

# Maximum Retainable Amounts

## Discussion Paper

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## 1 Introduction

NMFS and Industry stakeholders identified regulatory revisions for Maximum Retainable Amounts (MRAs) needed to improve clarity and efficiency in fishery operations. NMFS requests the Council review the proposed changes as described in this discussion paper, and, if warranted, develop a purpose and need statement, alternatives, and initiate an analysis.

NMFS received a proposal from industry to modify fishing trip definitions (triggers) for applying MRA calculations in the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA) groundfish fisheries. Industry identified complexities with applying MRAs when vessels are participating in more than one management program and highlighted that the current MRA structure may lead to unnecessary regulatory discards.

In October 2023, the Council prepared a [motion](#) to support NMFS in their preparation of a MRA discussion paper:

*The Council appreciates that NMFS is preparing a discussion paper concerning MRA management. The Council recommends that the discussion paper include: a description of the complexities resulting from current regulations for vessels participating in multiple fisheries and/or in multiple management areas; potential regulatory changes that could be made to modify trip triggers for the purpose of calculating and determining MRA calculations; potential changes to applying MRAs at offload instead of instantaneously; how those changes could reduce regulatory discards; and compliance considerations for vessels that are subject to unforeseen medical or mechanical issues during a trip.*

This discussion paper provides an overview of MRAs, definitions, and distinctions relevant to current fishery operations. NMFS provides regulatory changes as recommended by the agency and an overview of industry's requests for regulatory changes.

## 2 Background

### 2.1 What is an MRA?

A maximum retainable amount (MRA) both limits and allows for some retention of species closed to directed fishing (incidental catch species) while a vessel operator is engaged in fishing for species or species groups (species) that are open to directed fishing (basis species). Specifically, an MRA is the maximum round weight of a species closed to directed fishing that may be retained on board a vessel. An MRA allows for retention of inevitable incidental catch in the fisheries for other targets, preventing regulatory discards. This allows for increased utilization of catch in cases where a directed fishery is not possible. Although MRA percentages limit the incentive to target an incidental catch species, fishermen can top-off their retained catch with these incidental species up to the MRA amount by deliberately targeting them. MRA percentages also serve as a management tool to slow the harvest rates of incidental catch species by limiting the amount that can be retained on board a vessel. MRA percentages reflect a balance between the need to reduce the harvest rate of incidental catch species and the desire to minimize regulatory discard of the incidental catch species.

MRAs assist in limiting harvest of a groundfish species within its annual total allowable catch (TAC). Once the TAC for a species is reached, retention of that species becomes prohibited, and all catch of that species must be discarded (a few limited exceptions are addressed later in this section). Therefore, NMFS closes a species to directed fishing before the entire TAC is taken to leave sufficient amounts of the TAC available for incidental catch in other fisheries. A species MRA is used to manage the amount of TAC

remaining for the incidental catch of that species. Nonetheless, the catch may exceed the TAC (because discards still accrue towards the TAC) and approach the specified overfishing level (OFL). If a species OFL is approached, NMFS issues closures or prohibitions for fisheries in which the species is taken as incidental catch in order to prevent overfishing.

There are a few situations that require mandatory retention of some species either up to the MRA amount or over the MRA. Improved Retention/Improved Utilization (IR/IU) regulations (§ 679.27) apply to BSAI and GOA pollock and Pacific cod, GOA shallow-water flatfish, and all Fisheries Management Plan (FMP) species caught by non-American Fisheries Act (AFA) listed catcher/processors (CP). The IR/IU regulations require that vessels retain all of the IR/IU species if it is open to directed fishing, and retain up to the MRA if the IR/IU species is closed to directed fishing. IR/IU species must be discarded when in prohibited retention status. In addition, full retention of halibut and sablefish is required if there is an individual fishing quota (IFQ) holder onboard with available IFQ (§ 679.7(f)(11)) during the IFQ season. Discarding of rockfish species is also prohibited for catcher vessels (CVs) using hook-and-line, pot, and jig gear in the BSAI and GOA (§ 679.7(a)(5)), even if the rockfish species is on prohibited retention status. Full retention of most species is required for trawl vessels participating in the electronic monitoring (EM) program while harvesting BS or GOA pollock.

The MRAs are established as a percent of a basis species at [Table 10](#) to part 679 for the GOA, [Table 11](#) for the BSAI, and [Table 30](#) for the Central GOA Rockfish Program. The percentage of a species closed to directed fishing that is retained in relation to a basis species must not be exceeded. In most cases, any additional catch amounts must be discarded. For example, when Pacific cod is open to directed fishing (basis species) in the BSAI, and arrowtooth flounder is closed to directed fishing (incidental catch species), a vessel operator may retain a round weight equivalent amount of arrowtooth flounder of up to 35 percent (found in [Table 11](#)) of the round weight equivalent of the Pacific cod retained on board the vessel. In this example, all catches of arrowtooth flounder in excess of the 35 percent MRA must be discarded:

- Pacific cod total retained catch (basis species) = 100 mt
- Arrowtooth flounder MRA for Pacific cod as the basis species = 35%
- Arrowtooth flounder MRA = 35 mt

Every retained basis species (open for directed fishing) may be used to calculate an aggregate MRA. If yellowfin sole was also open for directed fishing in the example above, then more arrowtooth flounder may be retained relative to yellowfin sole as a basis species. In this example, all catches of arrowtooth flounder in excess of the allowed combined MRA amount for Pacific cod and yellowfin sole must be discarded:

- Pacific cod total retained catch (basis species) = 100 mt
- Arrowtooth flounder MRA for Pacific cod as the basis species = 35%
- Yellowfin sole total retained catch (basis species) = 100 mt
- Arrowtooth flounder MRA for yellowfin sole as the basis species = 35%
- Arrowtooth flounder MRA = 35 mt for Pacific cod + 35 mt for yellowfin sole = 70 mt.

Most MRAs apply at any time during a fishing trip as defined in regulation at § 679.2 *Fishing trip*. However, a few exemptions exist that require calculations of the MRA at the time of offload or at the end of a weekly reporting period. For all vessels not listed in subpart F of this section (i.e., non-AFA trawl vessels), the MRAs for pollock harvested in the BSAI (§ 679.20(e)(3)(iii)) and Atka mackerel in the Bering Sea (BS) (§ 679.20(e)(3)(v)) are calculated at the end of each offload and are based on the basis species harvested since the previous offload. In addition, MRAs for CPs fishing under a rockfish

cooperative fishing quota (CQ) permit in the Central GOA are calculated at the end of each weekly reporting area (§ 679.20(e)(3)(iv)) and are based on the basis species harvested since the previous reporting period.

The directed fishing definition (§ 679.2 *Directed Fishing*) is interrelated with the definition of an MRA. Unless otherwise indicated in regulation, directed fishing is determined by any fishing activity that results in the retention of an amount of a species on board a vessel that is greater than the MRA for that species. Directed fishing, established by assessing the MRA of a particular species, remains a significant and interrelated issue as many gear requirements (ie. Modified non-pelagic trawl (NPT) for flatfish), gear prohibitions (ie. NPT for pollock in BSAI), and closed areas surrounding sensitive sites (ie. Steller sea lion protection areas) hinge on the assessment of a vessel's directed fishing activity. Multiple calculations using Tables 10, 11 and 30 to part 679 are required by regulation to assess directed fishing activity in varied regulatory areas, notably for flatfish under § 679.2 *Directed Fishing* (5) and (6). The definition of directed fishing is different from the trawl fishery categories listed in regulation, for the purpose of apportioning the trawl PSC limits under § 679.21.

