Final Regulatory Impact Review/ Final Environmental Assessment/Initial Regulatory Flexibility Analysis

Amendment 97 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area
Amendment 80 Vessel Replacement

June 2012

Abstract: This action would amend the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and federal regulations related to the Amendment 80 Program to establish a process for the owners of Amendment 80 vessels to replace eligible trawl catcher/processor vessels. The action is necessary to rectify the currently untenable disagreement among the FMP, implementing regulations, and a recent Court Order (*Arctic Sole Seafoods, Inc. v. Gutierrez*, Case No. 07-1676MJP; May 19, 2008) that vacated the specific regulatory provisions that preclude vessel replacement.

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EXECUTIVE SUMMARY

This Regulatory Impact Review (RIR) was prepared to meet the requirements of Presidential Executive Order 12866 for an evaluation of the benefits and costs of a proposed federal regulatory action. The proposed action would amend the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and federal regulations related to the Amendment 80 Program to establish a process for the owners of Amendment 80 vessels to replace eligible trawl catcher/processor vessels. The proposed action is necessary to rectify the currently untenable disagreement among the BSAI FMP, implementing regulations, and a recent Court Order that vacated the specific regulatory provisions that preclude vessel replacement. The preferred alternative is Amendment 97 to the BSAI FMP. Analysts have also drafted an environmental assessment and initial regulatory flexibility analysis to comply with the National Environmental Policy Act and the Regulatory Flexibility Act, respectively. The proposed action would amend the BSAI FMP and federal regulations related to the Amendment 80 Program.

Amendment 80 Program

The Amendment 80 Program is a limited access privilege program (LAPP) that allocates a quota share (QS) permit to a person, based on the catch history of six Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, flathead sole, Pacific cod, rock sole, and yellowfin sole) in the Bering Sea and Aleutian Islands Management Area (BSAI), from 1998 through 2004, for each of 28 originally qualifying non-American Fisheries Act (AFA) trawl catcher/processors. In order to receive an allocation of QS, a person must own the catch history of an original qualifying non-AFA trawl catcher/processor that met specific criteria, designated by Congress, under the Capacity Reduction Program (CRP). The non-AFA trawl catcher/processors identified in the CRP comprise the Amendment 80 vessels. Section 219(g)(1) of the CRP states that "[o]nly a member of a catcher processor subsector may participate in the catcher processor sector of the BSAI non-pollock groundfish fishery." The "Catcher processor sector" is further broken down into four subsectors, one of which is the "non-AFA trawl catcher processor subsector" defined in section 219(a)(7):

> (7) NON-AFA TRAWL CATCHER PROCESSOR SUBSECTOR – The term "non-AFA trawl catcher processor subsector" means the owner of each trawl catcher processor –
> (A) that is not an AFA trawl catcher processor;
> (B) to whom a valid LLP license that is endorsed for Bering Sea or Aleutian Islands trawl catcher processor fishing activity has been issued; and
> (C) that the Secretary determines has harvested with trawl gear and processed not less than a total of 150 metric tons on non-pollock groundfish during the period of January 1, 1997 through December 31, 2002.

Section 219(a)(8) defines non-pollock groundfish:

(8) NON-POLLOCK GROUNDFISH FISHERY.—The term ‘‘non-pollock groundfish fishery’’ means target species of Atka mackerel, flathead sole, Pacific cod, Pacific Ocean perch, rock sole, turbot, or yellowfin sole harvested in the BSAI.

Each of the 28 originally qualifying vessels may be assigned a QS permit, if that vessel owner applies to receive QS. In cases where an original qualifying vessel has suffered a total or constructive loss, or is no longer eligible to receive a fishery endorsement (i.e., the vessel has been removed through a vessel buyback program, or has been reflagged as a foreign vessel) the QS permit may be assigned to a replacement vessel, or to the License Limitation Program (LLP) license initially assigned to that original qualifying vessel. Persons not applying for QS, based on the catch history of original qualifying vessels, may use those vessels to continue to fish in the Gulf of Alaska (GOA), but are prohibited from using those vessels as trawl vessels in the BSAI.

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

The National Marine Fisheries Service (NMFS) allocates an exclusive harvest privilege for a specific portion of the total allowable catch (TAC) assigned to the Amendment 80 Program for the six defined Amendment 80 species, as well as exclusive access to a portion of the prohibited species catch (PSC) allowances of BSAI halibut, Bristol Bay red king crab, snow crab, and Tanner crab. PSC allowances are based on the aggregate QS held by all of the QS permits assigned to a cooperative. The annual exclusive harvest privilege assigned to a cooperative is called cooperative quota. Persons who do not participate in a cooperative are assigned to the limited access fishery and compete for a share of the TAC and PSC remaining after deductions are made for cooperatives. Members of a cooperative may receive the benefits of ending the “race for fish,” thereby providing greater incentive to coordinate harvesting strategies, fish in conditions that are likely to be more economically profitable, as well as potentially less dangerous, permitting an operator to respond to changing conditions on the fishing grounds. The potential benefits that vessel owners and operators may derive from participating in a cooperative may not be realized by participants in the limited access fishery, who will not receive an exclusive harvest allocation. Participants in the limited access fishery may have little incentive to coordinate harvest strategies, if they perceive a benefit by competing with other participants in a race for fish. Under such circumstances, they may be inclined to take greater operational risks, fish more aggressively, and remain on the fishing grounds even when sea and weather conditions counsel otherwise.

A minimum groundfish retention standard (GRS) applies to all Amendment 80 vessels fishing in the BSAI. The GRS was recommended by the North Pacific Fishery Management Council (Council) as Amendment 79 to the BSAI FMP in June 2003, published as a final rule in April 2007, and became effective in 2008. As originally

recommended by the Council in April 2003, the GRS applied only to non-AFA trawl catcher/processors equal to or greater than 125 feet length overall (LOA). All Amendment 80 vessels over 125 feet would have been required to comply with the GRS recommended by the Council under Amendment 79. Under the GRS, Amendment 80 vessels are required to retain a minimum amount of all groundfish harvested. The percentage of catch that must be retained was 65 percent in 2008, 75 percent in 2009, increasing to 80 percent in 2010, and fixed at 85 percent in 2011 and all future years.

Amendment 80 modified the GRS as recommended under Amendment 79 in two critical ways. First, the GRS was extended to apply to all non-AFA trawl catcher/processors operating in the BSAI, without an exemption for vessels under 125 feet LOA. Therefore, all Amendment 80 vessels, regardless of size, are required to comply with the GRS. Second, Amendment 80 modified the method of calculating the total retention of catch that applies to cooperatives. Under the GRS as modified by Amendment 80, each vessel participating in the limited access fishery must ensure that it meets the GRS requirements. Vessels participating in a cooperative can aggregate the total catch and total retained catch by all vessels in the cooperative. Therefore, vessels with relatively poorer retention rates may have an incentive to join a cooperative with other vessels that have a better retention rate and are able to offset the lower retention rate of the former vessels. Vessels with better retention rates may choose to participate in a cooperative to ensure an exclusive harvest privilege, or to facilitate exchanges of quota with other members in the cooperative with poorer retention rates. Vessels participating in the limited access fishery may face increasing difficulty meeting the GRS if they cannot coordinate with other vessels. As the GRS increases, vessels with lower retention rates may have greater difficulty meeting the GRS, if they cannot coordinate with other vessels in a cooperative. A review of retention rates by Amendment 80 vessels indicates that smaller vessels, typically those under 144 feet in length overall, have lower retention rates than larger vessels, due to limited freezer space and less sophisticated processing equipment that can improve product yields.

The Amendment 80 fleet is comprised of a maximum of 28 vessels. Table E-1 notes all original qualifying vessels in the Amendment 80 sector and the one replacement vessel currently active (F/V *Ocean Cape*). As part of this analysis, vessel owners have provided detailed information concerning the ownership status of the various vessels and associated QS permits. As noted in Table E-1, not all of the potentially eligible recipients of QS have chosen to apply for QS. One potentially eligible QS permit could be assigned based on the historical catch history of the F/V *Golden Fleece*.

Table E-1 also denotes in italics the original qualifying vessels that are no longer active in the Amendment 80 fleet, due to a loss (i.e., F/V *Alaska Ranger*, F/V *Arctic Sole*, and F/V *Prosperity*), or because they have been reflagged under foreign ownership and are no longer eligible to reenter U.S. fisheries (i.e., F/V *Bering Enterprise*).

Table E-1 also describes those vessels that are considered to be "smaller vessels" for purposes of this analysis. There is not a clear distinction between large and small vessels in the Amendment 80 fleet. The final Environmental Assessment/ Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for Amendment 80 (Amendment 80 Analysis) indicated that vessels of smaller sizes had a lower retention rate than larger vessels. For purposes of this analysis, smaller vessels

refers to vessels less than 144 feet LOA, because the available data suggest that those vessels may have more difficulty achieving GRS requirements relative to larger vessels.

Table E-1: Active Amendment 80 vessels and LLP licenses		
Owner[1]	Amendment 80 Vessel(s) with length overall (LOA) as reported on Federal Fisheries Permit[2]	LLP license currently assigned to vessel and MLOA[2]
Fishing Company of Alaska (FCA), Inc. (Management entity for owner)	Alaska Juris (238 ft)	LLG 2082 (238 ft)
	Alaska Ranger[3] (203 ft)	LLG 2118 (203 ft)
	Alaska Spirit (221 ft)	LLG 3043 (221 ft)
	Alaska Victory (227 ft)	LLG 2080 (227 ft)
	Alaska Voyager (203 ft)	LLG 2084 (228 ft)
	Alaska Warrior (215 ft)	LLG 2083 (215 ft)
United States Seafoods, LLC (Management entity for owners)	**Ocean Alaska**[4] (107 ft)	LLG 4360 (124 ft)
	Alliance (107 ft)	LLG 2905 (124 ft)
	Legacy (132 ft)	LLG 3714 (132 ft)
	Prosperity (138 ft - QS assigned to LLP license derived from vessel LLG 1802)	N/A
	Seafreeze Alaska (295 ft)	LLG 4692 (296 ft)
Iquiqui U.S., LLC	Arica (186 ft)	LLG 2429 (186 ft)
	Cape Horn (158 ft)	LLG 2432 (158 ft)
	Rebecca Irene (140 ft)	LLG 3958 (140 ft)
	Tremont (124 ft)	LLG 2785 (131 ft)
	Unimak (185 ft)	LLG 3957 (185 ft)
O'Hara Corporation	*Bering Enterprise*[5] (183 ft - QS assigned to LLP derived from vessel LLG 3744)	N/A
	Constellation (150 ft)	LLG 1147 (150 ft)
	Defender (124 ft)	LLG 3217 (124 ft)
	Enterprise (120 ft)	LLG 4231 (132 ft)
	Harvester Enterprise (181 ft)	LLG 3744 (183 ft)
Fishermen's Finest (Management Entity for owners)	American No. 1 (160 ft)	LLG 2028 (160 ft)
	US Intrepid (185 ft)	LLG 3662 (185 ft)
Cascade Fishing, Inc. (Management Entity for owners)	Seafisher (230 ft)	LLG 2104 (230 ft)
Ocean Peace	Ocean Peace (219 ft)	LLG 2138 (219 ft)
Jubilee Fisheries	**Vaerdal** (124 ft)	LLG 1402 (124 ft)
Arctic Sole Seafoods	**Ocean Cape** (99 ft QS assigned to LLP derived from originally qualifying vessel ***Arctic Rose***)	LLG 3895 (122 ft)
Golden Fleece	**Golden Fleece** (104 ft)	LLG 2524 (124 ft)

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

own the vessels. In turn, those subsidiary corporations are created to separate ownership and governance structures. In cooperate governance, an elected board of directors monitors the managers.

2 LOA data for a vessel is derived from RAM Federal Fisheries Permit (FFP) license database at http://alaskafisheries.noaa.gov/sustainablefisheries/amds/80/default.htm. Maximum length overall (MLOA) for the LLP licenses is derived from the RAM LLP database (see URL above). Vessel lengths listed in the RAM database may differ from vessel lengths listed in United States Coast Guard Vessel Documentation files.

