the Bering Sea and their February 1st start date with the motherships. Several other vessels that normally fish in the Bering Sea, despite the 300,000 pound trip limit, have made first quarter and or full season commitments to fish in Kodiak. This added pressure makes several decisions for the smaller GOA catcher vessels just that much harder. The season for each of the "Kodiak" (smaller GOA vessels that do not have the qualification to harvest in the BS) vessels is shortened by these larger vessels fishing tougher weather and delivering larger catches, up to the 300K pound trip limit. This adds one more uncertainty, along with the "critical habitat" issue for SSL that might cripple the harvest from area 620. Boat owners trying to develop a business plan for the year, including major maintenance schedules for their vessel, are dependent on the profit that will be generated over the course of a normal year. At this juncture, we do not have a clue of what a "normal" year will look like for many years to come. Lacking relative stability in the fishery, boat owners will be forced to mix a more conservative maintenance schedule with a more aggressive fishing attitude and at some point there will be casualties when these two decisions cross.

The communities and the vessels that fish for them, **deserve the strongest possible sideboard protections from any fallout of SB1221.** The health of the GOA fleet is measured directly by their ability to deliver equitably amounts of fish that will return sufficient profit to provide a safe working environment and sustain family wages. The federally managed fisheries in the GOA should be managed with fair starts and consecutive openings for all gear types and "same" types fishing inshore and offshore and between both of Alaska's oceans. Kodiak's basic economy is now dependent on white fish to provide the backbone that supports the canneries and their labor force, beyond salmon, herring and halibut. In the last nine years Kodiak has lost six of twelve canneries and one of the remaining six is for sale. The decisions made in the near future by the NPFMC will shape the future the GOA fleet, the economy of the City of Kodiak, and effect the economy of the state of Alaska.

Respectfully, please require quarterly pollock registration, or lower trip limits in the GOA, or both. **The plants will still get the fish,** it will be of better quality for not spending the extra 36 hours in the boat (we could be fishing for the next fresh load).

F/V HAZEL LORRAINE

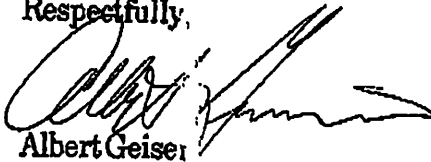
Page 2

Mr. Richard Lauber

Re: SB 1221, please stop the fallout for the small boat fleet in the GOA

This would end more of the race of pushing fish through the plants, gain a better product at lower cost, with the net benefit to all.

Respectfully,



Albert Geiser
202 Center St.
Suite 315-27
Kodiak, 99615

- cc: Senator Ted Stevens
- Senator Frank Murkowski
- Governor Tony Knowles
- Honorable Jerry Mackie
- Honorable Allen Austerman
- Mr. Steven Pennoyer, Director NMFS, Juneau
- Mr. Frank Rue, Commissioner ADFG
- Mr. Al Hurch, Alaska Draggers
- Capt. Barry Fisher, Midwater Trawlers Cooperative

enclosed: Brief history of the Kodiak fishing economy etc.....

ow passengers on different
to travel on the same plane
frequent flier miles re-
m either partner.
... don't say it is that trav-
ing tickets under those
ships, known as "code
..." can pay vastly different
or the same ticket.
fare analyst compared the
same seat on the same
id found a nearly \$600 dif-
in the price paid for a
sued by Continental from
ticket issued by its code
artner for the past year.

airline issued them.
Terry Tripple, operator of the
Internet-based "Airfare Report,"
said the same kind of gap can be
found with all of the partners in
the nation's new string of code
shares, including the tandems of
United Airlines and Delta Air
Lines, or American Airlines and
US Airways.
The partner with the higher
price depends on discounts and
on which route they are being
compared.
Tripple's warning sounds fam-
iliar: Buyer beware.

Crippled fishery, crippled town

Guest opinion

By Albert Geiser



The Island of Kodiak has en-
joyed a long string of sustaining
fisheries. Salmon and halibut
were the first ribs of the infra-
structure on the waterfront, the
king crab and Tanner crab fish-
ery put the boom into a town that
was dependent on a four month
salmon fishery. In the '70s to
the mid '80s the shrimp fishery
buttressed and then helped sup-
port the local economy after the
1980 crab fisheries crash. By
1985 the shrimp fishery was in a
nose dive and is still waiting for
recovery along with the crab. In
the early '80s joint venture fish-
eries brought direct and indirect
inputs to the economy.

At the end of the '80s the
shore-based groundfish fishery
began to take shape (pollock,
cod, and sole) along with all of
the other fisheries. Kodiak had
twelve working canneries. All
of the fisheries kept the plants
and their thousands of employ-
ees working ten to eleven months
each year. The early '90s saw
additional stresses put upon the
local fisheries by U.S. factory
trawlers, creating a race for the
by-catch, the groundfish. The
price for wild salmon came un-
der serious pressure from around
the world by farmed salmon. The
halibut derby ended in IFQs.
Now the majority of the halibut
are delivered to other ports, and
there is concern that farmed hal-
ibut will drive the price in this
fishery, too.

All of these factors contributed
to the loss of six canneries in the
last nine years and the fact that
one of the six remaining canner-
ies is for sale. Trawl caught
groundfish in the form of pol-
lock, cod and sole comprise the
economic backbone of the re-
maining working canneries. Now
there is a very serious additional
threat to the groundfish fishery
and to the local economy. The
listing of the northern Steller sea
lion as endangered in the gulf of
Alaska and Bering Sea has slip-
ped a noose around the necks
of the fishing communities in
both oceans. If the political cli-
mate that has gathered around
this issue is not turned around,
there will be a precipitous decline
in the number of surviving can-
neries and the amount of raw fish
dollars that drive the Kodiak
economy.

This is literally the parallel of

the spotted owl issue that drove
the wood products industry to its
knees in the Pacific Northwest.
(Their issue was raw logs; here
it is raw fish.) Spotted owls were
listed endangered. The resulting
battles over this listing caused
mill town after mill town to shut
down. In the Northwest there
were long court battles and lots
of warning and planned federal
legislation to protect those work-
ers who would be displaced with
retraining dollars.

Retraining of the workforce
was a viable option in the North-
west. There are roads to other
towns with jobs, or freeways that
provide transport of freight to at-
tract semiconductor plants and
mini silicon valleys.

This "island" community was
built on dollars from the sea, and
each time a fishery declined an-
other fishery began to shine and
fill or surpass the previous raw
dollars. There are no new fish-
eries on the horizon to fill any
future gaps. The stocks of the
salmon and groundfish fishery
are in sound shape and could sus-
tain the local economy into the
foreseeable future. The decline
of the Steller sea lion has been
studied by many scientists work-
ing for the National Marine Fish-
eries Service (NMFS). They
have concluded that the abun-
dance of pollock is the root cause
of the decline. The pollock are
so abundant that they are out
competing with the Steller sea
lion for the forage fish that make
up the rich side of their diet.
NMFS will not listen to their own
science or the peer review con-
ducted by contracted outside sci-
entists. NMFS, urged by
Greenpeace, started down the
wrong road believing that trawl-
ing was the cause of the decline.
Now their own science disagrees.

The first effects of this endan-
gered Steller sea lion listing will
be felt in each of the four pol-
lock openings this year. There
is a rule that automatically closes
thousands of square miles of new

"critical habitat" on the west side
of the island to pollock fishing
to protect the Steller sea lion.
This will prematurely close the
pollock fishery and send the
trawlers into the cod fish fishery
early. This is the beginning of
the crippling of the backbone
fishery. Next year the critical
habitat areas expand to a degree
on both sides of the island that
will cripple the pollock fishery
for Kodiak, Seward, Sand Point
and Cordova, permanently, be-
fore they start.

I have been told many times
that a large majority of people in
Kodiak do not have any idea how
critical fishing is to the survival
of the economy of this island.
The Eastern Aleutian Borough is
not waiting. They have filed a
lawsuit against NMFS along with
three other groups to overturn the
"finding jeopardy" for the Steller
sea lion, which also finds grave
jeopardy for the communities and
fishermen of two oceans in
Alaska.

I have given the barest of de-
tails of a very political and real
threat to the livelihood of the
majority of the people working
every month on the Rock, i.e.,
policemen, teachers, bank clerks,
professionals, real estate sales-
people, etc. Today, call your
mayor, state assemblyman, the
governor, and then your senators
and congressmen. And call this
newspaper. They could run two
weeks of articles on this issue, to
bring everyone up to speed and
build a record of concern.

If the Steller sea lions continue
to decline after NMFS destroys
the pollock fishery in the Gulf of
Alaska, they will have to look at
the cod fishery, herring, sole and
salmon fisheries. Kodiak aver-
age daily production for pollock
is 2.8 million pounds when the
season is open.

Very few people who live here
now can remember what it was
like when this was just a small
salmon town. The clock is tick-
ing. This is no joke.

Microsoft exec denies comment

WASHINGTON (AP) — The
senior Microsoft execu-
tive will testify at his
antitrust trial denied
government that he ever
in often-quoted phrase
company's aggression
a rival, that he once
said to "cut off
its air supply."
Sensational phrase,
underscores the
antitrust case
Microsoft, was attrib-
uted to witness Paul
during a November
trial with Intel Corp.
In its lawsuit, the
company alleges that
Microsoft included Internet
software free within its

dominant Windows operating
system to try to "crush"
Netscape, whose browser was
much more popular during the
mid-1990s and earned tens of
millions of dollars.

In a charge central to its case,
the government contends that
by flooding the market with its
own free browser, Microsoft
cut off Netscape's opportunity
to earn profits on its software.

Maritz, though, flatly denied
making the statements in writ-
ten testimony submitted to the
judge.

"I never said, in the presence
of Intel personnel or otherwise,
that Microsoft would 'cut off
Netscape's air supply,' or words
to that effect," Maritz wrote.

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Discussion Paper/Preliminary Analysis for AFA 'Sideboard' Package

(Prepared for February 1999 Council meeting)

Contains three Sections as follows:

Section 6 - AFA Catcher/Processor Sideboards

Section 7 - AFA Catcher Vessel Sideboards (groundfish and crab)

Section 8 - Measures to Mitigate Impacts on Non-pollock Processors

Section 6: AFA Catcher/Processor Sideboards

6.1 Introduction

The American Fisheries Act mandates protections for non-pollock groundfish fisheries in the Bering Sea that may be impacted excessively by the 20 listed pollock catcher processors. Because AFA was not enacted until October 1998, interim groundfish specifications and an emergency rule (forthcoming) are used to implement the catcher/processor restrictions in 1999. Follow-on plan and regulatory amendments are needed for 2000 and beyond and they are the main subject of this discussion paper.

6.2 American Fisheries Act Provisions

The Act specifies in section 211(b)(2) a not-to-exceed formulation for protecting non-pollock groundfish fisheries in the BSAI, paraphrased as follows:

- (A) Non-pollock groundfish harvests by the 20 listed catcher processors cannot exceed the percentage of the harvest available that is equivalent to the total harvest by the 29 listed catcher processors in 1995-1997 relative to the total amount available for harvest in those years.
- (B) Prohibited species limits for the 20 listed catcher processors cannot exceed the percentage of the PSC available that is equivalent to the total PSC harvested by the 29 listed catcher processors in 1995-1997 relevant to the total amount available for harvest in those years.
- (C) Atka mackerel harvests are limited to 11.5% in the central Aleutians and 20% in the western Aleutians.

The Act also authorizes the Council to go even further than the above provisions to protect non-pollock groundfish fisheries. Section 213(c) authorizes the Council to recommend additional conservation and management measures as necessary to mitigate adverse effects in fisheries caused by the AFA or cooperatives in the directed pollock fishery, so long as any 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.

6.3 Emergency Actions for 1999

In response to the above provisions, the Council recommended various protections at its November meeting as shown in a table in the action memo. These were implemented by NMFS on January 4, 1999, with publication of interim 1999 harvest specifications for BSAI groundfish. A forthcoming emergency rule will be published to authorize inseason authority to limit harvest of non-pollock groundfish by listed catcher/processors. Table 6.1 (which is Table 3 of the interim specifications) lists the ratios of total catch to available TAC for each species in accordance with the not-to-exceed formulation in the AFA. These ratios are applied to the ITAC to calculate harvest limits for the 20 listed catcher processors. ITAC is essentially 85% of the TAC for each non-pollock species or complex. The remaining 15% is divided equally between the groundfish reserve and the CDQ allocation. Amounts of fish may be made available to any species from the non-specific reserve during the year so long as overfishing does not result.

There are two general exceptions to using 1995-1997 catch histories to limit the 20 catcher processors. The first is for Atka mackerel, for which the percentage is specified explicitly in the AFA (see paragraph (C) above). If their three-year history had been used instead, the percentages would have been reversed, allowing the 20 vessels about 22% and 10% respectively, in the central and western Aleutians. Secondly, management of a fishery may have changed during 1995-1997. For Pacific cod, the industry and Council agreed to use solely 1997 as the base year because separate catcher-processor and catcher vessel allocations were made beginning in 1997, as noted in footnote 6 to the table. A similar problem exists in the BSAI Pacific ocean perch fishery where area percentages are based only on 1996-1997 because in 1995 the TAC was allocated for the entire Aleutians area. NMFS notes that under the forthcoming emergency rule, directed fishing by the listed catcher processors will likely be limited to Atka mackerel, Pacific cod, and yellowfin sole in 1999.

6.4 Non-pollock Groundfish Sideboards for 2000 and Beyond

The Council has selected several alternatives for 2000 and beyond, all based on 1995-1997. Principle variations among the alternatives arise from (1) using the catch histories of just the 20 eligible catcher/processors versus all 29 listed catcher/processors (20 eligible and 9 ineligible), (2) basing the caps on catch in just non-pollock target groundfish fisheries versus including catches in the pollock target fisheries, and (3) using the total harvest versus the total available TAC. Items (1) and (2) affect the numerator in determining the percentage of a species that will be fished by the 20 catcher processors, and item (3) affects the denominator, as will be shown below. Catch histories for 1995-1997 do not include activities in other than the open access fisheries, i.e., excluded are catches by catcher/processors not listed in the AFA, harvest vessels delivering to a processor, CDQ operations, or any catch in the GOA.

6.4.1 Choosing Catch Histories for the Numerator

The Council has specified four options for calculating catch histories to be applied to the numerator in determining the percentage of a species that will be available to the 20 listed catcher processors: the combined harvests of the 20 or 29 listed catcher processors for 1995-1997, mixed and matched with harvests in either the non-pollock fisheries or all target fisheries including pollock. The catch histories for each of the four options are shown in Table 6.2 based on aggregated catches in BSAI target fisheries from 1995-97 NMFS Blend data sets. The rows contain the BSAI TAC fishery groupings. The columns show catch by target fishery, either by the 20 eligible or all 29 listed catcher/processors. As noted earlier, some of the TAC groups changed between 1995 and 1997. For example, two separate categories of trawl Pacific cod are given, reflecting the cod allocation between catcher vessels and catcher processors starting in 1997 (Amendment 46). To resolve this problem, the industry agreed to base the TAC allocation for the 1999 fishery on 1997 only. A similar problem exists in the BSAI Pacific ocean perch fishery where area percentages are based only on 1996-1997 because in 1995 the TAC was allocated for the entire Aleutians area.

Tables 6.3 and 6.4 show the percentages of any future year's TAC for non-pollock target groundfish fisheries in the BSAI that would be available to the 20 eligible catcher processors. Table 6.3 uses 1995-1997 TAC as the base (except for Pacific cod when only 1997 is used), and Table 6.4 uses actual harvest those three years. The tables break out the contributions from the species' target fisheries and from bycatch in the pollock fishery.

Tables 6.5 and 6.6 show some of the same data, but the columns have been reordered to depict the general trend one would expect: percentages increase if bycatch in the pollock fishery is added to catches in the species' target fisheries, and, more significantly, if catches of the 9 ineligible vessels are included.

6.4.2. Choosing the Base for the Denominator

The Council selected two options for consideration as the base for calculating the percentage of a species that will be available for harvest in future years by the 20 eligible catcher processors. Option one would set the denominator equal to the total TACs for 1995-97. Option two would use total catch. The choice of denominators can have a significant impact on the amount of potential harvest, particularly if a TAC is underharvested due to PSC constraints. For example, the yellowfin sole TAC summed over 1995-97 was 527,000 mt. The total harvest was 437,138 mt, limited by halibut bycatch. The 20 AFA-eligible vessels caught 103,996 mt of yellowfin sole in the yellowfin sole target fisheries in 1995-97. Thus, the sideboard expressed as a percentage of the year 2000 yellowfin sole TAC, based solely on their 20-vessel catch history in the target fishery, would be 19.7% based on TAC versus 23.8% based on actual harvest. The difference in percentages is 4.1%. The general decreases in percentage caused by using the larger values of TAC in the denominator rather than the actual catches, are shown in Table 6.7.

6.4.3. Probable Directed Fisheries

Table 6.8 is a snapshot for species that may be able to support a directed fishery for the 20 eligible vessels, due to the higher percentage and/or TAC tonnage. The range of tonnages is calculated using the initial TACs in the NMFS specifications notice for 1999. Three species, yellowfin sole, other flatfish, and rock sole, are based on 1995-1997 data. Pacific cod is based on 1997. Atka mackerel is based on the percentages prescribed in AFA. The ranges of percentages and tonnages show the impacts of using different combinations of values for the numerator and denominator that result from the options being considered by the Council. Values for fisheries where the percentage is generally very small are available in tables 6.5 and 6.6.

Table 6.1: Interim Historical Catch Ratio, 1999 Aggregate Catch Limits, and 1999 Catch Limits for Vessels Listed Under Section 208 of the American Fisheries Act¹

Target species ²	Area	1995 - 1997			1999 ITAC available to trawl C/Ps	1999 harvest limit ⁴
		Total catch	Available TAC	Ratio ³		
Atka mackerel ⁵	Eastern AI/BS	-	-	-	-	-
	Central AI	-	-	0.115	19,040	2,190
	Western AI	-	-	0.200	22,950	4,590
Arrowtooth flounder	BSAI	788	36,873	0.021	13,600	291
Other flatfish	BSAI	12,145	92,428	0.131	76,019	9,989
Flathead sole	BSAI	3,030	87,975	0.034	85,000	2,927
Greenland turbot	AI	31	6,839	0.005	4,208	19
	BSAI	168	16,911	0.010	8,543	85
Other species	BSAI	3,551	65,925	0.054	21,930	1,181
Pacific cod trawl ⁶	BSAI	13,547	51,450	0.263	41,948	11,045
Pacific cod perch ⁷	BSAI	58	5,760	0.010	1,190	12
	Central AI	95	6,195	0.015	2,933	45
	Eastern AI	112	6,265	0.018	2,610	47
	Western AI	356	12,440	0.029	4,743	136
Other rockfish	AI	95	1,924	0.049	582	29
	BS	39	1,026	0.038	314	12
Rock sole	BSAI	14,753	202,107	0.073	85,000	6,205
Sablefish trawl ⁸	AI	1	1,135	0.001	293	0
	BS	8	1,736	0.005	553	3
Sharpchin/Northern Squid	AI	1,034	13,254	0.078	3,596	280
	BSAI	7	3,670	0.002	1,675	3
Shortraker/Rougheye	AI	68	2,827	0.024	314	8
Other red rockfish	BS	75	3,034	0.025	227	6
Yellowfin sole	BSAI	123,003	527,000	0.233	187,000	43,646

¹ The AFA specifies the manner in which the BSAI pollock TAC must be allocated among industry components and prohibits catcher/processors listed under paragraphs 1-20 of section 208(e) from exceeding the historical non-pollock harvest percentages by such catcher/processors and those listed under section 209 relative to the total available in the offshore component in BSAI groundfish fisheries in 1995, 1996, and 1997. Amounts are in metric tons.

² For further definitions of target species see Table 1.

³ The ratio is calculated by dividing the total catch by the available TAC.

⁴ The 1999 harvest limit for listed catcher/processors is calculated by multiplying the historic catch ratio by the 1999 proposed ITAC available to trawl catcher/processors.

⁵ In section 211(b)(2)(C) of the AFA, catcher/processors listed in paragraphs 1-20 of section 208(e) are prohibited from harvesting Atka mackerel in excess of 11.5 percent of the available TAC in the Central Aleutian Islands and Bering Sea subarea.

⁶ For Pacific cod, 47 percent of the ITAC is allocated to trawl, and of that 50 percent is available for catcher/processors. Separate catcher/processor and catcher/vessel allocations became effective in 1997, therefore only data from 1997 was used to calculate the historic ratio.

⁷ Apportionments to western, central, and eastern Aleutian Islands subareas began in 1996, therefore only data from 1996 and 1997 was used to calculate the historic ratio.

⁸ 25 percent of the Sablefish ITAC is allocated to trawl in the AI subarea, 50 percent is allocated to trawl in the BS subarea.

Table 6.2: Catch of the Listed AFA Catcher Processors (Eligible and Ineligible) in the Bering Sea and Aleutian Islands (1995-97)

Species by TAC Grouping	Non-Pollock Targets		Pollock Targets		All Target Fisheries	
	AFA CP Harvests		AFA CP Harvests		AFA CP Harvests	
	20 CPs	29 CPs	20 CPs	29 CPs	20 CPs	29 CPs
Atka Mackerel - Central AI	8,305	23,132	5	6	8,310	23,138
Atka Mackerel - Eastern AI	458	601	201	202	659	803
Atka Mackerel - Western AI	535	9,491		146	535	9,636
Arrowtooth Flounder - BSAI	371	787	910	1,901	1,280	2,688
Other Flatfish - BSAI	10,202	12,145	297	462	10,499	12,607
Flathead Sole - BSAI	1,914	3,028	2,878	4,408	4,791	7,435
Greenland Turbot - Aleutian Islands	29	31	2	2	30	33
Greenland Turbot - Bering Sea	111	168	71	96	182	265
Other Species - BSAI	2,237	3,551	1,205	2,048	3,442	5,599
Pacific Cod (Fixed Gear) - BSAI		436			0	436
Pacific Cod (Trawl Gear) - BSAI	16,450	32,487	8,072	13,263	24,522	45,750
Pacific Cod (Trawl Gear, CPs) - BSAI	6,573	13,544	2,399	3,661	8,973	17,205
Pollock (Offshore) - Aleutian Islands	68	307	53,205	63,760	53,273	64,067
Pollock (Offshore) - Bogoslof			532	532	532	532
Pollock (Offshore) - Bering Sea	17,082	23,161	1,101,738	1,408,322	1,118,820	1,431,483
Pacific Ocean Perch - Aleutian Islands	414	613	29	47	444	661
Pacific Ocean Perch - Bering Sea	18	58	28	33	46	91
Pacific Ocean Perch - Central AI	26	95	9	16	34	112
Pacific Ocean Perch - Eastern AI	35	112	29	29	64	141
Pacific Ocean Perch - Western AI	163	356			163	356
Other Rockfish - Aleutian Islands	74	95	2	2	76	97
Other Rockfish - Bering Sea	31	39	3	8	34	47
Rock Sole - BSAI	10,229	14,749	1,978	3,139	12,207	17,888
Sablefish (Trawl Gear) - AI	0	0	0	0	0	0
Sablefish (Trawl Gear) - Bering Sea	6	8	0	0	6	9
Sharpchin/Northern Rockfish - AI	336	1,034	0	1	336	1,034
Squid - BSAI	4	7	810	871	814	877
Shortraker/Rougheye Rockfish - AI	60	68	6	7	66	75
Other Red Rockfish - Bering Sea	69	75	97	99	166	174
Yellowfin Sole - BSAI	103,996	123,003	1,206	2,007	105,203	125,010
Grand Total	179,795	263,180	1,175,713	1,505,068	1,355,508	1,768,247

Source: National Marine Fisheries Service AKR Blend data for 1995-97.

Note: Excludes CDQ harvests

Table 6.3: Percent of TAC Harvested by the Listed AFA Catcher Processors (Eligible and Ineligible) in the Bering Sea and Aleutian Islands (1995-97)

Species by TAC Grouping	Non-Pollock Target Fisheries		Pollock Target Fisheries		All Target Fisheries	
	AFA CP Harvests		AFA CP Harvests		AFA CP Harvests	
	20 CPs	29 CPs	20 CPs	29 CPs	20 CPs	29 CPs
Atka Mackerel - Central Aleutian Islands	8.06%	22.44%	0.00%	0.01%	8.06%	22.44%
Atka Mackerel - Eastern Aleutian Islands	0.83%	1.09%	0.36%	0.37%	1.19%	1.45%
Atka Mackerel - Western Aleutian Islands	0.57%	10.04%	0.00%	0.15%	0.57%	10.19%
Arrowtooth Flounder - BSAI	1.01%	2.13%	2.47%	5.16%	3.47%	7.29%
Other Flatfish - BSAI	11.04%	13.14%	0.32%	0.50%	11.36%	13.64%
Flathead Sole - BSAI	2.18%	3.44%	3.27%	5.01%	5.45%	8.45%
Greenland Turbot - Aleutian Islands	0.42%	0.45%	0.02%	0.03%	0.44%	0.48%
Greenland Turbot - Bering Sea	0.66%	1.00%	0.42%	0.57%	1.08%	1.56%
Other Species - BSAI	3.39%	5.39%	1.83%	3.11%	5.22%	8.49%
Pacific Cod (Fixed Gear) - BSAI	0.00%	0.11%	0.00%	0.00%	0.00%	0.11%
Pacific Cod (Trawl Gear) - BSAI	6.38%	12.59%	3.13%	5.14%	9.50%	17.73%
Pacific Cod (Trawl Gear, CPs) - BSAI	12.78%	26.32%	4.66%	7.11%	17.44%	33.44%
Pacific Ocean Perch - Aleutian Islands	3.94%	5.84%	0.28%	0.45%	4.22%	6.29%
Pacific Ocean Perch - Bering Sea	0.31%	1.01%	0.48%	0.57%	0.80%	1.57%
Pacific Ocean Perch - Central Aleutian Islands	0.41%	1.54%	0.14%	0.26%	0.56%	1.80%
Pacific Ocean Perch - Eastern Aleutian Islands	0.56%	1.79%	0.47%	0.47%	1.02%	2.25%
Pacific Ocean Perch - Western Aleutian Islands	1.31%	2.86%	0.00%	0.00%	1.31%	2.86%
Other Rockfish - Aleutian Islands	3.86%	4.92%	0.12%	0.12%	3.97%	5.03%
Other Rockfish - Bering Sea	3.02%	3.83%	0.33%	0.76%	3.35%	4.59%
Rock Sole - BSAI	5.06%	7.30%	0.98%	1.55%	6.04%	8.85%
Sablefish (Trawl Gear) - Aleutian Islands	0.02%	0.04%	0.00%	0.00%	0.02%	0.04%
Sablefish (Trawl Gear) - Bering Sea	0.35%	0.47%	0.00%	0.03%	0.35%	0.49%
Sharpchin/Northern Rockfish - Aleutian Islands	2.54%	7.80%	0.00%	0.01%	2.54%	7.80%
Squid - Bering Sea and Aleutian Islands	0.10%	0.19%	22.07%	23.72%	22.17%	23.91%
Shortraker/Rougheye Rockfish - Aleutian Islands	2.11%	2.42%	0.21%	0.24%	2.32%	2.66%
Other Red Rockfish - Bering Sea	2.27%	2.47%	3.19%	3.28%	5.46%	5.74%
Yellowfin Sole - BSAI	19.73%	23.34%	0.23%	0.38%	19.96%	23.72%

Source: National Marine Fisheries Service AKR Blend data for 1995-97.