## 2.2 History of MRAs

The evolution and development of MRA regulations and management has been occurring in the BSAI and GOA groundfish fisheries for decades. MRA management superseded the use of “directed fishing standards” to regulate groundfish harvest. The implementation of MRA management included establishing the regulations and associated tables for MRAs in general. Over time, the MRA regulations have been modified to incorporate various changes to MRA management for different species (e.g., sablefish, shortraker/rougheye rockfish, pollock, skates), management programs (e.g. Rockfish Program), MRA timing (e.g. BSAI pollock and BS Atka mackerel), and changes to MRA percentages. Past regulatory actions associated with [MRA management](#) are available at the Alaska Region's website. Section 8 of this document contains a timeline of some pertinent actions regarding MRAs.

## 2.3 What is a Fishing Trip?

As defined in regulations at [§ 679.2](#), *fishing trip* is defined separately for CPs and motherships, and for CVs. The beginning of the fishing trip for CPs and motherships begins when harvesting, receiving, or processing begins or is resumed. The end of a fishing trip for CPs and motherships ends when:

- directed fishing is prohibited;
- fish or fish products are offloaded or transferred;
- the vessel enters or leaves an area with different prohibitions;
- the vessel fishes with a different type of gear; or
- the weekly reporting period ends, whichever comes first.

The beginning of a fishing trip for CVs begins when the operator begins harvesting groundfish. The end of a fishing trip for CVs ends when the operator either offloads or transfers all fish product from the vessel.

There are additional vessel-level restrictions during fishing trips, including:

- For CVs fishing in areas closed to directed fishing, the lowest MRA is applied at any time in all management areas for the duration of the fishing trip;
- For CPs and motherships, the MRA applies at any time for the duration of the fishing trip;
- CPs fishing in the Rockfish Program fishery have MRA amounts calculated at the end of the weekly reporting period;
- For non-AFA vessels, the MRA is calculated from offload to offload for BSAI pollock and BS Atka mackerel, and based on the total basis species from the same time period; and

- For motherships taking deliveries of unsorted codends while in the Pacific cod Trawl Cooperative (PCTC) Program, the MRA calculation applies at any point during the fishing trip, and the MRA calculation for PCTC hauls can only be calculated within the PCTC program.

### 3 Agency Recommended Regulatory Revisions

NMFS is recommending that the MRA regulations be modified to improve clarity and reflect current practices to help avoid confusion on how MRA calculations should be done. NMFS has identified three sections of the MRA regulations for possible modifications; (1) the definition of a fishing trip (§679.2 *Fishing trip*), (2) calculations for MRAs (§ 679.20(e)(2)), and (3) applications of MRAs (§ 679.20(e)(3)). In addition, clarity is needed on how IR/IU regulations should work in conjunction with MRA regulations. The following section will describe each of these issues and provide NMFS' recommendations on how these regulations could be clarified to reflect current practices. Table 1 provides a summary of the Agency's proposed changes.

#### 3.1 Revise the Definition of a Fishing Trip

As described in section 3 of this discussion paper, regulatory clarity is needed for some of the types of fishing trips listed under the definition for *Fishing trip* at 679.2.

##### 3.1.1 Motherships Receiving Unsorted Codends

Although a mothership is listed under the definition of a fishing trip as a vessel that is engaged in a fishing trip, it is currently unclear in regulation what this means since a mothership is not actively harvesting groundfish. Instead, a mothership usually relies on receiving unsorted codends from CVs. Currently the regulations imply that a fishing trip trigger is met when the CP or mothership enters or leaves an area with different directed fishing prohibitions, or if the CP or mothership changes gear. However, if the mothership is not harvesting groundfish, then these triggers applying to mothership activity are not practical. In practice, motherships are basing the fishing trips they are tracking for MRAs on the delivering CV activities. For example, if a CV enters or leaves an area where a different directed fishing prohibition applies, then that activity will trigger the mothership to start a new fishing trip. Likewise, if the mothership is receiving catch from CVs using different authorized trawl gear (eg. pelagic trawl (PTR) and NPT), each gear type will trigger the mothership to create a new trip. The definition of a fishing trip could be clarified by adding language that states these triggers are met when a CV delivering unsorted codends and delivering to a mothership enters or leaves areas with a different directed fishing prohibition, or when a CV is using different authorized trawl gear. In addition, the definition of a CV fishing trip could be modified to exclude CVs delivering unsorted codends since harvest from those vessels is being accounted for on the mothership.

It should be noted that, while most mothership activity involves taking unsorted codends, a mothership may receive catch from vessels using gear other than trawl gear. Unsorted codends are passed to the mothership and then sorted. The CV does not have an opportunity to sort the catch to ensure they are within MRAs, therefore it is the mothership's responsibility to ensure compliance with the MRA regulations. However, CVs using other gear types do not pass unsorted catch to motherships. For example, if a CV is fishing with pot gear, the CV brings the pot onboard and then sorts and discards the catch before the catch is transferred to the mothership for processing. Under these circumstances, the CV would be responsible for MRA compliance and not the mothership. Catch from these CVs would not be incorporated into the overall mothership MRA calculation.

### 3.2 Revise the Calculation of MRAs

NMFS identified regulations for calculation of MRAs that need revision. This section outlines MRA regulatory changes to calculations for: (1) management programs, (2) CPs acting as motherships, and (3) Community Development Quota (CDQ) Program fishing.

#### 3.2.1 Management Program

Vessels are often engaged in fishing for multiple management programs during a fishing trip. For example, a CV may be participating in both IFQ and an open access (OA) fishery, a CP may be participating in both Amendment 80 and a CDQ fishery, and a mothership may be taking deliveries from vessels engaged in both CDQ and OA. With the exception of the Rockfish Program (Table 30 to part 679), the MRA amounts in the GOA (Table 10 to part 679) and BSAI (Table 11 to part 679) remain the same regardless of which management program a vessel is fishing. However, the applicable MRA basis species may change depending on the management program. For example, Pacific cod may be closed to directed fishing in the OA fisheries but open for CDQ. In this case, while the vessel is fishing in the OA management program Pacific cod may only be retained up to the MRA amount, but when the vessel is fishing under the CDQ Program all Pacific cod should be retained. Changing management programs is not currently specifically listed as a criteria that would end a fishing trip nor is it currently mentioned in the application regulations for MRAs. However, in practice, vessels are calculating MRAs by management program based on the different applicable basis species. This could be made clear in the regulations by adding regulatory language specifically stating that MRAs are calculated by management program and listing those management programs. Management programs used to calculate different MRAs could include Amendment 80, PCTC, CDQ, IFQ, AFA, Aleutian Islands Pollock (AIP), Rockfish Program, and OA.

There are currently regulations ([§ 679.5\(a\)\(1\)\(iii\)](#)) outlining some, but not all, of the management programs which require separate reporting in logbooks, forms, and eLandings (i.e., CDQ, Exempted Fishery, Research Fishery, AIP, OA, Rockfish Program, and PCTC). Generally speaking, vessels are reporting an entire haul to one management program, even if it is not a management program in the referenced regulation listed above (i.e., for example Amendment 80 is not listed at [§ 679.5\(a\)\(1\)\(iii\)](#)). This practice makes it easier for vessels to track the different MRA calculations required for each management program. However, this is an issue for IFQ. If a fixed gear CP or CV has a sablefish or a halibut IFQ holder onboard with available IFQ and the CP or CV catches a sablefish or a halibut, then the catch is required to be retained and be deducted from the IFQ account. For example, if the vessel is participating in an OA Pacific cod fishery, has a sablefish IFQ holder onboard with available IFQ, and catches one sablefish, that sablefish should be retained and deducted from the IFQ account. This would result in two eLandings reports (one for OA and one for IFQ), but it would be difficult for the vessel to split out the haul in the logbook between OA and IFQ in this situation. Although this may cause some confusion when calculating MRAs by management program, it is still possible to calculate separate MRAs for each management program based on the eLandings data. This issue can be looked at closer if a full analysis on MRAs is initiated.