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

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

5 The *Bering Enterprise* LLP license is currently held by Trident Seafoods, Inc., but will be assigned to O'Hara Corporation in 2010 (Dave Benson, Pers. Comm.). Because this transaction is likely to occur, the QS assigned to the *Bering Enterprise* LLP license is considered to be assigned to the O'Hara Corporation for purposes of this analysis.

At its April 2010 meeting, the Council requested that NMFS report on the status of monitoring, enforcing, and prosecuting the GRS program. In June 2010, NMFS provided the Council a preliminary assessment of the GRS program that raised two key concerns for the Council. First, NMFS had implemented a different methodology for monitoring and enforcing annual retention standards in regulations implementing the GRS than that used in the Amendment 79 analysis to establish the GRS. The regulatory method underestimates retention rates when compared to the method used to calculate historical retention rates. The second concern involved the difficulties of effectively enforcing and prosecuting the GRS for individual vessels, a single cooperative, or multiple cooperatives.

In June 2010, the Council recommended two GRS actions, based on the concerns raised by the NMFS report and public testimony. First, the Council recommended that NMFS initiate an emergency rule to suspend the application of the GRS. Second, the Council recommended that NMFS remove the specific regulatory requirements to meet a GRS. On December 15, 2010, NMFS published an emergency rule exempting Amendment 80 vessels and cooperatives from GRS regulations effective during 2010 and 2011 (75 FR 78172). On June 2, 2011, an extension of this emergency action was published and was effective until December 17, 2011 (76 FR 31881). A proposed rule to remove GRS program from regulation and replace it with an annual groundfish retention reporting requirement should publish in the *Federal Register* in 2012.

The Amendment 80 fleet is also constrained by harvest limits in the GOA, commonly known as sideboards, that limit the catch of pollock, Pacific cod, northern rockfish, Pacific ocean perch, and pelagic shelf rockfish, as well as halibut PSC, based on harvest patterns during 1998 through 2004. Only specific Amendment 80 vessels that met minimum participation thresholds in GOA flatfish fisheries during 1998 through 2004 are allowed to target those species in the GOA. The vessels eligible to target GOA flatfish are listed, by name, in regulation. Specific GOA sideboard restrictions also apply to one vessel, the F/V *Golden Fleece*. That vessel demonstrated more dependence on GOA fisheries during 1998 through 2004, than other Amendment 80 vessels.

NMFS published a proposed rule to implement Amendment 80, on May 30, 2007 (72 FR 30052). The proposed regulations limited participation in the Amendment 80 sector to non-AFA trawl catcher/processors that qualified under the definition of the non-AFA trawl catcher/processor subsector as described in Congress' CRP. The proposed regulations listed the 28 non-AFA trawl catcher/processor vessels that met the criteria laid out in section 219(a)(7). Only listed vessels were permitted to fish in the Amendment 80 sector. Arctic Sole Fisheries, the owner of the F/V *Arctic Rose* (an

originally qualifying Amendment 80 vessel that was lost at sea) submitted comments on the proposed rule specifically addressing the restriction of participation in the Amendment 80 sector to the listed vessels, and the lack of a replacement vessel provision in the regulation. NMFS published a final rule September 14, 2007, that implemented Amendment 80 (72 FR 52668). NMFS maintained that Congress had established the eligibility requirements for participation in the Amendment 80 sector through the CRP and the non-AFA trawl catcher/processor subsector, and that section 219(a)(7) limited participation to the named vessels that met the qualifying criteria. NMFS further explained that it could not provide vessel replacement language in the regulations, because Congress did not authorize such action. After publication of the final rule, Arctic Sole Seafoods challenged the Council's and NMFS' statutory interpretation of section 219(a)(7), contending that the lack of replacement vessel language was arbitrary and capricious.

On May 19, 2008, the U.S. District Court for the Western District of Washington (Court) issued a decision invalidating those regulatory provisions that limit the vessels used in the Amendment 80 Program. In *Arctic Sole Seafoods, Inc. v. Gutierrez*, the district court found the statutory language of the CRP ambiguous as to whether replacement of qualifying vessels with non-qualifying vessels was permissible, and found the agency's interpretation of the statute to be arbitrary and capricious. The Court concluded that the inability to replace qualifying vessels with non-qualifying vessels would ultimately result in the elimination of the sector through attrition, and that Congress had not intended such an outcome in the CRP. The Court ordered that "[t]o the extent that [regulations] restrict access to the BSAI non-pollock groundfish fishery to qualifying vessels without allowing a qualified owner to replace a lost qualifying vessel with a single substitute vessel, the regulations must be set aside...." (Court Order).

The proposed action, herein, would modify the FMP to clarify the conditions under which an Amendment 80 vessel may be replaced consistent with the Court Order. Since the implementation of the Amendment 80 Program in 2008, some Amendment 80 sector participants have expressed concern that the lack of Amendment 80 vessel replacement provisions could impede the ability of relatively smaller Amendment 80 vessels from complying with the GRS. Additionally, Amendment 80 vessel owners may wish to replace smaller vessels with larger vessels to improve safety, to meet international class and load line requirements that would allow a broader range of onboard processing options, or to otherwise improve the economic efficiency of their vessels.

In October 2008, NMFS staff provided the Council with an overview of the Court Order, the necessary amendments to the FMP to implement the Court Order, alternatives to allow vessel replacement, and other aspects of the Amendment 80 Program that may be affected by Amendment 80 vessel replacement (e.g., application of GOA sideboards, assignment of QS permits to replacement vessels). After receiving this overview, the Council recommended that staff initiate an analysis that would amend the FMP consistent with the Court Order. The Council recommended two alternatives for consideration, and requested staff to examine whether the AFA contains provisions that would limit the length, tonnage, or horsepower of Amendment 80 replacement vessels. Amendment 80 vessel owners requested this review to ensure that provisions applicable to AFA vessels would not apply to the Amendment 80 sector.

Purpose and Need and Alternatives

The purpose of the proposed action is to amend the FMP and federal regulations related to the Amendment 80 Program to establish a process for the owners of Amendment 80 vessels to replace eligible trawl catcher/processor vessels. The proposed action is necessary to rectify the currently untenable disagreement among the FMP, implementing regulations, and a recent Court Order. Currently, the FMP and implementing regulations prohibit the replacement of any originally qualifying Amendment 80 vessels unless the vessel is lost at sea; however, NMFS is operating under a Court Order (*Arctic Sole Seafoods, Inc. v. Gutierrez*, Case No. 07-1676MJP; May 19, 2008) that vacated the specific regulatory provisions that preclude vessel replacement, as specified in the October 2008 guidance document.

To guide the development of the alternatives and analysis, the Council adopted this problem statement in February 2010:

Problem Statement

Allowing Amendment 80 vessel owners to replace their vessels, due to actual total loss, constructive total loss, permanent ineligibility to be used in a U.S. fishery, or for other reasons, would allow vessel owners to improve vessel safety, meet international class and load line requirements that would allow a broader range of onboard processing options, or otherwise improve the economic efficiency of their vessels. Allowing smaller vessels to be replaced with larger vessels could improve the ability of vessel owners to comply with the groundfish retention standard (GRS) applicable to all Amendment 80 vessels.

In June 2010, the Council recommended removing the GRS program from regulation. In place of the minimum retention standards, the Council recommended a non-regulatory approach to ensure that the non-AFA trawl catcher/processor sector operating in the BSAI maintain the improvements in retention achieved under the GRS program. If implemented, the regulatory amendment to remove the GRS program would be modified so as to require Amendment 80 cooperatives to annually report their retention performance to the Council. It is important to note that the Council's intent, under the proposed action, is to allow smaller vessels to be replaced with larger vessels to improve the ability of vessel owners to maximize the retention and utilization of groundfish in the Amendment 80 fleet.

The alternatives recommended by the Council in October 2008, and as modified in February 2010 and April 2010 to provide for Amendment 80 vessel replacement are listed below. These alternatives include limitations on the length of replacement vessels, management of specific GOA flatfish sideboards, management of sideboards applicable to the *Golden Fleece*, and the implications of vessel replacement on QS assignments. In the February 2010 initial review analysis, staff noted that general requirements applicable to original qualifying Amendment 80 vessels would apply to any replacement vessel.

Based on the comments provided by the Council's Scientific and Statistical Committee during initial review, staff have proposed clarifying the difference between a

no action alternative (Alternative 1a), under which NMFS would not implement the Court Order, and a status quo option (Alternative 1b), under which NMFS would implement the Court Order, but the Council and NMFS would not modify the FMP or regulations to be consistent with the Court Order. These two alternatives would address concerns that the status quo alternative does not provide an accurate description of the effects of no action. In addition, a clerical correction to Alternative 2 and Alternative 3 would add a missing word and clarify the intent regarding the replacement of a vessel. Likewise, Option 3c refers to the "LOA" of an LLP license. Length limits are established on licenses with an MLOA, not an LOA. These suggested changes are noted in strikeout and bold.

Alternatives under consideration at the time the Council took final action are as follows.

- **Alternative 1a: No Action. Vessels may not be replaced.**
- **Alternative 1b: Status quo. Vessels may be replaced, consistent with the Court Order, without accompanying changes in the FMP or regulations.**
- Alternative 2: The owner of an Amendment 80 vessel may replace that vessel with another vessel only in cases of actual total loss, constructive total loss, or if that vessel becomes permanently ineligible to be used in a U.S. fishery under 46 U.S.C. 14108. Only one replacement vessel may be used at any given time (one-for-one replacement).
- Alternative 3: The owner of an Amendment 80 vessel may replace that vessel with another vessel for any purpose. Only one replacement vessel may be used at any given time, up to a one-for-one replacement.

    - Option 1 (Applicable to Alternatives 2 and 3): Vessel size restrictions.
      (a) A replacement vessel may not have a length overall greater than the original qualifying Amendment 80 vessel it replaces.
      (b) The maximum length overall (MLOA) requirements on LLP licenses assigned to an Amendment 80 vessel would still apply.
      (b) A replacement vessel may have a length overall 10% (or, alternatively, 20%) greater than the original qualifying Amendment 80 vessel it replaces.
      (d) A replacement vessel could not have a LOA 50', 100', or 150' greater than the original qualifying length of the vessel.
      (e) No length restriction on replacement vessels (the MLOA requirements on LLP licenses assigned to an Amendment 80 vessel would not apply).

      Suboption 1: (Applicable to all options); Different vessel size restrictions may be applied to large (>145 feet LOA or >200 feet LOA) and small (<145 feet LOA or <200 feet LOA) vessels.
      Suboption 2: (Applicable to option 1—suboptions b, c, d, or e); 180 foot minimum size restriction.
      Suboption 3: (Applicable only to option 1 e): The replacement vessel cannot be fished in the Amendment 80 limited access sector.
      (f) A replacement vessel cannot exceed an LOA of 295 feet.

- Option 2 (Applicable to Alternatives 2 and 3): GOA flatfish sideboard restrictions. A replacement vessel that replaces an original qualifying Amendment 80 vessel that is allowed to directed flatfish in the GOA:
  (a) would not be allowed to directed fish for flatfish in the GOA.
  (b) would be allowed to directed fish for flatfish in the GOA.
  Suboption: Replaced vessels that are not considered an actual total loss or a constructive total loss would be subject to a flatfish sideboard limit.

- Option 3 (Applicable to Alternatives 2 and 3): *Golden Fleece* sideboard restrictions. A replacement vessel that replaces the *Golden Fleece*:
  (a) would not receive the same exemptions that apply to the *Golden Fleece*.
  (b) would receive the same exemptions that apply to the *Golden Fleece*.
  (c) if the replacement vessel for the *Golden Fleece* is greater than the **M**LOA of the license that was originally assigned to the *Golden Fleece*, then that replacement vessel will be subject to all sideboards that apply to other Amendment 80 vessels, with the catch and PSC of the *Golden Fleece* added to the existing GOA sideboards. If the *Golden Fleece* replacement vessel is less than or equal to the **M**LOA of the license that was originally assigned to the *Golden Fleece*, then the *Golden Fleece* sideboards would be retained.

- Option 4: Allow QS permit to be transferred to a replacement vessel. Allow the owner of an Amendment 80 vessel to choose to assign a QS permit from an original qualifying Amendment 80 vessel to the replacement vessel or to the LLP license derived from the originally qualifying vessel.
  (a) A replacement vessel cannot enter an Amendment 80 fishery without QS being assigned to that vessel.
  (b) Persons holding a QS permit associated with a vessel that is permanently ineligible to re-enter U.S. fisheries, is eligible to replace the vessel associated with its QS permit.