Note: Excludes CDQ harvests

Table 6.4: Percent of Catch Harvested by the Listed AFA Catcher Processors (Eligible and Ineligible) in the Bering Sea and Aleutian Islands (1995-97)

Species by TAC Grouping	Non-Pollock Target Fisheries		Pollock Target Fisheries		All Target Fisheries	
	AFA CP Harvests 20 CPs	AFA CP Harvests 29 CPs	AFA CP Harvests 20 CPs	AFA CP Harvests 29 CPs	AFA CP Harvests 20 CPs	AFA CP Harvests 29 CPs
Atka Mackerel - Central Aleutian Islands	7.99%	22.26%	0.00%	0.01%	8.00%	22.27%
Atka Mackerel - Eastern Aleutian Islands	0.78%	1.02%	0.34%	0.34%	1.12%	1.37%
Atka Mackerel - Western Aleutian Islands	0.60%	10.69%	0.00%	0.16%	0.60%	10.86%
Arrowtooth Flounder - BSAI	1.09%	2.31%	2.67%	5.59%	3.76%	7.90%
Other Flatfish - BSAI	16.54%	19.69%	0.48%	0.75%	17.02%	20.44%
Flathead Sole - BSAI	3.65%	5.77%	5.48%	8.40%	9.13%	14.17%
Greenland Turbot - Aleutian Islands	0.61%	0.66%	0.04%	0.04%	0.65%	0.70%
Greenland Turbot - Bering Sea	0.68%	1.03%	0.44%	0.59%	1.11%	1.62%
Other Species - BSAI	3.26%	5.18%	1.76%	2.99%	5.02%	8.17%
Pacific Cod (Fixed Gear) - BSAI	0.00%	0.11%	0.00%	0.00%	0.00%	0.11%
Pacific Cod (Trawl Gear) - BSAI	7.06%	13.94%	3.46%	5.69%	10.52%	19.64%
Pacific Cod (Trawl Gear, CPs) - BSAI	13.71%	28.24%	5.00%	7.63%	18.71%	35.87%
Pacific Ocean Perch - Aleutian Islands	4.02%	5.96%	0.29%	0.46%	4.31%	6.42%
Pacific Ocean Perch - Bering Sea	0.38%	1.24%	0.59%	0.69%	0.98%	1.93%
Pacific Ocean Perch - Central Aleutian Islands	0.45%	1.67%	0.16%	0.29%	0.61%	1.96%
Pacific Ocean Perch - Eastern Aleutian Islands	0.57%	1.81%	0.47%	0.47%	1.04%	2.29%
Pacific Ocean Perch - Western Aleutian Islands	1.20%	2.61%	0.00%	0.00%	1.20%	2.61%
Other Rockfish - Aleutian Islands	9.62%	12.26%	0.29%	0.29%	9.91%	12.55%
Other Rockfish - Bering Sea	5.21%	6.61%	0.58%	1.31%	5.79%	7.92%
Rock Sole - BSAI	6.04%	8.71%	1.17%	1.85%	7.21%	10.56%
Sablefish (Trawl Gear) - Aleutian Islands	0.13%	0.32%	0.02%	0.02%	0.15%	0.34%
Sablefish (Trawl Gear) - Bering Sea	1.21%	1.64%	0.01%	0.09%	1.22%	1.73%
Sharpchin/Northern Rockfish - Aleutian Islands	2.69%	8.25%	0.00%	0.01%	2.69%	8.26%
Squid - Bering Sea and Aleutian Islands	0.14%	0.25%	30.20%	32.46%	30.34%	32.71%
Shortraker/Rougheye Rockfish-Aleutian Islands	2.35%	2.69%	0.23%	0.27%	2.58%	2.96%
Other Red Rockfish - Bering Sea	9.03%	9.80%	12.69%	13.02%	21.72%	22.82%
Yellowfin Sole - BSAI	23.79%	28.14%	0.28%	0.46%	24.07%	28.60%

Source: National Marine Fisheries Service AKR Blend data for 1995-97.

Note: Excludes CDQ harvests

Table 6.5: Percent of TAC Harvested by the Listed AFA Catcher Processors (Eligible and Ineligible) in the Bering Sea and Aleutian Islands (1995-97), Reordered to Show Trends in Options by Catch History

Species by TAC Grouping	Non-Pollock Targets 20	All Targets 20	Non-Pollock Targets 29	All Targets 29
Atka Mackerel - Central Aleutian Islands	8.06%	8.06%	22.44%	22.44%
Atka Mackerel - Eastern Aleutian Islands	0.83%	1.19%	1.09%	1.45%
Atka Mackerel - Western Aleutian Islands	0.57%	0.57%	10.04%	10.19%
Arrowtooth Flounder - BSAI	1.01%	3.47%	2.13%	7.29%
Other Flatfish - BSAI	11.04%	11.36%	13.14%	13.64%
Flathead Sole - BSAI	2.18%	5.45%	3.44%	8.45%
Greenland Turbot - Aleutian Islands	0.42%	0.44%	0.45%	0.48%
Greenland Turbot - Bering Sea	0.66%	1.08%	1.00%	1.56%
Other Species - BSAI	3.39%	5.22%	5.39%	8.49%
Pacific Cod (Fixed Gear) - BSAI	0.00%	0.00%	0.11%	0.11%
Pacific Cod (Trawl Gear, CPs) - BSAI ¹	12.78%	17.44%	26.32%	33.44%
Pacific Ocean Perch - Bering Sea	0.31%	0.80%	1.01%	1.57%
Pacific Ocean Perch - Central Aleutian Islands ²	0.41%	0.56%	1.54%	1.80%
Pacific Ocean Perch - Eastern Aleutian Islands	0.56%	1.02%	1.79%	2.25%
Pacific Ocean Perch - Western Aleutian Islands	1.31%	1.31%	2.86%	2.86%
Other Rockfish - Aleutian Islands	3.86%	3.97%	4.92%	5.03%
Other Rockfish - Bering Sea	3.02%	3.35%	3.83%	4.59%
Rock Sole - BSAI	5.06%	6.04%	7.30%	8.85%
Sablefish (Trawl Gear) - Aleutian Islands	0.02%	0.02%	0.04%	0.04%
Sablefish (Trawl Gear) - Bering Sea	0.35%	0.35%	0.47%	0.49%
Sharpchin/Northern Rockfish - Aleutian Islands	2.54%	2.54%	7.80%	7.80%
Squid - Bering Sea and Aleutian Islands	0.10%	22.17%	0.19%	23.91%
Shortraker/Rougheye Rockfish - Aleutian Islands	2.11%	2.32%	2.42%	2.66%
Other Red Rockfish - Bering Sea	2.27%	5.46%	2.47%	5.74%
Yellowfin Sole - BSAI	19.73%	19.96%	23.34%	23.72%

Source: National Marine Fisheries Service AKR Blend data for 1995-97.

Note: Excludes CDQ harvests

¹Based only on 1997 catch and TAC, because the trawl TAC was split between catcher/processors and catcher vessels that year.

²Central, Eastern, and Western Aleutian Islands POP percentages are based only on 1996 and 1997 catch and TACs, because in 1995 the TAC was allocated for the entire Aleutian Islands area.

Table 6.6: Percent of Catch Harvested by the Listed AFA Catcher Processors (Eligible and Ineligible) in the Bering Sea and Aleutian Islands (1995-97), Reordered to Show Trends in Options by Catch History

Species by TAC Grouping	Non-Pollock Targets 20	All Targets 20	Non-Pollock Targets 29	All Targets 29
Atka Mackerel - Central Aleutian Islands	7.99%	8.00%	22.26%	22.27%
Atka Mackerel - Eastern Aleutian Islands	0.78%	1.12%	1.02%	1.37%
Atka Mackerel - Western Aleutian Islands	0.60%	0.60%	10.69%	10.86%
Arrowtooth Flounder - BSAI	1.09%	3.76%	2.31%	7.90%
Other Flatfish - BSAI	16.54%	17.02%	19.69%	20.44%
Flathead Sole - BSAI	3.65%	9.13%	5.77%	14.17%
Greenland Turbot - Aleutian Islands	0.61%	0.65%	0.66%	0.70%
Greenland Turbot - Bering Sea	0.68%	1.11%	1.03%	1.62%
Other Species - BSAI	3.26%	5.02%	5.18%	8.17%
Pacific Cod (Fixed Gear) - BSAI	0.00%	0.00%	0.11%	0.11%
Pacific Cod (Trawl Gear, CPs) - BSAI ³	13.71%	18.71%	28.24%	35.87%
Pacific Ocean Perch - Bering Sea	0.38%	0.98%	1.24%	1.93%
Pacific Ocean Perch - Central Aleutian Islands ⁴	0.45%	0.61%	1.67%	1.96%
Pacific Ocean Perch - Eastern Aleutian Islands	0.57%	1.04%	1.81%	2.29%
Pacific Ocean Perch - Western Aleutian Islands	1.20%	1.20%	2.61%	2.61%
Other Rockfish - Aleutian Islands	9.62%	9.91%	12.26%	12.55%
Other Rockfish - Bering Sea	5.21%	5.79%	6.61%	7.92%
Rock Sole - BSAI	6.04%	7.21%	8.71%	10.56%
Sablefish (Trawl Gear) - Aleutian Islands	0.13%	0.15%	0.32%	0.34%
Sablefish (Trawl Gear) - Bering Sea	1.21%	1.22%	1.64%	1.73%
Sharpchin/Northern Rockfish - Aleutian Islands	2.69%	2.69%	8.25%	8.26%
Squid - Bering Sea and Aleutian Islands	0.14%	30.34%	0.25%	32.71%
Shortraker/Rougheye Rockfish-Aleutian Islands	2.35%	2.58%	2.69%	2.96%
Other Red Rockfish - Bering Sea	9.03%	21.72%	9.80%	22.82%
Yellowfin Sole - BSAI	23.79%	24.07%	28.14%	28.60%

Source: National Marine Fisheries Service AKR Blend data for 1995-97.

Note: Excludes CDQ harvests

³Based only on 1997 catch, because the trawl TAC was split between catcher/processors and catcher vessels that year.

⁴Central, Eastern, and Western Aleutian Islands POP percentages are based only on 1996 and 1997 catches, because in 1995 the TAC was allocated for the entire Aleutian Islands area.

Table 6.7: Difference in Percent of the 2000 TAC the Listed AFA Catcher/Processors Would Receive Based on Calculations using TAC vs. Catch, Reordered to Show Trends in Options by Catch History

Species by TAC Grouping	Non-Pollock Targets 20	All Targets 20	Non-Pollock Targets 29	All Targets 29
Atka Mackerel - Central Aleutian Islands	0.07%	0.06%	0.18%	0.17%
Atka Mackerel - Eastern Aleutian Islands	0.05%	0.07%	0.07%	0.08%
Atka Mackerel - Western Aleutian Islands	-0.03%	-0.03%	-0.65%	-0.67%
Arrowtooth Flounder - BSAI	-0.08%	-0.29%	-0.18%	-0.61%
Other Flatfish - BSAI	-5.50%	-5.66%	-6.55%	-6.80%
Flathead Sole - BSAI	-1.47%	-3.68%	-2.33%	-5.72%
Greenland Turbot - Aleutian Islands	-0.19%	-0.21%	-0.21%	-0.22%
Greenland Turbot - Bering Sea	-0.02%	-0.03%	-0.03%	-0.06%
Other Species - BSAI	0.13%	0.20%	0.21%	0.32%
Pacific Cod (Fixed Gear) - BSAI	0.00%	0.00%	0.00%	0.00%
Pacific Cod (Trawl Gear, CPs) - BSAI ⁵	-0.93%	-1.27%	-1.92%	-2.43%
Pacific Ocean Perch - Bering Sea	-0.07%	-0.18%	-0.23%	-0.36%
Pacific Ocean Perch - Central Aleutian Islands ⁶	-0.04%	-0.05%	-0.13%	-0.16%
Pacific Ocean Perch - Eastern Aleutian Islands	-0.01%	-0.02%	-0.02%	-0.04%
Pacific Ocean Perch - Western Aleutian Islands	0.11%	0.11%	0.25%	0.25%
Other Rockfish - Aleutian Islands	-5.76%	-5.94%	-7.34%	-7.52%
Other Rockfish - Bering Sea	-2.19%	-2.44%	-2.78%	-3.33%
Rock Sole - BSAI	-0.98%	-1.17%	-1.41%	-1.71%
Sablefish (Trawl Gear) - Aleutian Islands	-0.11%	-0.13%	-0.28%	-0.30%
Sablefish (Trawl Gear) - Bering Sea	-0.86%	-0.87%	-1.17%	-1.24%
Sharpchin/Northern Rockfish - Aleutian Islands	-0.15%	-0.15%	-0.45%	-0.46%
Squid - Bering Sea and Aleutian Islands	-0.04%	-8.17%	-0.06%	-8.80%
Shorthead/Rougheye Rockfish-Aleutian Islands	-0.24%	-0.26%	-0.27%	-0.30%
Other Red Rockfish - Bering Sea	-6.76%	-16.26%	-7.33%	-17.08%
Yellowfin Sole - BSAI	-4.06%	-4.11%	-4.80%	-4.88%

Source: National Marine Fisheries Service AKR Blend data for 1995-97.

Note: Excludes CDQ harvests

⁵Based only on 1997 catch, because the trawl TAC was split between catcher/processors and catcher vessels that year.

⁶Central, Eastern, and Western Aleutian Islands POP percentages are based only on 1996 and 1997 catches, because in 1995 the TAC was allocated for the entire Aleutian Islands area.

Table 6.8: Percentage of future TAC available to 20 AFA catcher processors under various sideboard options for six possible directed fisheries. Tonnage range is derived by using the range of possible percentages multiplied by the 1999 TACs.

Fishery	(TAC or catch)	Non-Pollock Targets 20	All Targets 20	Non-Pollock Targets 29	All Targets 29
Yellowfin sole	TAC	19.7%	20.0	23.3	23.7
	Catch	23.8	24.1	28.1	28.6
	Range	(36,839 - 53,482 mt)			
Pacific cod	TAC	12.8	17.4	26.3	33.4
	Catch	13.7	18.7	28.2	35.9
	Range	(5,369 - 15,069 mt)			
Atka mackerel WAI	TAC	20.0	20.0	20.0	20.0
	Catch	20.0	20.0	20.0	20.0
	Range	(4,590 mt)			
Atka mackerel CAI	TAC	11.5	11.5	11.5	11.5
	Catch	11.5	11.5	11.5	11.5
	Range	(2,190 mt)			
Other flatfish	TAC	11.0	11.4	13.1	13.6
	Catch	16.5	17.0	19.7	20.4
	Range	(8,362 - 15,508 mt)			
Rock sole	TAC	5.1	6.0	7.3	8.9
	Catch	6.0	7.2	8.7	10.6
	Range	(4,335 - 9,010 mt)			

6.5 AFA Catcher/Processor PSC Caps for 2000 and Beyond

The same methodology used to determine groundfish sideboards is used to estimate PSC bycatch levels for 2000 and beyond. Again, this approach is based on 1995-1997 and does not include catches made in CDQ fisheries, bycatch from catcher vessels delivering fish, bycatch harvested by non-AFA catcher/processors, or bycatch harvested in the GOA.

PSC amounts available to AFA catcher/processors would be caps and not allocations. Because they are not guaranteed that amount of PSC bycatch, they must compete against other individuals operating in the open access fishery. For example, if the AFA catcher/processors were capped at 25 percent of the yellowfin halibut mortality allowance, the non-AFA vessels in the fleet could take all of the halibut mortality assigned to the yellowfin sole fishery if the AFA processors decided not to enter yellowfin sole at the start of the season. However if the AFA catcher/processors reach their cap, they will be required to stop fishing even if PSC halibut mortality is available to the non-AFA portion of the fleet.

There are at least two ways that PSC caps could be apportioned among the AFA catcher/processors. One method would be to determine the entire amount of PSC for each species and let the catcher/processors decide how to apportion it among fisheries. Recall that trawl PSC bycatch is currently divided among the Pacific cod, rockfish, pollock/Atka mackerel/other groundfish, rock sole/other flatfish, Greenland turbot/arrowtooth flounder/sablefish, and yellowfin sole fisheries. Under this option the Council identifies a given percentage of the trawl halibut PSC cap for the AFA catcher/processors and lets them decide in which fisheries to use the PSC. There may be advantages/disadvantages in allowing the catcher/processors to choose which fisheries to use their PSC.

Estimates of PSC harvests are provided based on whether the catch was made by the 20 eligible or 29 listed AFA catcher/processors. They also are calculated based on whether the harvest occurred in the pollock or non-pollock target fisheries. Table 6.9 lists the bycatch of PSC species taken by the AFA catcher/processors. Only herring, halibut, *C. bairdi* Zone 1, *C. bairdi* Zone 2, other Tanner crab, and red king crab zone 1 are included. The other Tanner crab category may need to be treated differently from the other PSC species, because caps by individual fishery were not established until 1999. This analysis has assumed that the 1999 caps were in place from 1995-97, which may tend to skew the resulting caps that are calculated, if the distribution of 'other Tanner' bycatch from 1995-97 does not track well with the target fishery caps established for 1999.

Tables 6.9 and 6.10 report the total amount of each PSC species harvested and the percent of that PSC species harvested as a percentage of the total bycatch cap, respectively, by the AFA catcher processors from 1995-97. Tables 6.11 and 6.12 then report the same information broken down by PSC target groups. This more specific breakdown may be useful if consideration is given to apportioning PSC by fishery.

Table 6.9: PSC Bycatch by the AFA Catcher Processors in the BSAI from 1995-97

PSC Species	Non-pollock Targets		Pollock Targets		All Target Fisheries	
	AFA CPs		AFA CPs		AFA CPs	
	20 CPs	29 CPs	20 CPs	29 CPs	20 CPs	29 CPs
Halibut Mortality	634	952	251	387	886	1,338
<i>C. bairdi</i> (Zone 1)	348,580	385,676	27,712	62,077	376,292	447,753
<i>C. bairdi</i> (Zone 2)	340,017	406,846	9,617	33,352	349,635	440,198
Red King Crab (Zone 1)	2,963	3,098	3,335	8,240	6,297	11,338
Herring	30	62	995	1,122	1,024	1,184
<i>C. opilio</i>	1,603,406	1,906,083	137,828	300,024	1,741,234	2,206,106

Source: National Marine Fisheries Service AKR PSC Bycatch Data (File Names BS95HALX, BS96HALX, and BS97HALX)

Table 6.10: Percent of PSC Bycatch Harvested by the AFA Catcher Processors in the BSAI from 1995-97

PSC Species	Non-pollock Targets		Pollock Targets		All Target Fisheries	
	AFA CPs		AFA CPs		AFA CPs	
	20 CPs	29 CPs	20 CPs	29 CPs	20 CPs	29 CPs
Halibut Mortality	5.60%	8.42%	2.22%	3.41%	7.82%	11.82%
<i>C. bairdi</i> (Zone 1)	12.68%	14.02%	1.01%	2.26%	13.68%	16.28%
<i>C. bairdi</i> (Zone 2)	4.20%	5.02%	0.12%	0.41%	4.32%	5.43%
Red King Crab (Zone 1)	0.63%	0.65%	0.70%	1.74%	1.33%	2.39%
Herring	0.57%	1.20%	19.36%	21.85%	19.94%	23.05%
<i>C. opilio</i>	11.40%	13.56%	0.98%	2.13%	12.38%	15.69%

Source: National Marine Fisheries Service AKR PSC Bycatch Data (File Names BS95HALX, BS96HALX, and BS97HALX)

Table 6.11: BS/AI PSC Bycatch by the AFA Catcher Processors from 1995-97 in each PSC Target Grouping

PSC Target	Species	Non-Pollock Targets AFA CPs		Pollock Targets AFA CPs		All Target Fisheries AFA CPs	
		20 CPs	29 CPs	20 CPs	29 CPs	20 CPs	29 CPs
Pacific Cod	Halibut Mortality	84	219	-	-	84	219
	<i>C. bairdi</i> (Zone 1)	2,973	24,940	-	-	2,973	24,940
	<i>C. bairdi</i> (Zone 2)	7,774	18,304	-	-	7,774	18,304
	Red King Crab (Zone 1)	-	-	-	-	-	-
	Herring	2	15	-	-	2	15
	<i>C. opilio</i>	5,687	21,917	-	-	5,687	21,917
Rockfish	Halibut Mortality	1	1	-	-	1	1
	<i>C. bairdi</i> (Zone 1)	-	-	-	-	-	-
	<i>C. bairdi</i> (Zone 2)	-	-	-	-	-	-
	Red King Crab (Zone 1)	-	-	-	-	-	-
	Herring	-	-	-	-	-	-
	<i>C. opilio</i>	-	-	-	-	-	-
Pollock/ Atka Mackerel/ Other Groundfish	Halibut Mortality	3	17	251	387	254	403
	<i>C. bairdi</i> (Zone 1)	70	70	27,712	62,077	27,782	62,147
	<i>C. bairdi</i> (Zone 2)	-	-	9,617	33,352	9,617	33,352
	Red King Crab (Zone 1)	-	-	3,335	8,240	3,335	8,240
	Herring	0	0	995	1,122	995	1,122
	<i>C. opilio</i>	-	-	137,828	300,024	137,828	300,024
Rock sole/ Other Flatfish	Halibut Mortality	38	64	-	-	38	64
	<i>C. bairdi</i> (Zone 1)	52,494	56,936	-	-	52,494	56,936
	<i>C. bairdi</i> (Zone 2)	258	5,976	-	-	258	5,976
	Red King Crab (Zone 1)	1,370	1,370	-	-	1,370	1,370
	Herring	-	0	-	-	-	0
	<i>C. opilio</i>	6,283	14,406	-	-	6,283	14,406
Greenland Turbot/ Arrowtooth Flounder/ Sablefish	Halibut Mortality	5	32	-	-	5	32
	<i>C. bairdi</i> (Zone 1)	54	54	-	-	54	54
	<i>C. bairdi</i> (Zone 2)	-	-	-	-	-	-
	Red King Crab (Zone 1)	-	-	-	-	-	-
	Herring	-	-	-	-	-	-
	<i>C. opilio</i>	1,492	1,565	-	-	1,492	1,565
Yellowfin Sole	Halibut Mortality	504	618	-	-	504	618
	<i>C. bairdi</i> (Zone 1)	293,042	303,729	-	-	293,042	303,729
	<i>C. bairdi</i> (Zone 2)	331,986	382,566	-	-	331,986	382,566
	Red King Crab (Zone 1)	1,593	1,729	-	-	1,593	1,729
	Herring	28	46	-	-	28	46
	<i>C. opilio</i>	1,589,944	1,868,195	-	-	1,589,944	1,868,195

Table 6.12: BS/AI PSC Bycatch by the AFA Catcher Processors from 1995-97 in each PSC Target Grouping

PSC Target	Species	Non-Pollock Targets AFA CPs		Pollock Targets AFA CPs		All Target Fisheries AFA CPs	
		20 CPs	29 CPs	20 CPs	29 CPs	20 CPs	29 CPs
Pacific Cod	Halibut Mortality	1.73%	4.53%	0.00%	0.00%	1.73%	4.53%
	<i>C. bairdi</i> (Zone 1)	0.49%	4.10%	0.00%	0.00%	0.49%	4.10%
	<i>C. bairdi</i> (Zone 2)	1.09%	2.56%	0.00%	0.00%	1.09%	2.56%
	Red King Crab (Zone 1)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	Herring	2.91%	22.98%	0.00%	0.00%	2.91%	22.98%
	<i>C. opilio</i>	0.04%	0.16%	0.00%	0.00%	0.04%	0.16%
Rockfish	Halibut Mortality	0.33%	0.33%	0.00%	0.00%	0.33%	0.33%
	<i>C. bairdi</i> (Zone 1)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	<i>C. bairdi</i> (Zone 2)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	Red King Crab (Zone 1)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	Herring	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	<i>C. opilio</i>	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Pollock/ Atka Mackerel/ Other Groundfish	Halibut Mortality	0.22%	1.24%	18.82%	28.96%	19.04%	30.20%
	<i>C. bairdi</i> (Zone 1)	0.04%	0.04%	14.25%	31.93%	14.29%	31.97%
	<i>C. bairdi</i> (Zone 2)	0.00%	0.00%	0.52%	1.80%	0.52%	1.80%
	Red King Crab (Zone 1)	0.00%	0.00%	4.94%	12.21%	4.94%	12.21%
	Herring	0.00%	0.00%	23.80%	26.85%	23.80%	26.85%
	<i>C. opilio</i>	0.00%	0.00%	0.98%	2.13%	0.98%	2.13%
Rock sole/ Other Flatfish	Halibut Mortality	1.73%	2.90%	0.00%	0.00%	1.73%	2.90%
	<i>C. bairdi</i> (Zone 1)	4.39%	4.76%	0.00%	0.00%	4.39%	4.76%
	<i>C. bairdi</i> (Zone 2)	0.02%	0.43%	0.00%	0.00%	0.02%	0.43%
	Red King Crab (Zone 1)	0.51%	0.51%	0.00%	0.00%	0.51%	0.51%
	Herring	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	<i>C. opilio</i>	0.04%	0.10%	0.00%	0.00%	0.04%	0.10%
Greenland Turbot/ Arrowtooth Flounder/ Sablefish	Halibut Mortality	4.03%	27.01%	0.00%	0.00%	4.03%	27.01%
	<i>C. bairdi</i> (Zone 1)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	<i>C. bairdi</i> (Zone 2)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	Red King Crab (Zone 1)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	Herring	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
	<i>C. opilio</i>	0.01%	0.01%	0.00%	0.00%	0.01%	0.01%
Yellowfin Sole	Halibut Mortality	20.15%	24.73%	0.00%	0.00%	20.15%	24.73%
	<i>C. bairdi</i> (Zone 1)	39.00%	40.43%	0.00%	0.00%	39.00%	40.43%
	<i>C. bairdi</i> (Zone 2)	8.05%	9.27%	0.00%	0.00%	8.05%	9.27%
	Red King Crab (Zone 1)	1.45%	1.57%	0.00%	0.00%	1.45%	1.57%
	Herring	3.18%	5.32%	0.00%	0.00%	3.18%	5.32%
	<i>C. opilio</i>	11.31%	13.29%	0.00%	0.00%	11.31%	13.29%

6.6 Reaching caps will close which fisheries

Once the groundfish and PSC caps are established, then a decision must be made regarding the closures that occur when the caps are reached. This decision may be impacted by the method used to determine the caps. For example, if only the catch in the non-pollock target fisheries is included in the cap, the Council may feel it is appropriate to only close the non-pollock target fisheries upon attainment of the cap. After the closure in this scenario, only the pelagic pollock fishery would remain open. The pelagic pollock fishery would then close once the AFA catcher/processors harvested their pollock quota.

Caps established for the 1999 fisheries were based on the 1995-97 catch history of all 29 listed AFA catcher/processors in the non-pollock target fisheries. Once a species cap is reached by these vessels in 1999, NMFS will close all but the pelagic pollock fishery for the 20 eligible AFA catcher/processors.

Based on the 1999 groundfish caps, only the BSAI yellowfin sole, Pacific cod, and Atka mackerel fisheries will likely be opened to directed fishing by the AFA catcher/processor fleet. The caps established for other groundfish species were determined to be insufficient to open a fishery for those species. So if similar caps are set for 2000 and beyond, it is likely that the only EEZ fisheries off Alaska that the AFA catcher/processors will be allowed to fish are those three and pollock.

6.6.1 Only non-pollock fisheries close

When a sideboard cap is reached under this alternative only the non-pollock target fisheries will be closed to directed fishing by the AFA catcher/processors. This option provides the fleet a greater opportunity to harvest their entire cap of non-pollock groundfish. The risk associated with reaching a cap are much less if the pollock fishery remains open when a sideboard cap is reached.

If the sideboard caps are based on the bycatch from non-pollock target fisheries, the AFA vessels will only be able to harvest at their traditional levels in those fisheries. Any bycatch reductions in the pollock targets, resulting from cleaner fishing under the co-op, would be forgone by the AFA catcher/processors. This may diminish their incentives to reduce bycatch of a valuable species like Pacific cod in the pollock target fishery, if they are well above the 95 percent pollock threshold for the pelagic fishery definition.

Allowing these vessels to count bycatch in all target fisheries towards their caps, but reaching the caps would only close the non-pollock target fisheries, likely would not be much of an advantage in most fisheries. Pacific cod may be one of the exceptions. About 50 percent of the Pacific cod harvested by these vessels was taken in the pollock target fisheries. Access to that increase in their cap may allow them the harvest more cod in the directed fishery. If they did not reduce the cod bycatch in the pollock target fishery they may actually increase the percentage of the cod TAC that they harvest. Given that bottom trawling for pollock is no longer legal, this may not be as much of a problem in the future as it would have been in the past.

6.6.2 All fishing closes for the AFA catcher/processor fleet

Reaching a sideboard cap under this scenario would close both the pollock and non-pollock fisheries for the AFA catcher/processors. Budgeting their caps under this scenario would be critical, since excessive bycatch of any species could close the directed pollock fishery before their allocation is taken. This option may force AFA members to forgo harvesting opportunities in the non-pollock target fisheries at the start of the season to ensure they do not reach a cap before their pollock is harvested.

The management of bycatch under this scenario would be more difficult if their cap was based only on participation in the non-pollock target fisheries. Given the historic catch break downs reported in Table 6.2 it appears that this would especially be true for the red rockfish, squid, POP, and other species groups. More bycatch of these species was taken in the pollock fisheries than in the non-pollock targets. Therefore, unless the fleet was able to reduce their bycatch of squid, they may be forced to forgo targeting non-pollock targets and still be unable to harvest their entire pollock allocation.