#### 3.2.2 Catcher/processors also acting as Motherships

Many CPs also act as motherships at the same time. CPs actively harvest and process their own catch, while concurrently operating as a mothership and taking unsorted codends from trawl CVs. These CVs are unable to sort their own codends to ensure they are within MRAs because the catch is never brought onboard the vessel. Instead the catch is sorted on the mothership. In practice, the MRA is calculated based on total catch onboard the mothership for the mothership's fishing trip, not each individual CV's fishing trip. The definition of a fishing trip is the same for both CPs and motherships. Because the definition is



the same, in cases where a CP is also acting as a mothership, one fishing trip can include both activities at the same time. As a result, CPs also acting as a mothership are calculating MRAs based on total catch from both their CP activity and mothership activity combined as long as the combined activity is for the same management program and fishing trip. This could be clarified in the MRA calculation regulations by adding language stating that the MRA calculation is combined for both CP and mothership activity by management program.

### 3.2.3 CDQ

Directed fishing calculations and determinations need to be updated for CDQ. Current regulation states that any groundfish species which is closed to directed fishing may not be used to calculate retainable amounts of other groundfish species. In addition, only fish harvested under the CDQ Program may be used to calculate retainable amounts of other CDQ species (§ 679.20(f)(2)). Under the CDQ Program, some species are specifically allocated to the CDQ groups by regulation. However, regulation further stipulates that other groundfish species not listed specifically in regulation (e.g., Kamchatka flounder, Alaska plaice) can be allocated to the CDQ Program after consultation with the Council and a determination if sufficient TAC exists to open a directed fishery and if it is economically viable for CDQ groups to target that species (§ 679.20(b)(1)(ii)(D)(2)). NMFS would likely recommend that the CDQ Program be allocated a non-listed groundfish species if CDQ groups were exceeding the MRA for that non-listed species. In 2006, changes regarding the CDQ Program were made to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)<sup>2</sup>, and were implemented through NMFS rulemaking (77 FR 6492, March 9, 2012). These revisions stated that vessels participating in CDQ fisheries could not have more restrictions than vessels participating in non-CDQ fisheries. Other sectors are able to use any species open to directed fishing as a basis species for calculating MRAs. Since CDQ cannot be treated more restrictively than other sectors, and because any species could be allocated to the CDQ Program, the MRAs for CDQ groups are being calculated based on any species open to directed fishing and not only CDQ allocated species. Although this is the current practice, the regulations have not been updated to reflect changes in the Magnuson-Stevens Act. These regulations should be updated to clarify how CDQ groups are currently calculating MRAs.

## 3.3 Revise the Application of MRAs

There are several regulations that need refining to accurately reflect how MRAs apply to CVs, motherships, and CPs.

### 3.3.1 Catcher Vessels

For CVs, MRAs are calculated based on the lowest MRA applicable in any area the CV fishes during the fishing trip. This helps discourage vessels from reporting that fish were harvested in an area with a higher MRA or open to directed fishing when in reality those fish may have been harvested in an area with a lower MRA or closed to directed fishing. However, the CV MRA regulation also states that the lowest MRA must be applied at any time for the duration of the fishing trip. Although this regulation is meant to ensure that harvest in excess of the MRA is not occurring at any time, it can be challenging to enforce. Instantaneous MRAs can be enforced at-sea on CVs through United States Coast Guard (USCG) patrols and at-sea boardings. However there is not currently a mechanism to ensure that a CV is not over the MRA while at sea in the middle of a fishing trip at all times without the use of USCG patrols. Although some CVs carry observers, total catch is not sorted and weighed onboard. Some CVs are also not

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<sup>2</sup> Section 305(i)(1)(B)(iv) of the MSA states, "The harvest of allocations under the program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of non-target species."

currently required to maintain logbooks (less than 60 feet length overall) and no CVs are currently required to submit logbook data while at sea, but even if logbook data were submitted during a fishing trip it would contain self-reported estimated catch and may not accurately reflect the amounts currently onboard. As a result, MRA violations are often only found once a CV makes a delivery and all catch has been sorted and weighed.

The application section of the regulations for MRAs regarding CVs currently reads as though it applies to all CVs. However, some CVs are delivering unsorted codends to motherships. CVs delivering unsorted codends never bring catch onboard and therefore are never given the opportunity to sort their catch to ensure they are within MRA limits. In practice the mothership is sorting the catch and responsible for any MRA overages. Additional clarity is needed in the application regulations stating that MRAs are calculated at the CV level only when they are not delivering unsorted codends. Regulations should also be clarified on how MRAs apply to motherships.

### **3.3.2 Motherships Receiving Unsorted Codends**

Although motherships are currently included in the definition of a fishing trip, there are no applicable regulations outlining how MRAs apply to a mothership. As discussed in section 3.2.2, in most cases motherships are receiving unsorted codends from trawl CVs. The CV does not have an opportunity to sort the catch to ensure they are within MRAs because the catch never comes onboard the CV. As a result, only the mothership has the opportunity to sort the catch and ensure they are within the MRA limits. As described earlier, there are several triggers that could end a trip for a mothership. None of these triggers includes an option for the trip to end after the mothership has received each individual codend from a CV. As a result, the MRAs are not calculated for each individual CV delivery and are instead calculated using the fishing trip triggers defined for a mothership. This could be clarified in the application regulations by adding a section specifically describing how MRAs apply to motherships.

### **3.3.3 CPs and Motherships**

The MRAs for BSAI pollock and BS Atka mackerel are calculated at the end of each offload for all vessels instead of at the end of each fishing trip. These offload regulations do not apply to vessels with an AFA permit or their replacement vessels. AFA vessels are required to calculate MRAs for BSAI pollock and BS Atka mackerel at any time during a fishing trip unless the vessel with an AFA permit is participating in CDQ and retaining Amendment 80 allocated species. Although these offload MRA regulations already exist, several aspects of these regulations need clarification.

The current MRA regulations do not reference the correct CFR citation for describing AFA permitted vessels for which the regulations do not apply. There are regulations at [§ 679.4\(l\)](#) which specifically list out how and to whom AFA permits are issued. However, instead of citing these regulations, it currently cites Subpart F, which generally describes the AFA program and does not specifically cite the permits. The correct reference for listed AFA vessels, § 679.4(l), needs to be added to the MRA regulations to ensure industry and the NOAA Office of Law Enforcement (OLE) can clearly identify vessels for which the regulations pertain.

The MRA regulations also do not specifically include AFA replacement vessels. Specific vessel names are listed in § 679.4(l) as having AFA permits, but some of these vessels have been replaced since those regulations were implemented. Although this section of the regulations does discuss AFA replacement vessels, it might be beneficial to specifically include a clause about replacement vessels in revised regulations.



Many AFA permitted vessels also participate in various CDQ fisheries. Some of this CDQ fishing is for the same species that are allocated to the Amendment 80 Program. In 2006, changes regarding the CDQ program were made to the Magnuson-Stevens Act, and were implemented through NMFS rulemaking (77 FR 6492, March 9, 2012). These revisions stated that vessels participating in CDQ fisheries could not have more restrictions than vessels participating in non-CDQ fisheries. This means that if an Amendment 80 vessel is able to calculate MRAs for BSAI pollock and BS Atka mackerel from offload to offload, then a CDQ vessel (even if it is an AFA vessel) also fishing for Amendment 80 species should be able to do the same. For clarity, this element could be added to the regulations.

### 3.4 Improved Retention/Improved Utilization Program

As discussed earlier (section 2.1), there is a regulatory requirement to keep some species up to the MRA under the Improved Retention/Improved Utilization (IR/IU) program (§ 679.27). For CVs, this includes pollock, Pacific cod, and the shallow-water flatfish species complex in the GOA. Currently it is unclear if MRA or IR/IU regulations take precedence regarding these species for CVs. Under the MRA regulations, it states that a CV who harvests fish from an area closed to directed fishing must apply the lowest MRA to all areas at all times for the duration of the fishing trip. However, the IR/IU regulations state that a CV has a minimum retention requirement for pollock, Pacific cod, and the shallow-water flatfish species complex in the GOA. If directed fishing is open for one of those species in an area a CV is active, then any of these species caught must be retained. If the species is closed for directed fishing, then a CV must retain the fish up to the MRA before any can be discarded. If the species is on prohibited for retention status, then the fish must be discarded. A fishing trip for a CV is currently defined from the time harvesting of groundfish begins until all fish or fish product has been offloaded. Furthermore, CV's are allowed by regulation to move between areas with different fishing prohibitions within the same fishing trip.