- Option 5: Limit replaced vessels from participating in other fisheries in the GOA and BSAI (Applicable to Alternatives 2 and 3):
  (a) Any vessel replaced under this program would be ineligible to be designated on an FFP or an LLP.
  (b) Sideboard limits of zero for replaced vessels in BSAI and GOA
  Suboption: Replaced vessels may be used to replace other Amendment 80 vessels.

- Requirement under all alternatives: Monitoring and enforcement, permitting, recordkeeping and reporting, prohibitions, and general GOA sideboard measures that apply to original Amendment 80 vessels would continue to apply to all replacement vessels.

The Preferred Alterative

The preferred alternative recommends the criteria NMFS should use to establish a process for Amendment 80 vessel owners to replace Amendment 80 vessels. The Council recommended the following motion as its preferred alternative for this proposed action.

- The owner of an Amendment 80 vessel may replace that vessel with another vessel for any purpose. Only one replacement vessel may be used at any given time, up to a one-for-one replacement.
- **Vessel size restrictions:** A replacement vessel cannot exceed an LOA of 295 feet.
- **GOA flatfish sideboard restrictions:** A replacement vessel that replaces an original qualifying Amendment 80 vessel that is allowed to directed flatfish in the GOA would be allowed to directed fish for flatfish.
- **Sideboard restrictions for a replacement vessel that replaces the Golden Fleece:** If the replacement vessel for the *Golden Fleece* is greater than the MLOA of the license that was originally assigned to the *Golden Fleece*, then that replacement vessel will be subject to all sideboards that apply to other Amendment 80 vessels, with the catch and PSC use of the *Golden Fleece* added to the existing GOA sideboards. If the *Golden Fleece* replacement vessel is less than or equal to the MLOA of the license that was originally assigned to the *Golden Fleece*, then the *Golden Fleece* sideboards would apply.
- **Allow QS permit to be transferred to a replacement vessel:** Allow the owner of an Amendment 80 vessel to assign a QS permit from an original qualifying Amendment 80 vessel to the replacement vessel or to the LLP license derived from the originally qualifying vessel. A replacement vessel cannot enter an Amendment 80 fishery without QS being assigned to that vessel or the associated permit. Persons holding a QS permit associated with a vessel that is permanently ineligible to re-enter U.S. fisheries are eligible to replace the vessel associated with its QS permit.
- **Any vessel replaced under this program may be used to replace other Amendment 80 vessels.** Vessels not assigned to the Amendment 80 fishery would have a sideboard limit of zero in BSAI and GOA groundfish fisheries. Vessels must be classed and load lined or meet the requirements of ACSA[1] to be used to replace other Amendment 80 vessels.
- **U.S. Maritime Administration (MARAD) Provisions:** The Council recommends any Amendment 80 replacement vessel that is greater than 165 feet in registered length, of more than 750 gross registered tons, or that has an engine

[1] USCG Alternative Compliance and Safety Agreement

or engines capable of producing a total of more than 3,000 shaft horsepower be authorized for use in the EEZ under the jurisdiction of the North Pacific Fishery Management Council. This recommendation is intended to clarify that any Amendment 80 replacement vessel is eligible to receive a certificate of documentation consistent with 46 U.S.C. 12113 and MARAD regulations at 46 CFR 356.47.

- **Management Applicable to Replacement Vessels**: Monitoring and enforcement, permitting, recordkeeping and reporting, prohibitions, and general GOA sideboard measures that apply to original Amendment 80 vessels would continue to apply to all replacement vessels.

The Council considered but did not select Alternative 1a as the preferred alternative. Under Alternative 1a, NMFS would have taken no action to implement the Court Order. Under this alternative, vessels could not be replaced. This alternative would violate the specific ruling of the Court and would be inconsistent with NMFS' previous guidance to industry representatives stating that vessel replacement is permissible. This alternative is not viable, and is provided only to provide contrast for purposes of the analysis.

Also considered but not selected was Alternative 1b. Under Alternative 1b, the BSAI FMP and regulations would continue to be inconsistent with the Court Order. Vessels could be replaced under the guidance NMFS provided the industry in October 2008. Specifically, NMFS would implement the Court Order by allowing vessels to be replaced, if they suffered an actual total loss, constructive total loss, or if that vessel became permanently ineligible to be used in a U.S. fishery under 46 U.S.C. 14108. Consistent with the Court Order, NMFS would allow an Amendment 80 vessel to be replaced by only one vessel at a time. NMFS would not limit vessel length, allow replacement vessels to target GOA flatfish unless otherwise qualified, or apply specific sideboards applicable to the *Golden Fleece* to its replacement. Existing MLOA requirements under the LLP would continue to apply.

A third alternative was considered by the Council but not selected. Alternative 2 would have amended the FMP and accompanying regulations to meet the minimum requirements established under the Court Order. Had the Council selected Alternative 2, Amendment 80 vessels could be replaced only due to loss or permanent ineligibility.

Alternative 3 was selected as the preferred alternative. If approved by the Secretary of Commerce, Alternative 3 would amend the FMP and accompanying regulations to meet the requirements established under the Court Order, but allow vessels to be replaced for any reason (i.e., to improve safety or to improve operational efficiency, as well as to replace a lost or permanently ineligible vessel).

Option 1 provided the Council with several choices on whether to restrict vessel length under Alternatives 2 and 3. In the past, the Council has used vessel length restrictions as a means to control fishery effort. The most restrictive option (Option 1a) would have limited all future replacement vessels to the recorded length of the original qualifying Amendment 80 vessel it is replacing. Option 1b would not constrain the size of replacement vessels specifically, but the existing MLOA requirements on LLP licenses would continue to apply. Option 1c would have allowed vessels to be replaced with

vessels 10 percent to 20 percent greater than the LOA of the original qualifying vessel. Option 1d would have limited vessels to a fixed increment above the LOA of the original qualifying vessel. Option 1e would have removed MLOA requirements on LLP licenses used on Amendment 80 vessels, effectively allowing vessels to be replaced without limit on length. The Council could also have chosen two suboptions that would apply different restrictions on smaller vessels (either at 145' or 200' LOA), or allow vessels to rebuild up to a minimum size of 180' LOA.

Option 1f is part of the preferred alternative. If implemented this option would limit the maximum size of replacement vessels to 295' LOA. The Council selected this option to allow all vessels in the fleet to reach the same LOA and to promote an equal standard to all vessels LOA.

Option 2 provided the Council a choice to allow, or disallow, GOA flatfish directed fishing on vessels replacing one of the 11 Amendment 80 vessels authorized to directed fish for GOA flatfish. The Council chose to allow GOA flatfish directed fishing on vessels replacing one of the 11 Amendment 80 vessels authorized to directed fish for GOA flatfish. The Council could have chosen a suboption that would subject these replacement vessels to a sideboard limit on the amount of flatfish that may be harvested, but declined to do so under Amendment 97.

Option 3 was included as part of the preferred alternative. This option provided the Council with the choice to extend, or not extend, specific GOA sideboards and monitoring and enforcement provisions to the replacement vessel of the *Golden Fleece*. One suboption would apply GOA sideboards to the replacement vessel depending on its LOA. Currently, the *Golden Fleece* is (1) prohibited from directed fishing for GOA pollock, Pacific cod, or rockfish; (2) not subject to GOA halibut PSC sideboard limits; and (3) not subject to increased observer coverage applicable to all other Amendment 80 vessels operating in the GOA (e.g., *Golden Fleece* is subject to 30% observer coverage, not 100%).

Option 4 was selected as part of the preferred alternative. This option provided the Council with the choice to allow a vessel owner to assign QS issued to an original qualifying Amendment 80 vessel to either the new replacement vessel or the LLP license originally derived from the originally qualifying vessel. Currently, vessel owners must assign QS to the LLP license, if a vessel is lost or becomes permanently ineligible. Option 4 was selected as part of the preferred alternative. Under this option the owner of an Amendment 80 vessel could assign a QS permit from an originally qualifying Amendment 80 vessel to any replacement vessel, including a vessel currently assigned QS, for any reason. Option 4a, was selected as part of the preferred alternative and would require that QS be assigned to a replacement vessel. Option 4b was selected as part of the preferred alternative. This option allows the holder of QS originally assigned to a vessel that is permanently ineligible to reenter U.S. fisheries, to be eligible to replace that vessel.

Option 5 was selected as part of the preferred alternative. This option provided the Council with several suboptions to effectively limit vessels from fishing in either the BSAI or GOA fisheries, but would not limit vessel participation in other regions of the United States. Option 5a was not selected as part of the preferred alternative. This option would have prohibited a replaced vessel from being eligible to receive an FFP or LLP. Option 5b and a suboption to allow replaced Amendment 80 vessels to be used as

replacement vessels for other Amendment 80 vessels were included in the preferred alternative. This option requires catch limits, known as Amendment 80 sideboard limits, for replaced vessels to be set at zero metric tons.

Potential Effects of the Alternatives

Effects of the alternatives on fishing patterns

Under all of the alternatives, except Alternative 1a, Amendment 80 vessels could be replaced. None of the alternatives would be anticipated to affect overall fishing patterns in the foreseeable future, given the anticipated slow pace of vessel replacement, the quota-based allocations in the BSAI, and GOA sideboards applicable to the Amendment 80 fleet. Given the high costs for vessel replacement, this analysis assumes that vessel operators would be replacing vessels to minimize costs and maximize return, based primarily on existing fishing allocations in the BSAI Amendment 80 sector, and not in an effort to expand harvest in other smaller non-Amendment 80 fisheries. Alternative 3 would provide the greatest flexibility to vessel owners, and minimize the potential gap between removal of a vessel and operation of its replacement. Under Alternative 3, the replaced vessels could become active in other non-Amendment 80 fisheries, probably GOA fisheries or the BSAI trawl limited access fishery, unless specifically restricted.

It is likely that replacement vessels would be newly constructed vessels and have improved hold capacity, fuel efficiency, and harvest capacity, relative to existing similarly sized vessels in the Amendment 80 fleet. Under Option 1e, vessel operators would have the greatest flexibility to replace vessels to incorporate additional processing equipment and hold capacity that could improve overall groundfish retention and increase the potential suite of product forms that can be produced. Options 1a through 1d would limit the potential length of replacement vessels and could constrain some vessel owners, particularly owners of smaller single vessels, who may wish to expand the overall retention rates and product forms of their fishing operations. Options 1a through 1e would not be expected to result in an increased incentive for Amendment 80 vessel operators to race for fish. The analysis notes that the Amendment 80 fleet appears to be engaged in increased competition in the Western GOA rockfish fisheries. Vessel length restrictions would not be expected to have a substantial impact on the harvest rate in this fishery. Restrictive vessel length limits may reduce the potential use of fillet, surimi, or fish meal products.

Larger vessels operating in the BSAI, specifically AFA catcher/processors, are correlated with a lower fatality rate. AFA catcher/processors are equipped with improved safety features relative to the Amendment 80 sector.

Option 2a would ultimately result in the inability of Amendment 80 vessels to directed fish for flatfish in the GOA. Unless other vessels increased efforts in fisheries historically prosecuted by these vessels, these flatfish fisheries would be harvested at a lower proportion than currently. Option 2b would allow replacement vessels to continue to directed fish for GOA flatfish, but would not be expected to result in substantially greater harvests, because Amendment 80 vessels are constrained by GOA sideboards. Currently, the Amendment 80 fleet has coordinated management of halibut PSC in the GOA to reduce mortality rates. This arrangement is expected to continue under either

Option 2a or 2b. The suboption to limit flatfish harvests could constrain harvests more strictly than the halibut PSC limits, although it would preclude the ability of Amendment 80 vessels to expand harvests of a number of flatfish species that are not fully utilized.