6.7 Processing Limitations

In addition to the harvesting restrictions placed on AFA catcher/processors, their ability to process has also been limited. Processing limitations fall into three general categories, those in the Bering Sea and Aleutian Islands, the Gulf of Alaska, and outside the North Pacific Council's jurisdiction. This discussion will only focus on those fisheries under the authority of the North Pacific Council.

6.7.1 Processing Harvests from the Bering Sea and Aleutian Islands

Two processing prohibitions are included under section 211(b)(3). Under this section of the AFA catcher/processor are prohibited from processing pollock assigned to the inshore or mothership sectors. This restriction is straightforward. Violation of this provision of the AFA would basically undo the pollock allocation percentage prescribed in the Act, and changing the percentages listed in section 206(b) is not allowed under the AFA. This section of the Act also prohibits catcher/processors from processing any species of crab harvested in the BSAI management area.

6.7.2 Processing Harvests from the Gulf of Alaska

Section 211(b)(4) contains the processing limitations outlined in the AFA for catcher/processors in the Gulf. That section states that AFA catcher/processors are not allowed to process any groundfish harvested from area 630. They are also restricted from processing more than bycatch levels of pollock, and more than 10 percent of the Pacific cod harvested from areas 610, 620, and 640. Restricting these vessels from processing any fish harvested in area 630 is designed to help protect processors in the Gulf (especially in the Kodiak region). Restrictions on processing pollock and more than 10 percent of the Pacific cod reflect the intent of the inshore/offshore allocations in the Gulf.

Section 7: AFA Catcher Vessel Sideboards

7.0 Introduction

To mitigate the impact of AFA on the non-pollock fisheries, section 211(c) mandates that *“by not later than July 1, 1999 the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to - (A) prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery”*. This chapter describes the options for constructing sideboards, which are expected to keep AFA catcher vessels from exceeding their traditional harvests in the crab and groundfish fisheries. This chapter also provides some information on the impacts of those alternatives.

The Council was clear in defining what joining a cooperative means. They stated that any use of a vessel's catch history by a cooperative, whether by direct harvest, lease, sale, or stacking of quota, would constitute that vessel's participation in a cooperative.

To aid in developing sideboard restrictions, several options were identified for inclusion in the amendment package at the December 1998 Council meeting. The options were divided by whether they applied to the non-groundfish or groundfish fisheries. The non-groundfish restrictions focused on limiting AFA catcher vessel participation in the BSAI crab fishery, although at least one of the catcher vessels has participated in the scallop fishery.

There are some issues that require further clarification at this meeting. Those issues are highlighted here and most are discussed further in other parts of this document.

- ◆ **Develop sideboard options to protect the scallop fishery? There may be confidentiality issues associated with setting caps for one or two vessels.**
- ◆ **Groundfish sideboard restrictions developed in December apply only to the BSAI. Section 211(c) of the AFA, also implies sideboards restrictions for the GOA by July 1, 1999. Given this direction, there are basically two options if the GOA is to be included. GOA sideboards could be developed at this meeting by the Council. Those options may be the same as the sideboards developed for the BSAI. A second option would be to task the GOA Sideboard Committee with developing options. However, they would need to make those recommendations relatively soon.**
- ◆ **Alter or delete options for using the “best two years” when calculating groundfish sideboards?**
- ◆ **Modify PSC sideboard options based on VBA Committee recommendations?**
- ◆ **Develop a different method of estimating species composition for unobserved hauls?**
- ◆ **Does crab sideboard alternative 5 also have an option to apply only when they join a cooperative?**

7.1 The Council's Alternatives from the December Newsletter

For reference, the Council's motion from December is included below:

CRAB SIDEBOARDS

Initiate analysis of the following options to mitigate impact of possible spillover effects of AFA on other fisheries:

Options For Section 208 Vessels:

1. No crossover allowed into any crab fisheries.
2. No crossover allowed in the Tanner crab fishery only (opilio and bairdi).
3. No crossovers at the endorsement level.
4. Allow crossovers only into red king crab fisheries only (excludes brown and blue king crab).
Sub-options:
 - a. Vessels which qualified based on bycatch of bairdi in red king crab would be restricted to bycatch of bairdi in the red king crab fishery (applied to #2 & 3 above).
 - b. Only Section 208 catcher vessels that join a co-op (applies to #1-4 above).

Duration sub-options:

- a. Permanent based on participation in co-op
 - b. Only for year vessel is involved in co-op.
 - c. Duration of AFA
3. Measures which would restrict pollock co-op vessels to their aggregate traditional harvest including:
- a. Restriction to the percentage of crab harvest in all species between 1995, 96, and 97.

GROUND FISH SIDEBOARDS

Participation in a co-op is defined as ANY use of a vessel's catch history by a co-op, whether by direct harvest, lease, sale, or stacking of quota.

To Whom do Restrictions Apply

Sideboards apply to all Section 208 eligible vessels.

Suboption: Applies to Section 208 vessels only if they join a co-op.

To What BSAI Non-Pollock Fisheries the Restrictions Should Apply

1. Restrictions should apply to all non-pollock FMP fisheries.

When the CV Restrictions Should Apply

1. Harvest levels should be restricted only during the same time periods as the normal open access pollock fishery
2. At all times during the fishing year

Sub-option: Use 1998 open access season dates by sector as a base reference

Sub-option: Use 1999 sea lion modified season dates.

Nature of CV Restrictions

Option A: Absolute harvest amounts expressed in percentage of TAC in metric tons.

Determination of "Traditional Harvest Level"

1. The definition of "traditional" in non-pollock fisheries will be determined by catch history
 - a. On basis of percentage of groundfish harvest in non-pollock fisheries by species by fishery.
 - b. On basis of percentage of total groundfish harvest by species by fishery.
 - c. On basis of percent of TAC in non-pollock fishery by species by fishery.

Option A: Apply one time frame equally to all groundfish targets

Sub-option 1: Use average catch history in the years 1995, 96, and 97.

Sub-option 2: Use catch history based on years 1992-97.

Sub-option under 1 and 2: Utilize "best 2 years"

Determination of "Aggregate"

Option A: Apply and monitor by the vessel class and sector

Option B: Apply and monitor by individual co-op

Management of Non-Pollock fisheries

Vessels limited to target fishing for non-pollock species during those times when the open access target fishery for the non-pollock species is open.

1. PSC and non-pollock groundfish caps would apply to all fisheries as true caps (i.e., when reached these vessels would stop fishing for all groundfish species).
2. The caps would only close the non-pollock target fisheries.

The VBA Committee will develop options for PSC caps for co-op vessels in non-pollock fisheries.

1. Use VIP rates to determine PSC
2. Use a fraction of the VIP rates to determine PSC.

7.2 Crab Sideboards

The AFA requires the Council to develop sideboards for catcher vessels that can participate in the BSAI crab fisheries under LLP. These recommended restrictions are required to be submitted to the SOC for all three catcher vessel categories by July 1, 1999. Currently only the catcher vessels that deliver to catcher/processors are operating under any crab restrictions. Those were mandated by the AFA because that group of catcher vessels was allowed to form a cooperative in 1999. The restriction placed on the catcher vessels that deliver to catcher/processors is listed in section 211(c)(2)(C). That section of the AFA states that "*catcher vessels eligible under section 208(b) are hereby prohibited from participating in a directed fishery for any species of crab in the Bering Sea and Aleutian Islands Management Area unless the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997 and is eligible to harvest such species of crab under the license limitation program*". According to preliminary estimates, three of the seven catcher vessels that deliver to catcher/processors were required to give up their rights to fish tanner crab in 1999 as a result of this requirement. When developing sideboards for all catcher vessels, the Council may choose to either retain or modify this section of AFA. These vessels were also directed to include provisions in their 1999 cooperative agreements to limit their participation in non-pollock fisheries to 'traditional' levels.

7.2.1 Options to Mitigate Impacts on the Crab Fisheries

Five options to mitigate the impacts of the AFA on BSAI crab fisheries have been identified by the Council. These options range between excluding any AFA catcher vessel from harvesting BSAI crab, and limiting the vessels as a group to their traditional harvest levels in any BSAI crab fishery. These specific options are discussed in the following sections.

The two options that do not allow crossovers at the endorsement level or crossovers into *C. bairdi* or *C. opilio*, include a suboption that would restrict vessels that qualified for a tanner crab endorsement, based on bycatch of *C. bairdi* in the red king crab fisheries, from harvesting more than bycatch levels of *C. bairdi* in future red king crab fisheries. The option that restricts vessels to their historic catch levels would have the same impact as this suboption on the *C. bairdi* fishery. That is because vessels that only harvested bycatch amounts in the past, would be capped at their historic catch level (i.e., their bycatch of *C. bairdi*) in the future.

As drafted, the first four options below would not allow any AFA catcher vessels to participate in the specific crab fisheries identified. That means that recent participation in those fisheries would not ensure future participation. Recall that the section 208(b) catcher vessels were allowed to retain their rights to fish tanner crab if they fished that species in 1997. None of the seven vessels met that requirement, so they were not allowed to fish tanner crab in 1999. However, they will be issued a tanner crab endorsement according to the current LLP rules. That endorsement cannot be fished on board an AFA vessel, but it could be fished if transferred to a non-AFA vessel. Transferring and applying the license to a non-AFA vessel would activate the license so it could fish crab species for which it had endorsements, without being limited by sideboard caps.

When setting the crab sideboards in June the Council will need to consider if they wish to issue inactive licenses/endorsements to AFA vessels, or simply not issue the licenses. Not issuing the licenses/endorsements would keep them from being transferred from a AFA vessel and becoming active, and thereby would limit effort

in the crab fishery. However, not issuing the license would certainly reduce the value of the license package that the AFA vessel qualified for under the LLP.

7.2.1.1 Allow no crossovers into any BSAI crab species

This option would not allow AFA catcher vessels to fish any BSAI crab species. Given the current list of qualified crab vessels, the following endorsements would not be issued.

Table 7.1. Crab endorsements held by AFA vessels

BSAI Tanner	33
D.Harbor. Brown	1
St. Matt. Blue/Red	8
Prib. Blue/Red	4
Adak Brown	1
Adak Red	2
Bristol Bay Red	32

7.2.1.2 Allow no crossovers into the *C. bairdi* or *C. opilio* fisheries

This option would not allow AFA vessels to fish a BSAI tanner crab endorsement. From Table 7.1 we see that 33 endorsements for tanner crab would not be issued (or would be restricted). However, any vessels which held LLP endorsements for the king crab fisheries would be allowed to continue fishing for those species.

7.2.1.3 Allow no crossovers at the endorsement level

As written this option could have the same result as any of the other options depending on how it is implemented. The Council could decide to apply this option to any of the species/area endorsements in the crab LLP. For example, it could be applied only to the tanner crab endorsement. That would have the same result as the no crossover into the *C. bairdi* or *C. opilio* fisheries option. Applying this option to all crab fisheries except red king crab, would have the same result as allowing crossovers into the red king crab fisheries only.

7.2.1.4 Allow crossovers into the red king crab fisheries only

This option would allow AFA vessels to only fish BSAI red king crab fisheries. The two endorsements for Adak red king crab and the 32 endorsements for Bristol Bay red king would be issued. Tanner crab, blue king crab, and brown king crab endorsements applied to these vessels would not be issued (or would be restricted).

7.2.1.5 Restrict cooperative to their aggregate traditional harvest based on their percentage of the harvest in 1995, 1996, and 1997.

The final option would allow AFA vessels to fish their endorsements, but the AFA catcher vessels would be capped at their average 1995-97 harvest levels. These caps would be calculated by dividing the group of vessels total catch of that species by the total catch for those years. ADF&G has expressed concerns over managing these caps. Therefore, the viability of this option may require assurance from ADF&G that in season management and enforcement of these caps is possible. The percentages of the GHL that AFA vessels would be allocated in future years are shown in Table 6.2. AFA vessels have historically harvested more of the Bristol

Bay red king crab fishery than any other species. Although, significant amounts of tanner crab were harvested by these vessels.

Table 6.2 Percent of Catch Accounted for by AFA Vessels (1995-97)

Species	AFA Vessel's Catch (Lbs.)	AFA Vessel's Percent of Catch
<i>C. bairdi</i>	363,390	3.39%
<i>C. opilio</i>	4,389,214	1.69%
Tanner Total	4,752,604	1.75%
St. Matthew Blue King	conf.	conf.
Norton Sound Red/Blue King	conf.	conf.
Pribilof Red/Blue King	conf.	conf.
Bristol Bay Red King	1,558,098	8.94%

Source: ADF&G crab fishticket data sets for 1995-97.

Note: conf. means that the data are confidential

Also, was it the intent of the Council to have a sub-option where this alternative would apply only if vessels joined a cooperative?

7.2.2 To Whom the Restrictions Would Apply

The first four options listed above also contain a suboption that states these restrictions could only apply to eligible AFA catcher vessels if they joined a cooperative. If vessel owners choose not to join a cooperative, they would not be bound by the sideboard regulations. Several members of industry have expressed concern that some vessels qualify for the cooperative with relatively small amounts of pollock history. If these vessels choose not to enter the cooperative, and are still bound by the sideboards applied to the AFA group of vessels, they could be placed in a difficult situation. They would not receive much benefit from the cooperative because of their limited pollock catch history and their participation would be limited in the crab fisheries. On the other hand, if vessels are allowed to join a cooperative each year they may decide whether to join the cooperative or not depending on the relative catch limits in the pollock and crab fisheries, and the relative prices for the different species.

If the restrictions only apply when a vessel joins a cooperative, then licenses/endorsements would need to be issued on an annual basis if a vessel could choose to join a cooperative each year. This may make management of the program difficult for the RAM division. Therefore options that would either issue or not issue a license, may only be appropriate if the program is permanent or for the length of the AFA.

7.2.3 Duration of the Crab Sideboards

The crab sideboard options could be implemented for one of three time periods. Sideboards could be put in place permanently, which means that any sideboard restrictions would extend beyond the December 31, 2004 expiration date of the AFA. If AFA vessels were issued inactive licenses (or endorsements), they could never fish them on an AFA vessel. Issued licenses could be sold to a non-AFA vessel, so long as the AFA vessel was able to obtain an appropriate replacement license for participation in the groundfish fisheries. The second option would

implement the sideboards for the duration of the AFA. Currently AFA is scheduled to sunset on December 31, 2004, but the Council may extend the program beyond that date. This option would remain in effect as long as the Council extends the program. The third option would apply the sideboards to a vessel only during the years a vessel participates in a cooperative. If vessels can decide to join a cooperative on an annual basis, vessel owners could decide each year if they would rather join a cooperative or be free of the sideboard restrictions. Recall that a vessel is considered to have participated in a cooperative if that vessel's quota is used by a cooperative.

7.3 Groundfish Sideboards

Three classes of catcher vessels exist under the AFA - Catcher vessels delivering to catcher processors, catcher vessels that deliver to motherships, and catcher vessels that deliver to the inshore sector. Catcher vessels that deliver to catcher processors formed a cooperative in 1999. Included in their cooperative agreement was language restricting themselves as a group from exceeding their historic catch levels in fisheries other than pollock. Formal regulations which implement effort limits for all AFA catcher vessels must be submitted to the SOC by July 1, 1999, so they will be in place at the beginning of the 2000 fishing season. Language in the AFA mandating these limits (Section 211(c)(1)(A)) states that the Council shall recommend measures for approval by the SOC that "prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock target fishery". This section of the document will specify the non-pollock groundfish harvests allowed by AFA catcher vessels.

7.3.1 Description of the Sideboards

Before determining the level of catch that these vessels will be allowed, some general questions need to be answered. The questions include, to whom do the restrictions apply, when do they apply, and at what level of aggregation do they apply for management/enforcement purposes?

7.3.1.1 To Whom do the Sideboards Apply

To whom the restrictions apply requires answering the question, are catcher vessels that opt not to join a co-op still required to abide by the sideboard restrictions? The language is not clear regarding to whom the restrictions apply. The first part of the section 211(c)(1)(A) seems to indicate that it is meant to apply to all AFA eligible catcher vessels. However, the phrase at the end of the quote indicates that the impacts resulting from fishery cooperatives should be mitigated by this action. That phrase may be interpreted to indicate that this section should apply only to eligible catcher vessels that join a cooperative. Because of the uncertainty in the language and the differing interpretations of this sections of the AFA, the Council will need to determine to whom the sideboard regulations apply. Currently the options are there for either course of action - this does not have to be answered until June.

7.3.1.2 When do the Sideboards Apply

When the sideboards should apply to the AFA catcher vessels also needs to be answered. The Council is considering three alternatives. The first option is at all times during the fishing year. This options would prevent the AFA catcher vessels from participating in non-pollock fisheries above their historic levels throughout the year. Once they reach a cap in the non-pollock fisheries, fishing for that group of vessels would be halted until the following year. Two sub-options were also included under the main alternative. Sideboard caps under these sub-options would only apply when the pollock fishery is open. Two methods of defining when the pollock fishery was open were provided. The first is based on the 1998 open access fishery (by sector), and the second is based on the 1999 open access dates as modified by stellar sea lion concerns. Under these options the AFA

catcher vessels would no longer be bound by the caps during predefined times of the year. Essentially, they would not have caps when pollock was closed. Persons proposing this alternative argued that since the sideboards were designed to protect the non-pollock fleet from the effects of cooperatives, when the pollock fishery is closed there are not cooperative impacts. Everyone would be fishing in the open access mode and no one would be able to employ fishing strategies afforded by cooperatives that would give them an advantage over the rest of the fleet.

At this time, it is not possible to predict the behavior of vessels that will be fishing under a cooperative. It may be true that allowing AFA catcher vessels to operate outside of the sideboard caps when the pollock fishery is closed may not give them any advantage. On the other hand, they may be able to harvest their sideboard caps when the pollock fishery is open, and then continue targeting these other species once the pollock fishery is closed. If the 1999 fishing seasons were used as the standard for when the sideboard caps apply, it may create opportunities for vessels to increase their harvests of a species like Pacific cod. Given that there is currently a period between the A1 and A2 pollock seasons when pollock fishing is closed for some sectors, AFA catcher vessels could harvest Pacific cod during those times and not have the harvests count towards their sideboard cap. This may give these vessels an advantage over the open access fleet during those seasons. Pollock vessels could move into Pacific cod between seasons, but Pacific cod boats could not move into pollock if cod closes earlier than expected because of the pollock fleet's effort. These types of problems may not be so pronounced using the 1998 season dates. Yet members of the non-pollock fleets may still perceive an AFA fleet without restrictions, when pollock is closed, as a threat.

Providing an analysis showing the impacts of choosing one alternative over another, is not possible. To conduct such an analysis, it would be necessary to know which vessels will join the cooperatives. Since that information is not available, it could be assumed that vessels with less than a given level of pollock catch history would opt not to join the cooperatives, reasoning that, they would choose not to join so they could operate outside the bounds of the sideboards. Determining that point at which vessel owners would decided to join a cooperative would be difficult, and the results would likely be inaccurate. Yet it would be critical to determine who would join when determining the sideboards, especially since it is likely going to be the vessels with relatively smaller pollock history that would contribute the most to the sideboard cap for the sector. Vessels with a smaller pollock history may have been operating in other fisheries like Pacific cod or crab during part of the year when pollock was open. Therefore, they would take more than just bycatch amount of those species into the cooperative if they joined.

7.3.1.3 Level at Which Sideboards are Monitored and Enforced

The Council is currently considering two options for determining the level at which sideboards will be monitored and applied. One option would aggregate the sideboards by vessel class and sector. In this case vessel class is assumed to mean catcher vessels delivering to inshore processors, motherships, or catcher processors, and the sector is the more generic defined as AFA catcher vessels. The second option is to monitor and enforce these caps at the cooperative level. This option would require NMFS to monitor more caps if there are several inshore cooperatives formed. It may also raise confidentiality issues if caps are set at the individual plant level. Additional clarification on the confidentiality issues would be required if this option was selected. A second problem is the ability to provide information on who would opt to join the cooperative. This issue is more thoroughly discussed in the previous section.

7.3.2 Groundfish Harvest Caps

The issue of what fisheries close when a cap is reached was discussed under the catcher/processor sideboard section. That issue also needs to be decided for the catcher vessels. Recall that there are two options. The first

option would close the non-pollock groundfish fisheries when the cap is reached. The second option would close all groundfish fisheries (including pollock).

Deciding which fisheries close when a cap is reached may very well depend on which fisheries were included in the numerator when calculating the cap. If only the catch of species taken during non-pollock fisheries are used to calculate the cap, the burden on industry would be much greater if attainment of the cap closed all fisheries. If the cap only closed the non-pollock targets, these vessels would be allowed to harvest about their historic average (assuming bycatch levels in the pollock fishery remained constant) and would be more likely able to harvest their pollock allocations.

Because catcher vessels are currently allowed to participate in both the BSAI and GOA groundfish fisheries under AFA, the problem is slightly more complex than it was for the catcher/processors. However, if we assume that reaching a cap in the BSAI would not close the both the BSAI and GOA fisheries, or vice versa, then the problem is basically the same as discussed for catcher/processors. As noted earlier, we need clarification regarding treatment of GOA fisheries.

7.3.2.1 Directed Fishery Limits

Historical catch data for the three classes of catcher vessels will be presented in this section. ADF&G fishtickets were used to determine the catch history of catcher vessels that deliver to inshore processors and floating processors that operate in State waters. Fishtickets are required for all catch delivered to these processors. Data for catcher vessels that delivered to catcher processors and motherships were derived from the NORPAC observer data base. Deliveries that were made in a CDQ fishery were not included from either source.

The NORPAC data base provides haul-by-haul catch records for the catcher vessels that deliver at-sea. When the haul is sampled by the observer, a detailed catch composition is included. However, when the observer is unable to sample a haul, the total weight of that catch is recorded with no species information. Based on NORPAC records for catcher vessel deliveries to catcher processors and mothership from 1995-97, about 55 percent of the total catch was sampled. The remaining 45 percent of the catch data had no information on the species that were harvested.

To provide estimates of a vessels catch history at the species level, an assumption regarding the unobserved catch has to be made. Otherwise catcher vessels, on average, would not be credited for about 45 percent of their catch. For this analysis, the following methodology was used to estimate the species composition for unobserved hauls.

- 1) A flag was added to the data showing if the pollock fishery (BS or AI) was open when and where the harvest was made.
- 2) Observed catches by species were then summed for each catcher vessel based on whether the pollock fishery was open or closed.
- 3) The catch of each species (by catcher vessel and if pollock was open) was then divided by the vessel's total catch to determine the percentage of each species that catcher vessel harvested during the times of year when pollock was open or closed.
- 4) Those percentages were then multiplied by its catch in unobserved hauls (again separated based on whether pollock was open or closed). The results are estimates of catch for the unobserved hauls.
- 5) Some vessels were never observed. For those vessels, a percentage was calculated based on the harvests of all observed catcher vessels on that day. Those percentages for each species were then applied to the unobserved hauls that day.

This methodology for determining each vessel's catch by species will certainly provide estimates that do not track exactly with the actual landings. However when the pollock fishery was open, almost 96 percent of all sampled catch was pollock, and over 93 percent of all catch from 1995-97 occurred when the pollock fishery was open. When the pollock fisheries were closed, only 50 percent of the catch was pollock. This percentage seems high, but that is because two vessels had observer reports of over 90 percent pollock when the pollock fishery was closed. Applying a vessel's own observed history helps correct for this problem. Overall when the pollock fishery was closed, the methodology employed estimated that about 25 percent of the unsampled catch was pollock. Pacific cod accounted for the largest portion of catch at just over 55 percent.

For purposes of this analysis, the numbers resulting from extrapolating observed catch to unobserved hauls may provide reasonable estimates of each vessel's catch history for pollock. Estimates of the amounts of bycatch that occurred by species and the amounts of other target species harvested may likely be less accurate than the estimates for pollock.

Tables showing the calculated numbers are included as an attachment. They are preliminary estimates, and after further review may change slightly.

Under the main options to calculate sideboards (either 1992-97 or 1995-97), there is a sub-option that would base that history on the vessel's best two years during the qualifying period. Calculating sideboards using a vessel's best 2 years would be difficult. First, this method of calculating catch history would only work if the denominator was established based on the best two years of catch for all vessels in the fishery, not just AFA vessels. Using any other methodology would allow the AFA catcher vessels as a class to be capped at more than their 'historic' average. Determining the best two years of catch for all vessels in the fleet would be time consuming, and may not be doable in the time frame allotted for this analysis. Especially if the GOA is included.

If the AFA vessels are concerned about the equity of allocations within the cooperatives. It would be possible to use a vessels total catch from 1995-97 to determine the sideboards, and then allocate the sideboards within the AFA fleet based on a vessels best two of three years. This would allow the sideboard caps to be set at historical levels, while not seriously disadvantaging individual members of a cooperative that may not have fished every year during the qualification period.

7.3.2.2 PSC Limits

The VBA Committee was requested by the Council to develop PSC sideboard caps for the AFA catcher vessel fleets participating in non-pollock groundfish fisheries. Two alternatives for determining the caps were listed by the Council. The first option simply applied the VIP rates to determine PSC caps. The second method was to apply an appropriate fraction of the VIP rates to determine the caps.

After reviewing this task, the VBA Committee discussed the issue and included the following recommendation in their minutes from the January 7-8th meeting.

"In December, the Council tasked the VBA Committee with developing options for PSC caps for co-op vessels in non-pollock fisheries. The Committee reviewed this issue, and felt that it would be better to let the affected industry groups discuss this and report directly to the Council. However, the Committee suggests that, rather than use VIP rates to determine PSC caps, a better option would be based on catch history ratios (like suggested for the VBA pool limits)."

Based on the Committee recommendation, the percentage used to calculate the groundfish sideboard caps would be multiplied by the available PSC caps to determine the amount of each PSC species the vessels would be

allowed to take into a co-op, or the open access fishery, with them. The VBA Committee also indicated in their minutes that 5% of the caps could be set aside to reduce bycatch under the pilot program. It may also be possible to include that type of reduction in the sideboard caps if included in they also are included in the pilot program. However, at that point, it would no longer be a cap. Instead PSC bycatch amounts would be issued as an allocation to that "pool" of vessels.

As stated earlier, staff needs direction at this meeting regarding the PSC alternatives to be analyzed. Based on recommendations from the VBA Committee, alternatives in addition to, or in place of, using VIP rates should be included in the amendment package.

7.3.3 Compensation for Inshore Catcher Vessels

Inshore pollock catcher vessels will be allowed to form cooperatives in 2000. The amount of pollock they will be allowed to take with them into a cooperative will be based on their individual catch histories. As discussed above the Council is considering three options for calculating catch history, 1995-97, 1992-97, or the best two years from the two previous options. Section 210(b)(4) of the AFA specifically lists the years 1995, 1996 and 1997 as the years to be considered, but the Council has the option of choosing one of the other options if they desire.

Some inshore pollock catcher vessels have made deliveries to both the inshore and offshore sectors during the qualifying years. Catcher vessels with histories split between the mothership sector and the inshore sector are able to fish both histories pursuant to the AFA. However, catcher vessels which made deliveries to both the inshore sector and the catcher vessel to catcher/processor sector lose the catch history that was delivered to the catcher/processor sector. This occurs because the AFA does not specifically create a mechanism for these catcher vessels to obtain credit for that catch history in any sector. The AFA states in section 210(b)(4) states 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 owners of such qualified catcher vessel.*" This language seems to place the burden of compensating members of a cooperative on the cooperative itself. However if each inshore processor forms a separate cooperative, the burden of compensating members may be more onerous on some cooperatives than others. For example, a cooperative that did not have any members with offshore catch history would not need to "pay" any compensation, but a cooperative that had several members with offshore catch history could require substantial compensation "payments" by its members.

While the AFA states that both the catch delivered to catch/processors and motherships would be eligible for compensation, the AFA allows catcher vessels to operate in both the inshore and mothership sectors. Therefore, several members of industry have indicated that the focus should only be on the lost catch in the catcher/processor sector.

Section 210(b)(1) states that only catch delivered to the inshore sector will be considered by the Secretary when determining the amount of quota to be allocated to the inshore cooperative(s). Vessels will be disadvantaged if joining a cooperative if a substantial portion of their history was delivered to catcher/processors in the years used to determine catch history. As an example, a catcher vessel fishes for a catcher/processor in 1995 and 1996 and then fishes for a shore plant in 1997. That catcher vessel is not eligible under the AFA for the future to deliveries to catcher/processors. The vessel is eligible to fish for the inshore sector, but when cooperatives are formed will only receive credit for the fish delivered in 1997, while most of the other members will receive credit for 1995, 1996 and 1997. As a result, the catcher vessel in this example will be disadvantaged.