For example, a pot CV could begin a trip fishing for sablefish in the Bogoslof area where Pacific cod is closed to directed fishing. If Pacific cod is caught while harvesting sablefish, under the IR/IU regulations the CV is required to keep up to the MRA amount of Pacific cod (20%) before discarding. The CV may then move outside of Bogoslof to an area where both Pacific cod and sablefish are open to directed fishing. Under the MRA regulations, the CV would be restricted to keeping only 20% of Pacific cod because they already fished in an area closed to directed fishing for Pacific cod during their fishing trip. However, by discarding Pacific cod over the 20%, the CV is then in violation of the IR/IU regulations that state all Pacific cod must be retained in areas where it is open to directed fishing.

NMFS and OLE currently direct industry to give precedence to the MRA regulations over IR/IU. In the example listed above, the CV would be required to discard any catch over the MRA amount, even when harvesting groundfish in an area open to Pacific cod directed fishing. A reasonable interpretation of the regulations is that once a CV fishes in an area closed to directed fishing, under the MRA regulations, directed fishing of that species is now closed in all areas to that CV. As a result, under the IR/IU regulations the CV would discard any catch over the MRA amount because directed fishing is now closed to that vessel. However, it may be beneficial to further clarify these regulations to clearly designate which set of regulations takes precedence under these circumstances.

IR/IU regulations are intricately connected to MRAs. As such, NMFS has identified additional IR/IU regulations that could be clarified. Current regulations at § 679.27(b)(4), list all species in [Table 2a](#) to part 679 (FMP groundfish) as IR/IU species for Amendment 80 CPs. Under this regulation, Amendment 80 CPs are required to retain all FMP groundfish species closed for directed fishing up to the MRA and make a percentage of it a primary product (§ 679.27(c)(2)). From 2008 to 2012, Amendment 80 vessels were subject to groundfish retention standards (GRS) which established regulatory minimum retention levels of groundfish. These regulations were removed temporarily by an emergency rule in 2011 and

permanently by a final rule in 2013. With the removal of GRS, Amendment 80 cooperatives stated their intent to maintain groundfish retention rates similar to GRS and are required to submit an annual Amendment 80 cooperative report to NMFS which includes information on the percent of groundfish retained for each cooperative (§ 679.5(s)(6)). Amendment 80 cooperative reports, which include retention information, are also presented to the Council annually. The final rule removing GRS stated that it removed certain regulatory requirements that mandated minimum levels of groundfish retention (78 FR 12627, 02/25/2013). The rule also states that Amendment 80 participants are subject to a 15 percent utilization standard for all retained FMP groundfish species (§ 679.27(i)). However, current IR/IU regulation still requires full (100%) retention of all FMP groundfish by Amendment 80 CPs. The [§ 679.27\(b\)\(4\)](#) regulations need to be updated to make clear the intended utilization of 15 percent, and remove the full retention requirement of some FMP groundfish species for Amendment 80 CPs.

### **3.5 Management and Enforcement Impacts**

The proposed changes to the MRA regulations listed in the above section are intended to clarify the current regulations and mirror current practices. The proposed changes would provide clearer guidance and facilitate greater industry compliance and enforceability on how MRAs should be calculated and applied to operations that currently lack such clarity. Other than adding clarity, no other impacts are expected because vessel operators would continue their current practice to calculate and apply MRAs.

## **4 Industry Recommended Regulatory Revisions**

The Council may also wish to consider changes to the MRA regulations beyond the NMFS' recommendations. The industry has expressed concern over complicated MRA calculations for multiple fishing trips in each management program and discarding more fish than necessary. CPs and motherships can be engaged in multiple, concurrent fishing trips at the same time and may have to keep track of several MRA calculations for each fishing trip. Although changing management programs does not officially trigger a new fishing trip, each management program does have to be calculated separately because there are usually different MRAs associated with each. A CP or mothership can be engaged in one or more fishing trips and MRA calculations at any given time. Table 2 provides a summary of the industry recommended regulatory revisions.

For example, a CP that also acts as a mothership may be participating in Amendment 80, CDQ, and OA concurrently. That results in at least three calculations for the weekly reporting period, which is currently one of the triggers for the regulatory definition of a fishing trip for calculating MRAs. However, it is possible that in the middle of that week a species was closed to directed fishing for OA which triggers a new fishing trip and a new MRA calculation. Within the same week, a CDQ CV delivering to the mothership enters an area closed to directed fishing for a species, which triggers an additional fishing trip and MRA calculation. At this point the CP/mothership is already engaged in five different MRA calculations for the weekly reporting period and may incur even more depending on fishing location and any new directed fishing prohibitions that may occur during the week. Some CP/mothership vessels stay at sea for over a month, which could result in twenty or more MRA calculations being tracked from the time the CP/mothership leaves the dock until the fish product is offloaded.

In addition, the CP or mothership has to ensure they are not over any MRA at any point in time during the fishing trip, and non-AFA vessels participating in the BSAI have to track BSAI pollock and BS Atka mackerel from offload to offload. Keeping track of so many different MRAs for the duration of time at sea can be complicated, time consuming, and error prone. The industry has identified two possible solutions to these issues; (1) (a) modifying fishing trip triggers for CPs and motherships, and (b) applying MRAs from offload to offload for Rockfish Program CPs, GOA pollock, and BSAI and GOA Pacific cod, or (2) applying MRAs for all species from offload to offload. This section addresses these possible

solutions by industry members and possible impacts if they are adopted. Table 2 also summarizes the industry's proposed changes. In addition, two other compliance considerations are addressed; (1) how changes to MRA regulations might work in conjunction with existing IR/IU regulations, and (2) unforeseen medical or mechanical issues.

#### **4.1 Modify Trip Triggers for CPs and Motherships; Applying Rockfish Program Catcher/Processors, GOA Pollock, and BSAI and GOA Pacific Cod MRA Calculations at Offload**

The first industry recommended regulatory revision for MRAs contains two parts: (1) Reducing the trip triggers for CPs and motherships from five to two, and (2) Changing rockfish program CPs, GOA pollock, and BSAI and GOA Pacific cod MRA calculations to the time of offload instead of instantaneously. Both of these will be further discussed below.

##### **4.1.1 CP and Mothership Trip Triggers**

One possibility for simplifying MRA calculations would be to modify the current fishing trip triggers from the five different triggers currently in regulation for CPs and motherships (§ 679.2 *Fishing trip*) to two triggers; 1) The offload or transfer of any fish or fish product from that vessel; and 2) when a vessel begins fishing with a different type of authorized gear. Moving all MRA calculations from offload to offload could make tracking and calculating MRAs easier and less confusing for the fishing fleet. Under this option, MRAs would still be calculated by management program and MRAs for most species would still be instantaneous. Fishing with a different type of authorized gear already exists as a trip trigger in the fishing trip definition and would remain in place. Keeping separate fishing trips by gear type is necessary because there are often different fishing prohibitions for each gear type. The use of more than one gear type by CPs and motherships is not common.

Under this scenario, a CP or mothership who stays on the fishing grounds for three weeks and participates in three management programs each week, would reduce their MRA calculations from nine (one for each management program and each week) to three (one for each management program from offload to offload). The vessel would calculate the MRA by summing all the retained species that are open to directed fishing as the basis species from the time it began operating until it offloaded. If, during the trip, the vessel participates in an area that is closed to directed fishing for a species, then that species would no longer be considered a basis species for that portion of the trip. The vessel would still need to keep track of MRAs for each management program by haul to ensure there is not an MRA overage at any point in time during the fishing trip.