Option 3a would apply specific sideboard measures to the replacement vessel for the *Golden Fleece*. Most importantly, this replacement vessel would be exempt from halibut PSC sideboard limits in the GOA. Conceivably, this lack of constraint could adversely affect other non-Amendment 80 participants in other flatfish fisheries who would be competing with the *Golden Fleece* replacement vessel for the seasonal PSC apportionment. A substantially larger replacement vessel for the *Golden Fleece* that is subject to the same monitoring and enforcement measures now applied to the *Golden Fleece* would have lower monitoring and enforcement costs relative to other similarly situated vessels operating in the GOA. Option 3b would apply existing GOA sideboard limitations, including halibut PSC limits to the *Golden Fleece* replacement vessel. This option could reduce potential risks that a *Golden Fleece* replacement vessel would adversely affect other non-Amendment 80 fishery participants. Option 3c would apply existing sideboard provisions to the replacement vessel for the *Golden Fleece,* if the LOA of the replacement vessel is under the MLOA of the LLP license originally assigned to the *Golden Fleece*. If the LOA of the replacement vessel exceeded the MLOA of the original LLP license, then the replacement vessel would be subject to sideboard measures applicable to the Amendment 80 sector. NMFS would adjust the Amendment 80 sector GOA sideboards to incorporate the catch history of the *Golden Fleece* into the GOA sideboards, if the replacement vessel is greater than the MLOA of the LLP license originally assigned to the *Golden Fleece.*

Option 4 would not affect fishing operations, because it affects only the assignment of a QS permit and the eligibility to replace a vessel, not the characteristics of replacement vessels or fishing practices onboard those vessels. Option 4a would not be expected to affect the ability of owners to replace vessels and would limit the potential entry of a vessel in the Amendment 80 limited access fishery that could exacerbate a race for fish. Option 4b would provide a limited mechanism for replacement of a vessel that is no longer able to enter U.S. fisheries due to foreign ownership.

Overall, vessel replacement would be expected to result in the replacement of smaller vessels with larger vessels that can accommodate additional hold and processing capacity. Vessel owners may choose to replace multiple vessels with a single larger vessel that can more efficiently harvest the allocations assigned under cooperative management. Under Option 4, the owner of an Amendment 80 vessel could assign a QS permit from an originally qualifying Amendment 80 vessel to any replacement vessel, including a vessel currently assigned QS, for any reason. This consolidation would not be expected to result in reduced harvests overall. Similarly, however less likely, the owner of an Amendment 80 vessel could assign a QS permit to a smaller less efficient replacement vessel. It is important to note that this amendment would facilitate the ability of vessel owners to make decisions to consolidate harvesting capacity, but would not mandate it.

Potential effects on net benefits to the Nation

Overall, this action is likely to have a limited effect on net benefits realized by the Nation. Alternative 1a would result in the extinguishment of all Amendment 80 vessels.

This would reduce net benefits to the Nation, unless the TAC allotted to the Amendment 80 sector could be harvested by non-Amendment 80 vessels. Under Alternatives 1b, 2, and 3, vessels can be replaced. Alternatives 2 and 3 provide a clear regulatory framework to replace vessels, and are more likely to result in vessel replacement than Alternative 1b. Generally, Alternatives 2 and 3 would be expected to encourage vessel replacement and, therefore, may encourage fishing practices that are more likely to result in fully harvesting the TAC assigned to the Amendment 80 sector. To the extent that vessel replacement allows harvesters additional time to focus on improving product quality, recovery, and forms, there may be some consumer benefits realized by the proposed action. Conceivably, the proposed alternatives may increase the economic efficiency of a harvester by allowing the use of more efficient vessels or the consolidation of fishing operations on multiple vessels on a single vessel. Option 1e would provide vessel owners with the greatest flexibility to realize these benefits. Alternative 3 would allow vessel owners to replace vessels before a loss occurs. This alternative would reduce the potential costs associated with foregone harvests and allow financial preparation for the investment, more considered review of alternative design and construction options, and optimization of delivery schedules. The lack of any quantitative data makes it difficult to rigorously assess the relative differences in net benefits among the alternatives.

Potential effects on management, enforcement, and safety

Overall, none of the alternatives or options would be expected to increase management costs. If vessel operators have greater flexibility to replace vessels as needed, with the desired size (e.g., Alternative 3, Option 1e), the total number of active vessels may decrease. This could result in reduced management costs associated with monitoring a larger number of vessels, debriefing additional observers, and inspecting scales and observer sampling stations required on vessels. If smaller vessels are replaced with larger vessels, groundfish retention might be expected to increase, potentially reducing the risk of enforcement actions against a cooperative or vessel operator. Option 1e would provide the greatest flexibility to increase vessel size. Other options to limit vessel length could provide adequate opportunity for a vessel owner to improve the range of products and incorporate improved safety design features. The size of vessels that can incorporate these features will vary, depending on specifics of vessel construction, but data from marine architects and operations in the AFA catcher/processor fleet suggest that vessels ranging from 220' to 270' LOA would be likely to meet these design requirements. Longer vessels (e.g., 270' LOA vessels) would probably more easily accommodate these safety features.

United States Coast Guard personnel have noted that newly constructed vessels are generally safer than older vessels. Alternative 3 would provide vessel owners with the greatest flexibility to replace a vessel. The ability to seamlessly replace a vessel, before it is lost, could encourage more rapid vessel replacement. Generally, larger vessels are safer than smaller vessels in most sea conditions. Option 1e would provide vessel operators with the greatest flexibility to increase the length of replacement vessels. Limitations on the potential use of replaced vessels, under Options 5a and 5b, could reduce the potential adverse effects of new capacity entering other fisheries not currently managed under a LAPP, or catch share program.

NMFS does not have specific data that can quantify the potential changes in the number of vessels that may be replaced, the vessels that would leave the fishery, the timing of vessel replacement, the overall impact on monitoring and enforcement costs, or the potential improvements in fishery casualties that may result from vessel replacement.

Potential effects on fishing crew and communities

Vessel owners may choose to replace vessels or to consolidate fishing operations from multiple vessels on a single, more efficient platform. Currently, vessel owners must assign QS to the LLP license, if a vessel is lost or becomes permanently ineligible. Under Option 4, the owner of an Amendment 80 vessel could assign a QS permit from an originally qualifying Amendment 80 vessel to any replacement vessel, including a vessel currently assigned QS, for any reason. If vessel operators consolidate fishing operations from multiple vessels on a single vessel, total crew employment would be expected to decrease. It is important to note that the Council's intent, under Amendment 97, is to allow smaller vessels to be replaced with larger vessels to improve the ability of vessel owners to maximize the retention and utilization of groundfish in the Amendment 80 fleet. However unlikely it may presently seem, the owner of an Amendment 80 vessel could assign a QS permit to a smaller (potentially) less efficient replacement vessel, which may require fewer crew members.

In both cases, decreased employment could be offset by the increased fishing time of the replacement vessel or the incorporation of new processing and fishing practices of the remaining vessels that could require additional crew. NMFS has no information to suggest that payment to crew would differ on replacement vessels relative to existing vessel operations. Potentially, if vessels are harvesting more fish and processed product forms increase gross revenue, some of that additional revenue could be received by crew, if a vessel is operating under a revenue sharing arrangement. NMFS has no quantitative information to suggest that the alternatives differ with respect to effects on fishing communities. It is not clear that the alternatives would result in changes in the total amount and time vessels spend in port, the amount of provisions purchased, or other factors that may affect communities.

Potential Effects on Marine Resources

No significant impacts are anticipated under this proposed action. As described in more detail in Section 3.4 of the Environmental Assessment for this action no direct or indirect effects are anticipated to occur with any of the alternatives analyzed including the preferred alternative as none of the alternatives would change fishing practices. Amendment 80 vessel replacement would not be likely to increase the amount of the status quo level of fishing that has been previously analyzed by NMFS and determined to have no significant adverse impacts on fish species, marine mammals, seabirds, habitat, or ecosystem relationships. Amendment 80 vessels would continue to be constrained by the TAC and specific management measures within the Amendment 80 sector that limit the overall harvest of TAC and use of PSC. As a result, there are no significant adverse impacts expected under the preferred alternative.

1 INTRODUCTION

The groundfish fisheries in the Exclusive Economic Zone off Alaska are managed by the National Marine Fisheries Service under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Under the authority of the MSA, the North Pacific Fishery Management Council developed fishery management plans for the groundfish fisheries of the Gulf of Alaska management area and Bering Sea and Aleutian Islands management area. The proposed action represents Amendment 97 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), as well as changes to federal regulations.

This Regulatory Impact Review (RIR) evaluates the costs and benefits of the proposed action to modify criteria that allow owners of non-AFA trawl catcher/processors, commonly known as Amendment 80 vessels, to replace those vessels.

Presidential Executive Order 12866, the National Environmental Policy Act, and the Regulatory Flexibility Act mandate that certain issues be examined before a final decision is made. The RIR and environmental assessment are contained in Chapters 2.0 and 3.0, respectively. Chapter 4.0 provides an Initial Regulatory Flexibility Analysis. Chapter 5.0 includes a description of how the proposed action is consistent with the MSA. References and lists of preparers and persons consulted are provided in Chapters 6.0, 7.0, and 8.0, respectively.

2 REGULATORY IMPACT REVIEW

An RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735; October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

> *"In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach."*

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant." A "significant regulatory action" is one that is likely to:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

2.1 Purpose and Need

The purpose of the proposed action is to amend the FMP and federal regulations related to the Amendment 80 Program to establish a process for the owners of Amendment 80 vessels to replace eligible trawl C/P vessels. The proposed action is necessary to rectify the currently untenable disagreement among the FMP, implementing regulations, and a recent Court Order. Currently, the FMP and implementing regulations prohibit the replacement of any originally qualifying Amendment 80 vessels; however, the National Marine Fisheries Service (NMFS) is operating under a Court Order (*Arctic Sole Seafoods, Inc. v. Gutierrez*, Case No. 07-1676MJP; May 19, 2008) that vacated the specific regulatory provisions that preclude vessel replacement, as specified in the October 2008 guidance document (see section 2.4.3).

The October 2008 guidance document notes that specific issues were addressed by the Court Order and others can be inferred. The Court Order clearly provides that the owner of an originally qualifying Amendment 80 vessel may "replace a lost qualifying vessel with a single substitute vessel." NMFS inferred that the Court Order (1) allows a

vessel to be replaced due to its ineligibility to receive a fishery endorsement, as well as for actual total loss, and constructive total loss; (2) allows vessels replacing originally qualifying Amendment 80 vessels to be replaced (i.e., replacement of replacement vessels is allowed); (3) does not limit the size of replacement vessels; (4) does not remove existing MLOA limitations on LLP licenses assigned to Amendment 80 vessels; (5) allows NMFS to continue to apply existing GOA sideboard limits to any replacement vessel; (6) does not allow NMFS to permit vessels replacing Amendment 80 GOA flatfish eligible vessels to continue to directed fish for GOA flatfish; and (7) does not allow a vessel replacing the *Golden Fleece* to receive the same sideboard exemptions and prohibitions extended to the original vessel. Although NMFS has provided a clear rationale for inferring these limitations and conditions, there is no regulatory mechanism that specifically addresses them. The lack of regulations addressing this guidance undermines the enforcement of these provisions.

Not taking action to address these deficiencies would also fail to meet the National Transportation Safety Board's (NTSB's) specific recommendations issued following the sinking of the *Alaska Ranger* (see Appendix B). The NTSB recommended clear regulatory provisions that allow vessel replacement for reasons other than loss. U.S. Coast Guard personnel share this perspective.

The proposed action and alternatives would provide a clear regulatory framework that vessel operators are likely to need to replace vessels. Vessel owners have indicated that the lack of a regulatory framework severely compromises the willingness of owners to invest in new vessels. Newer vessels are likely to incorporate safer designs and more advanced safety measures. Newer vessels are likely to be designed to meet international class and load line requirements that would allow vessel operators to retain more products than they can currently under the ACSA, thereby improving their retention rate and increasing the ability of vessel owners (and any cooperatives to which those vessels are assigned) to meet the GRS and increase groundfish retention rates. Vessels with higher groundfish retention rates are likely more desirable as cooperative members. Those vessel owners are more likely to receive the benefits of the exclusive harvest privilege provided by a cooperative management.

In the absence of action, owners of Amendment 80 trawl C/Ps are unlikely to replace vessels as needed to improve the safety or operational efficiency of existing vessels. Because the loss of a vessel is a sudden and unanticipated event, vessel owners are unlikely to be able to quickly replace a vessel. Vessel owners may face a multi-year gap between the loss of a vessel and the activation of its replacement, particularly if the replacement vessel must be built first. A lengthy gap could severely undermine the financial solvency of a company, particularly companies owning only a single vessel.