The Council authorized that a discussion paper be developed to outline "options for compensation to inshore catcher vessels with catch history delivering to catcher/processors that is no longer available to them under AFA". The problem faced by these vessels could be addressed by a modification to the criteria by which the Secretary determines how much quota is allocated to each cooperative. Section 213(c)(3) of AFA provides that the Council may modify "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 such catcher vessels."

The following change to Section 210(b)(1)(B) was recommended by Midwater Trawlers Cooperative (MTC) and would appear to remedy this problem:

“ . . . the Secretary shall allow only such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) 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 (and by such catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) in the directed pollock fishery for processing by the inshore component, together with the amount harvested by such vessels for processing by catcher/processors in the offshore 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 together with the aggregate total amount harvested by all catcher vessels (excluding those eligible under 208(b)) for processing by catcher/processors in the offshore component during such years and shall prevent such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) from harvesting in the aggregate in excess of such percentage of such directed fishing allowance.”

This modification would allow a catcher vessel with catch history based on deliveries to catcher/processors, that is otherwise lost under the AFA, to bring that catch history into a cooperative while sharing the burden among all members of the inshore cooperative/cooperatives. In addition, the modification does not change the AFA sector allocations.

Preliminary data indicates that 64,907 mt of pollock were delivered to catcher/processors by 37 different AFA catcher vessels from the inshore sector. The four vessels making the most deliveries accounted for 35,783 mt of the catch, or over 55 percent of the total.

A total of 1,093,129 mt of pollock was delivered by the AFA inshore catcher vessels to inshore processors between 1995-97. Adding the catch delivered inshore to the catch delivered to catcher processors, results in a total of 1,158,036 mt of catch. Dividing the deliveries to catcher/processors by the total indicates that catcher vessels with no deliveries to catcher/processors would need to make a compensation payment equal to about 5.6 percent of their pre-compensation pollock allocation.

Section 8: Measures to Mitigate Impacts on Non-pollock Processors

8.0 Introduction

The AFA stipulates that the Council shall submit measures by July of 1999 to "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". For reference, other provisions of the AFA which are related to processing sideboards, or excessive share caps, are contained in Attachment 1, along with a summary of what these provisions appear to imply. In November and December 1998 the Council heard from representatives of non-AFA processors who expressed concern with regard to spillover effects, and offered several suggestions for mitigating those potential impacts.

A review of the letters and testimony presented to the Council can be summarized as a basic concern that AFA processors will have a competitive advantage relative to non-AFA processors. This advantage may allow AFA processors to utilize economic and operational leverage to increase their positions in the processing of other species. In other words, resources that might otherwise have been spent assuring AFA processors' their share of the pollock, are now free to be used to gain processing shares of other species.

Among the primary solutions proposed in oral and written comment were the following:

1. Open up the closed class of processors, or at least allow non-AFA processors some limited access to pollock deliveries.
2. Establish sideboard limits for AFA processor activity in non-pollock groundfish and crab processing. These sideboard limit would apply to both offshore and shoreside AFA sectors.
3. Establish excessive share caps for pollock processing by AFA processors (up to 17.5%), and include GOA pollock in that cap.
4. Restrict AFA inshore component processing vessels to a single geographic location.

8.1 Council Action to Date

In order to respond to these concerns and the mandates of the AFA the Council passed the following motion to frame the analysis for the plan amendment(s) being developed:

AN ANALYSIS BE INITIATED EXAMINING OPTIONS TO MITIGATE POTENTIAL ADVERSE IMPACTS FROM AFA ON NON-POLLOCK PROCESSORS INCLUDING:

1. The ability to allow processors not listed in Section 208 to process limited amounts of inshore pollock allocation, including requirement to participate in buyout provisions.
2. Excessive share caps on processors of 10%, 12%, 15% and 17.5%. The pollock, non-pollock groundfish, and crab fisheries should be examined. A sub-option should also be examined which allows differential caps between pollock and non-pollock processors.
3. Restricting vessels used for processing in the inshore sector to a single geographic location.

4. Measures to restrict pollock processor activity in non-pollock fisheries to no more than historic levels including options using years 1995, 1996 and 1997.

The analysis should consider the following:

1. list the adverse effects that the measures are aimed at protecting,
2. quantify how the measures will protect the non-eligible processor from the adverse effects, and
3. consider whether adverse effects have a high probability of occurring as opposed to being just perceived as a possibility of occurrence.

The Council in December recognized the overlap between sideboard amendments due by July 1999 and the excessive share cap mandates (which can be developed later), and therefore included some of the excessive share cap alternatives in this package. Because the alternatives and options for analysis have to be finalized at this meeting, staff is seeking clarification of the Council's intent regarding what should be included in this amendment package. The essential area for clarification is which processors are the focus of this amendment package, given the differences between aggregate sideboard caps and entity-level excessive share caps. The specific questions are outlined below.

8.2 Aggregate sideboard limits

First we will discuss the sideboard limits. Given that this part of the amendment package is aimed at protecting non-AFA processors, alternative 4 above appears to directly address that issue by restricting AFA processor activity to historic levels in non-pollock groundfish and crab fisheries. The specific questions for clarification are:

(1) how are we to define AFA qualified processors, in terms of company vs plant-level activity (GOA vs BSAI)?

The AFA indicates (relative to crab sideboard limits) a 10% rule, whereby AFA processors are defined as a single entity if there is 10% cross-ownership of processing facilities, (apparently regardless of geographic location). Barring direction to the contrary, we will apply the same ownership criteria when examining groundfish sideboards. Given the concerns raised by non-AFA processors, and the apparent intent of the sideboard limits, we assume that the sideboard limits will apply at the company level, whether associated facilities are located in the BSAI or the GOA, or whether a specific facility has ever processed BSAI pollock. In terms of analysis, we should be able to make some reasonable estimates based on our determinations of ownership relationships.

(2) should these limits be applied separately to the three subsectors, or as a common limit for all processors?

For harvest sideboard limits, we are looking at applying the limits to each of the three catcher vessel subsectors. For processing sideboards, there are also three separate sectors (offshore, shoreside, and motherships), and there may be similar rationale for dividing the sideboard limits by sector; however, there is cross-ownership between those sectors, making it more difficult to determine and implement sub-sector limits. There are also data confidentiality issues - for example, if we make the sideboard limits at the sector level, there are only three mothership operations in that sector. Based on current regulations, we cannot divulge the processing activities of these three operations in 1995, 1996, and 1997, making it virtually impossible to set a sideboard limit for that sector.

For crab sideboards, the AFA language is quite specific, and at least implies that a sideboard limit for crab processing be established for the mothership and shoreside processors in aggregate (for crab, the offshore sector already has prohibitions on processing crab). There is no specific direction relative to groundfish processing.

(3) Do we limit the options for determining crab sideboard limits to the years specified in the AFA?

The AFA stipulates processing sideboard limits for crab specifically (i.e., use the average of 1995-1997), while the Council motion provides options for permutations among those years. We need to clarify what options we are analyzing for both groundfish and crab sideboards.

8.3 Excessive share caps

The Council's language in alternative 2 refers to excessive share caps for processing for all fisheries, as well as possible differential caps for pollock vs. non-pollock processors. This implies a much broader focus, beyond aggregate sideboards discussed above, and staff is seeking confirmation that this was the Council's expectation. The AFA indeed requires the Council to develop excessive share caps for all harvesting and processing in the BSAI, but not necessarily as part of this amendment package. Ownership and confidentiality issues will impede our ability to develop excessive share alternatives for action by June of this year (these issues are discussed more fully in section 8.6). This also needs to be considered in light of the Council's other action in December which was to create a Committee to develop GOA cooperatives and associated sideboard issues on a separate timeline.

Excessive share caps for pollock for AFA processors are mandated by the AFA, with a 17.5% limit and direction on defining the entity, though with no time certain. In the case of excessive share caps for all non-pollock groundfish and crab in the BSAI, the AFA is silent with regard to criteria for defining an entity, and with regard to a specific percentage. If we proceed with analysis of the excessive share caps as part of this amendment package, it is also likely that the current suite of options for excessive share caps on processing (10%, 12%, 15%, and 17.5%) may be well below that occurring for some species by some entities (based on preliminary information we are able to compile).

A general question is whether the excessive share caps need to be included as part of this amendment package, or developed separately on a delayed timeline. This is certainly a policy call on the part of the Council, taking into account the practical considerations described in this document. While the AFA mandates the Council to establish such caps via amendments to our FMP, it does not necessarily give us the authority to divulge the information necessary for the Council to make an informed decision. It may be that a further legislative 'fix' is necessary before we can go very far with an amendment to accomplish these caps. If the Council confirms that we do want to proceed with developing excessive share caps as part of this amendment package, the following specific questions arise:

(1) are the excessive share cap options intended to apply only to the AFA processors, or to all non-AFA processors also, in both the GOA and the BSAI?;

In terms of protecting non-AFA processors from the effects of the Act, it may make sense to establish processing caps for pollock for the AFA processors. The sideboard limits described above may serve to insulate the non-pollock species. However, the Council's motion does include all processors and all fisheries. While this may be desirable, and in fact is mandated by the AFA at some point in time, we need confirmation that this is the Council's intent, and if so, how this would interact with development of GOA co-ops and associated sideboard provisions in that area.

(2) if we proceed with non-pollock and crab excessive share caps as part of this amendment (as opposed to just aggregate sideboard limits), what ownership criteria should be used for defining an entity?

As with sideboard limits, we assume that any excessive share caps are at the company level (not the plant level). We could use the 10% Ownership Rule described above, or some other criteria.

(3) if we proceed with excessive share caps as part of this amendment, should the Council include a broader set of options (in terms of percentages) and/or include grandfather provisions?

As noted above, some companies may be processing well in excess of 17.5% of the TAC of some groundfish or crab species. The current suite of options only goes up to 17.5%. We conducted an initial examination of groundfish and crab processing shares in the BSAI and GOA. In the initial examination we assumed that the "10% Ownership Rule" applied to all facilities. We also looked at TACs in terms of apportionments by gear, area, and sector as they are specified in the TAC setting process. There are approximately 100 such apportionments in the crab and groundfish fisheries managed by the NPFMC. For ownership information we used Federal Permit data, the State of Alaska Corporate Database, *Fishing Vessels of the USA* (4th Edition), and industry sources. In our initial analysis we found that approximately 50% of the species/gear/area/sector apportionments had at least one entity that processed more than 17.5 percent of the apportionment.

We recognize that the Council may wish to examine excessive processing share caps at a higher level of aggregation, for example at the BSAI-wide level (as is implied by the AFA). However, even at that level the 17.5% would be exceeded for many of the species. Based on this information, the Council may wish to broaden the range of excessive processing share cap options beyond 17.5%, and/or include grandfather provisions. A further discussion of our ability to discern ownership information, and associated confidentiality issues, is contained in section 8.6 below.

8.4 Single geographic location

Alternative 3 from the Council's motion considers restricting pollock processors in the inshore sector to a single geographic location. It appears that the AFA already implies this restriction beginning in the year 2000 (see the parenthetical under 208(f)(1)(A) - "including vessels in a single geographic location in Alaska State waters"). Coupled with the final regulations implementing the I/O3 amendments, this is how NMFS is interpreting this issue. The Council will need to confirm that this is their intent when they take final action in June 1999 on this amendment package.

8.5 Allowing non-AFA processors access to pollock

The AFA provisions which establish the allocations of BSAI pollock among the sectors, and the provisions which specify the eligible participants, are the only provisions which cannot be altered by the Council. NOAA GC has provided an opinion that the Council is restricted under the Act from allowing additional pollock processors except when the TAC increases by 10 percent over 1997 levels, or one of the processors suffers a total or constructive loss (Section 208(f)(2)). For these reasons this is not being considered as a viable alternative.

8.6 Ownership and confidentiality issues

Defining the entity

The AFA indicates that, for purposes of classifying AFA vessels when calculating of excessive processing shares in directed pollock fisheries a company that has a 10% ownership interest in another should be regarded as the same entity. The actual wording in the AFA at Section 210(e)(3) is:

For purposes of this subsection, 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.

At Section 210(g) the AFA states that:

The violation of any of the requirements of this section or section 211 shall be considered the commission of an act prohibited by section 307 of the Magnuson-Stevens Act (16 U.S.C. 1857). In addition to the civil penalties and permit sanctions applicable to prohibited acts under Section 308 of such Act (16 USC 1858), any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, USC, to have violated a requirement of this section shall be subject to the forfeiture to the SOC of any fish harvested or processed during the commission of such act.

The language above implies that the Congress expects that all AFA processors will provide to NMFS and the Council information that shows all their owners and all of the companies they own down to a 10% level, and that all such information provided will be truthful and complete. In addition the language implies that the Congress expects that NMFS will require this information and has the authority to sanction permits if such information is not provided, and presumably if such information is not truthful and complete.

The AFA requires the use of the same ownership rule in the calculation of "sideboard limits" for crab species under the jurisdiction of the NPFMC [Section 211(2)(A)]. In very next section of the Act [Section 211(2)(B)], the AFA appears to broaden the scope of ownership information submission to all Bering Sea harvesters and processors when it states that:

The North Pacific Fishery Management Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity (*emphasis added*) from harvesting or processing an excessive share of crab or of groundfish in fisheries in the Bering Sea and Aleutian Islands Management Area.

Whether or not Congress or the Council intends the 10% ownership rule to apply to all harvesters and processors of crab and groundfish in the calculation of excessive shares is an open question that needs to be answered before an analysis of excessive share caps can be undertaken. Nonetheless it is clear that the 10% ownership rule is to be used in the excessive pollock-processing share caps and in sideboard limits for crab. It may also be applied to sideboard limits for all groundfish but that appears to be the Council's prerogative.

If we use this 'rule' for defining entities, the results in many cases will be far-reaching; i.e., the nested ownership relationships of various companies, across geographic areas and across industry sectors, will mean that the excessive share caps applied to one 'entity' would impact several facilities, even though the facilities may be generally recognized as separate entities. Figure 1 and Figure 2 attempt to illustrate this situation. An additional illustration is provided in Attachment 2 - this is a actual diagram from the State of Alaska Legislative Affairs Agency (1980) depicting ownership relationships between processors and their affiliates. This figure further illustrates the complex linkages in ownership which could affect the implementation of an excessive share cap.

Figure 1 illustrates the generally accepted concept of an entity in terms of ownership. Figure 2 illustrates how application of the AFA criteria would classify the 4 companies, and all of their associated facilities, as one entity for purposes of the cap. Again, the basic message we are trying to convey is that the definition of processing (or harvesting) entity will have significant implications on which actual facilities would be limited as a result of an entity reaching its cap.

Figure 1: Four Processing Companies

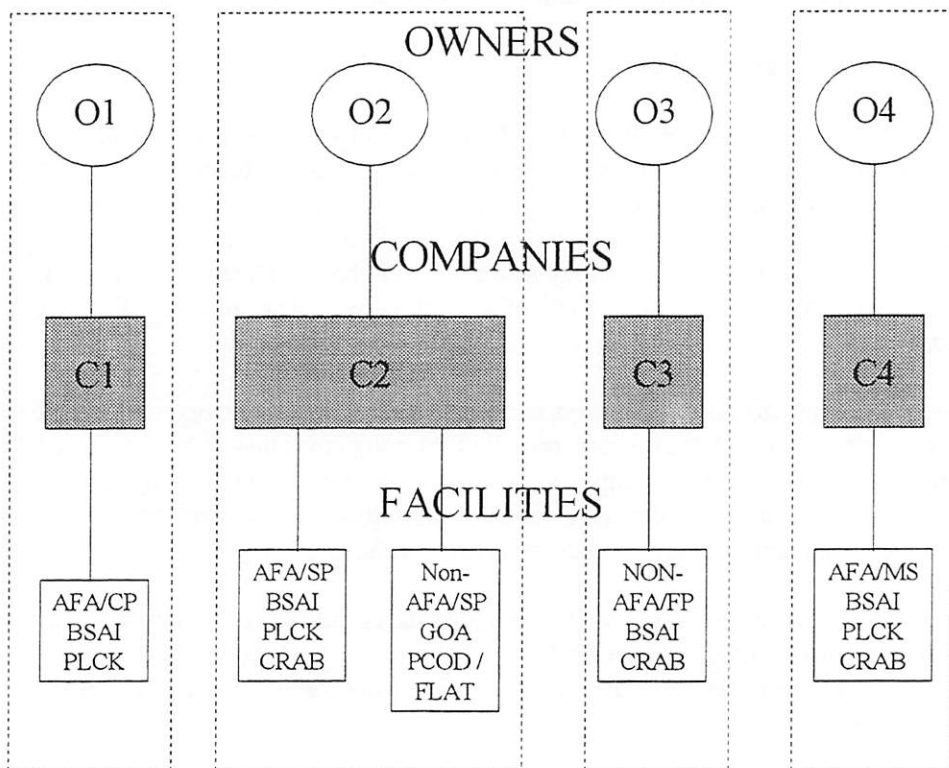
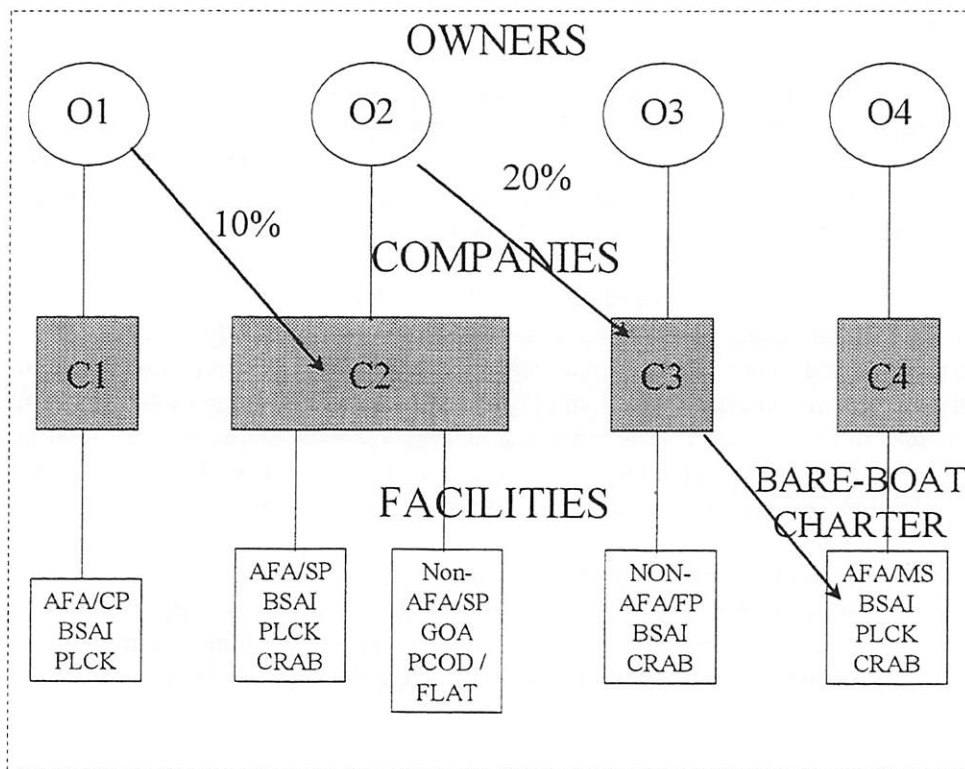


Figure 2: One Entity with 10 % Ownership Rule



Implementation and Monitoring Considerations

For either excessive share caps or aggregate sideboard limits, some consideration needs to be given to what will happen when a cap (or limit) is reached. In terms of excessive share caps at the company level, when that company reaches its limit for a particular species, all processing of that species by that company will cease, and that will apply to any facility owned by that company (or associated via the 10% rule, or some other criteria). In the case of sideboard limits at the sector level, we assume that when the limit is reached for a particular species, all processing of that species by all companies within that sector will cease (including any plants associated with those companies via the 10% rule, or some other criteria).

How these closures or prohibitions will be effected in-season remains unclear at this point and requires further consideration by Council and NMFS staff. However, it may be that in-season closures will not be the actual mechanism - rather, each company will know at the beginning of the year what its caps are for each species (based on the overall TAC) and will be responsible for ceasing processing when a particular cap is reached. Post-season monitoring by NMFS would then determine compliance and penalties would be assessed by NMFS.

Availability and accuracy of ownership information

In terms of defining the entity for purposes of either sideboard limits or excessive share caps, the Council needs to be aware of certain issues and limitations in our ability to link ownership of processing operations. Verifiably accurate and complete ownership information is not currently available from any source. Therefore the analysis can at best provide an indication of the levels at which sideboard limits and excessive share caps might be set.

Federal and State processing permits data provides the initial data for tracking owners. Additional information may be available through public licensing documents required by states in which companies are doing business. In addition, less formal information may be available for making linkages between companies. Examples of such sources information are trade journals or publications such as *Fishing Vessels of the United States* which lists vessels owners and management companies. By combining the different sets of information it may be possible to make determinations of ownership levels (as we did with 'Lexis-Nexis' during the I/O3 analysis) that could provide an approximation of the level at which sideboard limits and excessive share caps should be set.

While we can provide some useful information in terms of the analysis, implementation and monitoring will be more dependent upon accurate and complete information on ownership. Presumably NMFS would have to require full disclosure of ownership information in the determination actual sideboard limits and the monitoring of excessive share caps.

Confidentiality

The ability of analysts to present an analysis of excessive share caps, either for processing or harvesting, is severely compromised by issues of confidentiality. Confidentiality rules are designed to prevent the release of proprietary information that might damage the competitive positions of fishing and processing companies. Guidelines for the release of information require that data be aggregated so that the 4 or more companies¹ are included in each number that is released. If data from fewer than four companies are available than that information cannot be released.

¹ State of Alaska guideline require four or more companies, while NMFS guidelines require 3 or more companies. Since the data used to calculate excessive shares includes data originating from the State of Alaska, Council analyses general use the State of Alaska guideline.

In most cases confidentiality restriction do not preclude the ability to present useful information to the decision-makers and the public. But in the case of excessive share caps, information about the top four entities may not be released, and therefore the appropriate level at which to set a particular cap is uncertain.

At best, analysts are able to release the aggregate of the top four entities as well as the average catch of those four entities. Other information such as the variance or standard deviation would enable competitors to know the approximate level of catch of the top entity. For any given species, analysts will be able to divulge the percentage processed by the fifth highest entity. Analysts can also divulge the percentage over all species above which there are only four entities.

We are aggregating data for all species for all processors in the GOA and BSAI at this point, pending your direction for this amendment, though there remain these issues of confidentiality, and what level of detail we can present regarding current levels by each processor for each species. These issues may affect the Council's desire to proceed with excessive share caps as part of this amendment.

We are also seeking NOAA GC input on the issue of jurisdiction - i.e., do the mandates in the AFA give the Council authority to manage shoreside processors (establish caps). While the apparent answer is 'Yes', given that the AFA directs the Council to establish such caps for BSAI fish and crab processing (and harvesting), does that authority extend to the GOA as well? And, does that mean that we can present confidential information in the development of an amendment that effects Congressional intent? This issue could also affect the development of GOA cooperatives, to the extent such cooperatives may include limited entry type measures for shoreside processors.

Duration of Sideboard Limits or Excessive Share Caps

Another consideration for this amendment is whether any sideboard limits or excessive share caps established via this amendment should automatically sunset at the end of 2004. While the AFA stipulates that the provisions of the Act end on December 31, 2004, the Council may extend those provisions or enact provisions which go beyond the Act; i.e., it is not incumbent upon the Council to sunset the excessive share caps, and they may want to keep them in place even if the provisions of the AFA expire. Sideboard limits by sector may be more appropriately tied to the AFA provisions, and therefore be scheduled to sunset unless reauthorized.

The same issue applies to sideboard limits being considered for catcher/processors and catcher vessels within this same amendment package.

ATTACHMENT 1

AFA PROVISIONS REGARDING PROCESSING LIMITATIONS

Under 'Eligible Shoreside Processors'

(2) Upon recommendation by the North Pacific Council, the Secretary may approve measures to allow catcher vessels eligible under subsection (a) to deliver pollock harvested from the directed fishing allowance under section 206(b)(1) to shoreside processors not eligible under paragraph (1) if the total allowable catch for pollock in the Bering Sea and Aleutian Islands Management Area increases by more than 10 percent above the total allowable catch in such fishery in 1997, or in the event of the actual total loss or constructive total loss of a shoreside processor eligible under paragraph (1)(A).

Under 'Fishery Cooperative Limitations'

(e) EXCESSIVE SHARES.—

(1) HARVESTING.—No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

(2) PROCESSING.—Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the North Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

(3) REVIEW BY MARITIME ADMINISTRATION.—At the request of the North Pacific Council or the Secretary, any individual or entity believed by such Council or the Secretary to have exceeded the percentage in either paragraph (1) or (2) shall submit such information to the Administrator of the Maritime Administration as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either such percentage. The Administrator shall make a finding as soon as practicable upon such request and shall submit such finding to the North Pacific Council and the Secretary. For the purposes of this subsection, 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.

Under 'Protections for Other Fisheries'

(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.

(c) CATCHER VESSEL AND SHORESIDE PROCESSOR RESTRICTIONS.—

(1) REQUIRED COUNCIL RECOMMENDATIONS.—By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to—

(A) prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery; and

(B) 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.

If the North Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the North Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation restrict or change the authority in section 210(b) to the extent the Secretary deems appropriate, including by preventing fishery cooperatives from being formed pursuant to such section and by providing greater flexibility with respect to the shoreside processor or shoreside processors to which catcher vessels in a fishery cooperative under section 210(b) may deliver pollock.

(2) BERING SEA CRAB AND GROUND FISH.—

(A) 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.

(B) Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from harvesting or processing an excessive share of crab or of groundfish in fisheries in the Bering Sea and Aleutian Islands Management Area.

The above provisions of the AFA can be summarized as follows:

1. The Council cannot alter the list of eligible processors, unless the TAC increases or an eligible plant is lost.
2. Harvesting excessive share caps for BSAI pollock of 17.5% are in place from 1999 through 2004. Processing excessive share caps for BSAI pollock (at or below 17.5%) have to be established by the Council, though with no time certain - both harvesting and processing caps appear to be independent of co-op involvement.

3. By July 1999 the Council must recommend measures to “protect processors not eligible to participate in the (BSAI) directed pollock fishery from adverse effects of the AFA or fishery cooperatives...”.
4. The Council must have in place by January 2000 measures to prevent AFA motherships and AFA shoreside processors from processing, in aggregate, a greater percentage of the total catch of BSAI crab than they processed in 1995-1997 (on average).
5. The Council must submit measures to establish excessive share caps for harvesting and processing of all groundfish and crab in the BSAI, though under no time certain.
6. The Council can develop any other measures it deems necessary (at any time) to protect other fisheries and participants under its jurisdiction from adverse impacts caused by the AFA or co-ops in the directed pollock fishery.