##### **4.1.2 Apply Rockfish Program Catcher/Processors, GOA Pollock, and BSAI and GOA Pacific Cod MRAs at Offload**

Currently BSAI pollock and BS Atka mackerel MRAs are calculated from offload to offload and do not have instantaneous MRAs for non-AFA vessels. Instead, MRAs are only calculated at the time of offload. CPs fishing under a rockfish CQ permit in the Central GOA currently calculate MRAs at the end of each weekly reporting period and also do not have an instantaneous MRA. If MRA regulations and trip triggers are being evaluated for possible changes, it might be worth considering whether additional species should be added as a species without an instantaneous MRA and calculated from offload to offload. For example, CPs fishing under a rockfish CQ permit in the Central GOA, where MRAs apply to each weekly reporting period, could instead be calculated from offload to offload to coincide with how the BSAI pollock and BS Atka mackerel MRAs are already handled. In addition, BSAI and GOA Pacific cod and GOA pollock, both IR/IU species, could be added to the list of species with offload to offload MRAs and could apply to all vessels. The intent of the IR/IU regulations is to minimize discarding of certain species. Adding IR/IU species to the list of species managed offload to offload without an instantaneous MRA could result in less discarding of these species (See section 6.1: regulatory discards).

Removing the weekly reporting period as a trip trigger would likely not pose an enforcement issue. However, as noted later in section 6.2: (Enforcing Areas Closed to Directed Fishing), eliminating the trigger to begin a new fishing trip when a vessel enters an area with a different fishing prohibition and eliminating instantaneous MRAs may make it difficult to enforce closed areas. In December 2006 the Council looked at a similar action and ultimately opted to retain a trip trigger when a vessel entered an area with a different fishing prohibition due to concerns over enforceability of Steller sea lion closure areas. The action was withdrawn by NMFS after industry stated that creating a new trip trigger when fishing inside a Steller sea lion closure area would likely not reduce discards and would be costly to participants. This is further discussed in section 6.2 of this paper.

## **4.2 Offload to Offload - No Instantaneous MRAs**

One possible change to the MRA regulations could be to require that all MRAs be calculated and applied from offload to offload instead of applying throughout the duration of the fishing trip. Non-AFA vessels currently calculate BSAI pollock and BS Atka mackerel offload to offload. Groundfish harvested in the Central GOA by a CP operating under a rockfish CQ permit is calculated at the end of each weekly reporting period. All other species are calculated at any time and to all areas for the duration of the fishing trip. This is true of motherships, CPs, and CVs. Changing the MRA application for all species in any program from offload to offload may reduce regulatory discards (See section 6.1: Regulatory Discards).

### **4.2.1 CPs and Motherships**

Applying all MRAs from offload to offload instead of instantaneously would be the simplest way to calculate MRAs for CPs and motherships. In this scenario, the vessel would no longer have to calculate MRAs for the multiple concurrent regulatory fishing trips in which they may be engaged, and would no longer have to ensure they did not exceed an MRA at any given moment of the fishing trip. Instead, MRAs would be calculated for the duration of time the vessel was at sea for each management program, greatly reducing the number of calculations that must be tracked. If, for example, a hook-and-line CP remains at sea for three weeks fishing OA Pacific cod, the number of trips/calculations is reduced from three to one, and the vessel would no longer have to track MRAs instantaneously. Currently this is how BS Atka mackerel and BSAI pollock are calculated for non-AFA vessels. This could be extended to include all species, including to CPs fishing under a rockfish CQ permit in the Central GOA, which is currently calculated at the end of each weekly reporting period.

Most CPs and motherships maintain daily fishing logbooks, have observers on board (with a few exceptions for CPs who have low harvest), weigh catch on board, and complete daily production reports. However, in order to ensure a vessel is within the MRA amount at any given time, retained and discarded catch would need to be calculated at each point in time of the fishing trip. This can be a complicated and long process, especially if the vessel was engaged in multiple concurrent fishing trips. It may be easier to calculate MRAs if they applied only at the fishing trip level instead of at any point in time, or if they were always calculated offload to offload. It should be noted that the OLE has developed tools that allow them to calculate instantaneous MRAs on CPs and motherships by looking at daily data submitted electronically by industry.

### **4.2.2 CVs**

As discussed earlier, there is not a mechanism to ensure that a CV is not over the MRA while in the middle of a fishing trip without an at-sea enforcement presence. Total retained catch is not sorted and weighed onboard CVs. Therefore it is difficult to determine and enforce if a CV is within the allowed MRA at any given moment of the fishing trip. Altering current regulation to allow for all MRAs on CVs to apply from offload to offload may be easier to enforce. In addition, it may be less confusing for a non-

AFA CV operator to treat all MRA species the same instead of having some calculated from offload to offload (i.e., BSAI pollock and BS Atka mackerel) and others calculated instantaneously (i.e., Pacific cod, octopus, etc).

Under § 679.20(e)(3)(i), when a CV fishes in an area closed to directed fishing or with a different MRA, then the lowest MRA amount applies in any area, at all times, and for the duration of the fishing trip. In other words, when a CV fishes in multiple areas with different MRAs, the CV is restricted to the lowest MRA everywhere the CV fishes until the trip ends. If regulation were changed from an instantaneous MRA to an offload to offload MRA, this provision would still apply unless there were additional regulatory amendments.

Removing the weekly reporting period as a trip trigger would likely not pose an enforcement issue. However, as noted later in section 6.2: (Enforcing Areas Closed to Directed Fishing), eliminating the trigger to begin a new fishing trip when a vessel enters an area with a different fishing prohibition and eliminating instantaneous MRAs may make it difficult to enforce closed areas. In December 2006 the Council looked at a similar action and ultimately opted to retain a trip trigger when a vessel entered an area with a different fishing prohibition due to concerns over enforceability of Steller sea lion closure areas. This is discussed further in section 6.2 of this paper.

## **5 Other Compliance Considerations**

### **5.1 Improved Retention/Improved Utilization Program**

In addition to the MRA regulations, all vessels must also comply with improved retention/improved utilization (IR/IU) regulations. As discussed earlier (Section 3.4), it is somewhat unclear if MRA or IR/IU regulation takes precedence. If MRA regulations were changed to define a trip as offload to offload for CPs and motherships, additional clarity in the IR/IU regulations may be advisable.

If a fishing trip for CPs and motherships was redefined as offload to offload, without additional regulatory changes, a vessel would be restricted to the lowest MRA for the duration of the fishing trip when the vessel has fished in an area closed to directed fishing. Under the current MRA regulations a new fishing trip is automatically triggered when a vessel enters an area with a different directed fishing prohibition. As a result, it is possible to restrict the vessel to the lowest MRA for the duration of the fishing trip because once the vessel moves out of that area a new fishing trip begins. If a fishing trip was defined from offload to offload without further regulatory changes, then the lowest MRA would apply if the vessel moved to an area with a different directed fishing prohibition from the time they left the dock until they offloaded the product onboard. This may cause confusion about how IR/IU regulations interact with MRA regulations.

IR/IU species for CPs and motherships include Pacific cod, pollock, shallow-water flatfish species complex in the GOA, and for non-AFA CPs (Amendment 80 CPs) using trawl gear in the BSAI, all species listed in Table 2a to 50 CFR part 679. (See section 3.4 for more information regarding this Amendment 80 IR/IU regulation.) CPs and motherships must retain a primary product for all IR/IU species brought onboard the vessel if it is open to directed fishing, up to the MRA amount of the IR/IU species if directed fishing is closed, and must discard all of the IR/IU species if it is in prohibited status. If CPs and motherships are restricted to the lowest MRA amount based on fishing location for the duration of a trip, then it is unclear which regulations would take precedence, MRA or IR/IU.