To guide the development of the alternatives and the analysis, the North Pacific Fishery Management Council (Council) adopted this problem statement in February 2010:

> Allowing Amendment 80 vessel owners to replace their vessels, due to actual total loss, constructive total loss, permanently ineligibility to be used in a U.S. fishery, or for other reasons, would allow vessel owners to improve vessel safety, meet international class and load line requirements that would allow a broader range of onboard processing options, or otherwise improve the economic efficiency of their vessels. Allowing smaller vessels to be replaced with larger vessels could improve the ability of vessel owners to

comply with the groundfish retention standard (GRS) applicable to all Amendment 80 vessels.

2.2 Proposed Alternatives

The alternatives recommended by the Council in October 2008, and as modified in February 2010 and April 2010, are listed below. These alternatives include limitations on the length of replacement vessels, management of specific GOA flatfish sideboards, management of sideboards applicable to the *Golden Fleece*, and the implications of vessel replacement on QS assignments. In the February 2010, initial review analysis, staff noted that general requirements applicable to original qualifying Amendment 80 vessels would apply to any replacement vessel.

Based on the comments provided by the Council's Scientific and Statistical Committee during initial review, staff have proposed clarifying the difference between a no action alternative (Alternative 1a) under which NMFS would not implement the Court Order, and a status quo option (Alternative 1b) under which NMFS would implement the Court Order, but the Council and NMFS would not modify the FMP or implement regulations to be consistent with the Court Order. These two alternatives would address concerns that the status quo alternative does not provide an accurate description of the effects of no action. In addition, a clerical correction is made in Option 3c. Option 3c refers to the "LOA" of an LLP license. Length limits are established on licenses with an MLOA, not an LOA. These two suggested changes are noted in bold.

At the time of final action, the Council will need to specify how each of the options would apply to each of the alternatives.

- **Alternative 1a: No Action. Vessels may not be replaced.**
- **Alternative 1b: Status quo. Vessels may be replaced consistent with the Court Order, without accompanying changes in the FMP or regulations**
- Alternative 2: The owner of an Amendment 80 vessel may replace that vessel with another vessel only in cases of actual total loss, constructive total loss, or if that vessel is permanently ineligible to be used in a U.S. fishery under 46 U.S.C. 14108. Only one replacement vessel may be used at a given time (one-for-one replacement).
- Alternative 3: The owner of an Amendment 80 vessel may replace that vessel with another vessel for any purpose. Only one replacement vessel may be used at **a given** time, up to a one-for-one replacement.

    - Option 1 (Applicable to Alternatives 2 and 3): Vessel size restrictions.

    (a) A replacement vessel may not have a length overall greater than the original qualifying Amendment 80 vessel it replaces.

    (b) A replacement vessel may have a length overall 10% or 20% greater than the original qualifying Amendment 80 vessel it replaces.

    (c) The maximum length overall (MLOA) requirements on LLP licenses assigned to an Amendment 80 vessel would still apply.

    (d) A replacement vessel could not have an LOA 50', 100', or 150' greater than the original qualifying length of the vessel.

(e) No length restriction on replacement vessels (the MLOA requirements on LLP licenses assigned to an Amendment 80 vessel would not apply).

Suboption 1: (Applicable to all options); Different vessel size restrictions may be applied to large (>145 feet LOA or 200 feet LOA) and small (<145 feet LOA or 200 feet LOA) vessels.

Suboption 2: (Applicable to options b, c, d, or e); 180 foot minimum size restriction.

Suboption 3: (Applicable to option e): The replacement vessel cannot be fished in the Amendment 80 limited access sector.

(f) A replacement vessel cannot exceed an LOA of 295 feet.

- Option 2 (Applicable to Alternatives 2 and 3): GOA flatfish sideboard restrictions. A replacement vessel that replaces an original qualifying Amendment 80 vessel that is allowed to directed flatfish in the GOA:

(a) would not be allowed to directed fish for flatfish.

(b) would be allowed to directed fish for flatfish.

Suboption: Replaced vessels that are not considered an actual total loss or a constructive total loss would be subject to a flatfish sideboard limit.

- Option 3 (Applicable to Alternatives 2 and 3): *Golden Fleece* sideboard restrictions. A replacement vessel that replaces the *Golden Fleece*:

(a) would not receive the same exemptions that apply to the *Golden Fleece*.

(b) would receive the same exemptions that apply to the *Golden Fleece*.

(c) if the replacement vessel for the *Golden Fleece* is greater than the **M**LOA of the license that was originally assigned to the *Golden Fleece*, then that replacement vessel will be subject to all sideboards that apply to other Amendment 80 vessels, with the catch and PSC of the *Golden Fleece* added to the existing GOA sideboards. If the *Golden Fleece* replacement vessel is less than or equal to the **M**LOA of the license that was originally assigned to the *Golden Fleece*, then the *Golden Fleece* sideboards would apply.

- Option 4: Allow QS permit to be transferred to a replacement vessel. Allow the owner of an Amendment 80 Vessel to choose to assign a QS permit from an original qualifying Amendment 80 vessel to the replacement vessel or to the LLP license derived from the originally qualifying vessel.

(a) A replacement vessel cannot enter an Amendment 80 fishery without QS being assigned to that vessel.

(b) Persons holding a QS permit associated with a vessel that is permanently ineligible to re-enter U.S. fisheries is eligible to replace the vessel associated with its QS permit.

- Option 5: Limit replaced vessels from participating in other fisheries in the GOA and BSAI(Applicable to Alternatives 2 and 3):

(a) Any vessel replaced under this program would be ineligible to be designated on an FFP or an LLP.

(b) Sideboard limits of zero for replaced vessels in BSAI and GOA

Suboption: Replaced vessels may be used to replace other Amendment 80 vessels.

Requirement under all alternatives: Monitoring and enforcement, permitting, recordkeeping and reporting, prohibitions, and general GOA sideboard measures that apply to original Amendment 80 vessels would continue to apply to all replacement vessels.

Under Alternative 1a, NMFS would take no action to implement the Court Order. Under this alternative, Amendment 80 vessels could not be replaced. This alternative would violate the specific ruling of the Court and would be inconsistent with NMFS' previous guidance to industry representatives stating that vessel replacement is permissible. This alternative is not viable, and is included only to provide contrast for purposes of the analysis.

Under Alternative 1b, the FMP and regulations would continue to be inconsistent with the Court Order. Vessels could be replaced under the guidance NMFS provided the industry in October 2008. Specifically, NMFS would implement the Court Order by allowing vessels to be replaced, if they suffered an actual total loss, constructive total loss, or if that vessel became permanently ineligible to be used in a U.S. fishery, under 46 U.S.C. 14108. Consistent with the Court Order, NMFS would allow an Amendment 80 vessel to be replaced by only one other vessel at a time. NMFS would not limit vessel length, allow replacement vessels to target GOA flatfish, unless otherwise qualified, or apply specific sideboards applicable to the *Golden Fleece* to its replacement. Existing MLOA requirements under the LLP would continue to apply.

Alternative 2 would amend the FMP and accompanying regulations to meet the minimum requirements established under the Court Order. Vessels could be replaced only due to loss or permanent ineligibility.

Alternative 3 was selected as the preferred alternative. If approved Amendment 97 would amend the FMP and accompanying regulations to meet the requirements established under the Court Order, but allow vessels to be replaced for any reason (i.e., to improve safety or to improve operational efficiency, as well as to replace a lost or permanently ineligible vessel).

Option 1 would provide the Council with several choices on whether to restrict vessel length under Alternatives 2 and 3. In the past, the Council has used vessel length restrictions as a means to control fishery effort. The most restrictive option (Option 1a) would limit all future replacement vessels to the recorded length of the original qualifying Amendment 80 vessel it is replacing. Option 1b would not constrain the size of replacement vessels specifically, but the existing MLOA requirements on LLP licenses would continue to apply. Option 1c would allow vessels to be replaced with vessels 10 percent to 20 percent greater LOA than that of the original qualifying vessel. Option 1d would limit vessels to a fixed increment above the LOA of the original qualifying vessel. Option 1e would remove MLOA requirements on LLP licenses used on Amendment 80 vessels, effectively allowing vessels to be replaced without limit on length. The Council

could have chosen two suboptions that would apply different restrictions on smaller vessels (either at 145' or 200' LOA), or allow vessels to be rebuilt up to a minimum size of 180' LOA.

Option 2 provided the Council a choice to allow, or disallow, GOA flatfish directed fishing on vessels replacing one of the 11 Amendment 80 vessels authorized to directed fish for GOA flatfish. The Council chose to allow GOA flatfish directed fishing on vessels replacing one of the 11 Amendment 80 vessels authorized to directed fish for GOA flatfish. The Council could have chosen a suboption that would subject these replacement vessels to a sideboard limit on the amount of flatfish that may be harvested, but declined to do so under Amendment 97.

Option 3 would provide the Council a choice to extend, or not extend, specific GOA sideboards and monitoring and enforcement provisions to the replacement vessel of the *Golden Fleece*. One option would apply GOA sideboards to the replacement vessel, depending on its LOA. Currently, the *Golden Fleece* is (1) prohibited from directed fishing for GOA pollock, Pacific cod, or rockfish; (2) not subject to GOA halibut PSC sideboard limits; and (3) not subject to increased observer coverage, applicable to all other Amendment 80 vessels operating in the GOA (e.g., *Golden Fleece* is subject to 30% observer coverage, not 100%).

Option 4 would allow the Council to choose to allow a vessel owner to assign QS issued to an original qualifying Amendment 80 vessel to either the new replacement vessel or the LLP license originally derived from that replaced vessel. Currently, vessel owners must assign QS to the LLP license, if a vessel is lost or becomes permanently ineligible. Option 4 is intended to allow smaller vessels to be replaced with larger vessels to improve the ability of vessel owners to maximize the retention and utilization of groundfish in the Amendment 80 fleet. The Council recommended Option 4 as part of the preferred alternative. If Amendment 97 is approved, the owner of an Amendment 80 vessel could assign a QS permit from an originally qualifying Amendment 80 vessel to any replacement vessel, including a vessel currently assigned QS, for any reason. Option 4a would require that QS be assigned to a replacement vessel. Option 4b would allow the holder of QS originally assigned to a vessel that is permanently ineligible to reenter U.S. fisheries to be eligible to replace that vessel.

Option 5a would prohibit a replaced vessel from being eligible to receive an FFP or LLP. Option 5b would set sideboard limits for replaced vessels at zero. Options 5a and 5b would effectively limit vessels from fishing in either the BSAI or GOA fisheries, but would not limit vessel participation in other regions of the United States. A suboption of Option 5 would allow any vessel replaced under this program to be used to replace other Amendment 80 vessels; however, any replacement vessel must be classed and load lined or meet the requirement of ACSA, including replaced vessels.

2.3 Preferred Alternative

This section describes the Council's preferred alternative. The preferred alternative recommends the criteria NMFS should use to establish a process for Amendment 80 vessel owners to replace Amendment 80 vessels.

Preferred Alternative: The owner of an Amendment 80 vessel may replace that vessel with another vessel for any purpose. Only one replacement vessel may be used at any given time, up to a one-for-one replacement.

Vessel size restrictions: A replacement vessel cannot exceed an LOA of 295 feet.

GOA flatfish sideboard restrictions: A replacement vessel that replaces an original qualifying Amendment 80 vessel that is allowed to directed flatfish in the GOA would be allowed to directed fish for flatfish.

Sideboard restrictions for a replacement vessel that replaces the Golden Fleece: If the replacement vessel for the *Golden Fleece* is greater than the MLOA of the license that was originally assigned to *the Golden Fleece*, then that replacement vessel will be subject to all sideboards that apply to other Amendment 80 vessels, with the catch and PSC use of the *Golden Fleece* added to the existing GOA sideboards. If the *Golden Fleece* replacement vessel is less than or equal to the MLOA of the license that was originally assigned to the *Golden Fleece*, then the *Golden Fleece* sideboards would apply.

Allow QS permit to be transferred to a replacement vessel: Allow the owner of an Amendment 80 vessel to assign a QS permit from an original qualifying Amendment 80 vessel to the replacement vessel or to the LLP license derived from the originally qualifying vessel. A replacement vessel cannot enter an Amendment 80 fishery without QS being assigned to that vessel or the associated permit. Persons holding a QS permit associated with a vessel that is permanently ineligible to re-enter US fisheries is eligible to replace the vessel associated with its QS permit.