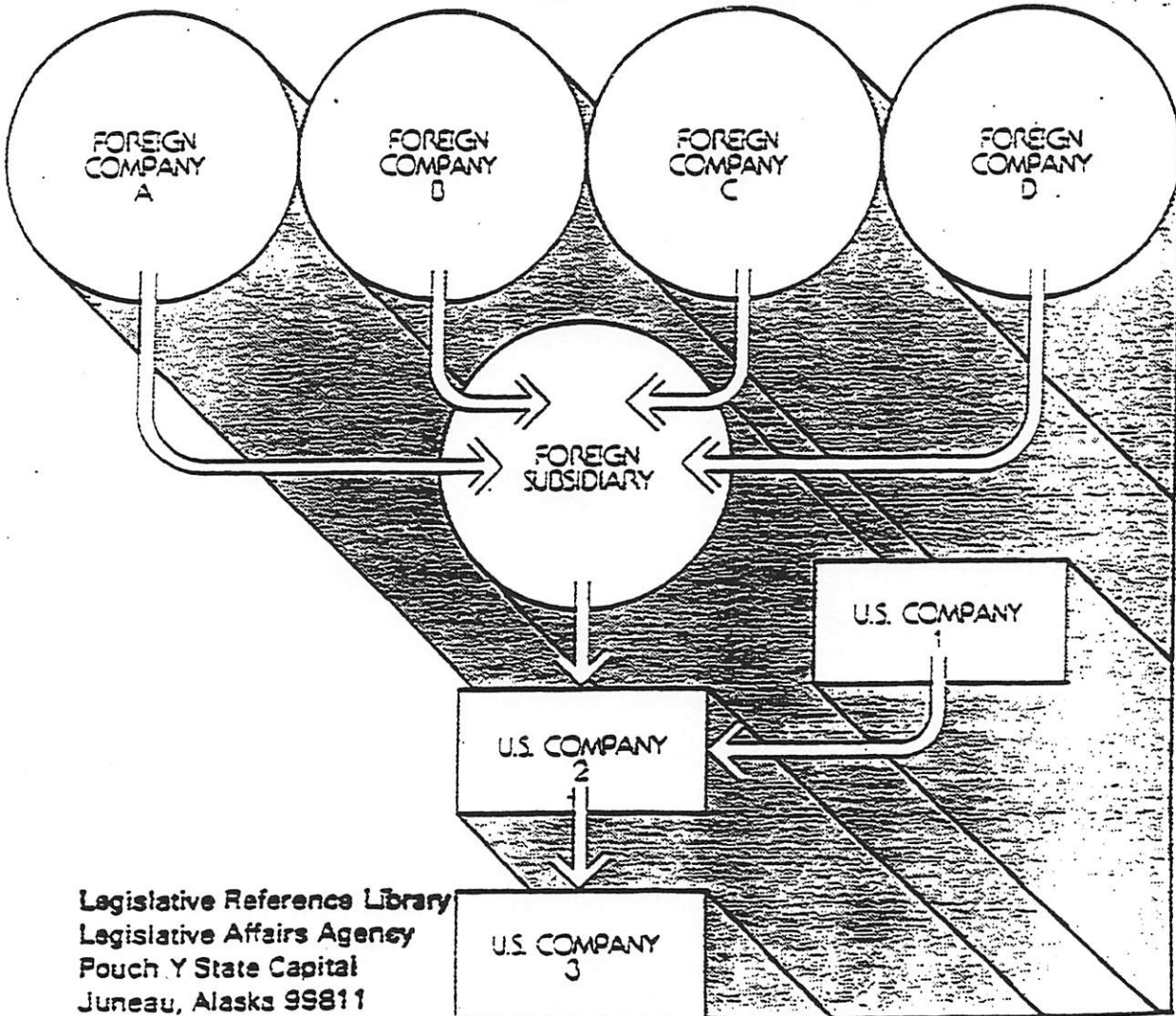
Diagram of Ownership Relationships from 1980 State Report

FILE COPY

FOREIGN INVESTMENT IN THE ALASKA SEAFOOD INDUSTRY

Prepared for:
HOUSE INTERIM COMMITTEE
ON FOREIGN INVESTMENT
OF THE ALASKA LEGISLATURE

Prepared by:
FRANK ORTH & ASSOCIATES, INC.
AND W. PATRICK DOUGHERTY
JANUARY, 1980



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Sue Salvesson
NMFS Alaska Region
January 28, 1999

DISCUSSION PAPER ON THE PROCESS WHICH COULD BE USED TO PUBLICALLY
DISCLOSE INDIVIDUAL VESSEL CATCH INFORMATION UNDER
THE AMERICAN FISHERIES ACT (AFA)

The North Pacific Fishery Management Council has requested NMFS to develop a discussion paper on the public release of vessel catch data as authorized under the following 2 sections of the AFA:

Section 210(a)(1)(B) of the AFA states:

⌘[Sec. 210 (a) (1)] ...Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a) or any other provision of law, but taking into account the interest of parties to any such contract in protecting the confidentiality of proprietary information, the North Pacific Council and the Secretary shall.....(B) make available to the public in such a manner as the North Pacific Council and Secretary deem appropriate information about harvest by vessels under a fishery cooperative of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis.

Section 211(d) states:

⌘(d) BYCATCH INFORMATION.-- Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a), the North Pacific Council may recommend and the Secretary may approve, under such terms and conditions as the North Pacific Council and the Secretary deem appropriate, the public disclosure of any information from the groundfish fisheries under the jurisdiction of such Council that would be beneficial in the implementation of section 301(a)(9) or section 303(a)(11) of the Magnuson-Stevens Act (16 U.S.C. 1881(a)(9) and 1853(a)(11)).⌘

A comparison of the scope of the information required or authorized to be disclosed under each of these two sections of the AFA is presented in Table 1. Discussion of issues associated with the disclosure of this information follows.

Required Regulatory Changes to Accommodate AFA Information Disclosure

Fishery Cooperative Limitations. Under section 210(a)(1), the AFA mandates for public notice and disclosure of fishery cooperative agreements also require the Council and Secretary to determine what information will be made available about the

harvest of fish in the directed pollock fishery by vessels party to a fishery cooperative agreement. The type of information that appears to be envisioned under 210(a)(1) for disclosure might include: vessel identification, harvest amounts by species including prohibited species, and/or harvest rates of species. Information could be provided weekly, although NMFS is working towards the development of vessel-specific harvest information at levels approaching catcher/processor haul-by-haul or catcher vessel landings information.

Although regulations are not necessary to support the disclosure of this information for purposes of section 210(a)(1) of the AFA, the development of a regulatory infrastructure that clarifies the specific information that will be disclosed would be prudent for several reasons. First, the Council and NMFS are required to consider the interest of parties to fishery cooperative agreements in protecting the confidentiality of proprietary information when determining the appropriate information to be released. Assumedly, this means the Council and NMFS would be required to confer with a fishery cooperative's representative prior to the release of information. Regulations that list the specific information to be released would provide clear guidance to fishery cooperatives on disclosure expectations and avoid case-by-case consideration by the Council and NMFS of ~~appropriate information~~ to be disclosed as different cooperatives are developed.

Second, independent public requests for information on harvest activities of parties to fishery cooperatives could be efficiently responded to within the constraints of regulations that clarify what information will and will not be disclosed. The alternative would require that each request independently be reviewed by NMFS and General Counsel to determine whether the request would be within the scope of information disclosure deemed appropriate by the Council and NMFS for a particular cooperative. This process would be cumbersome, time consuming, and subject to other work priorities within NMFS and NOAA-GC.

The regulations necessary to support effective disclosure of harvest information authorized under section 210(a)(1) could be developed and implemented in tandem with the management measures the Council will be considering for AFA implementation in 2000 and beyond.

Bycatch Information: Section 211(d) poses general discretionary authority to the Council to recommend and NMFS to approve disclosure of information that would be beneficial to minimizing discards or discard morality. Regulations would be required to enact this authority for the BSAI and GOA groundfish fisheries under new FMP amendments given the discretionary nature of the AFA provision. Section 211(d) applies to information generated pursuant to existing regulations. Other information exists, such

as State fish tickets, which could not be disclosed absent an independent federal information collection requirement. Thus, regulations also could be needed to collect additional information that NMFS currently does not collect. These regulations would have to be justified relative to the statutory authority and establish which vessels would be subject to the information disclosure. The Council could choose to develop these FMP amendments and associated regulations at any time subject to the expiration of the AFA.

The nature and scope of the information disclosed would depend on whether the disclosure of the information is punitive or informational. For example, disclosure of a vessel's species-specific harvest, harvest rate, or discard activity for punitive purposes might require that debriefed observer data be used rather than undebriefed, resulting in time delays in releasing the information. Vessel identification associated with haul by haul harvest and location data may not be important for purposes of information that could be used to reduce discards, but could be desirable if the Council believed that the potentially punitive nature associated with releasing a vessel's identification or the name of a skipper of the vessel would be beneficial for purposes of Magnuson-Stevens Act sections 301(a)(9) pertaining to National Standard 9 and 303(a)(11) pertaining to reporting methodology to minimize bycatch. Although Magnuson-Stevens Act limitations on the disclosure of confidential information can be waived, disclosure restrictions under other applicable law must be considered.

Availability of Vessel Harvest Information

NMFS currently collects fairly comprehensive harvest information on a haul by haul basis from catcher/processors because of the level of observer coverage on these vessels, particularly the AFA-eligible pollock C/PS which are required to have two observers onboard at all times while fishing for groundfish. In addition to observer data on vessels acting as motherships, NMFS recently implemented regulations at § 679.5(m) that requires operators of motherships to summarize combined weekly catch for individual catcher vessels delivering to the mothership on ADF&G fish tickets. This information provides harvest information for catcher vessels delivering to mothership operations that NMFS could make available consistent with AFA provisions.

In general, however, NMFS does not collect species catch information from individual catcher vessels and relies on ADF&G fish ticket information when catcher vessel data is needed for management purposes. NMFS understands that existing State statute prohibits the disclosure of information collected on fish tickets in a manner that would support the Council's and NMFS's ability to disclose catcher vessel harvest information for purposes of AFA mandates or authority. Unless the State

statutory restrictions are changed, the Council and NMFS would need to develop new recordkeeping and reporting regulations to collect landings information from catcher vessels. The Alaska Region has been involved in an ongoing project to collect this information as part of a larger initiative to develop a timely and streamlined reporting system dependent on electronic submission of catch reports. Pending the availability of budget resources, the Alaska Region will be testing the new system this summer to capture catch delivery information from shoreline operations. This program ultimately would simplify processor reporting and replace shoreline processor logbooks with electronic fish ticket-type information that documents individual vessel landings information.

Table 1. DESCRIPTION OF AFA AUTHORITY TO RELEASE PROPRIETARY OR CONFIDENTIAL INFORMATION

Scope of information disclosure	FISHERY COOPERATIVE LIMITATIONS Section 210(a)(1)(B)	BYCATCH INFORMATION Section 211(d)
Affected vessels	Vessels participating in the directed fishery for pollock under an AFA-endorsed fishery cooperative	All vessels fishing for any groundfish species in the GOA or BSAI
Other statutory constraints on the disclosure of information	None. AFA authorizes the disclosure of proprietary or confidential information that otherwise would be prohibited under the MSA and all other applicable law	AFA authorizes the disclosure of proprietary or confidential information that otherwise would be prohibited under the MSA. Constraints on disclosure of this information under other applicable law still exist. ¹
Type of information disclosed	Vessel specific harvest of all species in the directed BSAI pollock fishery	Only information determined by the Council and Secretary that is beneficial to assess the amount of economic and regulatory discards and minimize discard and discard mortality of incidental catch which cannot be avoided.
Expiration of AFA disclosure authority	December 31, 2004 unless extended by future statutory provisions	December 31, 2004 unless extended by future statutory provisions

¹Other applicable law could prevent the disclosure of certain information. For example, the Privacy Act would prevent disclosure of confidential personal information pertaining to individuals.

Council Working Document for AFA
(Saturday, February 6, 1999)

***Includes Council December Actions with AP February Action**

Page 1 Catcher/Processor Sideboards

Pages 2-5 Catcher Vessel Sideboards

Pages 6-7 Processor Sideboards

Pages 8-9 Other AP Action Related to AFA

Pages 10-11 Other Council Actions Taken in December (for reference)

Council's December Actions Updated with the AP's February Recommendations for Catcher Processor Sideboards (Section 6)

Example: Shaded text was added by the AP
Example: Strikeout text was deleted by the AP

For the year 2000 and beyond, the Council initiated an analysis for the 20 + 9 vessels listed in the AFA of their bycatch in both the directed pollock and non-pollock fisheries (95, 96, 97) and associated PSC levels. The catch histories of the 20 listed vessels and the 9 vessels which are removed from the fishery and the catch in the pollock and non-pollock target fisheries will be treated separately. This will allow the Council to include either all catch or only catch in the non-pollock target fisheries (for either the 20 or 29 vessels) in the caps set for 2000 and beyond.

Sub-options:

1. The caps would close both the pollock and non-pollock groundfish fisheries when reached.
2. The caps would close only the non-pollock groundfish fisheries when reached (only pelagic pollock fisheries would remain open).

~~Include a review of vessel specific PSC rates in addition to average PSC bycatch ratio for the 20 +9 AFA catcher/processors relative to non-AFA vessels~~

~~Add to Table 6.9 a fourth column which illustrates a retrospective analysis of PSC needs of the 20 + 9 AFA catcher/processors using a performance-based pelagic definition~~

~~Include discussion paper establishing chinook PSC sideboard for co-op pools in pollock based on final Council action on chinook bycatch caps. (Note: The chinook bycatch option was included in the AP minutes only under catcher vessel sideboards. For consistency, staff has also included this option under the catcher/processor sideboard section).~~

Council's December Actions Updated with the AP's February Recommendations for Catcher Vessel Sideboards (Section 7)

Example: Shaded text was added by the AP
Example: Strikeout text was deleted by the AP

CRAB SIDEBOARDS

~~Participation in a co-op is defined as ANY use of a vessel's catch history by a co-op, whether by direct harvest, lease, sale, or stacking of quota.~~

Initiate analysis of the following options to mitigate impact of possible spillover effects of AFA on other fisheries:

Options For Section 208 Vessels:

1. No crossover allowed into any crab fisheries.
2. No crossover allowed in the Tanner crab fishery only (opilio and bairdi).
3. No crossovers at the endorsement level.
4. Allow crossovers only into red king crab fisheries only (excludes brown and blue king crab).

Sub-options:

- a. Vessels which qualified based on bycatch of bairdi in red king crab would be restricted to bycatch of bairdi in the red king crab fishery (applied to #2 & 3 above).
- b. Only Section 208 catcher vessels that join a co-op (applies to #1-4 above and #5 below).
- c. ~~Allow crossovers for vessels with crab landings in each of the three years (1995, 96, and 97) (1 and 2 above)~~
- d. ~~Prohibit any vessel participating in an AFA co-op from lease, transfer, or sale of any license limitation program (LLP) permit.~~

Duration sub-options:

- a. Permanent based on participation in co-op
 - b. Only for year vessel is involved in co-op.
 - c. Duration of AFA
5. Measures which would restrict pollock co-op vessels to their ~~aggregate traditional harvest including:~~

~~Option a. Aggregate traditional harvest including a restriction to the percentage of crab harvest in all species between 1995, 96, and 97.~~

~~Option b. Average catch history 1995, 96, and 97 on a species-by-species and vessel-by-vessel basis.~~

~~a. Restriction to the percentage of crab harvest in all species between 1995, 96, and 97.~~

SCALLOP SIDEBOARDS

1. Participation in a co-op is defined as any use of a vessel's catch history by a co-op, whether by direct harvest, lease, sale, or stacking of quota.
2. Measures which would restrict pollock co-op vessels to their aggregate traditional harvest in the scallop fishery in the years 1995, 96, and 97.

- Sub-option:
- a. Based on percentage of GHL
 - b. Based on percentage of catch
 1. Statewide
 2. By management area
 - c. Based on percentage of PSC cap.

GROUND FISH SIDEBOARDS

BSAI

Participation in a co-op is defined as ANY use of a vessel's catch history by a co-op, whether by direct harvest, lease, sale, or stacking of quota.

To Whom do Restrictions Apply

Sideboards apply to all Section 208 eligible vessels.

Suboption: Applies to Section 208 vessels only if they join a co-op.

To What BSAI Non-Pollock Fisheries the Restrictions Should Apply

1. Restrictions should apply to all non-pollock FMP fisheries.

When the CV Restrictions Should Apply

1. Harvest levels should be restricted only during the same time periods as the normal open access pollock fishery
2. At all times during the fishing year

Sub-option: Use 1998 open access season dates by sector as a base reference

Sub-option: Use 1999 sea lion modified season dates.

3. AFA qualified pollock catcher vessels that during pollock A season historically had a majority of their catch in pollock, would be limited prior to March 1 of each year to the collective share of the cod fishery that these same vessels collectively harvested historically (1995, 96, 97) prior to March 1.
 1. Apply and monitor by vessel class and sector
 2. Apply and monitor by individual co-op.(This would effectively subdivide the P cod cap between AFA vessels that harvested mostly pollock during the A season and those that did not).

Nature of CV Restrictions

Option A: Absolute harvest amounts expressed in percentage of TAC in metric tons.

Determination of "Traditional Harvest Level"

1. The definition of "traditional" in non-pollock fisheries will be determined by catch history
 - a. On basis of percentage of groundfish harvest in non-pollock fisheries by species by fishery.
 - b. On basis of percentage of total groundfish harvest by species by fishery.
 - c. On basis of percent of TAC in non-pollock fishery by species by fishery.

Option A: Apply one time frame equally to all groundfish targets

Sub-option 1: Use average catch history in the years 1995, 96, and 97.

Sub-option 2: Use catch history based on years 1992-97.

~~Sub-option under 1 and 2: Utilize "best 2 years"~~

~~Pollock - initiate qualitative discussion on ability for Secretary to use the best 2 out of 3 years to determine overall denominator for total pollock pool and numerator for each co-op.~~

Determination of "Aggregate"

Option A: Apply and monitor by the vessel class and sector

Option B: Apply and monitor by individual co-op

Compensation

Further address in a discussion paper, options for compensation to inshore catcher vessels with catch history delivering to catcher processors that is no longer available to them under AFA. Additionally, examine inserting a clause replacing language in §210(b)(1) to add an option for determining catch history for catcher vessels on the basis of the best two of three years in 1995, 96, 97.

~~As provided by Section 213(c)(3) of AFA, the AP recommends the following change to Section 210(b)(1)(B) to allow a catcher vessel with catch history based on deliveries to catcher processors that is otherwise lost under AFA to bring that catch history to the inshore sector cooperative while sharing the burden among all members of the inshore sector.~~

~~*" the Secretary shall allow only such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) 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 (and by such catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) in the directed pollock fishery for processing by the inshore component, together with the amount harvested by such vessels for processing by catcher processors in the offshore 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 together with the aggregate total amount harvested by all catcher vessels (excluding those eligible under 208(b)) for processing by catcher/processors in the offshore component during such years and shall prevent such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) from harvesting in the aggregate in excess of such percentage of such directed fishing allowance.

The analysis should breakout the 37 vessels by:

- a. deliveries of 250 tons
- b. deliveries of 500 tons
- c. deliveries of over 1,000 tons

(Vessels that do not meet these harvest requirements may not be eligible for compensation in the inshore sector.)

Management of Non-Pollock fisheries

Vessels limited to target fishing for non-pollock species during those times when the open access target fishery for the non-pollock species is open.

Assigning PSC Caps for Co-op Catcher Vessels in Non-Pollock Fisheries

Rates based on catch history ratios (1995, 1996) rather than VIP rates.

- a. A review of vessel specific PSC rates for eligible vessels, compared to non-eligible vessels.
- b. Average bycatch rates of eligible vessels, compared to non-eligible vessels.
- c. A retrospective analysis of PSC needs for eligible vessels using a performance-based pelagic pollock definition.

Include discussion paper establishing chinook PSC sideboard for co-op pools in pollock based on final Council action on chinook bycatch caps.

1. PSC and non-pollock groundfish caps would apply to all fisheries as true caps (i.e., when reached these vessels would stop fishing for all groundfish species).
2. The caps would only close the non-pollock target fisheries.

The VBA Committee will develop options for PSC caps for co-op vessels in non-pollock fisheries:

1. Use VIP rates to determine PSC
2. Use a fraction of the VIP rates to determine PSC.

GOA

1. Apply the following sideboards only to AFA eligible catcher vessels participating in a co-op.
2. Any non-pollock catch limitations for AFA co-op vessels are caps not quotas or allocations.
3. Co-op catch history consists of the years 1995, 96 and 97. Fishery is released seasonally by quarter proportionally to when caught during qualifying years.
4. Gulf of Alaska flatfish sideboards to be halibut bycatch driven. Historic target catch should be multiplied by the average halibut bycatch rate and current mortality rate to determine the halibut mortality available to

AFA vessels. These amounts should be separated between deepwater and shallow water complexes.

5. Non flatfish Gulf of Alaska target fishery

Target catch of each non-flatfish species available to AFA pollock co-op vessels should be limited to the average catch, by target species, based on the average catch history.

Council's December Actions Updated with the AP's February Recommendations Mitigating Impacts on Non-Pollock Processors (Section 8)

Example: Shaded text was added by the AP

Example: Strikeout text was deleted by the AP

Processor Sideboards

The analysis should consider the following:

1. list the adverse effects that the measures are aimed at protecting,
2. quantify how the measures will protect the non-eligible processor from the adverse effects, and
3. consider whether adverse effects have a high probability of occurring as opposed to being just perceived as a possibility of occurrence,

before any protective measures are implemented.

An analysis be initiated examining options to mitigate potential adverse impacts from AFA on non-pollock processors including:

1. The ability to allow processors not listed in Section 208 to process limited amounts of inshore pollock allocation, including requirement to participate in buyout provisions. Note that NOAA GC has provided an opinion that the Council is restricted under the Act from allowing additional pollock processors except when the TAC increase by 10 percent over 1997 levels, or one of the processors suffers a total or constructive loss (Section 208(f)(2)).
2. Excessive share caps on processors of 10%, 12%, 15% and 17.5%. The pollock, non-pollock groundfish, and BSAI crab fisheries should be examined. A sub-option should also be examined which allows differential caps between pollock and non-pollock processors.
3. Restricting vessels used for processing in the inshore sector to a single geographic location.
4. Measures to restrict pollock processor activity in non-pollock fisheries to no more than historic levels including options using years 1995, 96 and 97.

Initiate a data gathering program to identify the benefits and impacts of AFA. Information tracked should examine state and federal fisheries and include:

ownership patterns
processor activity
product forms
ex-vessel price
employment changes
market share

~~In order to further the analysis mandated by the AFA, the AP recommends the following:~~

1. ~~Analysis should evaluate impacts at both the facility and corporate level throughout the BSAI and GOA.~~
2. ~~Processing efforts information should aggregate the mothership, offshore and inshore sectors.~~
3. ~~Crab sideboard limits should include all Council alternatives.~~

4. Excessive share caps should
 - a. Use the 10% ownership rule
 - b. Provide grandfather options for existing processors in excess of the 17.5% share
 - c. Be applied by species groups (cod, flatfish, mackerel, rockfish, crab, sablefish, halibut) and FMP areas (BSAI and GOA).

The AP recommends, given the continued difficulty with confidentiality, that until resolved, excessive share caps for all species except pollock be dealt with on a separate track.

Other AP Actions Taken at the February Meeting

C-2(a) 1999 Co-op Agreements

The AP recommends the Council request that NMFS prepare a preliminary report on the 1999 co-ops for the October 1999 Council meeting and a final report for the February 2000 meeting. The report should specifically assess:

6. The effectiveness of pollock co-ops in reducing bycatch (all species).
7. The effectiveness of management measures to protect other fisheries from adverse impacts caused by the AFA or pollock co-ops.
8. A discussion of how transfers within co-ops may affect issues 1 and 2 above.
9. Utilization and recovery rates by species and product categories.
10. Method of monitoring and enforcement.

The report should include the most specific catch and bycatch information available on an individual vessel level to help the co-op and the Council realize the public disclosure requirements for such information envisioned in section 210(a)(1)(A) of the AFA. Motion carries unanimously (17/0).

General

The AP recommends the Council request staff to initiate a discussion paper examining alternatives to specific sideboards that would allow vessels in any federal fishery, applicable to both BSAI and GOA, to form co-ops with a:

1. Threshold percentage of participants.
2. Threshold percentage of catch history (1995, 96, 97).

Confidential Catch & Bycatch

As described in NMFS' January 28, 1999, discussion paper, the AP recommends the Council request NMFS to begin to develop the regulatory infrastructure to provide disclosure of:

1. Vessel identification
2. Harvest amounts by species including prohibited species and harvest rates of species.

Further, the AP recommends the Council initiate analysis to consider use of a dual form of fish tickets to be used by NMFS and ADF&G that would not fall under the State of Alaska's confidentiality regulations.

The AP recommends the Council request ADF&G initiate efforts to change AS 16.05.815 to allow for the release of confidential data as provided by Section 210(a)(1)(B) and Section 211(d) of the AFA.

The AP recommends the Council urge NMFS to make testing of its new system to capture catch delivery information from shoreline operation a top priority for implementation this summer. The AP further recommends the Council write a letter to Senator Stevens highlighting NMFS's need to budget additional staff and resources to improve our catch and bycatch reporting systems in order to aid the Council's ability to comply with the bycatch reduction mandates the Senator authored in the Magnuson-Stevens Act.

Council's Other December Actions
(Not addressed by AP at this meeting - included for reference)

Excessive Share Caps

Move forward with an FMP amendment to prevent excessive harvest/processing shares for all crab and groundfish (and excessive processing shares for pollock). The analysis should examine shares of fisheries as defined in the following options:

1. individual crab and groundfish species
2. Pollock, non-pollock groundfish, crab.

Staff note: *This analysis likely cannot be initiated until after April, though processor caps are included in the suite of potential measures recommended by the Council regarding protection of pollock-ineligible processors.*

The Council asked staff to examine the following and report back to the Council:

1. Definitions used in AFA and Magnuson-Stevens for consistency.
2. The ability of pollock processors to expand their operations to other geographic locations, and
3. The ability of pollock processors to transfer their processing privileges.

Begin developing an amendment for species endorsements under LLP. Both the GOA and BSAI should be included in the analysis. The amendment should be based on the proposal submitted by the Groundfish Forum.

Initiate an analysis to establish duration for GOA I/O3 to coincide with the BSAI.

The Council reiterates its October 1998 recommendation on development of fee systems:

“The Council recommends that NMFS work cooperatively with ADF&G, processors and fishermen to develop a standardized fee collecting mechanism which will provide consistency between current fee collection programs, the IFQ fee, CDQ program, and potential future fee programs.”

“With respect to the proposed IFQ fee program, the Council recommends it not go forward until a mechanism be included which allows fishermen to submit evidence demonstrating discrepancies between standard prices charged by NMFS and actual prices received by the individual fishermen.”

Adjust LLP for new upgrade criteria and endorsement restrictions

Staff note: *No Council action on this item. Upgrade criteria for eligible vessels are stipulated in the AFA, and are different than under current LLP. Regarding endorsement restrictions, AFA refers to vessels, while LLP will issue licenses to persons. An amendment is necessary to preclude the initial issuance of these endorsements; i.e., so that they cannot be transferred to another vessel. The Council understood that these licenses would be issued if they took no action.*

The Council requests NMFS and ADF&G initiate development of a discussion paper examining what disclosure of catch and bycatch information § 211(d) of the AFA would allow that is currently restricted, any other legal

impediments to such disclosure, and how that disclosure may be beneficial in implementing §301(a)(9) and §303(a)(11) of the Magnuson-Stevens Act.

Staff note: *ADF&G and NMFS have both sent the Council letters on this issue. Those letters are included in the briefing books.*

GOA Co-ops

Add to staff tasking the framework proposal submitted by Alaska Groundfish Databank for pollock co-ops in the Gulf of Alaska. This task will not be started by staff until the Committee formed to study this issue has completed its work. It is the Council's intent to disband the Western and Central GOA committee and reform it as the GOA Sideboard Committee.

Other GOA Issues

Initiate analysis for the following management actions for the pollock fishery in the Gulf of Alaska

1. Trip limits of 75,000 - 400,000 maximum within a 24 hour period
2. Vessel length restriction of 125 ft.
3. Superexclusive areas
4. Limit the second trimester to 15% TAC allocation.

Initiate a regulatory amendment for examining start dates for the pollock fisheries (both A and B seasons).

Staff note: The Council indicated that the first amendment package above has been partially resolved within the sea lion protection measures (trip limits for the W/C GOA), and the remaining issues would be considered within the GOA Sideboard Committee. Regarding the second amendment package above, the Council had already initiated an examination of season dates and standdown provisions, though that will likely be subsumed within the overall 1999 examination of future sea lion protection measures.

High Seas Catchers' Co-op

1999 Groundfish Sideboards

The seven catcher vessels in the High Seas Catchers' Cooperative have been engaged in a dialogue with other industry associations about fulfilling our obligation to provide sideboards in 1999. In doing so, we are seeking the concurrence of the other groups that our plans provide adequate protection, while allowing us to continue in our traditional non-pollock fisheries.

The Council will decide on sideboards at the June 1999 meeting for all Bering Sea pollock CVs for the year 2000 and beyond. However, because our boats are in a coop in 1999, Congress requires us to limit ourselves to our traditional levels in other fisheries, and set penalties to impose on ourselves if we exceed those levels. The membership agreement of HSCC has a provision in paragraph 1.d, to provide such limitations (attached).

To date we have reached agreement with MTC and UCB on the Bering Sea Cod fishery, and have provided those associations with information on our catch prior to March 1st in the 95-97 period. We have also reached agreement with some members of the scallop fleet regarding scallops.