For example, a CP may harvest fish in an area open to directed fishing for Pacific cod, which would require 100 percent retention of all Pacific cod under the IR/IU regulations. The next day the CP may move to an area where Pacific cod is closed to directed fishing. Under the IR/IU regulations the vessel must now keep up to the MRA. Under current regulation once a vessel harvests groundfish in an area closed to directed fishing, that vessel is restricted to that MRA level for the duration of the fishing trip. If a fishing trip is defined as offload to offload, then it is unclear if the MRA regulations or IR/IU regulations would take precedence. If the MRA regulations take precedence then the vessel would be restricted to only keeping Pacific cod up to the MRA for the duration of the fishing trip, even if the vessel moved into an area open to directed fishing. However, if the IR/IU regulations take precedence then the vessel would be required to keep all Pacific cod in areas where Pacific cod was open to directed fishing. If the MRA regulations take precedence, then it would likely increase regulatory discards.

As discussed in section 3.4, NMFS and OLE currently direct CVs to give precedence to the MRA regulations over IR/IU. A reasonable interpretation of the current regulations is that once a vessel fishes in an area closed to directed fishing, under the MRA regulations, directed fishing of that species is now closed in all areas to that vessel. As a result, under the IR/IU regulations, the vessel would discard anything over the MRA amount because directed fishing is now closed to that vessel. This same interpretation would likely apply to CPs and motherships should fishing trips be defined from offload to offload unless further regulatory changes are made. Clarification will be needed as to which set of regulations take precedence if the regulation restricting vessels to the lowest MRA amount for the duration of the fishing trip is not changed when a fishing trip is defined as offload to offload. This issue can be examined further should a full analysis on MRAs be initiated.

## **5.2 Unforeseen Medical or Mechanical Issues During a Trip**

There have been instances where a vessel has come to port due to unforeseen circumstances such as an onboard medical emergency or mechanical issue. Because the vessel had to end their fishing trip earlier than expected, the vessel may end up over the MRA for one or more species if they have not accumulated enough basis species. Current regulation states that MRAs apply at any time and to all areas for the duration of the fishing trip, with the exception of BSAI pollock and BS Atka mackerel for non-AFA vessels, which will be discussed later in this section. If a vessel is over the MRA at the end of a fishing trip it is a violation, even if the vessel had to come to port due to a medical emergency or mechanical issue. The MRA should be applied at any time for the duration of the fishing trip, which means there is no point in time where it would be allowable for the vessel to be over the MRA. As discussed earlier, many different triggers end a fishing trip on a CP and mothership, including the end of a weekly reporting period and an offload. As a result, even if the vessel does not offload while in port, the weekly reporting period may end thus ending the trip and putting them in violation.

BSAI pollock and BS Atka mackerel MRAs for non-AFA vessels are calculated offload to offload. If a vessel comes to port for a medical emergency or mechanical issue and does not offload, then the vessel cannot be in violation of exceeding the MRA for those species. However, often when a vessel is in town unexpectedly, it is to their advantage to offload some, or all, of the product onboard so they will have more room in their freezers when they return to the fishing grounds and can remain on the grounds longer, thus conserving fuel expenses. If the vessel was unable to fish for basis species as long as they had originally anticipated, it is possible that they will be over their MRA for BSAI pollock and BS Atka mackerel if they offload. This would be considered a violation under current regulation.

Unless provisions are made in regulation specifically addressing a vessel coming to port due to a medical emergency or mechanical issue, any changes to the MRA regulations would not alleviate a vessel operator's responsibility to ensure they are not over an MRA, whether it be an instantaneous calculation throughout the fishing trip, or offload to offload. A regulatory exception to MRAs for an unexpected



return to port would need to contain clear parameters on what constitutes a medical emergency or mechanical issue, as well as the amount over an MRA that would be acceptable under those circumstances. Such regulations may be difficult to enforce. However, this issue can be examined more closely if a full analysis on MRAs is initiated.

## **6 Management and Enforcement Impacts**

The proposed changes listed in this section would likely have several management and enforcement impacts. Modifying trip triggers from five possible triggers to two triggers for CPs and motherships, would result in reducing the number of trips and MRA calculations CPs and motherships would need to track. If instantaneous MRAs stayed in place but the trip trigger changed to offload to offload, CPs and motherships would still need to calculate the MRAs daily to ensure no MRA is ever exceeded at any given time. However, instead of tracking multiple concurrent trips every day for these calculations, CPs and motherships would only need to track them by management program. Although instantaneous MRAs would still need to be calculated, this option would reduce the overall number of trips and MRA calculations a vessel would need to track and could result in a reduction of calculation errors. There would still be some species, like BSAI pollock, that would not have an instantaneous MRA, which may cause some confusion among the industry and maintains a level of management and enforcement complexity.

If instantaneous MRAs were no longer in place for any species, all vessels (CPs, motherships, and CVs) would no longer need to worry about tracking MRAs at any given time, and instead would only track MRAs by management program for the entirety of the fishing trip (offload to offload). This option would also result in reducing the number of trips and MRA calculations a vessel would need to track, and may reduce the risk of calculation errors. In addition, no species would have an instantaneous MRA. If all species were treated the same, it would make the MRA regulations easier to understand and easier to enforce. This option would greatly simplify the MRA regulations. It should be noted, however, that it would likely exacerbate the issue described in the section 5.2 regarding trips abruptly ending due to mechanical or medical reasons (in absence of a new regulatory exemption). In other words, if industry behavior changes and regulatory discards do decrease, it is highly likely that MRA violations would be exacerbated when unforeseen circumstances result in a trip ending prematurely.

Either option might also reduce regulatory discards. However, changing the definition of a trip for CPs and motherships to offload to offload may also make it more difficult to enforce closed areas. Both of these issues will be discussed further below.

### **6.1 Regulatory Discards**

Changing the MRA application for some or all species from offload to offload instead of instantaneously may decrease, to some extent, regulatory discards if implemented. Other than IR/IU species, a vessel is not required to keep incidental amounts of a species. If a vessel does not want to retain a species due to low economic value, the vessel may discard all of that species. The vessel must want to retain the species for a change in MRAs to decrease discards. Currently MRAs for most species are applied instantaneously throughout the fishing trip. This can lead to daily regulatory discards as the vessel is constantly monitoring total catch of basis species for the fishing trip and discarding incidental species to ensure they are never over the MRA at any point in time. It is likely that more regulatory discarding occurs towards the beginning of the fishing trip because there are fewer basis species onboard the vessel at that time. However, if MRAs were not applied instantaneously, and instead applied offload to offload, then it is possible that fewer regulatory discards would occur.

For example, a CP hook-and-line vessel may be fishing for Pacific cod (the basis species) in the BSAI and harvest 10 mt on the first day of the fishing trip. On that same day, the vessel also catches 5 mt of skates. In the BSAI a vessel may keep skates up to 20 percent by weight of Pacific cod (Table 11 part 679 under “other species”). Because the vessel only has a total of 10 mt of Pacific cod onboard, in order to stay under the instantaneous MRA, the CP must now discard 3 mt of skates. However, the CP will likely continue to harvest Pacific cod until the vessel is full. If, for example, the CP does not plan on coming to port until they have 200 mt of Pacific cod onboard, then the vessel could have retained all of the skates from the first day instead of discarding if the MRA was applied at the time of the offload instead of instantaneously.

If this same CP hook-and-line vessel harvests fish for three weeks before coming to port to offload, then under current regulation the vessel has created at least three fishing trips (one for each weekly reporting period). In this example, the CP hook-and-line vessel has harvested 100 mt of Pacific cod in the first weekly reporting period and 3 mt of skates. This week constitutes a fishing trip for the vessel. On the first day of the second week of fishing, the vessel again only harvests 10 mt of Pacific cod and 5 mt of skates. Again, the vessel is required to discard 3 mt of skates because the new fishing trip only has a total of 10 mt of Pacific cod. However, if the vessel had been able to include the previous week’s catch of 100 mt, then the vessel would not have had to discard any of the skates because there would be enough Pacific cod onboard the vessel (110 mt) to stay under the MRA for skates.