Any vessel replaced under this program may be used to replace other Amendment 80 vessels. Vessels not assigned to the Amendment 80 fishery would have a sideboard limit of zero in BSAI and GOA groundfish fisheries. Vessels must be classed and load lined or meet the requirements of ACSA to be used to replace other Amendment 80 vessels.

U.S. Maritime Administration (MARAD) Provisions: MARAD The Council recommends any Amendment 80 replacement vessel that is greater than 165 feet in registered length, of more than 750 gross registered tons, or that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower be authorized for use in the Exclusive Economic Zone (EEZ) under the jurisdiction of the North Pacific Fishery Management Council. This recommendation is intended to clarify that any Amendment 80 replacement vessel is eligible to receive a certificate of documentation consistent with 46 U.S.C. 12113 and MARAD regulations at 46 CFR 356.47.

Management Applicable to Replacement Vessels: Monitoring and enforcement, permitting, recordkeeping and reporting, prohibitions, and general GOA sideboard measures that apply to original Amendment 80 vessels would continue to apply to all replacement vessels.

2.4 Background

2.4.1 Summary of Amendment 80

The Council began its development of Amendment 80 at its October 2002 meeting. During the years leading up to the Council's final recommendation in June 2006, the Council considered a range of alternatives and options for various aspects of the Amendment 80 Program, such as which non-pollock groundfish species should be allocated to non-AFA trawl catcher/processors that have been historically active in these fisheries, how bycatch and PSC reduction measures would be implemented, and eligibility to participate as a non-AFA trawl catcher/processor. The Council considered a range of criteria that could be used to define a specific set of vessels that would be qualified to participate in the non-AFA trawl catcher/processor subsector and that would be eligible to generate QS; or alternatively, defined specific LLP licenses that could be used on a non-AFA trawl catcher/processor vessel, provided that the catch history assigned to an LLP license met minimum landing thresholds.

The Amendment 80 Program allocates several BSAI non-pollock trawl groundfish species among trawl fishery sectors and facilitates the formation of harvesting cooperatives in the non-AFA trawl catcher/processor sector. The Amendment 80 Program was designed to meet the broad goals of (1) improving retention and utilization of fishery resources by the non-AFA trawl catcher/processor fleet by extending the GRS to all non-AFA trawl catcher/processor vessels; (2) allocating fishery resources among BSAI trawl harvesters in consideration of historical and present harvest patterns and future harvest needs; (3) establishing a LAPP for the non-AFA trawl catcher/processors and authorizing the allocation of groundfish species to harvesting cooperatives to encourage fishing practices with lower discard rates and to improve the opportunity for increasing the value of harvested species while lowering costs; and (4) limiting the ability of non-AFA trawl catcher/processors to expand their harvesting capacity into other fisheries not managed under a LAPP.

Each year, NMFS allocates an amount of Amendment 80 species available for harvest, called the initial total allowable catch (ITAC), and crab and halibut PSC to two defined groups of trawl fishery participants: (1) the Amendment 80 sector; and (2) the BSAI trawl limited access sector. The ITAC is the amount of the TAC remaining after allocations to the Western Alaska Community Development Quota Program (CDQ) and incidental catch needs by the BSAI trawl limited access sectors. The BSAI trawl limited access sector comprises all trawl participants who are not part of the Amendment 80 sector (i.e., AFA trawl catcher/processors, AFA trawl catcher vessels, and non-AFA trawl catcher vessels). Allocations made to one sector are not subject to harvest by participants in the other fishery sector, except under a specific condition (i.e., fish that are allocated to the BSAI trawl limited access sector and projected to be unharvested can be reallocated to Amendment 80 cooperatives by NMFS, throughout the year, to ensure a more complete harvest of the TAC).

The amount of ITAC assigned to the Amendment 80 and the BSAI trawl limited access sectors was based on a review of historical catch patterns during 1998 through 2004, with consideration given to various socioeconomic factors. As an example, a greater proportion of the Atka mackerel and Aleutian Islands Pacific ocean perch (AI POP) was assigned to the BSAI trawl limited access sector than is reflected in historical

catch records by that sector from 1998 through 2004. One exception to this rule applies to Pacific cod. Pacific cod ITAC is allocated to the Amendment 80 sector under the criteria that the Council adopted for Amendment 85 in April 2006. NMFS published a final rule implementing Amendment 85 in September 2007 (72 FR 50788) and Amendment 85 and Amendment 80 were fully implemented in 2008. The rationale for Pacific cod allocation to the Amendment 80 sector is described under the analysis prepared for Amendment 85 and is not repeated here.[2]

Annually, NMFS determines the division of the Amendment 80 sector's ITAC within the sector, based on QS holdings of sector members. Depending on a QS holder's choice, the portion of the TAC associated with that person's QS is assigned to either a cooperative or a limited access fishery. A vessel owner may choose to assign a vessel to either a cooperative or the limited access fishery, but owners of multiple vessels may choose to assign each vessel independently to a cooperative or to the limited access fishery, depending on the perceived benefits of those choices for each specific vessel. In general, if a person who holds one percent of the Amendment 80 QS for a given species assigns that QS to a cooperative, one percent of that species TAC would be assigned to that cooperative for that year. Crab and halibut PSC limits in the BSAI are allocated to the Amendment 80 and BSAI trawl limited access sectors and within the Amendment 80 sector in a similar manner. The PSC limits assigned to the Amendment 80 sector are lowered in a stepwise fashion over a period of years to provide additional reductions in PSC over time.[3]

The Amendment 80 fleet is constrained by harvest limits in the GOA, commonly known as sideboards, that limit the catch of pollock, Pacific cod, northern rockfish, Pacific ocean perch, and pelagic shelf rockfish, as well as halibut PSC, based on harvest patterns during 1998 through 2004.[4] In addition, a number of the Amendment 80 vessels are participants in the Central GOA Rockfish Program LAPP and participate in either a cooperative or limited access fishery under that program.

Prior to the adoption of Amendment 80, the GRS was approved by the Council under Amendment 79 in June 2003. The GRS was published as a final rule on April 6, 2007 (71 FR 17362), and became effective in 2008. The GRS requires a minimum retention of all federal groundfish in the BSAI for non-AFA trawl catcher/processors. Groundfish are defined in regulations at 50 CFR 679.2. The GRS requirement began at 65 percent of all groundfish caught in 2008, rose to 75 percent in 2009, 80 percent in 2010, and peaked at 85 percent in 2011 and remains constant for all future years. As recommended by the Council, the GRS originally applied only to vessels greater than or equal to 125 feet LOA. The Council recommended not applying the GRS to vessels less than 125 feet LOA, based on a review of the potential costs of enforcement relative to revenue for these vessels, as well as the proportionally smaller amount of total catch that vessels less than 125 feet caught, relative to larger vessels. A more extensive discussion of the rationale for the Council's application of a length standard to the GRS is found in

[2] See Final EA/RIR/IRFA for Amendment 85: www.alaskafisheries.noaa.gov/analyses/amd85/bsa85final.pdf
[3] See Tables 35 and 36 to part 679 at: www.alaskafisheries.noaa.gov/regs/default.htm
[4] See Tables 37 and 38 to part 679 at: www.alaskafisheries.noaa.gov/regs/default.htm

the response to comment section of the final rule for Amendment 79, which was published in the *Federal Register* (April 6, 2006; 71 FR 17362).

Amendment 80 modified the GRS, as recommended under Amendment 79, in two critical ways. First, the GRS was extended to apply to all non-AFA trawl catcher/processors operating in the BSAI, without an exemption for vessels under 125 feet LOA. Therefore, all Amendment 80 vessels, regardless of size, would be required to comply with the GRS. Second, Amendment 80 modified the method of calculating the total retention of catch that applies to cooperatives. Under the GRS as modified by Amendment 80, each vessel participating in the limited access fishery must ensure that it meets the GRS requirements, based on the amount of catch retained by that vessel. Vessels participating in a cooperative can aggregate the total catch by all vessels in the cooperative and the total retained catch by all vessels in the cooperative.

2.4.2 Eligible Amendment 80 vessels and vessel replacement

While the Council was in the early stages of developing Amendment 80, Congress also decided to tackle the ill effects of the "race for fish," through a legislative approach. On December 8, 2004, the President signed into law the Consolidated Appropriations Act of 2005. (Pub. L. 108-447, 118 Stat. 2809). Section 219 of the Consolidated Appropriations Act of 2005 contained the Capacity Reduction Program (CRP). The CRP is intended to remove "excess harvesting capacity" from the catcher/processor sector of the non-pollock groundfish fishery (section 219(e)(1)) and authorizes funding for a vessel buyback program that is to be financed through a capacity reduction loan.[5] The CRP identifies the capacity it seeks to reduce as vessels and the federal fishery licenses, fishery permits, and area and species endorsements issued for those vessels or any vessel named on an LLP license (section 219(d)). Therefore, the CRP's "capacity" refers to both vessels and licenses. Congress noted that this reduction of capacity is intended to contribute to the future rationalization and long-term stability of these fisheries.[6]

Section 219(g)(1) of the CRP states that "[o]nly a member of a catcher processor subsector may participate in the catcher processor sector of the BSAI non-pollock groundfish fishery." The "Catcher processor sector" is further broken down into four subsectors, one of which is the "non-AFA trawl catcher processor subsector" defined in section 219(a)(7):

> (7) NON-AFA TRAWL CATCHER PROCESSOR SUBSECTOR – The term "non-AFA trawl catcher processor subsector" means the owner of each trawl catcher –
> (A) that is not an AFA trawl catcher processor;
> (B) to whom a valid LLP license that is endorsed for Bering Sea or Aleutian Islands trawl catcher processor fishing activity has been issued; and
> (C) that the Secretary determines has harvested with trawl gear and processed not less than a total of 150 metric tons of non-pollock groundfish during the period of January 1, 1997 through December 31, 2002.

[5] 150 Cong Rec. S11747 (daily ed. November 20, 2004) (statement of Sen. Murray).
[6] 150 Cong Rec. S11747 (daily ed. November 20, 2004) (statement of Sen. Murray).

Section 219(a)(8) defines non-pollock groundfish:

> (8) NON-POLLOCK GROUNDFISH FISHERY.—The term ‘‘non-pollock groundfish fishery’’ means target species of Atka mackerel, flathead sole, Pacific cod, Pacific Ocean perch, rock sole, turbot, or yellowfin sole harvested in the BSAI.

The Council realized that CRP sections dealing with subsector membership eligibility may have an impact on Amendment 80. As a result, the Council asked NOAA General Counsel for a legal opinion concerning the CRP's impact on Amendment 80. NOAA General Counsel provided the Council a memorandum on September 8, 2005, that specifically addressed the CRP's effect on Amendment 80's eligibility requirements for the four subsectors of the BSAI non-pollock groundfish fishery.

One of the Council's questions addressed in this memorandum concerned the eligibility to participate in the buyback or the non-pollock fisheries (Question 3).[7] NOAA General Counsel responded that the CRP's subsector definitions identified and limited the universe of vessels and/or LLP licenses that could be used by owners in the non-pollock groundfish fishery or the capacity reduction program. Another Council question addressed in this memorandum was whether the vessel or the LLP license should be considered in determining the harvest tonnage requirement in section 219(a)(7)(C) (Question 4). NOAA General Counsel responded that the harvest tonnage requirement should be applied to the vessel. In the end, the Council and NMFS adopted the CRP's 219(a)(7) eligibility definition and incorporated it into Amendment 80.

The Council was presented with and considered NOAA General Counsel's third legal memorandum at its October 2005 meeting. After receiving public testimony from representatives of the affected non-AFA trawl catcher/processor industry, none of which challenged the legal interpretation of the eligible vessels, the Council tasked staff with modifying the draft Environmental Analysis/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for Amendment 80 to reflect the eligibility criteria for a non-AFA trawl catcher/processor to be used to fish in BSAI non-pollock groundfish fisheries consistent with the CRP, and modified its Amendment 80 suite of components and options to be consistent with the CRP.