We have no plans to participate in fisheries other than pollock and cod in the 1st quarter of 1999, and are continuing to discuss our plans for participation in flatfish and rockfish fisheries with Groundfish Forum and Alaska Draggers, before engaging in those fisheries later in the year. Until we reach a conclusion in the dialogue with other groups, we intend to apply the following guidelines to our participation in other non-pollock fisheries:

General Statement

- a) *Our members will not participate at a greater level of effort in any concurrent fishery in 1999, than the level at which they participated in 1995-1998*
- b) *Our members will not enter any fishery in 1999, in which they did not participate during 1995-1998, whether the fishery is concurrent or not.*

To Whom Restrictions Should Apply

All of the seven vessels listed in Section 208(b) of the AFA.

To What Non-Pollock Fisheries the Restrictions Should Apply

Category 1:

Crab fisheries as defined in Sec. 211(c)(2)(C)

Category 2:

A - Restrictions apply to those fisheries that run concurrently with the BSAI pollock fisheries, and for which the TACs are fully utilized:

- GOA Pollock
- GOA Inshore P. Cod
- BSAI P. Cod, prior to March 1st

- Atka Mackrel and Rockfish
- Scallops

B - Restrictions apply to those fisheries that run concurrently with the BSAI pollock fisheries, and for which the PSCs are fully utilized:

- Flatfish & P. Cod

Category 3

EEZ fisheries other than Category 1 & 2, and those fisheries listed in Category 1& 2 outside the normal pollock season.

- Whiting
- WOC groundfish
- GOA & BSAI groundfish other than pollock and cod

Nature of Restrictions, and When the HSCC Restrictions Apply

Category 1 All HSCC vessels are prohibited from participating in Opilio by the Act. HSCC vessels also will not participate in the St. Matthew's or Pribolof king crab fisheries, because none of the vessels participated in 1997.

Category 2A HSCC vessels' harvest levels in 1999 will be restricted (during the same time periods as the normal open access pollock fishery using 1995-1997 as a base reference) based on catch history expressed as a percentage of overall TAC.

Category 2B HSCC vessels' harvest levels throughout the year will be limited by the constraint of operating within the VIP standard for each fishery (though our goal is to operate in a VBA pool).

Category 3 HSCC vessels will not enter fisheries in 1999 in which they have no previous participation, and will not exceed the proportion of the season for each fishery that they fished in the base years. (i.e.: if a vessel has participated for the duration of the rockfish fishery in the past, they will be allowed to fish the full duration of the 1999 rockfish fishery.)

Determination of "Traditional Harvest Level"

The AFA does not supply clear guidance of the definition of 'traditional harvest level.' The AFA itself, uses several sets of qualifying years:

- 95-97 for shoreside co-op catch history
- 95-97 for CP sideboards
- 97 for 208(b) vessels for pollock and crab eligibility
- 96-98 for MS 208(a&c) catcher vessels pollock eligibility

Additionally, the Council substituted 97 for CP cod sideboards. There have also been a series of control dates adopted by the Council for various fisheries stating that participation after such dates may not count. These control dates begin in 1987, and include 1992, 1994, 1995, and 1998. It follows that participation before such dates may be relevant in defining "traditional."

We believe there is a basis to apply different years to different fisheries based on whether the TAC is taken on a regular basis. We have provided a table (attached) that outlines the fisheries in which HSCC vessels have participated in 95-98 and those fisheries in which we expect to participate in 1999.

HSCC Sideboard Policy Comments on Council Development of Sideboards

The High Seas Catchers' Cooperative agrees with the position expressed by the NPFMC Advisory Panel at the November and December meetings. We understand that AFA requires the Council to develop conservation and management measures for 2000 and beyond, to prevent 208 (a, b, & c) vessels from exceeding their aggregate traditional harvest levels in other fisheries as a result of fishery cooperatives in the directed pollock fishery. We believe that the clear intent of Congress is to limit the impact of these restrictions or protective measures to catcher vessels actually participating in a cooperative because there would be no reason, or need, to add restrictions on CVs that elect to fish pollock open access in the traditional manner. The CV open access pollock fishery would not have any unfair advantage to adversely impact other fisheries and may in fact depend on those other fisheries for a majority of their income. Likewise, it is only fisheries that are concurrent with the open access pollock fishery that might be significantly impacted by participation in cooperatives.

HSCC further recognizes that in 1999 we are required by the AFA to limit ourselves in "all other fisheries in the exclusive economic zone of the United States" to "prevent such vessels from exceeding in 1999 the traditional levels harvested by such vessels." The AFA defines "harvest" in Sec. 205 (5) as "an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish." This statement, in conjunction with Senator Stevens' floor speech, which states that "without these provisions in 1999, the catcher vessels could target other fisheries during the time they would traditionally be participating in the BSAI directed pollock fishery," provides the guidance for our sideboard policy.

Therefore the HSCC recommends the following in the Council's development of sideboards:

- Sideboards should be applied primarily to fisheries concurrent with the BSAI open access pollock fishery.
- Additional sideboards in non-pollock fisheries outside the normal open access pollock fishery season should be expressed on the basis of effort.
- Additional restrictions in other non-pollock fisheries, including the portion of the P. Cod fishery outside the concurrent pollock fishery time frame, should not discriminate between co-op and non-co-op vessels.

Excerpt from Membership Agreement of HSCC – paragraph 1(d)

Limitation on Participation in Fisheries Other Than Pollock: Each Member agrees to identify its traditional fisheries and its historical level of participation in those fisheries. The board shall then determine which vessels and to what extent each Member may participate in each fishery so that the traditional levels of harvest, as defined in Section 205(5) of the Act, by the Members in 1999 does not exceed the traditional levels harvested by section 208(b) vessels in other fisheries in the exclusive economic zone of the United States. The board shall then assign entitlement to participate in a fishery based upon prior participation. Priority shall be based on the extent of prior participation.

Upon the Board of Directors or two or more Members in good standing concluding that a Member may have participated in a fishery in which he was not entitled, Section 4.4 of the Bylaws shall be implemented for a determination of whether there has been an unauthorized participation, and if so, the penalty to be assessed. To determine the proper penalty, the forum shall be guided by the penalties assessed by judicial forums for illegal participation in similar fisheries. All revenue resulting from the assessment of penalties shall be used as determined by the Board of Directors.

Participation by High Seas Catchers' Co-op boats in various GOA & BSAI fisheries.

Fishery	WGOA				
	95	96	97	98	99
Pollock -Inshore winter -A summer fall - B		OH	OH		
Cod inshore offshore fixed gear	TA/MM	OH	OH		TA?/MM?
Flatfish Rockfish Other Groundfish		OH			

Fishery	CGOA				
	95	96	97	98	99
Pollock -Inshore winter -A summer fall - B	FS	FS	MM/FS	TA/MM/FS	MM/FS
Cod inshore offshore fixed gear	FS TA/MM	FS	FS	FS TA/MM/AC/NK	FS TA/MM/FS
Flatfish Rockfish Other Groundfish	FS	FS	FS	MM/FS MM	MM/FS MM

Fishery	EGOA				
	95	96	97	98	99
Pollock -Inshore winter -A summer fall - B					
Cod inshore offshore fixed gear					
Flatfish Rockfish Other Groundfish	TA/MM TA/MM	TA/MM TA/MM	TA/MM TA/MM	TA TA	TA TA

BSAI Crab	95	96	97	98	99
	Tanner Crab Opillo Bardil	OH	OH OH		OH
King Crab Bristol Bay Pribolof St Matthews Brown Adak Norton Sound			OH/MM/SS	OH/MM/SS	OH/MM/SS
Dungeness Crab	MM				

BSAI Groundfish	95	96	97	98	99
	Pollock -Inshore winter -A summer fall - B	OH	OH	MM/NK/SS/OH	OH
Cod inshore offshore fixed gear	NK/SS/AC TA/MM OH	NK/SS/MM TA/MM/AC/FS OH	NK/SS/OH TA/MM/FS/AC	OH TA/MM/SS/NK/FS/AC	OH TA/MM/NK/FS/SS
Flatfish Rockfish Other Groundfish	TA/MM	MM		NK/SS	NK?/SS?/MM?

Scallops	95	96	97	98	99
			FS	FS	FS

Garry Loncon
Earl Constock

**Fair Fisheries Coalition Comments on Council Analysis and AP
Recommendations - February 6, 1999**

C-2(a) 1999 Co-op Agreements

The Coalition supports the AP recommendation.

C-2(d) 2000 Amendment Package

Section 6

The Coalition recommends that the Council adopt safeguards that limit the catcher processors to the historical catch and bycatch of the twenty listed vessels in section 208(e). The history of the nine vessels removed from the fishery should **not** be included. Those vessels were bought out, and section 209 states that the catch history of those vessels is "hereby extinguished." To permit the catch history to be used in section 211 permits the owners of the vessels bought out to enjoy an additional benefit on top of the money already paid. Processors and fishermen that did not benefit from the AFA will be further damaged if the catcher processors are allowed to increase the historic catch of the remaining vessels by getting credit for the catch of vessels that were removed under the AFA. Section 213(c)(1) provides authority for the Council to modify section 211(b)(2) to **exclude the catch history of the nine ineligible vessels.**

The Coalition supports the AP recommendations for additional analysis.

Section 7

A. Crab Sideboards

The Coalition supports the analysis approved by the Council at the December meeting.

1. The Coalition supports the AP recommendation to add a definition of participation.
2. The Coalition supports the AP request to add option b to alternative 5.
3. The Coalition supports the AP recommendation of a sub-option to prohibit co-op vessels from leasing, transferring, or selling any LLP endorsement that they may be allowed to keep. The Coalition **recommends adding a prohibition on the sale, lease, or stacking of vessel catch history of AFA vessels.**
4. The Coalition **opposes** the addition of a sub-option to allow crossovers.

The Coalition requests that the Council renew its request for the emergency rule it requested for crab in December. In the absence of such a rule, the Council should include such measures in its July recommendations to the Secretary.

B. Scallop Sideboards

The Coalition supports the AP recommendation, though questions the need for the analysis of sub-options.

C. Groundfish Sideboards

The Coalition supports the analysis requested by the Council at their December meeting.

1. – 4. The Coalition **opposes** the AP recommendations for items 1 through 4. Each of these recommendations seeks to minimize the impact and effectiveness of sideboards on the vessels that benefited from the AFA. In particular, the Coalition objects to any analysis of options that would turn the statutory “aggregate” caps into sub-allocations for individual coops or specific classes of AFA eligible vessels. All of the non-AFA vessels must continue to “race for the fish” and are subject to aggregate sector-wide harvest and PSC caps. The non-AFA vessels and processors would be further damaged by the AFA if AFA vessels are able to get vessel by vessel, coop by coop, or subsector allocations of harvest caps or PSC, because they will then further allocate those caps on a vessel by vessel basis using the coop mechanism.

5. The Coalition supports the AP recommendation to provide a mechanism to compensate the inshore catcher vessels that delivered to at-sea processors in the qualifying years. The impact should be spread sector wide.

The Coalition also supports the changes requested by John Dooley and Margaret Hall. These changes remove an unconscionable restriction that was insisted on by the AFA processors over the objection of independent fishermen and non-AFA processors in the Congressional process. Failure to remove these restrictions results in the fishermen being captive to the processors. Congress specifically reserved the Council’s authority to review and modify these provisions in section 213 of the AFA.

The Coalition recommended these same modifications in a November 4, 1998 letter to the Council and in testimony at the November and December meetings. The Council has the authority under section 213(c)(1) of the AFA to make these modifications, and these modifications are consistent with the Fishermen’s Cooperative Act of 1934.

Adoption of these changes presents the Council with the means to address AFA catcher vessel concerns regarding the economic impact of sideboards. The flexibility to deliver to any AFA eligible processor should increase the price paid to fishermen (it certainly did for at-sea catcher vessels). Combined with the 42 percent increase in inshore pollock , this should offset any economic impacts on AFA boats from stringent sideboards.

6. The Coalition supports the AP recommendation to delete the sub-option.

7. The Coalition **opposes** the analysis of a “best 2 of 3” approach. This analysis will be difficult and time consuming for already stretched staff resources.

D. Additional Gulf of Alaska Sideboards

1. Any sideboards should apply to all AFA eligible catcher vessels.
2. The Coalition supports the AP recommendation.
3. – 5. The Coalition is analyzing these proposals and has no position.

Section 8

Measures to Protect Non-AFA processors

The Coalition supports the Council’s December meeting request for analysis.

The Coalition notes that the excessive share processing caps mandated in the AFA are limited to fish harvested under BSAI FMPs. Section 301(a)(4) of the Magnuson-Stevens Act permits the Council to establish harvesting caps for the GOA, but not processing caps. The M-S Act has limited jurisdiction over onshore processing. **The Council should limit all analysis of excessive share processing caps to fish harvested from the BSAI. An excessive share processing cap on BSAI fish would not impact processing of any GOA fish under the AFA and M-S Act.**

1. – 4. The Coalition generally supports the AP recommendations with the modification that analysis of GOA impacts for processing caps should be deleted. The Coalition strongly supports use of the 10 percent affiliation rule for all excessive share caps. The Coalition **opposes** analysis of a grandfather of processing shares above 17.5 percent for pollock. This conflicts with the plain statutory language.

The Coalition supports the AP recommendation regarding NMFS actions to address *confidential catch & bycatch* information. **All of the analysis for excessive share caps and harvest caps can be done without public disclosure of confidential data. NMFS GC can assist in finding ways to prevent disclosure from being an obstacle.**

The Coalition **opposes** the AP recommendation that processing caps be considered on a separate track. Excessive share caps will be difficult to establish the longer the Council waits. **Excessive share caps are a necessary protection for non-AFA processors, and should be established as part of the 1999 amendment package.**

General The Coalition **opposes** the AP recommendation for analysis of options for other fishery co-ops in the Bering Sea and GOA that involve a threshold percentage of participants and the set aside of catch history. AFA type coops violate the ban on IFQ plans in section 303(d)(1)(A) of the Magnuson-Stevens Act, and could not be recommended to the Secretary prior to October 1, 2000. Given the heavy staff load implementing the AFA and Stellar sea lion protection this is an unnecessary and counterproductive use of staff resources at this time. **The Coalition reiterates that the Council has no authority under the Magnuson-Stevens Act to create a closed class of shore processors in any fishery, and opposes any analysis of such action.**

Gunner Ildhuso
F/V GunMar
8814 207th Place SW
Edmonds, WA 98026

February 3, 1999

Mr. Richard Lauber, Chairman
North Pacific Fishery Management Council
605 W. 4th Ave
Anchorage, Alaska 99501

RE: Agenda Item C-2 American Fisheries Act - Sideboards

Dear Chairman Lauber and Council Members:

I am writing to urge you to add an option to the analysis on American Fisheries Act (AFA) changes. I ask that the Council add an option to analyze a change in the years used to base a vessel's pollock catch history for purposes of formation of an inshore vessel pollock cooperative.

Currently under Section 210(b)(1)(B) of the AFA the amount of pollock a member of an inshore coop can bring into a coop is based on the vessel's catch history in the years 1995, 1996 and 1997. **I ask you to add to your analysis an option to change the years used to determine one's pollock catch history to the best 2 out of 3 years of 1995 - 1997.**

The reason I request this option is that my vessel missed part of a pollock "A" season and the majority of the following "B" season in 1996 due to a fire on-board. Because I lack a complete set of seasons in the qualifying years ('95-'97), I will reduce the amount of catch history I can annually bring into a coop in the year 2000 and beyond by over 20%.

My vessel, the *F/V GunMar*, has fished in the Bering Sea since 1981 and was one of the first vessels to deliver shoreside in Dutch Harbor when the surimi plants were first built. We have continued to fish for shoreside markets every single year since 1988. We will be severely disadvantaged if the years used for one's coop catch history remain 1995 - 1997.

I believe the AP considered this issue and unanimously recommended that the Council add an option to the AFA analysis that would look at the effects of using the best 2 out of three years of 1995 - 1997.

Thank you,



Gunner Ildhuso, Owner
F/V GunMar

Catcher Processors

Benefit: Limited access to offshore pollock fishery.

Cost

- Required to have 75% US ownership in 3 years.
- Lost approximately 6% of offshore BSAI pollock quota to Inshore and CDQ sectors, beyond 10% that was compensated with buyout.
- *All remaining restrictions from (Sec. 211):*
- Prohibited from exceeding historical percentage of harvest available of any BSAI groundfish fishery equivalent to offshore aggregate total for '95-97 participation.
- Prohibited from exceeding the historical percentage of PSC available in offshore component of BSAI groundfish species (other than pollock) for '95-'97.
- Lost access to Atka mackerel in eastern area of AI and limited to 11.5% in central AI and 20% in western AI.
- Prohibited from processing any Inshore or MS pollock
- Prohibited from processing any BSAI crab
- Prohibited from harvesting any fish in GOA
- Prohibited from processing any pollock in GOA.
- Prohibited from processing any groundfish in area 630 of GOA
- Prohibited from processing more than 10% cod in areas 610, 620 and 640 of GOA
- Prohibited from harvesting and processing in any other US regions unless recommended by regional council and approved by Secretary (except Pacific whiting fishery)
- Prohibited from access to federal loans for construction or rebuilding if over 165', more than 750 tons or more than 3,000 horsepower.
- Must have two observers at all times.
- Must use scales by 1999 (CDQ vessels) and by 2000 (all other pollock CPs).
- North Pacific Council to recommend conservation and management measures for fisheries and participants under its jurisdiction from adverse impacts *of the Act* or fishery cooperatives (July, 1999)
- Pacific Council to recommend conservation and management measures for fisheries and participants under its jurisdiction from adverse impacts *of the Act* or fishery cooperatives. (July, 2000)

Benefit: Formation of Cooperative

Cost: Sec. 210. Fishery Cooperative Limitations

- Make available to the public all coop contract information including the amount of pollock and other fish to be harvested
- Make available to the public the harvest of all species (including bycatch) in the directed pollock fishery on a vessel by vessel basis.
- Payment of Alaska landing tax even if product landed elsewhere.
- Possible imposition of excessive share caps.
- Must not disadvantage CDQ royalty payments.

Offshore Catcher Vessels

Benefit: Limited access to at least 8.5% of offshore pollock allocation.

Cost

- Lost approximately 6% of offshore BSAI pollock quota to Inshore and CDQ sectors beyond the 10% that was compensated for with the buyout.
- Prohibited from participation in BSAI crab fisheries unless the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997.
- North Pacific Council to recommend conservation and management measures for fisheries and participants under its jurisdiction from adverse impacts *of the Act* or formation of a cooperative
- Pacific Council to recommend conservation and management measures for fisheries and participants under its jurisdiction from adverse impacts *of the Act* or formation of cooperatives.

Benefit: Formation of a cooperative

Cost:

- *(Sec. 210 c) Fishery Cooperative Limitations*
Prohibited from exceeding the traditional levels harvested in all other fisheries in US EEZ. Steven's floor speech describes this provision as a measure to restrict catcher vessels in a coop from targeting "other fisheries during the time they would traditionally be participating in the BSAI pollock fishery."
- *(Sec. 211 c 1 A;) Protection for Other Fisheries; Conservation Matters.*
By July 1999 the Council to recommend measures to prevent catcher vessels (208 a, b, and c vessels) from exceeding in the aggregate the traditional harvest levels in other fisheries in the Jurisdiction of the NPFMC as a result of pollock fishery cooperatives.

Inshore Catcher Vessels

Benefit: 15% shift of TAC or a 43% increase in allocation.

Cost:

- 5% of TAC shift is taken from the Offshore sector without compensation. The remaining 10% is purchased at a cost of \$95 million of which the US government pays \$20 million. The remaining \$75 million will be paid by the inshore sector with an assessment of \$.06/per pound.

Inshore and Mothership Catcher Vessels

Benefit: Limited access to Inshore pollock fishery

Cost:

- North Pacific Council to recommend conservation and management measures to protect fisheries and participants under its jurisdiction from adverse impacts *of the Act* or formation of a cooperative.
- Pacific Council to recommend conservation and management measures to protect fisheries and participants under its jurisdiction from adverse impacts *of the Act* or formation of a cooperative.

Benefit: Formation of a cooperative

Cost:

- Coop reporting requirements including information on catch and bycatch in the pollock fishery on a vessel-by-vessel basis.
- Limited to aggregate percentage of pollock harvested during 1995-97 in proportion to years when cooperative formed.
- Pollock must be delivered to processor which it delivered to in previous year.
- Prohibition from exceeding, in the aggregate, the traditional harvest levels in other fisheries.
- Excessive harvesting share cap

Onshore Processors

Benefit: A 15% shift in the BSAI pollock TAC causing a 43% increase in allocation.

Cost:

- 5% of TAC shift is taken from the Offshore sector without compensation. The remaining 10% is purchased at a cost of \$95 million of which the US government pays \$20 million. The remaining \$75 million will be paid by the inshore sector with an assessment of \$.06/per pound.

Benefit: Limited Access to Inshore pollock fishery.

Cost:

- No US ownership requirements
- New entrants permitted if BSAI TAC increases more than 10% of 1997 TAC or if actual loss of eligible shoreside processor.
- North Pacific Council to recommend conservation and management measures for fisheries and participants under its jurisdiction from adverse impacts *of the Act* and formation of cooperative.
- Pacific Council to recommend conservation and management measures for fisheries and participants under its jurisdiction from adverse impacts *of the Act* and formation of cooperatives.

Benefit: Formation of a cooperative

Cost:

- Prohibited from processing in the aggregate more than the total percentage of catch of each species of crab as they did on average in 1995-97.
- Possible excessive share caps for crab and groundfish
- Contract reporting requirements (for harvesting rather than processing)
- Protection for CDQ groups

Margaret Haue/g. Dooley

**Position Statement – Independent Catcher Vessels
On the
American Fisheries Act of 1998**

Problem:

Under the language of the American Fisheries Act, pollock vessels which enter into co-ops and deliver to shorebased processors are prevented from entering into a co-op with a different processor in the following year. This prevents pollock boats delivering onshore from freely moving between competing buyers.

Solution:

We would like the council to implement regulations so that we could negotiate the sale of our fish from a reasonable bargaining position. The proposed change would allow vessels in a co-op to deliver their catch history to the market of their choice. For example, if one plant will pay 9 cents a pound because they are producing fillets and another will pay 8 cents per pound because they are producing surimi, we feel that we should be able to deliver to the plant with the highest prices; even though we may not have been in a co-op relationship with that processor in the previous year.

Discussion:

We are not saying that our fish will automatically flow to the plant paying the highest price because other factors such as room in the rotation schedule, roe maturity and the November 1 closure will, for the most part, cause most of the vessels to deliver to their traditional markets. However, with so many restrictions placed upon us, we cannot be sure of getting a reasonable price for our fish if we are locked forever into a co-op arrangement with a single processor.

Under this proposed modification, the plant that is the most efficient and pays the most will be rewarded with small increments in market share. Certainly a competitive market for all our fish has been the primary goal for the State of Alaska, the Magnuson-Stevens Act and the American Fisheries Act.

Recommended Council Action:

Council documents showed that bargaining power has suffered since 1992. The key question for the analysis of the action we propose is:

Will the "Pro-Competition" provisions have a positive or negative effect on fish prices?

Thus Mr. Chairmen and council we respectfully urge you to utilize the authority provided to you in Section 213 (c) (1 & 3) to supersede the provisions of Section 210 (b) (1) of the American Fisheries Act by initiating consideration and analysis of the following regulatory changes,

"Pro-Competition" Motion

- 1) Modify the definition of "qualified Catcher Vessel" found in 210 (b) (3) to read, **"any vessel meeting the criteria of Section 208 (a) and eligible to harvest the allocation under 206 (b)(1)**. Strike the language that qualifies a catcher vessel by stating ~~during the year prior to the year in which the fishery cooperative will be in effect, delivered more pollock to the shoreside process to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.~~

and

- 2) Modify paragraph 210 (b)(1)(A) to read **"is signed by the owners of any 5 (7 - 10 could be sup-options), or more qualified vessels, may form a co-operative; and modify paragraph (B) to read: "specifies, (strike: "except as provide in paragraph (6)") that such catcher vessels will deliver pollock in the directed pollock fishery only to (strike: such shoreside processor during the year in which the cooperative will be in effect and that such shoreside processor has agreed to process such pollock") those processors eligible under Section 208 (f)**.

In Fishermen's terms

The modification to the first paragraph would allow all the boats on the AFA list to deliver to any of the shoreplants on the AFA list, regardless of where the vessel delivered in the past.

The proposed change to the second paragraph would allow groups of 5 - 10 boats to form a co-op. This paragraph also strikes the language that requires permission from a shoreplant to form a co-op.

Selected passages from the American Fisheries Act

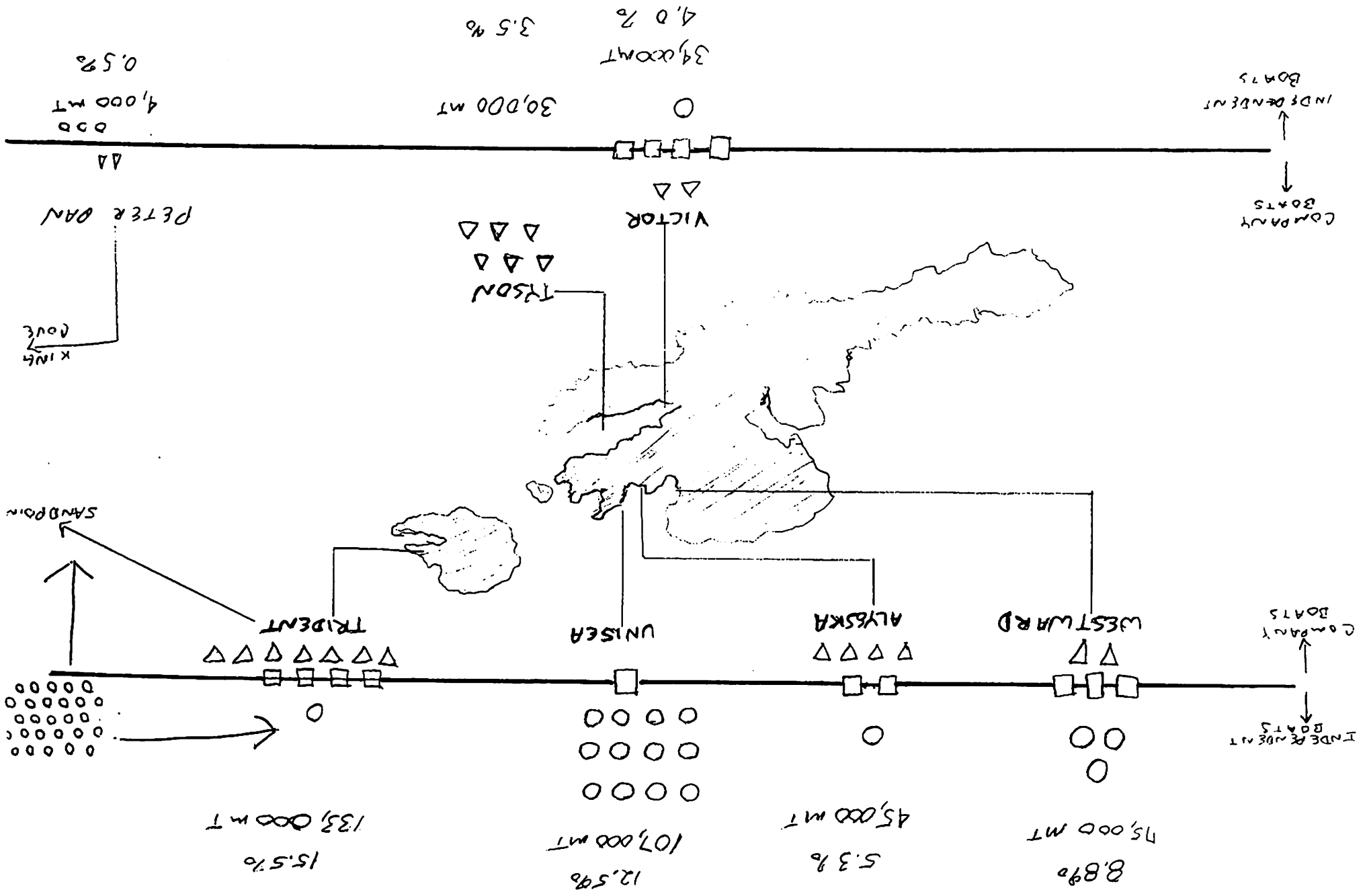
Section 210 (b)(1) FISHERY COOPERATIVE LIMITATIONS - ONSHORE CATCHER VESSEL COOPERATIVES.