Although the above examples provide a simplified view of how MRAs are calculated instantaneously and how discarding may occur, the same logic can be applied to all CPs, motherships, and CVs. However, it is unclear at this time how much discarding could be avoided under this approach and whether significantly more discarding would occur at the end of the fishing trip as vessels attempt to stay under the MRA before offloading. In addition, there may be a time when a vessel unexpectedly comes to port and offloads before the vessel was able to harvest enough basis species to ensure they are not over an MRA, putting them in violation. This issue can be looked at closer if a full analysis on MRAs is initiated.

## **6.2 Enforcing Areas Closed to Directed Fishing**

OLE has expressed concerns in their ability to enforce closed areas for the species that have MRAs currently calculated from offload to offload (i.e., BSAI pollock and BS Atka mackerel). If the MRAs are calculated from offload to offload for additional species, then areas closed for those species will become largely unenforceable. Targeted harvest of species closed to directed fishing would be measured against the total basis species harvested between offloads instead of within the closed waters; an issue now experienced in pollock closure areas throughout the Aleutian Islands. For non-AFA vessels, BSAI pollock and BS Atka mackerel MRAs are calculated offload to offload. MRAs for CPs fishing under a rockfish CQ permit are calculated at the end of each weekly reporting period. Although a fishing trip is not defined as offload to offload for these species, the regulations do stipulate that the MRAs are not instantaneous and the calculation is done upon offloading. Often vessels will top-off on certain high value species to harvest as close as possible to the MRA. Topping-off is a term used to describe when a vessel will target a species not open to directed fishing, but remain under the overall MRA. In cases where the MRAs are calculated from offload to offload, a CP or CV delivering to a mothership could enter an area closed to directed fishing for a species, target that species, and still be under the MRA for that species at the time of the offload.

For example, in the AI, there are many Steller sea lion protection areas closed to directed fishing for pollock, Atka mackerel, and Pacific cod (Tables 4, 5, and 6 to part 679). These areas include haulouts and foraging areas. Directed fishing is defined as any fishing activity that results in the retention of an amount of a species or species group over the MRA. As a result, currently a CP or CV delivering to a mothership could enter a closed haulout or foraging area, top-off on pollock, and not be in violation of the directed

fishing prohibition for pollock in the area because the CP or mothership is below the overall MRA for pollock when the vessel offloads. For these closures to be enforceable, an instantaneous calculation would be required with a fishing trip trigger when a vessel enters or leaves a closed area where a different directed fishing prohibition applies.

Calculation of MRAs at offload has already proven to prevent the ability to enforce spatial closures in real time, which enables the targeting of BSAI pollock and BS Atka mackerel, two Steller sea lion forage species, in waters closed to these species surrounding Steller sea lion haulouts and rookery sites. This is evidenced by the OLE's inability to currently enforce spatial closures for directed fishing of pollock in Steller sea lion protection areas throughout the AI and in several critical areas of the BS such as the BS pollock restriction area (§ 679.22(a)(7)(ii)). Currently for all other species, a fishing trip is triggered for CPs and motherships when the CP or CV delivering to a mothership enters or exits an area where a different directed fishing prohibition applies, including Steller sea lion protection areas. If MRAs for these species were also calculated offload to offload, it would likely also be difficult for the OLE to enforce areas closed to directed fishing, including protection areas.

It should also be noted that the Council took action on a regulatory package in December 2006 to change the trip trigger to offload to offload for non-AFA CPs for some additional species ([74 FR 7209, February 13, 2009](#)). These species included yellowfin sole, rock sole, flathead sole, "other flatfish," arrowtooth flounder, Pacific cod, and Atka mackerel in BSAI and Pacific ocean perch in the AI.<sup>3</sup> At that time, the Council expressed concern over the ability to enforce Pacific cod and Atka mackerel harvest inside Steller sea lion closure areas. The Council recommended that the trip trigger be offload to offload and not instantaneous when a vessel was not in a Steller sea lion closure area. However, if a vessel was within a Steller sea lion area it was recommended that the MRA remain instantaneous and trigger a new fishing trip. A proposed rule was issued, but NMFS eventually withdrew the proposed rule ([74 FR 65503, December 10, 2009](#)) after receiving public comment stating that creating a new trip trigger when fishing inside a Steller sea lion closure area would likely not reduce discards and would be costly to participants.

CVs delivering shoreside are already subject to an offload to offload trip trigger. For a CV, an offload is defined as the transfer of all fish or fish product from the vessel. However, the MRA for a CV during a fishing trip in areas closed to directed fishing is the lowest MRA which is applicable in any area and at any time for the duration of the fishing trip. Although it is currently difficult for OLE to enforce these instantaneous MRAs on CVs without at-sea patrols, should instantaneous MRAs no longer be required on CVs, it would greatly reduce OLE's ability to enforce closed areas. In cases where the MRAs are calculated from offload to offload, without an instantaneous MRA, a CV could enter an area closed to directed fishing for a species, target that species, and still be under the MRA for that species at the time of the offload. For these closed areas to be enforceable to CVs, an instantaneous MRA is necessary. It is possible that in the future OLE may develop tools to more effectively enforce instantaneous MRAs and fishing in closed areas without the use of at-sea patrols.

If a full analysis regarding MRAs is initiated, the issue of fishing in closed areas can be looked at in more detail.

## **7 Next Steps and Summary of Issues**

The Council's immediate task is to determine whether to move forward by developing a purpose and need statement and alternative for analysis. The Council may rely on this paper, public comment, and any recommendation received from its Advisory Panel. The intent of this discussion paper was to provide the Council with information about how the MRA regulations could be modified to reflect current practices,

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<sup>3</sup> It should be noted at the time of this action only the MRA for BSAI pollock was calculated at the time of the offload. BS Atka mackerel was not added until 2014.

and to give an overview of industry proposed regulatory changes. The Council could choose to incorporate any combination of these proposed changes for further analysis. Table 1 summarizes the Agency's proposed changes to clarify the MRA regulations, and Table 2 summarizes the industry's proposed changes.

**Table 7-1 Summary of Agency proposed changes to clarify MRA regulations.**

<b>Regulatory Section</b>	<b>Sector</b>	<b>Issue</b>	<b>Revise Regulation to:</b>
<b>Fishing Trip Definition for MRAs (§679.2 Fishing trip)</b>	Mothership	Unsorted codends - CV delivering to motherships	MRA calculated by mothership for CV delivering unsorted codends (also in application regulation)
	CV	Unsorted codends - CV delivering to motherships	Exclude CV delivering unsorted codends to mothership (also in application regulation)
<b>Calculation of MRAs (§ 679.20(e)(2))</b>	All	MRA by Management program	MRA calculated by management program
	CP also acting as mothership	MRA by Management program	MRA combined for same management program for CP and mothership
	CDQ	CDQ	Clarify current CDQ groups MRA calculation
<b>Application of MRAs (§ 679.20(e)(3))</b>	Mothership	Unsorted codends - CV delivering to motherships	MRA applies to mothership for CV delivering unsorted codends (also in fishing trip regulation)
	CV	Unsorted codends - CV delivering to motherships	Exclude CV delivering unsorted codends to mothership (also in fishing trip regulation)
	CP / Mothership	Offload regulation - incorrect citation for AFA vessels for BSAI pollock and BS Atka mackerel MRA	Correct citation in application of MRA regulations
		Offload regulation - AFA replacement vessel not included for BSAI pollock and BS Atka mackerel	Revise regulation for AFA replacement vessels for MRAs and BSAI pollock and BS Atka mackerel at offload
	CDQ	CDQ	CDQ may use any species open to directed fishing as a basis species