During the development of Amendment 80, the Council and NMFS were well aware that at least one vessel, the F/V *Arctic Rose*, had been lost and was no longer able to be used as an eligible non-AFA trawl catcher/processor, as defined by the CRP. In fact, shortly before the Council's February 2006 meeting, the Council was presented with a letter from a number of fishing companies in the non-AFA trawl catcher/processor subsector, indicating their agreement with the Council's and NMFS' interpretation of the CRP's vessel eligibility requirements. They also advocated that the Council move to a vessel based cooperative program and that some accommodation be made for vessels that meet the requirements of the CRP, but have subsequently sunk, such as the *Arctic Rose*. To address this circumstance, the Council and NMFS incorporated measures to ensure

[7] The parenthetical reference to the Question number corresponds to the numbering used in the September 8, 2005, memorandum.

that the historical catch of any vessel that sank between 1997 and 2002 could be used to generate QS. This QS would be valid, even if that sunken vessel could no longer be used. Specifically, the Council recommended measures to ensure that "[T]he catch history of any vessel that meets [minimum landings thresholds] which has sunk, is lost or becomes inoperable, or becomes otherwise ineligible during or after the qualifying period will be credited to the [LLP] license that arose from that vessel."

In June 2006, the Council took final action on Amendment 80 and adopted a preferred alternative for Amendment 80 to the BSAI FMP. The Council submitted Amendment 80 and proposed implementing regulations to NMFS on April 23, 2007. NMFS published a Notice of Availability for Amendment 80 in the *Federal Register* on April 30, 2007 (72 FR 21198, April 30, 2007), and invited public comment on Amendment 80 through June 29, 2007. NMFS then published a proposed rule to implement Amendment 80 on May 30, 2007 (72 FR 30052, May 30, 2007), and invited public comment on the proposed regulations through June 29, 2007. The proposed regulations limited participation in the Amendment 80 sector to those non-AFA trawl catcher/processors that qualified under the definition of the non-AFA trawl catcher/processor subsector from Congress' CRP. The proposed regulations also included a list of 28 non-AFA trawl catcher/processor vessels that met the criteria laid out in section 219(a)(7) (Table 31 to part 679). Those vessels, specifically named on the list, would be permitted to fish in the Amendment 80 sector. AR 36 (72 FR 30055). The proposed regulations included the *Arctic Rose* on the list of eligible vessels. (72 FR 30134, Table 31 to part 679).

The proposed rule for Amendment 80 defined the specific amount of QS derived from each of the 28 originally qualifying vessels listed in Table 31 to 50 CFR Part 679, based on total catch from those vessels during 1998 through 2004. NMFS may issue a single QS permit for the catch history for each of the 28 originally qualifying vessels, listing the amount of each of the six Amendment 80 species derived from the vessel's catch history. Once NMFS issues that QS permit, it may not be subdivided and QS allocations of specific species may not be transferred separately. Furthermore, that QS permit is affixed to the vessel that gave rise to the QS. Once affixed to a vessel, a QS permit may not be transferred independently from that vessel. Vessel owners choose to apply for QS, and must do so by October 15 of the year prior to the year they intent to fish in the BSAI. However, prospective QS holders who choose not to apply for QS are not able to fish in the BSAI using trawl gear.

The proposed rule also indicated that if a vessel sinks, is scrapped, or is otherwise permanently ineligible to be used in the program, the vessel owner may transfer the QS permit assigned to that vessel to the LLP license originally derived from that vessel.[8] Once QS is assigned to an LLP license, NMFS reissues that LLP license with the QS affixed to it as an Amendment 80 LLP/QS license (LLP/QS license). With three exceptions, shown in Table 1, the QS permits that may be issued in the Amendment 80 fishery are assigned to one of the 28 initially eligible vessels.

Arctic Sole Fisheries, the owner of the *Arctic Rose*, submitted comments on the proposed rule specifically addressing the restriction of participation in the Amendment 80 sector to certain vessels and the lack of a replacement vessel provision in the regulation.

[8] See regulations at 50 CFR 679.90(e)

On July 26, 2007, NMFS approved Amendment 80 to the BSAI FMP. On September 14, 2007, NMFS published in the *Federal Register* a final rule implementing Amendment 80. AR 39 (72 FR 52668). The final rule did not differ from the proposed rule with respect to Arctic Sole Seafood's concerns. In response to Plaintiff's comments, NMFS maintained that Congress had established the eligibility requirements for participation in the Amendment 80 sector through the CRP and the non-AFA trawl catcher/processor subsector, and that section 219(a)(7) limited participation to the vessels that met the qualifying criteria. (72 FR 52689–90, comment 23). NMFS further explained that it could not provide replacement language in the regulations, because Congress did not authorize such action. Arctic Sole Seafoods challenged the Council's and NMFS' statutory interpretation of section 219(a)(7) and contended that the lack of replacement vessel language was arbitrary and capricious.

Subsequent to the sinking of the *Arctic Rose,* Arctic Sole Seafoods purchased the F/V *Ocean Cape,* a vessel that does not meet the eligibility criteria of the CRP or the Amendment 80 final rule. Arctic Sole Seafoods wished to use the *Ocean Cape* as an eligible Amendment 80 vessel and asserted that the CRP did not restrict participation in the sector to qualifying vessels, but instead permitted owners of qualifying vessels to use non-qualifying vessels in the sector, thus allowing replacement of a lost qualifying vessel. Because the final rule implementing Amendment 80 prohibited Arctic Sole Seafoods from using the non-qualifying *Ocean Cape,* Arctic Sole Seafoods challenged the Amendment 80 final rule, claiming that the final rule was arbitrary and capricious under the Administrative Procedure Act.

On May 19, 2008, the U.S. District Court for the Western District of Washington (Court) issued a decision invalidating regulatory provisions that limit the vessels used in the Amendment 80 Program. In Arctic Sole Seafoods, Inc. v. Gutierrez, Case No. 07-1676MJP (W.D. Wash. May 19, 2008), the district court found the statutory language of the CRP ambiguous as to whether replacement of qualifying vessels with non-qualifying vessels was permissible, and found the agency's interpretation of the statute to be arbitrary and capricious. The Court concluded that the inability to replace qualifying vessels with non-qualifying vessels would ultimately result in the elimination of the sector through vessel attrition, and that Congress had not intended such an outcome in the CRP.[9] The district court ordered that "[t]o the extent that [regulations] restrict access to

[9] "The Court concludes that NMFS' interpretation — that an otherwise qualified owner must use the qualifying vessel and cannot substitute a replacement vessel — is impermissible in light of the statutory language and purpose and is not supported by a rational basis. The Court does not come to this conclusion lightly and takes seriously its responsibility to give deference to an agency's reasonable interpretation of a statute. But here, NMFS has promulgated an unreasonable interpretation that is out of line with what Congress intended to accomplish through the Capacity Reduction Program. Congress intended to limit capacity in the fishery to reduce bycatch. It intended to limit the number of vessels and licenses in this particular fishery. Congress did not intend to eliminate the fishery or to limit it through the sinking of the fleet. Because NMFS did not provide a good reason for its interpretation and because the interpretation is impermissible, the Court concludes that the regulation is arbitrary and capricious. To the extent Amendment 80 restricts access to the BSAI non-pollock groundfish fishery to qualifying vessels without allowing a qualified owner to replace a vessel that has sunk, the regulations are invalid and are hereby vacated." (Arctic Sole Seafoods, Inc. v. Gutierrez, Case No. 07-1676MJP (W.D. Wash. May 19, 2008; p. 15 at line 20).

the BSAI non-pollock groundfish fishery to qualifying vessels without allowing a qualified owner to replace a lost qualifying vessel with a single substitute vessel, the regulations must be set aside...."

2.4.3 Implementation of the *Arctic Sole Seafoods* Court Order

In October 2008, NMFS provided the Council with a description of how it intended to comply with the Court's decision and recommended that the Council amend its FMP to be consistent with the decision. The October 2008 implementation guidance stated that:

- The owner of an Amendment 80 vessel listed in Table 31 to 50 CFR Part 679 can replace that Amendment 80 vessel, but only due to actual total loss, constructive total loss, or permanent ineligibility of that vessel to receive a fishery endorsement under 46 U.S.C. 12108.
- If a replacement vessel suffers an actual total loss, constructive total loss, or permanent ineligibility to receive a fishery endorsement under 46 U.S.C. 12108, that replacement vessel may be replaced by another subsequent replacement vessel.
- No more than one vessel may be used to replace any other vessel at a given time.
- The owner of an Amendment 80 vessel must provide clear and unambiguous written documentation that can be verified by NMFS that any lost vessel is no longer able to be used in the Amendment 80 Program, due to the actual total loss, constructive total loss, or permanent ineligibility of that vessel to receive a fishery endorsement under 46 U.S.C. 12108. The owner of any replacement vessel must clearly identify the replacement vessel to NMFS in any Amendment 80 QS application, and annual application to participate in either an Amendment 80 cooperative or the Amendment 80 limited access fishery, as applicable.
- Any vessel that replaces an Amendment 80 vessel listed in Table 31 to 50 CFR Part 679, or any subsequent vessel that replaces a replacement vessel, shall be considered an Amendment 80 vessel for purposes of the Amendment 80 Program.
- Any replacement vessel must comply with all regulations applicable to the Amendment 80 vessel that it is replacing, except that (1) any vessel other than an Amendment 80 vessel listed in Table 31 to 50 CFR 679 shall not have any Amendment 80 legal landings, and no Amendment 80 QS may be issued for any catch made by a vessel not listed in Table 31 to 50 CFR 679; and (2) specific GOA sideboard provisions applicable to an Amendment 80 vessel listed in Table 39 to 50 CFR 679 and the *Golden Fleece* do not apply to a vessel replacing those vessels.

As part of its October 2008 guidance to the Council, NMFS published a series of frequently asked questions (FAQs) that addressed the specific rationale for the interpretation of the Court's Order. Those FAQs are summarized below.

What is a "lost vessel" as described in the Court Order?

NMFS will permit the replacement of an original qualifying Amendment 80 vessel listed in Table 31 to part 679 that has suffered an actual total loss, constructive total loss, or permanent ineligibility of that vessel to receive a fishery endorsement under 46 U.S.C. 12108.

The Court Order uses both the terms "sunk" and "lost" when referring to qualifying vessels. The specific language in the Court Order notes that a vessel owner should be allowed "to replace a lost qualifying vessel." In NMFS' opinion, the court's decision refers to the broader category of qualifying vessels that are "lost," rather than only those that sank. This interpretation is supported by the Court's reference to the ability of vessel owners to continue to be able to participate in an Amendment 80 cooperative, even if they are the owner of a lost vessel.[10] The Court's reference to a lost vessel is to specific regulations that allow for the issuance and use of QS if a vessel has suffered an actual total loss, constructive total loss, or is permanently ineligible to receive a fishery endorsement under 46 U.S.C. 12108.

Who may replace a lost vessel?

The Court Order makes it clear that only a "qualified owner" may replace a "lost qualifying vessel." NMFS will use information available through U.S. Coast Guard Documentation files to determine vessel ownership consistent with the existing regulations to determine vessel ownership.[11] NMFS will not permit persons who do not currently own title to an original qualifying Amendment 80 vessel, either because title has been transferred to another person or because the vessel has been lost and no title exists for that vessel, to replace an Amendment 80 vessel.

How would I establish that a vessel has been lost and designate a new vessel?

Any vessel owner who wishes to replace a vessel must provide NMFS with clear and unambiguous documentation, in written form, of the actual total loss, constructive total loss, or permanent ineligibility of that Amendment 80 vessel to receive a fishery endorsement under 46 U.S.C. 12108.[12] A vessel owner must provide NMFS with the necessary identifying information for the replacement vessel, including the vessel name, USCG Documentation number, and length overall of the vessel. If NMFS is not notified that a specific Amendment 80 vessel has been replaced, then NMFS will assume that Amendment 80 vessel has not been replaced.

[10] "[O]wners of lost vessels may continue to participate in the cooperative fishery. See 50 C.F.R. 679.90(a)(2)(ii), 679.91(b)." (Court Order, p. 13 at line 10).

[11] The final rule to Amendment 80 notes that "Regulations at § 679.90(a)(2)(i)(A) clarify that a person is eligible to receive QS as the owner of an Amendment 80 vessel if that person, among other criteria, can demonstrate that they own an Amendment 80 vessel through an abstract of title or USCG documentation." (72 FR 52678, September 14, 2007).