- (1) **CATCHER VESSEL COOPERATIVES.**-Effective January 1, 2000, upon the filing of a contract implementing a fishery cooperative under subsection (a) which—
- (A) is signed by the owners of 80% or more of the qualified catcher vessels that delivered pollock for processing by a shoreside processor in the directed pollock fishery in the year prior to the year in which the fishery cooperative will be in effect; and
 - (B) specifies, except as provided in paragraph (6), that such catcher vessels will deliver pollock in the directed pollock fishery only to such shoreside processor during the year in which the fishery cooperative will be in effect and that such shoreside processor has agreed to process such pollock,
- (3) **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 harvested in the directed pollock fishing to the shoreside processor to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.

Section 213 (c) 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 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;**

1997 SNAPSHOT



Members of the council . My name is Thor Olsen . My son Steve Olsen and I own and operate the F/V Western Dawn catching pollock and have done so for a number of years . At first we delivered to onshore processors , but in the summer of 1996 we got a job with a Mothership , and are still delivering to such .

Little did we know 1996 that the years 1995 - 96 and 97 were to be the qualifying years for a catch - historie on pollock . As a matter of fact we were exactly at midpoint . But now we have two half loaves ; one 1/2 half inshore and 1/2 in mothership-deliveries . Neither by themselves is enough to support a vessel like ours.

Let me point out that S1221 was not a windfall for the mothership-sector . That sector had in earlier years caught up to 11,3 % of the total Bering Sea quota , but were now assigned only 10 % , where as the shore -side got a 40% increase . I believe the intent of S1221 was to retire a number of factory trawlers , and then spread the benefits to the catcherboats left . Given the economics of Pollock ,and the language of S1221 regarding the Mothership-sector , jobs in that sector are uncertain . Lets just imagine what a fire like the one on Northern Victor would do to our three only markets . Some of our catcher-vessels in the Mothership- sector that also qualify inshore may elect or find themselves having to move inshore , but now with only part of their qualifying period counting towards a shoreside-quota. We in the Mothership sector got to have an alternative .

I understand that proposals have been made that asks the Council on behalf of vessels that had spent some of qualifying time selling pollock to at sea-processors ,but are now delivering inshore be given credit for the time spent offshore with an equivalent quota in the inshore without actually having earned it in that sector . They would then have a full 3 year qualifying period like everyone else . I concur with that proposal , except that I believe that the catcherboats in Mother-ship sector should be included as well . It is only fair that we all get credit for all the fish we caught in 1995 -96 and 97.And I believe that there is language in S 1221 that specifically admonish the inshore sector to fair and equal treatment of vessels that had delivered to offshore and motherships. With a 3 year catch historie a catchervessel that elects or of needs must seek a shoreside market will then be a worthy member of any CO-OP , and can earn a living equal with any other vessel .

I support the Alternative 1 of Robert Czeisler and also Alternative 2 if the year chosen to set the catch historie is one of the otherwise qualifying years 1995 - 96 -and 1997 .

Again I want to repeat that the Mothership sector came out poorly on S 1221 . Come now another matter ; In the language on implementation of S1221 it states that restriction should be made as to pollock vessels right to engage in other fisheries .We have historicly engaged in Cod and sole fisheries . The A season for the Mothership sector will probably be about 18 - 20 days this year . Are we then going to be restricted in the cod or sole fisheries .With less access to pollock than before we need more access to other fisheries ,not less .

THOR OLSEN

MOTHERSHIP CATCHER BOATS

February 2, 1999

Richard Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, AK 99501

RE: COOP ALTERNATIVES TO BE ADDED

Dear Chairman Lauber:

SB 1221 was supposed to remedy the factory trawler's preemption of the pioneering catcherboat fleet. All sectors of the catcherboat fleet but the Mothership Catcher boat sector has been helped. As a result of this inequality, SB 1221 has seriously damaged the Mothership Catcherboat fleet. While the factory trawler catcher boats and shoreside catcher boats with solely a shoreside catch history are receiving over a 40% increase in revenue either through an increase in price (factory trawler catcher boats) or through increased allocation to shoreside catcher boats, the Mothership catcher boats are receiving a 16% reduction in harvesting allocation with no increase in price. Our allocation has gone from 10.45% of the overall TAC (11.3% of 92.5% = 10.45%) to 9% of the overall TAC (10% of 90% TAC = 9%). In addition, the bill heavily skews the coops against catcher boats that have fished open access in both the Mothership sector and the factory trawl sector. Unless this Council remedies these inequities our sector will go through the very trauma that SB 1221 was supposed to prevent: independent fishermen being forced to sell their boats because they cannot make their boat payments on the diminished revenues.

SB 1221 foresaw that there would be problems with boats that have fished more than one sector during the qualifying period and also was aware that the Mothership sector did take a loss of quota as a consequence of the mother ship catcher boats receiving only 9% of the TAC. Section 210(b)(4) of the Act states:

"contracts implementing a fishery cooperative.[in the inshore component for vessels].. that harvested pollock for processing by catcher/processors or motherships . . . shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified vessel."

Without changing the Mothership allocation of 9%, those boats wanting to leave the Mothership sector should be able to take their catch history with them to the shoreside sector. For example, if a vessel caught .5% of the pollock TAC and is

shoreside eligible, then that vessel has the option of taking that .5% catch history (without changing the allocation in the Mothership sector) to a shoreside coop and then be able to increase accordingly as a consequence of the increased percentage going shoreside. That vessel, however, should not be able to double dip. It would have to forfeit its Mothership coop rights. The consequence of this would be that the denominator on the shoreside would be greater than 100%. I ask that the Council add the following alternative for analysis:

Additional Option No. 1 on Coops:

" Any Owner of a Mothership catcher boat that is shoreside eligible may choose to utilize its directed pollock fishing catch history in a shoreside cooperative treating such catch history as if it had been processed by the inshore component and giving his or her shoreside processor the right to process said percentage of the inshore component on the following conditions: 1. The owner declares its intention by December 1st of the prior year that the owner wants to treat their directed fishing to a Mothership as if had been processed by a shoreside processor; 2. Said owner forfeit all rights to be in a fisheries coop or open access fishery in the Mothership sector during the year(s) in which the Secretary allows their Mothership directed fishing history to be aggregated with others delivering to the shoreside processor selected by the Mothership catcher boat as if Mothership catcherboat directed fishing history had been processed by an inshore component shoreside coop."

A second inequity in the shoreside fisheries coop standards is the lack of any meaningful shoreside harvesting rights that a dual eligible catcher boat can provide to a shoreside processor under the present criteria for cooperative rights. During the qualifying periods--1995-7--most of the Mothership vessels had little time available to fish pollock shoreside because the Mothership pollock fishery overlapped almost the entire shoreside pollock fishery. That has changed dramatically since SB 1221 and the NMFS actions reducing fishing areas and spreading out the effort in the CVOA to help the Stellar Sea Lions recover. Now the non-overlap fishing time for Mothership catcher boats has gone from 10 days total for the year to a probable 55 day non-overlap pollock season: 20 days during the A1, A2 pollock seasons and another probable 35 days of non-overlap fisheries during the pollock B season. This is a fivefold increase in shoreside-eligible, Mothership catcher boats fishing time in the Bering Sea. There is no recognition of this increase in our shoreside fishing opportunities under the default coop. Instead, the legislation looks only at the 1995, 1996, and 1997 fishing activities under open access. The COOP provisions were supposed to reflect what open access fishing would be after passage of SB 1221, not be designed to prevent Mothership catcher boats from catching their fair share of the shoreside quota that they would have caught under open access.

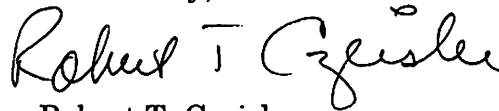
To remedy this problem, Mothership catcher boats should be given credit for open access catch history in the inshore component during 1999 or later to take into account the change in fishing periods due to the increased shoreside allocation and the changes in the length and the time periods for the pollock fishery as a result of the conservation measures taken for the Stellar Sea Lions. We ask the Council to include as a second additional option, the following:

Additional Option 2 on COOPS:

“Shoreside catch history for catcher boats that are Mothership eligible and that continue fishing either in open access or in a cooperative in the Mothership sector may choose to use a different year than those set forth in Section 210 (b)(1)(B) as the measuring year of its directed pollock fishing catch percentage in the inshore component that it may provide to a shoreside processor cooperative. Said owner may use its percentage of the directed pollock fishery delivered to a shoreside processor during the year prior to entering a shoreside cooperative as the percentage of its shoreside harvesting available to include in a shoreside cooperative.”

These two options, if adopted, would begin to put the Mothership catcher boats at least where they were prior to the reallocation of fish from the Mothership catcher boats under SB 1221.

Yours truly,



Robert T. Czeisler

RTC/cp
K:\CLIENTS\RTC\7139\NORTH PAC.ADD

MOTHERSHIP CATCHER BOATS

ADDITIONAL ALTERNATIVES:

Additional Option No. 1 on Coops:

" Any Owner of a Mothership catcher boat that is shoreside eligible may choose to utilize its directed pollock fishing catch history in a shoreside cooperative treating such catch history as if it had been processed by the inshore component and giving his or her shoreside processor the right to process said percentage of the inshore component on the following conditions: 1. The owner declares its intention by December 1st of the prior year that the owner wants to treat their directed fishing to a Mothership as if had been processed by a shoreside processor; 2. Said owner forfeit all rights to be in a fisheries coop or open access fishery in the Mothership sector during the year(s) in which the Secretary allows their Mothership directed fishing history to be aggregated with others delivering to the shoreside processor selected by the Mothership catcher boat as if Mothership catcherboat directed fishing history had been processed by an inshore component shoreside coop."

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USIS Washington File

02 February 1999

FAO STARTS ON PATH TOWARD REDUCING EXCESS FISHING CAPACITY

(Second in a series on fisheries management) (930)
By Bruce Odessey
USIA Staff Writer

Washington -- The U.N. Food and Agriculture Organization (FAO) says that excess fishing capacity worldwide -- too many boats chasing too few fish -- is largely responsible for the degradation of ocean fisheries, and it recommends reducing that capacity by 30 percent.

At an FAO Committee on Fisheries (COFI) meeting scheduled February 15-19 in Rome, the international community of fishing countries could take a small step in that direction.

"If you had to identify any single issue that's the biggest threat it has to be overcapacity," said Terry Garcia, assistant secretary of commerce. "If we can't get control of that, we are going to have a very difficult time managing these fisheries. In fact it may be impossible to manage them."

Garcia will lead the U.S. delegation to that meeting. In October he attended an FAO meeting in Rome where participants agreed on the draft document that is to be considered for adoption by COFI in February. They called it "Elements of an International Instrument for the Management of Fishing Capacity."

The non-binding agreement would direct members to assess their fishing fleet capacity, maintain national records of those fleets, develop and implement national capacity management plans, and progressively eliminate subsidies that contribute to excess capacity. It does not attempt to rank countries by excess capacity or by excessive fishing effort.

The FAO estimates the world fishing fleet at 1.2 million vessels at 24 million metric tons gross weight. Most of the increase since 1980 is attributed to the Chinese fleet, now 450,000 vessels at six million tons.

David Balton, director of the State Department's office of marine conservation, said he expects COFI will accept the draft document. Except for implementation deadlines, most of the language has been worked out, he said.

According to the Commerce Department's Garcia, one unresolved issue for COFI is what to call the document as adopted.

"Is this a plan of action or will it be guidelines?" Garcia said. "Our view is that it should be a plan of action. That's what's needed. A plan of action carries with it a connotation that we think will convey the urgency of the problem rather than just guidance."

Whatever COFI members decide to call the document, he said, it amounts to a plan of action.

"We think the substance is there," he said.

The State Department's Balton said most countries now accept the underlying concepts that too many fisheries suffer from overcapacity and that overcapacity leads directly to overfishing. But countries don't agree yet on what to do about overcapacity, how to control it, even how to measure it, he said.

COFI approval of the draft proposal should advance the process, he said.

"But I don't think anybody could say that with its adoption by COFI that the job will be done," Balton said. "Indeed, in many respects the job will have just begun. The document looks forward to a lot more work on the issue both internationally and nationally."

Balton views as especially important the need to eliminate government subsidies for fishing boat construction, a practice the U.S. government has already ended.

"If those sorts of subsidies were ended, ultimately those vessels would be taken out of the fisheries because they wouldn't be making any money," Balton said. "So with subsidization some vessels can continue to fish even in the face of conservation problems."

Balton predicts reducing capacity will be a wrenching challenge, but noted one promising development: In October one fishing conservation regime, the Inter-American Tropical Tuna Commission (IATTC), acted at least to block any increase in capacity in region it manages in the eastern tropical Pacific.

"There was some evidence that the stocks were starting to decline, but the situation certainly had not reached anything like crisis proportions, and yet the organization was able to hammer out a plan to keep capacity stable and committed itself to continue to monitor the situation," he said. "So they were actually pro-active in a situation where stocks are reasonably healthy."

Balton said developing countries have expressed skepticism about the FAO capacity initiative at a time when they are seeking to expand their fisheries. They view overfishing as a problem caused by the developed countries, he said.

While the United States has far from a perfect record in managing its fisheries, he said, in recent years it has embraced a conservation ethic.

"We're trying to make it work," Balton said. "And the fishermen themselves for the most part accept the need for it because, if stocks are not conserved, ultimately they will be the ones hurt most."

At least one environmental organization, Greenpeace International, has criticized the FAO capacity draft proposal as too weak. Its own proposal would cut the world commercial fishing fleet in half by 2005.

"FAO did not have the courage to do anything significant," said Jerry Leape, Greenpeace legislative director in Washington.

Without more aggressive capacity reduction, he said, overfishing will lead to commercial extinction of more species.

"And then we're going to face a real crisis not only in nutrition,

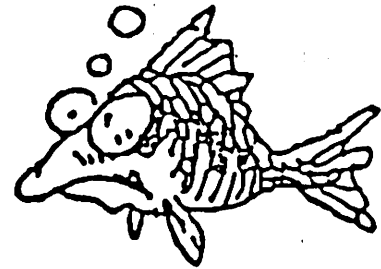
fish for human consumption, but also in the ocean food web itself," Leape said.

Governments need to muster the political will to face a serious economic, biological and social problem, he said.

"The danger of asking for too little is you may get it," Leape said.

(Next in the series: The existing international framework for managing fisheries)

**North
Pacific
Longline
Association**



Agenda C-2

February 2, 1999

**Mr. Richard B. Lauber, Chariman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, AK**

RE: Emergency Rules; New Proposal

Dear Rick:

It is with a real sense of frustration that we write again about the unintended consequences of the American Fisheries Act and the need for prompt regulatory action to offset them. The Act has created changed circumstances in our management scheme - circumstances that were not anticipated at the time our regulations were developed, and that threaten a new race for fish and destabilization of fully-utilized non-co-op fisheries.

In December the Council heard and understood these problems, and recommended two emergency rules to protect the crab and groundfish fisheries from speculative expansion by token participants. Congress also understands these problems. On December 8, 1998, four senators wrote to encourage the adoption of emergency measures. On January 20, 1999, they sent a second letter to the Secretary of Commerce, strongly recommending implementation of the emergency rules adopted by the Council - **"full justification is provided by the APA mandate to the Council and Department of Commerce...we believe the agency does not fully appreciate the need to prevent major dislocations and redirection of effort...."** (please see attachments). Unfortunately NMFS has been unable to implement the recommended measures. We find little comfort in the advanced notice of proposed rulemaking purporting to establish a "control date."

In casting about for an alternative approach, we have observed that the most acute problem exists in the fixed gear fishery for cod. This fishery is now prosecuted primarily by some 30 freezer-longliners and perhaps 20 pot vessels that have made substantial landings over a number of years, and has reached a state of equilibrium. However there are some 492 vessels, many of them pot vessels with minimal catch history, qualified to participate in the fishery under LLP (please see attachment). As a result of the American Fisheries Act many of these latter vessels are preparing to redirect their effort into the cod

fishery, threatening the "major dislocations" anticipated by the Senate.

For this reason we feel that it is time to separate the fixed gear apportionment of BSAI cod into a longline apportionment and a pot apportionment, based on recent catch history. This could be accomplished initially by an emergency rule responding to the Senate's advice, to be followed by a normal Administrative Procedure Act (APA) rulemaking. Alternatively, if NMFS feels that it can promulgate an APA rule as fast as an emergency rule (as with the seabird avoidance regulations), time and effort might be saved.

We thank you for your attention to this matter, and ask that you recognize that this is not a "fish grab." It is merely an attempt to preserve the status quo and to prevent a "fish grab."

Sincerely,



Thorn Smith

United States Senate

WASHINGTON, DC 20510

December 8, 1998

Richard Lauber
 Chairman
 North Pacific Fishery Management Council
 605 West 4th Avenue, Suite 306
 Anchorage, Alaska 99501-2252

Dear Mr. Chairman:

The North Pacific Council must make recommendations this week to protect other fisheries that may be negatively affected as a result of the American Fisheries Act or the potential for fishery cooperatives in the Bering Sea/Aleutian Islands (BSAI) pollock fishery.

Section 211(a) of the American Fisheries Act requires the Council to recommend "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 the [American Fisheries Act] or fishery cooperatives in the directed pollock fishery." Section 211 (c)(2)(C) specifically directs the Council to "recommend measures for approval by the Secretary to eliminate latent licences under [the License Limitation Program]." In anticipation that a fishery cooperative might be formed by catcher-processors in 1999, the American Fisheries Act included specific measures to protect other fisheries and participants in this regard. The Act appropriately left to the Council, however, the responsibility to develop and recommend the measures that may be needed to fully protect other fisheries.

We urge the Council to make strong recommendations to the Secretary to protect other fisheries and fishermen and to eliminate latent licenses. If the Council cannot develop adequate long-term measures due to time constraints or its work on the Steller sea lion issue, then we encourage the Council to recommend emergency measures until the long-term measures can be developed. We appreciate your attention to this important matter and ask that you keep us informed of the Council's actions this week and anything we can do to assist in the matter.

Sincerely,



Senator Slade Gorton



Senator Ted Stevens



Senator Patty Murray



Senator Frank Murkowski

United States Senate

WASHINGTON, DC 20510



January 20, 1999

RECEIVED

JAN 21 1999

N.P.F.M.C

The Honorable William M. Daley
Secretary
Department of Commerce
(Via Facsimile (202) 482-2741)

Dear Secretary Daley:

We request that the National Marine Fisheries Service (NMFS) reconsider its decision not to implement emergency rules which the North Pacific Fisheries Management Council proposed to address some of the potential direct and indirect effects of the American Fisheries Act (AFA). We believe these steps are necessary to prevent fishermen from redirecting their efforts toward --and further overcapitalizing --fisheries in which they have little historical participation.

When we passed the AFA, we realized that it would likely affect not only the Bering Sea/Aleutian Islands pollock fishery, but other Alaska and West Coast fisheries as well. For this reason, the AFA requires the North Pacific and Pacific Councils to recommend, and the Secretary to consider and approve, measures to protect other fisheries. Shortly after the enactment of the AFA, we wrote to the North Pacific Council urging it to take meaningful and swift action at its December meeting to prevent direct and indirect adverse impacts that would otherwise occur in fisheries which open as early as this month. We are concerned about the potential for increased participation by pollock fishermen in other fisheries (in which they have little or no historical participation) as a result of the formation of pollock fishery cooperatives. We are also concerned, however, about potential indirect effects of the AFA like the "race" by fishermen to establish catch history in fisheries during 1999 before entry in those fisheries is further limited.

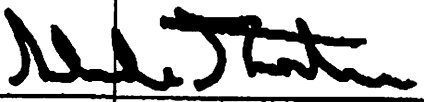
The North Pacific Council appreciated the need for immediate action, and recommended two emergency rules in December. The first rule would limit participation in the *C. opilio* crab fishery to those who participated in 1996 or 1997. The second would prevent immediate and major shifts in effort among gear and vessel types in other North Pacific groundfish fisheries by temporarily limiting the harvest of each vessel and gear type to the proportion it caught during 1996, 1997, and 1998. We believe these emergency rules would satisfy the mandates of the AFA until the North Pacific Council can recommend, and the Secretary consider and approve, permanent measures.

While we were pleased with the publication in the Federal Register of the notice indicating that the North Pacific Council will not consider 1999 harvest activity in developing future AFA protective measures, we believe that the only way to prevent adverse impacts *during* 1999 is to

adopt the emergency measures recommended by the Council. We strongly disagree with the suggestion that the Council "has not offered sufficient justification for NMFS to pursue" these emergency measures - in fact, full justification is provided by the AFA mandate to the Council and Department of Commerce. While we appreciate some of the concerns NMFS raised, we believe the agency does not fully appreciate the need to prevent major dislocations and redirection of effort and should take steps, if necessary, to assist the Council in modifying the proposed emergency rules so that they can be implemented.

We urge you to reconsider the decision not to implement the emergency rules, and to work with the North Pacific and Pacific Councils to execute Congress' mandate to protect other fisheries from any negative consequences of the AFA.

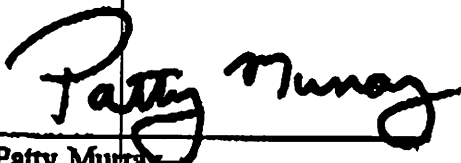
Sincerely,



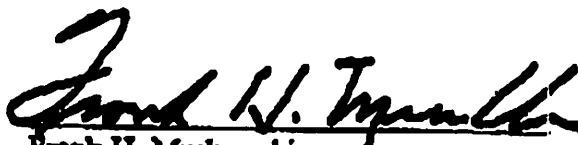
Slade Gorton
United States Senator



Ted Stevens
United States Senator



Patty Murray
United States Senator



Frank H. Murkowski
United States Senator

Draft

Projected Non-Trawl Groundfish LLP Qualifiers in the Bering Sea and CV/CP Designations by Vessel Length

Gear Designation and Vessel Length	BSA & GOA			BSA			Total
	CVs	CPs	All	CVs	CPs	All	
Non-Trawl							
Less than 60'	108	2	110	29	0	29	139
60' to 124'	77	22	99	43	0	43	142
125' and greater	7	24	31	19	6	25	56
Total	192	48	240	91	6	97	337
Trawl and Non-Trawl							
Less than 60'	18	0	18	1	0	1	19
60' to 124'	71	9	80	9	2	11	91
125' and greater	6	36	42	3	0	3	45
Total	95	45	140	13	2	15	155
Grand Total	287	93	380	104	8	112	492

THE BULK OF THE BSAI FIXED GEAR COD FISHERY IS CONDUCTED BY 26-30 FREEZER-LONGLINERS AND BY SOME 20 ACTIVE POT BOATS (PERSONAL COMMUNICATION), FOR A TOTAL OF 46-50 VESSELS. AS ABOVE, 492 VESSELS ARE QUALIFIED TO FISH FOR GROUND FISH WITH FIXED GEAR UNDER LLP - A POTENTIAL TENFOLD INCREASE. DATA DERIVED FROM ANALYSIS OF PROPOSED LICENSE LIMITATION AMENDMENT PACKAGE, AUGUST 21, 1998.



ALASKA CRAB COALITION

3901 Leary Way (Bldg.) N.W., Suite #6 • Seattle, WA 98107 • (206) 547-7560 • FAX (206) 547-0130

December 17, 1998

The Honorable Ted Stevens
522 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Stevens:

I am delighted to report to you that, at its recently-concluded December meeting, the North Pacific Fishery Management Council voted, 7 to 4, to recommend that the Secretary of Commerce promulgate an emergency rule to prevent pollock crossover vessels that did not participate in the opilio crab fisheries in 1996 or 1997 from flooding into those fisheries in 1999. Your letter urging protective action, including by emergency rule, if necessary, was undoubtedly the needed catalyst for Council action.

Unfortunately, I must also report that the NMFS representative on the Council voted against the recommendation. This astonishing action flew in the face of the communicated position of the State of Alaska, which manages the crab fisheries under delegated federal authority, that the fleet size should not exceed 250 vessels. The recommended emergency rule would limit participation to almost precisely that number of vessels. In the absence of the emergency rule, the fleet size could be 275 or more vessels, a level that is clearly excessive and unmanageable. The consequences for crab resources and dedicated crab fishermen would be severe. For the pollock crossover vessels, participation would represent merely a convenient little subsidy for their primary operations.

NMFS has signaled that it is too busy with the sea lion issue to address the recommended emergency rule. That, Senator, is nothing short of irresponsible. The crab fisheries and the crab fishermen face difficulties at least as severe as those confronting the sea lions, the pollock fisheries, and the pollock fishermen. If the opilio fishery is flooded with 275 or more vessels, including dozens of pollock crossover vessels, it will be the dedicated crab fishermen who will be endangered and the fragile crab resources that will suffer.

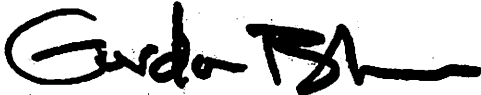
NMFS also claims that it would have difficulty identifying the vessels to which the rule would apply. This is nonsense. A NMFS-developed vessel list was provided to Congress by a representative of United Catcher Boats during consideration of S. 1221 on September 18, 1998. There is also vessel list in the EA/RIR/Inshore/Offshore-3 (Amendments 51/51), NPFMC, 8/26/98. Both lists were before the Council, when it made its recommendation for the emergency rule. If there is a remaining question, it can

and should be resolved by publication of a proposed list for public comment. It is not hard to conceive of an expeditious procedure whereby vessels could be added or deleted from the published list, based on public input and further review of the available records.

I respectfully request that you urge the Secretary of Commerce to ensure that the emergency rule is promulgated, and that his action occur before the opening of the opilio season on January 15. We have watched in disbelief the more-than-two-years wasted by the Commerce Department in implementing the much-needed buyback provisions of the Magnuson-Stevens Act. A proposed rule to allow buybacks to go forward has not yet appeared in the Federal Register. We cannot afford a repetition of that experience.

Thank you, again, for your strong support. Crabbers continue to rely upon you for our future survival.

Respectfully,

A handwritten signature in black ink, appearing to read "Gordon Blue", with a long horizontal flourish extending to the right.

Gordon Blue
President

Draft AP Minutes

2. Add to Table 6.9 a fourth column which illustrates a retrospective analysis of PSC needs of the 20 + 9 AFA catcher/processors using a performance-based pelagic definition. Motion carried 21/0.

Section 7

A. Crab Sideboards

1. Add participation definition as follows: "participation in a co-op is defined as any use of a vessel's catch history by a co-op, whether by direct harvest, lease, sale or stacking of quota." Motion carried 21/0.
2. Amend Alternative 5 to read:

Measures which would restrict pollock co-op vessels to their:

~~Option a.~~ Aggregate traditional harvest including a restriction to the percentage of crab harvest in all species between 1995, 96, and 97.

Option b. Average catch history 1995, 96, and 97 on a species-by-species and vessel-by-vessel basis.

Option c. No sale, lease or stacking of vessel catch history in crab

This alternative would apply to either 208 eligible vessels, or only vessels in a co-op (as with Alternatives 1-4).

3. Add sub-option to all five options: Prohibit any vessel participating in an AFA co-op from a lease, transfer, or sale of any license limitation program (LLP) permit. Motion carried 15/2/4.
4. Add sub-option to 1 and 2 to allow crossovers for vessels with crab landings in each of the last three years (1995, 96, 97). Motion carried 20/1.

5. Add to option 2, restrict crossovers into opilio to 96 or 97 participation.

B. Add new section, Scallop Sideboards, with the following options:

1. Participation in a co-op is defined as any use of a vessel's catch history by a co-op, whether by direct harvest, lease, sale, or stacking of quota.
2. Measures which would restrict pollock co-op vessels to their aggregate traditional harvest in the scallop fishery in the years 1995, 96, and 97.

- Sub-option:
- a. Based on percentage of GHL
 - b. Based on percentage of catch
 1. Statewide
 2. By management area
 - c. Based on percentage of PSC cap.

Motion carried unanimously (21/0).

C. Groundfish Sideboards (BSAI)

1. Add new section: Assigning PSC Caps for Co-op Catcher Vessels in Non-Pollock Fisheries. Rates based on catch history ratios (1995, 1996) rather than VIP rates.
 - a. A review of vessel specific PSC rates for eligible vessels, compared to non-eligible vessels.
 - b. Average bycatch rates of eligible vessels, compared to non-eligible vessels.

United Fishermen's Marketing Association, Inc.