Regulatory Section	Sector	Issue	Revise Regulation to:
IR/IU (§ 679.27)	All	MRA or IR/IU precedence	MRA takes precedence over IR/IU
	Amendment 80	All FMP groundfish are IR/IU species	Clarify if all species need to be retained and a product made (i.e. sharks)



**Table 7-2 Summary of industry proposed changes to MRA regulations.**

	<b>Sector</b>	<b>Status Quo</b>	<b>Industry Recommendation 1</b>	<b>Industry Recommendation 2</b>
<b>Trip Triggers</b>		A vessel is engaged in a fishing trip from the time harvesting begins until:	A vessel is engaged in a fishing trip from the time harvesting begins until:	A vessel is engaged in a fishing trip from the time harvesting begins until:
	CP / Mothership	(1) directed fishing is prohibited;  (2) fish or fish products are offloaded or transferred;  (3) the vessel enters or leaves an area with different prohibitions;  (4 ) the vessel fishes with a different type of gear; or  (5) the weekly reporting period ends, whichever comes first.	(1) fish or fish products are offloaded or transferred; or   (2) the vessel fishes with a different type of gear; whichever comes first.	(1) fish or fish products are offloaded or transferred; or   (2) the vessel fishes with a different type of gear; whichever comes first
	CV	All fish or fish product is offloaded or transferred from the vessel	Status Quo	Status Quo
<b>MRA Application</b>	All	Instantaneous for all species except;  -BSAI pollock at offload (non-AFA) -BS Atka mackerel at offload (non-AFA) -CGOA CP Rockfish Program at end of weekly reporting period	Add the following species to the status quo offload calculation;  -BSAI Pacific cod -GOA Pacific cod -GOA pollock -CGOA CP Rockfish Program	All MRAs for all species applied at offload
<b>Regulatory Discards</b>	All	Status Quo	May reduce regulatory discards	May reduce regulatory discards
<b>Enforcement Concerns</b>	All	Status Quo	May be difficult to enforce closed areas without a trip trigger for entering and exiting areas with a different fishing prohibition and without instantaneous MRAs.	May be difficult to enforce closed areas without a trip trigger for entering and exiting areas with a different fishing prohibition and without instantaneous MRAs.

## 8 MRA Timeline

This section contains a timeline of some pertinent MRA actions. However, many MRA changes occurred in conjunction with other regulatory packages and may not be listed here. This timeline can be further developed if an analysis is initiated.

1995 - [60 FR 40304, 08/08/1995](#)

- Established maximum retainable bycatch (MRB) percentages by FMP area and species.
- Directed fishing defined as an amount exceeding the MRB percentages.
- MRB percentages applied at any time during the fishing trip (i.e. instantaneous).

1997 - [62 FR 11109, 03/11/1997](#)

- Reduced MRB percentage of sablefish in GOA trawl gear to slow the harvest rate of sablefish.
- Allowed use of arrowtooth flounder as basis species when calculating MRB of pollock and Pacific cod in the GOA to provide fuller utilization of pollock and Pacific cod.

1997 - [62 FR 35109, 06/30/1997](#) and correction [62 FR 38944, 07/21/1997](#)

- Defined *fishing trip* with respect to monitoring compliance with groundfish directed fishing closures as ending when:
  - The effective date of a notification prohibiting directed fishing in the same area is issued;
  - The offload or transfer of all fish or fish product occurs from that vessel;
  - The vessel enters or leaves an area with a different directed fishing prohibition;
  - The end of a weekly reporting period is reached, whichever comes first.

1998 - [63 FR 15334, 03/31/1998](#)

- Separated shortraker/rougheye rockfish from aggregated rockfish in the AI for purposes of the MRB percentages.
- Reduced MRB percentage for shortraker/rougheye in the AI to reduce the potential of overfishing.

1998 - Amendments 49: [62 FR 63880, 12/03/1997](#) (BSAI) and [62 FR 65379, 12/12/1997](#) (GOA)

- IR/IU regulations established in the BSAI and GOA for Pacific cod and pollock.
- IR/IU regulations established for yellowfin sole and rock sole to begin in 2003 in the BSAI.
- IR/IU regulations established for shallow water flatfish to begin in 2003 in the GOA.

2000 - [64 FR 68054, 12/06/1999](#)

- Separated shortraker/rougheye rockfish from aggregated rockfish in the GOA for purposes of the MRB percentages.
- Reduced MRB percentage for shortraker/rougheye in the Eastern district of the GOA to reduce the potential of overfishing.

2003 - Amendment 75: [68 FR 52142, 09/02/2003](#)

- Removes rocksole and yellowfin sole from IR/IU regulations in the BSAI.

2004 - [69 FR 32901, 06/14/2004](#)

- BSAI pollock MRA changed from instantaneous calculation to time of offload for non-AFA vessels to allow for greater utilization of pollock and reduce discards.
- Clarified that the lowest MRA for any area where fish are harvested during a fishing trip applies for the duration of the fishing trip for CVs.

- MRB changed to MRA for consistency with the definition of bycatch in the Magnuson/Stevens Act.
- 2008 – Amendment 79: [71 FR 17362, 04/06/2006](#)
- Implemented GRS for non-AFA CPs in the BSAI.
    - Vessels must retain FMP groundfish species up to a specified yearly standard.
  - Required 15 percent utilization standard for all retained FMP groundfish species for non-AFA CPs.
- 2008 – Amendment 80: [75 FR 52668, 09/14/2007](#)
- Established the Amendment 80 sector.
  - Clarified GRS program requirements for Amendment 80 cooperatives
- 2009 - [73 FR 71592, 11/25/2008](#)
- Increased MRAs when using arrowtooth flounder as a basis species in the GOA.
- 2009 - [74 FR 7209, 02/13/2009](#) (proposed rule), [74 FR 65503, 12/10/2009](#) (withdrawn)
- Proposed to establish MRAs at time of offload for non-AFA trawl C/Ps for yellowfin sole, rock sole, flathead sole, “other flatfish”, arrowtooth flounder, Pacific cod, and Atka mackerel in the BSAI and Pacific Ocean perch in the AI.
  - Proposed that the trip trigger and instantaneous MRAs remain in place when entering a Steller sea lion (SSL) protection area for Atka mackerel and Pacific cod.
  - Proposed rule was withdrawn after industry stated it may not be effective at reducing bycatch because of additional costs for complying with the SSL trip trigger.
- 2011 - Amendment 88; [76 FR 81248, 12/27/2011](#)
- Implemented the central GOA Rockfish Program.
  - MRAs calculated at the end of the weekly reporting period for C/Ps in the central GOA fishing under a rockfish CQ permit.
- 2011 - [75 FR 78172, 12/15/2010](#) (emergency rule), [76 FR 31881, 06/02/2011](#) (emergency rule extension)
- Temporarily exempted Amendment 80 from the GRS program.
- 2013 - [78 FR 29248, 05/20/2013](#)
- Increased MRAs when using arrowtooth or kamchatka flounders as a basis species in the BSAI.
- 2013 - [78 FR 12627, 02/25/2013](#)
- Removed the GRS program for Amendment 80.
  - Required annual reporting of groundfish retention performance to NMFS by Amendment 80 cooperatives.
- 2014 - [FR 79 70286, 11/25/2014](#)
- Implemented Steller sea lion protection measures.
  - BS Atka mackerel MRA changed from instantaneous calculation to time of offload for non-AFA vessels in order to reduce regulatory discards and allow more harvest in the BS.
- 2015 - [80 FR 80695, 12/28/2015](#)
- Reduced MRA of skates in the GOA in order to slow the rate of harvest and reduce the incentive for topping off on skates.

2020 - [85 FR 9687, 02/20/2020](#)

- Implemented full retention of rockfish species in the BSAI and GOA for CVs using pot, jig and hook-and-line gear.

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