P.O. Box 1035 Kodiak, Alaska 99615

Telephone 486-3453

February 5, 1998

Mr. Richard Lauber, Chairman
North Pacific Fishery Management Council

Dear Chairman Lauber and Members of the Council,

We understand that the Council has been requested to apportion the fixed gear allocation for BSAI p. cod between the Longline sector and the Pot sector. In the event that the Council initiates an analysis that addresses an apportionment of the BSAI fixed gear allocation of p. cod between the Longline sector and the Pot sector, we request that such analysis should include:

I. Comparison of the total potential participation under LLP that is permitted in the Factory Longline sector, and in the Pot sector, including:

- A. total number of unique longline vessels that are permitted under LLP
 - 1. by freezer longliner
 - 2. by longline catcher vessel
- B. total number of unique longline vessels that have harvested p. cod
 - 1. by freezer longliner
 - 2. by longline catcher vessel
 - 3. during '96, '97 and '98 collectively
 - 4. during '96, '97 and '98 respectively
- C. total number of pot vessels that are permitted under LLP
 - 1. by pot catcher processor
 - 2. by pot catcher vessel
- D. total number of unique pot vessels that have harvested p. cod
 - 1. by pot catcher processor
 - 2. by pot catcher vessel
 - 3. during '96, '97 and '98 collectively
 - 4. during '96, '97 and '98 respectively

II. Consideration of a recent participation requirement under LLP in the BSAI p. cod Pot sector that limits participation in the Pot sector to those vessels that participated during:

- A. '96, '97 and '98, inclusively
- B. any 2 years of '96, '97 and '98
- C. Any 1 year of '96, '97 and '98

III. Consideration of a recent participation requirement under LLP in the BSAI p. cod Fixed Gear sector that creates a BSAI p. cod Fixed Gear category under LLP that limits participation for all gear types in the entire Fixed Gear sector to those vessels that participated during:

- A. '96, '97 and '98, inclusively
- B. any 2 years of '96, '97 and '98
- C. Any 1 year of '96, '97 and '98

Note: This option could remove the need for a gear-type or other apportionment, and could still preserve the opportunity for cooperatives in the sectors of the Fixed Gear sector

IV. Consideration of a gear-type endorsement under LLP in the BSAI p. cod Fixed Gear sector that would permanently limit a vessel to utilize only one gear-type to harvest p. cod from the Fixed Gear

NPFMC; UFMA Comment;
2/1/99; Page 2/2

allocation of p. cod

V. Consideration of an apportionment of the BSAI fixed gear allocation of p. cod by operational mode (rather than by gear-type mode), including:

- A. apportionment by catcher processor mode (that is, including Freezer Longliners and Pot catcher processors in one apportionment)
- B. apportionment by catcher vessel mode (that is, including longline catcher vessels and pot catcher vessels in one apportionment)

VI. Computations of the catch history and apportionment of the BSAI fixed gear allocation of p. cod between the Longline sector and the Pot sector that are based upon the % harvest of the Fixed Gear p. cod allocation by the Longline sector, not upon the % harvest of the Fixed Gear p. cod harvest by the Longline sector (which includes the harvest of a rollover from the Trawl sector)

VII. Consideration of the distribution of any future allocation of BSAI p. cod from the Trawl sector to the Fixed Gear sector, including:

- A. an allocation of 100% of any transfer of p. cod from the Trawl sector to the Pot sector
- B. An allocation of 80% of any transfer of p. cod from the Trawl sector to the Pot sector

VIII. Consideration of the economic considerations of an apportionment of the BSAI fixed gear allocation of p. cod between the Longline sector and the Pot sector, including:

- A. employment impacts
- B. impacts to shore-based processing entities
- C. impacts to shore-based communities
- D. comparison of other economic costs and benefits
- E. comparison of costs and benefits of potential growth in either sector
- F. comparative impacts of an allocation between the offshore and inshore sectors (i.e., freezer longliners and pot catcher processors, versus longline catcher vessels and pot catcher vessels)

IX. Comparison of the respective performance of the Longline sector and the Pot sector with regard to:

- A. halibut bycatch and mortality
- B. other bycatch and mortality
- C. discards

X. Consideration of a process for the reallocation of p. cod from the Longline Sector to the Pot sector if the harvest of p. cod by the Longline sector is limited by MMPA or ESA actions

Thank you for your consideration of our thoughts on this subject.

Sincerely,

Jeffrey R. Stephan

THEODORE G. KRONMLIER
ATTORNEY

9893 GEORGETOWN PIKE
SUITE 400
GREAT FALLS, VIRGINIA 22066

703/757-6602
703/757-6603 FAX

December 9, 1998

MEMORANDUM FOR ARNI THOMSON

Subject: State of Alaska Submission to the North Pacific Council on the Crab LLP

You have asked that I advise you concerning the legal significance of a State of Alaska, Board of Fisheries ("Board"), submission dated November 4, 1998, to the North Pacific Fishery Management Council ("Council"), in relation a proposed amendment to the crab license limitation program ("Crab LLP"), for the purpose of reducing excess capacity. In short, a submission by the Board to the Council with respect to Bering Sea/Aleutian Islands ("BSAI") crab fisheries, for which the federal government has delegated management authority to the State of Alaska under the applicable fishery management plan, carries great legal weight.

First, it is important to recognize, based on the state of the record of the pending Crab LLP amendment process and on the authority and the expertise of the Board, that the Board's submission to the Council on this subject is the best scientific evidence available. In accordance with National Standard 2, section 301(a)(2), of the Magnuson-Stevens Fishery Conservation and Management Act ("Act"), such evidence must form the basis of fishery conservation and management decisions. 16 U.S.C. 1851(a)(2). That section provides, "Conservation and management measures shall be based upon the best scientific information available."¹ 16 U.S.C. 1851(a)(2). Accordingly, the Council and the Commerce Department are legally obligated to base the pending Crab LLP amendment on the above-referenced submission by the Board.

Second, in the event of litigation challenging regulations implementing a Crab LLP amendment, the submission of the Board will be of particular importance. Failure to comply with National Standard 2, as it relates to that submission, could very well lead to the regulations being overturned. Of course, the obverse is also true.

When considering the legal significance of the Board's submission, the standard of judicial review of regulations promulgated pursuant to the Act is important to the

¹ See section 303(a)(5), (8) of the Act. 16 U.S.C. 1853(a)(5), (8). The Guidelines for National Standard 2 provide that, "[s]cientific information includes, but is not limited to, information of a biological, ecological, economic, or social nature". 50 C.F.R. 600.315(b)(1). "FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures." 50 C.F.R. 600.315(d).

analysis. It is well established that the Secretary of Commerce ("Secretary") has broad discretion in administering the Act. Accordingly, actions by the Secretary pursuant to the Act are subject to extremely limited judicial review. *Associated Fisheries of Maine, Inc. v. Daley*, 127 F.3d 104, 109-110 (1st Cir. 1997); *Alliance Against IFQs v. Brown*, 84 *supra*, at 349-350; *C&W Fish Co. v. Fox*, 931 F.2d 1556, 1562; *Alaska Factory Trawlers Ass'n v. Baldrige*, 84 F.3d 343, 9th Cir.1996, *cert. den.* 117 S.C. 1497, L.Ed. 2d 681 (1997), at 1460; *State of Maine v. Kreps*, 563 F.2d 1052, 1055 (1st Cir. 1977); *Southeastern Fisheries Ass'n, Inc. v. Mosbacher*, 773 F. Supp. 435, 439 (D.D.C. 1991); *National Fisheries Institute v. Mosbacher*, 732 F. Supp. 210 (D.D.C. 1990), at 223; *Associated Vessels Services, Inc. v. Verity*, 688 F. Supp. 13, 17 (D.D.C. 1988); *State of Louisiana v. Baldrige*, 538 F. Supp. 625, 628 (E.D. La. 1982); *Pacific Coast Fed'n v. Secretary of Commerce*, 494 F. Supp. 626, 628 (N.D. Cal. 1980).

However, the discretion of the Secretary of Commerce, while broad, is not entirely unbounded. In *Alliance Against IFQs v. Brown, supra*, the Court stated:

Where we review regulations promulgated by the Secretary of Commerce under the Magnuson [-Stevens] Act, our only function is to determine whether the Secretary 'has considered the relevant factors and articulated a rational connection between the facts found and the choice made.' [*Washington Crab Producers, Inc. v. Mosbacher*, 924 F.2d 1438 (9th Cir. 1990), at 1440-41]... We determine only if the Secretary acted in an arbitrary and capricious manner in promulgating such regulations. *Id.* at 1441. See also 16 U.S.C. sec. 1855(b)(1)(B); 5 U.S.C. sec. 706(2)(A)-(D). We cannot substitute our judgment of what might be a better regulatory scheme, or overturn a regulation because we disagree with it, if the Secretary's reasons for adopting it were not arbitrary and capricious.

84 F.3d at 345.

In *National Fisheries Institute v. Mosbacher, supra*, the Court stated:

It is especially appropriate for the Court to defer to the expertise and experience of those individuals and entities—the Secretary, the Councils, and their advisors—whom the Act charges with making difficult policy judgments and choosing appropriate conservation and management measures based on their evaluations of the relevant quantitative and qualitative factors. [Citations omitted.]

732 F. Supp. 223.

The statement cited immediately above unarguably applies, as well, to the State of Alaska, including its Board, in the context of the BSAI crab fisheries. This is a function of the authority delegated to the State of Alaska by the federal government for the management of the BSAI crab fisheries.

Failure to follow the expert advice of the Board would, in the absence of superior scientific evidence clearly contradicting that advice, be subject to challenge as arbitrary and capricious and an abuse of discretion. The record of the pending Crab LLP amendment process contains no such evidence. Indeed, the scrupulously documented, clearly reasoned, and legally supported comments of the Alaska Crab Coalition, among others, on the pending Crab LLP amendment proposals, strongly support the position of the Board. A vpproval by the Commerce Secretary of regulations based on the Board's submission could not be credibly challenged.

Theodore G. Kronmiller

ADFG 11/4/98

Table 1. Total vessel participation in Bering Sea crab fisheries and the number of vessels that qualified under LLP alternative 9 and SB 1221 Vessels

Fishery	Bristol Bay Red King		Bering Sea Tanner (<i>C. bairdi</i>)		Bering Sea Snow (<i>C. opilio</i>)		Pribilof Blue & Red king		St. Matthew Blue King	
	Total	SB 1221	Total	SB 1221	Total	SB 1221	Total	SB 1221	Total	SB 1221
1988	200	3	98	2	162	2		1	46	2
1989	211	5	109	3	168	6	0	0	69	1
1990	240	12	179	12	189	4	0	0	31	1
1991	302	33	255	25	220	8	0	0	68	6
1992	281	30	285/294	32	250	10	0	0	174.	8
1993	292	37	296	35	254	13	112	3	92	1
1994	0	0	183	12	273	11	104	3	87	2
1995	0	0	196	19	253	7	126	0	90	2
1996	196	7	135	8	234	3	66	0	122	0
1997	256	35	0	0	226	2	53	0	117	0
1998	275	35	0	0	229	7	58	0	131	0

AVERAGE: -250

-193

-223

Anchorage Daily News

Tuesday, January 26, 1999

Storms wreak havoc on crabbers

By PETER PORCO
Daily News reporter

The opilio tanner crab fishery in the Bering Sea is living up to its reputation as the most dangerous commercial fishery in the state.

One man is missing and presumed dead. More than a dozen others have been hoisted off eight separate fishing vessels in the stormy Bering Sea by U.S. Coast Guard helicopters since Friday, including three on Monday, the agency said.

Weather - including snow squalls and gales that have churned seas to 25 feet and higher - is the principal natural cause of the mayhem in the vicinity of the Pribilof Islands, Coast Guard officials said.

"The weather at St. Paul has been biblical today," said Lt. Cmdr. Paul Ratte, a helicopter pilot stationed on St. Paul Island as part of Operation Northern Safeguard. The 2-year-old program commits additional cutters and helicopters to the area during the winter Bering Sea fishing season.

"The first couple of days we had high hopes," Ratte said, referring to the opilio opening early last week. "The seas were calm and the fishing got off to an uneventful start. The next thing we knew, the winds came up and it's been rapid-fire (rescue operations) ever since."

Not every evacuation was linked directly to fishing activities and not all fishing was for tanner crab. Of three men evacuated Monday, two were hoisted for medical reasons - a diabetic without his medication and a man suffering severe abdominal pain, the Coast Guard said.

One man was hurt when a wave washed him into a hold and trapped him under fishing nets Friday afternoon. He was airlifted from the Kodiak Enterprise, a pollock fishing vessel, 30 miles north of Unimak Island.

But all other incidents occurred on crab vessels, including a man whose foot was crushed Monday by a crab pot aboard the Seabrooke, a 107-foot boat based in Kodiak, the agency said.

Early Sunday morning, 41-year-old Vongsa Keobowalapha fell over the side of the vessel West Point in heavy weather about 32 miles southeast of St. Paul. Keobowalapha was working on the deck at about 1:30 a.m. when he fell and was not wearing a floatation vest or a personal emergency transmitter, the Coast Guard said. He has not been found.

Ratte, who piloted the Jayhawk helicopter that helped search for Keobowalapha, said ferocious winds and snow kept him and his crew pinned down in St. Paul for several hours.

"We pulled the aircraft out of the hangar in the middle of the night. It was sliding around on the ramp. The snow crusted the windows over completely (as) we were just beginning our checklist," he said.

Gusts of wind buffeted the Jayhawk, he said. "It was baller with a 20,000-pound helicopter."

They pushed the chopper back in the hangar and waited until the winds abated, Ratte said.

A few hours later, the helicopter crew was able to take off. Although they found crab pots floating in the water, they never saw a trace of Keobowalapha.

Ratte and his crew also participated in the most dramatic event of the past several days - the pre-dawn rescue Friday morning of six men from the vessel Nowitna about 70 miles northwest of Cold Bay.

The operation took place in 25-foot seas, with rogue waves of up to 35 feet, Ratte said. His hoist operators, Petty Officers John Overholt and Bob Watson, tried to drop the hoist basket in the middle of the 125-foot boat, which was listing 15-20 degrees to port and rolling side to side on top of that.

"At certain moments the decks were 45 degrees to the horizontal, and I was amazed the crew could even stand up on deck," Ratte said.

At one point, however, the basket's trail line, which the evacuees use to the basket close, got snagged on the mast. The helicopter crew thought they'd have to abandon the basket.

"Next thing we see is the skipper of the vessel climbing the mast to get our line unhooked. That was kind of a defining moment," Ratte said. "If he was willing to risk getting up there on that mast, he must really want to come off."

The skipper freed the line and the 45-minute rescue proceeded until all six men were aboard the helicopter. The Nowitna sank sometime afterward.

In terms of fatal commercial fishing accidents, the Bering Sea is the most dangerous area in Alaska, and January is the most dangerous month, according to the National Institute for Occupational Safety and Health.

* Reporter Peter Porco can be reached at pporco@adn.com

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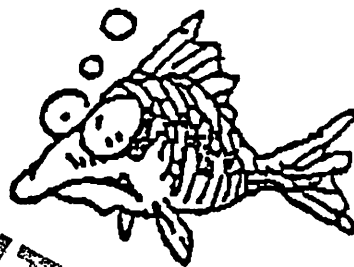
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* Reporter Peter Porco can be reached at pporco@adn.com

**North
Pacific
Longline
Association**

LATE COMMENT



- FAX TRANSMISSION -

RECEIVED

JAN 29 1999

N.P.F.M.C

DATE: January 29, 1999
TO: NPFMC - Clarence Pautzke
FROM: NPLA - Thorn Smith *Thorn*
SUBJECT: Letter for Agenda C-2
PAGES: 7

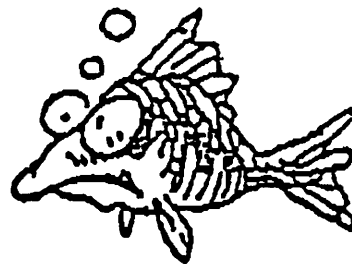
Clarence -

I know you would have liked to have this sooner for the Council books. Our Board made its final decision on our proposal just yesterday.

See you next week.

FIN

**North
Pacific
Longline
Association**



Agenda C-2

February 2, 1999

Mr. Richard B. Lauber, Chariman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, AK

RE: Emergency Rules; New Proposal

Dear Rick:

It is with a real sense of frustration that we write again about the unintended consequences of the American Fisheries Act and the need for prompt regulatory action to offset them. The Act has created changed circumstances in our management scheme - circumstances that were not anticipated at the time our regulations were developed, and that threaten a new race for fish and destabilization of fully-utilized non-co-op fisheries.

In December the Council heard and understood these problems, and recommended two emergency rules to protect the crab and groundfish fisheries from speculative expansion by token participants. Congress also understands these problems. On December 8, 1998, four senators wrote to encourage the adoption of emergency measures. On January 20, 1999, they sent a second letter to the Secretary of Commerce, strongly recommending implementation of the emergency rules adopted by the Council - "full justification is provided by the APA mandate to the Council and Department of Commerce...we believe the agency does not fully appreciate the need to prevent major dislocations and redirection of effort...." (please see attachments). Unfortunately NMFS has been unable to implement the recommended measures. We find little comfort in the advanced notice of proposed rulemaking purporting to establish a "control date."

In casting about for an alternative approach, we have observed that the most acute problem exists in the fixed gear fishery for cod. This fishery is now prosecuted primarily by some 30 freezer-longliners and perhaps 20 pot vessels that have made substantial landings over a number of years, and has reached a state of equilibrium. However there are some 492 vessels, many of them pot vessels with minimal catch history, qualified to participate in the fishery under LLP (please see attachment). As a result of the American Fisheries Act many of these latter vessels are preparing to redirect their effort into the cod

fishery, threatening the "major dislocations" anticipated by the Senate.

For this reason we feel that it is time to separate the fixed gear apportionment of BSAI cod into a longline apportionment and a pot apportionment, based on recent catch history. This could be accomplished initially by an emergency rule responding to the Senate's advice, to be followed by a normal Administrative Procedure Act (APA) rulemaking. Alternatively, if NMFS feels that it can promulgate an APA rule as fast as an emergency rule (as with the seabird avoidance regulations), time and effort might be saved.

We thank you for your attention to this matter, and ask that you recognize that this is not a "fish grab." It is merely an attempt to preserve the status quo and to prevent a "fish grab."

Sincerely,



Thorn Smith

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We thank you for your attention to this matter, and ask that you recognize that this is not a "fish grab." It is merely an attempt to preserve the status quo and to prevent a "fish grab."

Sincerely,



Thorn Smith

United States Senate

WASHINGTON, DC 20510

December 8, 1998

Richard Lauber
Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Mr. Chairman:

The North Pacific Council must make recommendations this week to protect other fisheries that may be negatively affected as a result of the American Fisheries Act or the potential for fishery cooperatives in the Bering Sea/Aleutian Islands (BSAI) pollock fishery.

Section 211(a) of the American Fisheries Act requires the Council to recommend "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 the [American Fisheries Act] or fishery cooperatives in the directed pollock fishery." Section 211 (c)(2)(C) specifically directs the Council to "recommend measures for approval by the Secretary to eliminate latent licences under [the License Limitation Program]." In anticipation that a fishery cooperative might be formed by catcher-processors in 1999, the American Fisheries Act included specific measures to protect other fisheries and participants in this regard. The Act appropriately left to the Council, however, the responsibility to develop and recommend the measures that may be needed to fully protect other fisheries.

We urge the Council to make strong recommendations to the Secretary to protect other fisheries and fishermen and to eliminats latent licenses. If the Council cannot develop adequate long-term measures due to time constraints or its work on the Steller sea lion issue, then we encourage the Council to recommend emergency measures until the long-term measures can be developed. We appreciate your attention to this important matter and ask that you keep us informed of the Council's actions this week and anything we can do to assist in the matter.


Sincerely,



Senator Slade Gorton



Senator Ted Stevens



Senator Patty Murray



Senator Frank Murkowski

United States Senate

WASHINGTON, DC 20510



January 20, 1999

RECEIVED
 JAN 21 1999
 N.P.F.M.C

The Honorable William M. Daley
 Secretary
 Department of Commerce
 (Via Facsimile (202) 482-2741)

Dear Secretary Daley:

We request that the National Marine Fisheries Service (NMFS) reconsider its decision not to implement emergency rules which the North Pacific Fisheries Management Council proposed to address some of the potential direct and indirect effects of the American Fisheries Act (AFA). We believe these steps are necessary to prevent fishermen from redirecting their efforts toward --and further overcapitalizing -- fisheries in which they have little historical participation.

When we passed the AFA, we realized that it would likely affect not only the Bering Sea/Aleutian Islands pollock fishery, but other Alaska and West Coast fisheries as well. For this reason, the AFA requires the North Pacific and Pacific Councils to recommend, and the Secretary to consider and approve, measures to protect other fisheries. Shortly after the enactment of the AFA, we wrote to the North Pacific Council urging it to take meaningful and swift action at its December meeting to prevent direct and indirect adverse impacts that would otherwise occur in fisheries which open as early as this month. We are concerned about the potential for increased participation by pollock fishermen in other fisheries (in which they have little or no historical participation) as a result of the formation of pollock fishery cooperatives. We are also concerned, however, about potential indirect effects of the AFA like the "race" by fishermen to establish catch history in fisheries during 1999 before entry in those fisheries is further limited.

The North Pacific Council appreciated the need for immediate action, and recommended two emergency rules in December. The first rule would limit participation in the *C. opilio* crab fishery to those who participated in 1996 or 1997. The second would prevent immediate and major shifts in effort among gear and vessel types in other North Pacific groundfish fisheries by temporarily limiting the harvest of each vessel and gear type to the proportion it caught during 1996, 1997, and 1998. We believe these emergency rules would satisfy the mandates of the AFA until the North Pacific Council can recommend, and the Secretary consider and approve, permanent measures.

While we were pleased with the publication in the Federal Register of the notice indicating that the North Pacific Council will not consider 1999 harvest activity in developing future AFA protective measures, we believe that the only way to prevent adverse impacts during 1999 is to

adopt the emergency measures recommended by the Council. We strongly disagree with the suggestion that the Council "has not offered sufficient justification for NMFS to pursue" these emergency measures - in fact, full justification is provided by the AFA mandate to the Council and Department of Commerce. While we appreciate some of the concerns NMFS raised, we believe the agency does not fully appreciate the need to prevent major dislocations and redirection of effort and should take steps, if necessary, to assist the Council in modifying the proposed emergency rules so that they can be implemented.

We urge you to reconsider the decision not to implement the emergency rules, and to work with the North Pacific and Pacific Councils to execute Congress' mandate to protect other fisheries from any negative consequences of the AFA.

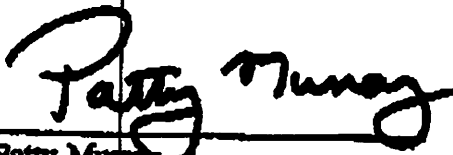
Sincerely,



Slade Gorton
United States Senator



Ted Stevens
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United States Senator



Frank H. Murkowski
United States Senator

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We urge you to reconsider the decision not to implement the emergency rules, and to work with the North Pacific and Pacific Councils to exercise Congress' mandate to protect other fisheries from any negative consequences of the AFA.

Sincerely,



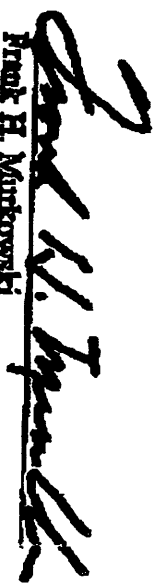
Slade Gorton
United States Senator



Ted Stevens
United States Senator



Patty Murray
United States Senator



Frank H. Lautenberg
United States Senator

Draft**Projected Non-Trawl Groundfish LLP Qualifiers in the Bering Sea and CV/CP Designations by Vessel Length**

Gear Designation and Vessel Length	BSA & GOA			BSA			Total
	CVs	CPs	All	CVs	CPs	All	
Non-Trawl							
Less than 60'	108	2	110	29	0	29	139
60' to 124'	77	22	99	43	0	43	142
125' and greater	7	24	31	19	6	25	56
Total	192	48	240	91	6	97	337
Trawl and Non-Trawl							
Less than 60'	18	0	18	1	0	1	19
60' to 124'	71	9	80	9	2	11	91
125' and greater	6	36	42	3	0	3	45
Total	95	45	140	13	2	15	155
Grand Total	287	93	380	104	8	112	492

THE BULK OF THE BSAI FIXED GEAR COD FISHERY IS CONDUCTED BY 26-30 FREEZER-LONGLINERS AND BY SOME 20 ACTIVE POT BOATS (PERSONAL COMMUNICATION), FOR A TOTAL OF 46-50 VESSELS. AS ABOVE, 492 VESSELS ARE QUALIFIED TO FISH FOR GROUND FISH WITH FIXED GEAR UNDER LLP - A POTENTIAL TENFOLD INCREASE. DATA DERIVED FROM ANALYSIS OF PROPOSED LICENSE LIMITATION AMENDMENT PACKAGE, AUGUST 21, 1998.

No
hand
out

FAX

Date: February 4, 1999
To: Rick Lauber / Clarence Pautzke
From: Bob Mikol

Re: Fisheries Coops

Dear Rick and Clarence,

Please include my written testimony (copy and distribute) for the discussion of coops, to come under the *American Fisheries Act* (S.1221).

Sorry I can't be there to deliver it myself. Stuck in Fairbanks at 49 below. No one short of a convicted, violent offender should have to live here. It's really cold. I can't believe I have to (and will) go out to the university today. Good luck at the meetings today. Say "Hi" to all my pals for me.

Bob Mikol

Bob

Robert Mikol
PO Box 80106
Fairbanks, Alaska 99708

January 31, 1999

Rick Lauber, Chairman
North Pacific Fisheries Management Council
Old Federal Building, Fourth Avenue
Anchorage, Alaska 99501

Dear Chairman Lauber and Members of the Council,

I am writing this letter to express my support for fishery cooperatives. Last year, during the 1998 West Coast Pacific Whiting (WCC) fishery, I participated in a bycatch analysis project on-board the F/T Northern Jaeger. This participation gave me a unique access and insight to the inner workings of the coop structure and how it effects our fisheries. My attitude towards coops has evolved from ambivalence to intrigue to appreciation. As a conservationist and a fisherman, I fully support the cooperative structure modeled on the WCC.

I found the coops to be extremely beneficial to all parties involved. The coop structure increased safety and efficiency, fostered a better conservation atmosphere, reduced bycatch and provided a more flexible platform for at sea research.

First, the vessels were able to leave when they were ready and not before. Not only does this increase vessel safety, as we've seen in similar harvest programs, but in the realm of processing at sea, it ensures the highest quality of production available. Product recovery ratios rose last year and product quality increased also. Factory technicians can expound on this better than I, but we all know that when quality improves, anywhere in the fishing industry, we all benefit. It's also worth pointing out that when PRR's rise, as a result of increased efficiency, there are tremendous energy savings, not only in vessel operations but throughout the trophic levels of the food chain as well.

Conservation was the biggest winner under the coop structure. The race for fish was off and bycatch rates came down. Coop participants reduce their rockfish bycatch rate from >9.0kg/mt in 1997 to <2.5kg/mt in 1998. Two of the seven vessels were able to reduce their overall rockfish bycatch rates to less than 1.0kg/mt.

Vessels, no longer under pressure to keep their nets in the water at nearly all costs, tried new ideas. Some vessels experimented with large nets and less fish. These vessels fished away from the densest portion of the school in order to stay away from the associated heavier concentrations of mixed species bycatch. They reduced bycatch.

Others worked on a new technique called "long-wiring." Long wiring is the opposite of short wiring. Instead of bringing a full net up, close to the vessel while waiting for the

factory, the net was placed deeper in the water column where bycatch species were non-existent. Short wiring, on the other hand, pulls the net high in the water column, through the euphotic zone where the water is warmer and many lower trophic organisms and bycatch prey thrive. Though this practice of long wiring may not be applicable to the Bering Sea Shelf, it illustrates what innovative minds can do when they have a little additional breathing room.

The WCC coop provided a very flexible platform for research at sea. The work performed off the coast of Washington required sending sensors over-board on a regular basis. This could not have been possible under the "maximize every moment" commonly associated in the stress of an Olympic fishery. I know that, I've been there.

In closing let me say that I sincerely regret not being able to give this testimony in person. I realize that questions may arise and I apologize for not being able to answer them. Call me, I'm in the Fairbanks phone book.

There is a tremendous need for research and understanding in our BSAI & GOA fisheries. Coops can get us there. They are a far better means to that end than the open access fishery that we have all been living under for far too long.

Thank you and Sincerely,



Bob Mikol