[12] Vessel owners must provide proof to NMFS if they wish to have QS assigned to an Amendment 80 LLP license in case of loss of a vessel (see 50 CFR 679.90(a)(2)(ii)(B)).

Note that existing regulations require a person to list the specific vessels, which would include any replacement vessels that are participating in an Amendment 80 cooperative or limited access fishery during the annual cooperative/limited access fishery application process (see regulations at 50 CFR 679.91).

Is a replacement vessel considered to be an "Amendment 80 vessel"?

Yes, NMFS will consider any replacement vessel to be an Amendment 80 vessel subject to all prohibitions, limitations, and requirements applicable to the Amendment 80 vessel that it is replacing. These include, but are not limited to, requirements to comply with permitting, recordkeeping and reporting, groundfish retention standards, monitoring and enforcement, regulations applicable to participation in an Amendment 80 cooperative or Amendment 80 limited access fishery, and Gulf of Alaska sideboard restrictions. See the final rule for the Amendment 80 Program (September 14, 2007; 72 FR 52668) and 50 CFR 679 for all regulations applicable to Amendment 80 vessels and participation in the Amendment 80 Program.

The exceptions to this rule are (1) NMFS will not consider the catch history of any replacement vessel that is not listed in column A of Table 31 to part 679 as eligible for generating Amendment 80 QS; and (2) GOA sideboard restrictions applicable to specific listed Amendment 80 vessels would not apply (see following Q&A).

How would GOA sideboard restrictions applicable to a specific Amendment 80 vessel be applied to any vessel used to replace that Amendment 80 vessel?

NMFS will apply GOA sideboard regulations at 50 CFR 679.92(b) to any replacement vessel. Currently, all Amendment 80 vessels are subject to this provision. However, NMFS will not permit any vessel that replaces an Amendment 80 vessel that is listed in Table 39 to part 679 to directed fish for flatfish in the GOA. Similarly, NMFS will not apply GOA sideboard regulations specifically applicable to the F/V Golden Fleece to any vessel that replaces the F/V Golden Fleece.

The Court addressed the interpretation of the CRP and whether NMFS could limit fishing for non-pollock groundfish in the BSAI to a specific list of non-AFA trawl catcher/processors. The Court Order indicates that any vessel replacing an original qualifying Amendment 80 vessel listed in Table 31 to part 679 would be subject to the provisions applicable to Amendment 80 vessels generally. The Court did not indicate that specific provisions applicable to specific vessels in the GOA would be extended to the vessel replacing an original qualifying Amendment 80 vessel. For example, the Court did not specify that a vessel replacing a lost Amendment 80 vessel that is eligible to directed fish for flatfish (i.e., listed in Table 39 to part 679) would also be eligible to directed fish in the flatfish fishery in the GOA, or that a vessel replacing the F/V Golden Fleece would be subject to the sideboard restrictions applicable to the F/V Golden Fleece. Because the Court is silent on these issues, and the Council developed specific GOA sideboard criteria for specific vessels, NMFS does not intend to modify its regulations. NMFS notes that the Council may wish to address this issue in a future FMP amendment.

Can a lost Amendment 80 vessel be replaced with more than one vessel?

No, NMFS will allow only one vessel to replace an Amendment 80 vessel at a time. The Order stated that "a regulation that allowed an otherwise qualified owner to replace his or her Amendment 80 vessel with multiple vessels would also be impermissible (Court Order, footnote 4, p. 15)."

What happens if a replacement vessel is lost?

NMFS would allow only one vessel to replace another replacement vessel at a time, consistent with the Court's direction not to allow multiple replacement vessels at the same time.

The Order did not specifically address the potential to replace a replacement vessel. However, based on the text of the Order, it appears that the term "single replacement vessel" is intended to allow a person to replace a lost Amendment 80 vessel with another vessel, regardless of the number of times that vessel may be replaced. The Order supports this interpretation. Specifically, the Court noted that "an interpretation of the Capacity Reduction Program [sec. 219; Pub. L. 108-447] that limits eligibility to certain vessels but does not include a vessel replacement provision leads to absurd results – the inevitable elimination of the fishery. (p. 14)." The only way to avoid the elimination of the fishery that concerned the Court would be to allow a lost replacement vessel to be replaced if it is lost.

Are there any limitations on the characteristics of a replacement vessel?

No, the Court did not address the size or capacity of a replacement vessel relative to the qualifying vessel being replaced. Because the CRP makes a clear distinction between the AFA and non-AFA trawl catcher/processor subsectors, an AFA catcher/processor as defined by the CRP would be ineligible to fish as a non-AFA trawl catcher/processor and could not replace an Amendment 80 vessel. Existing regulations remain in place that may provide some practical limits on the size and capacity of a replacement vessel. Specifically, in order to be eligible to participate in the Amendment 80 fishery, a replacement vessel would still need to be designated on an Amendment 80 LLP in order to be eligible to fish in the Amendment 80 fishery (see 50 CFR 679.7(o)(2)(ii)). An Amendment 80 LLP license is defined under 50 CFR 679.2 as

(1) Any LLP license that is endorsed for groundfish in the Bering Sea subarea or Aleutian Islands subarea with a catcher/processor designation and that designates an Amendment 80 vessel in an approved application for Amendment 80 QS;

(2) Any LLP license that designates an Amendment 80 vessel at any time after the effective date of the Amendment 80 Program; and

(3) Any Amendment 80 LLP/QS license.

NMFS notes that once an LLP license is assigned to an Amendment 80 vessel, that LLP license may not be used on any vessel other than an Amendment 80 vessel (see 50 CFR 679.7(o)(2)(i)). In addition, a person cannot hold an Amendment 80 QS permit assigned to an Amendment 80 vessel unless an Amendment 80 LLP license is assigned to that vessel (see 50 CFR 679.7(o)(3)(i)). Furthermore, the number of LLP licenses that may be used in the Amendment 80 Program is limited by the fact that LLP licenses with

the applicable endorsements for trawl catcher/processor activity in the BSAI assigned to AFA catcher/processors may not be used on a non-AFA catcher/processors (see 50 CFR 679.4(k)(10)).

What happens to QS that has been assigned to the holder of an LLP license originally issued for an Amendment 80 vessel if that vessel is subsequently replaced?

NMFS will not reassign QS that was already issued to the holder of an LLP license listed in Column C of Table 31 to part 679 if the Amendment 80 vessel corresponding to that LLP license in Column A of Table 31 to part 679 is subsequently replaced.

For example, NMFS would not reissue the QS already assigned to the LLP license originally assigned to the lost Amendment 80 vessel the *Prosperity* (LLG 1802) to the owner of the *Prosperity* if the owner of the *Prosperity* decided to replace that vessel.

What happens if I have established that I am the owner of a lost Amendment 80 vessel, I have replaced that vessel, and I apply for QS?

Consistent with regulations at 50 CFR 679.90(a)(2)(i) and (d)(2)(i), if the owner of a lost Amendment 80 vessel replaces that vessel, NMFS has not previously issued QS for that lost vessel, and the owner of the replacement vessel subsequently applies for QS and is eligible to receive QS, NMFS will issue an Amendment 80 QS that must be assigned to the replacement vessel.

For example, because NMFS has not yet issued QS based on the catch history of the F/V *Arctic Rose*, a lost Amendment 80 vessel, NMFS will issue QS and assign that QS to the vessel that replaces the *Arctic Rose*.

What happens if I hold the LLP license originally issued to a lost Amendment 80 vessel and the rights and privileges to receive QS, but I have not replaced the vessel and I wish to receive QS?

If you apply to receive QS consistent with regulations in 50 CFR 679.90, NMFS would issue the QS derived from the lost Amendment 80 vessel to the LLP license originally issued to the Amendment 80 vessel that you hold. You are not required to replace an Amendment 80 vessel before you receive QS.

For example, the person holding the LLP license originally issued to the *Bering Enterprise*, a lost Amendment 80 vessel, is not required to replace the *Bering Enterprise* before applying to receive QS based on the catch history of that vessel. NMFS would issue any QS to the holder of the LLP license of the *Bering Enterprise*, provided all other requirements were met.

What happens if I hold the LLP license originally issued to a lost Amendment 80 vessel and the rights and privileges to receive QS, I have not yet applied for QS, and the owner of the lost Amendment 80 vessel replaces that vessel and applies to receive QS before I do?

NMFS has not yet thoroughly reviewed this situation. A brief review of the regulations suggests that the owner of an original qualifying Amendment 80 vessel has the first priority to apply for and receive QS. There is no conclusive answer at this time.

2.4.4 Scope of alternatives being considered for Amendment 97 in light of the Court's decision in *Arctic Sole Seafoods v. Gutierrez*

During the course of the Council's development and consideration of alternatives for Amendment 97, some concerns have been raised in public testimony before the Council as to whether the Council and NMFS have the authority to adopt and implement some of the alternatives and options under consideration in Amendment 97. For example, because *Arctic Sole Seafoods* involved an Amendment 80 vessel that had sunk, concerns have been expressed with Alternative 3 and whether the Council and NMFS have the authority under the Court's decision and the CRP to allow an Amendment 80 vessel to be replaced for reasons other than constructive or actual total loss.
The following provides an in-depth review of the Court's decision and an examination of the authority for the action alternatives and options under the Court's decision, the CRP, and the Magnuson-Stevens Fishery Conservation and Management Act MSA).

2.4.4.1 Review of the Court's decision in Arctic Sole Seafoods v. Gutierrez

As briefly explained in section 2.3.2, Arctic Sole Seafoods challenged Amendment 80's prohibition on the use of any vessel other than an original qualifying vessel, arguing that section 219(a)(7) of the CRP clearly and unambiguously permitted owners who satisfied all three criteria of the section to use non-qualifying vessels in the non-AFA trawl C/P sector, thus allowing vessel replacement of a lost qualifying vessel. The Secretary of Commerce (Secretary) argued that the statutory language at section 219(a)(7) clearly and unambiguously restricted the vessels that could be used in the non-AFA trawl C/P sector and the CRP did not provide for vessel replacement.

As the decision explains,[13] the Court applied the 2-step test articulated in *Chevron v. NRDC*.[14] Under this test, the Court must first determine whether Congress has clearly and unambiguously spoken to the question (Step 1). If it has, the Court must give effect to the unambiguously expressed intent of Congress. If Congress has not spoken to the precise question at issue, or if the statutory language is ambiguous, then the Court must determine whether the agency's interpretation of the statute is permissible (Step 2). Under the *Chevron* test, the Court must give deference to the agency's interpretation unless the agency's interpretation is arbitrary and capricious or is contrary to statute.

- *Chevron* Step 1: Is the statute unambiguous?

Under Step 1 of the *Chevron* test, the Court concluded that the statutory language is ambiguous:

[13] *Arctic Sole Seafoods v. Gutierrez*, 622 F.Supp.2d 1050, 1056 (W.D. Wash. 2008).
[14] *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc*., 467 U.S. 837, 842-43 (1984).

> Contrary to both parties suggestions, the plain language of § 219 does not address whether Congress authorized replacement vessels or whether otherwise qualified owners are limited to using the vessel that qualified them for the fishery. Although the first sentence of the provision focuses on owners, the subsections limit the universe of vessels. What is missing from the language is any indication of whether Congress intended otherwise qualified owners to be limited to using the vessels that qualified them for the subsector. The plain language is silent on this issue. Likewise, the language is silent regarding what Congress intended regarding replacement vessels.

Arctic Sole Seafoods v. Gutierrez, at 1057. The Court found that the plain language of the CRP did not address whether Congress authorized replacement vessels, and the CRP's purpose and statutory construction and legislative history did not clarify Congress' unambiguous intent. Therefore, the Court concluded that the statutory language is ambiguous and silent regarding whether a replacement vessel is authorized and whether an otherwise qualified owner must use the vessel that qualified that owner for the fishery. *Id.*, at 1059.

- *Chevron* Step 2: Has the Secretary promulgated a permissible regulation supported by a rational basis?

Under Step 2 of the *Chevron* test, the Court concluded that the Secretary's regulatory prohibition on the use of any vessel in the Amendment 80 sector that was not an original qualifying vessel was not a permissible regulation supported by a rational basis. Id., at 1061.

The Court recognized that the purpose of the CRP is to reduce capacity in the non-AFA trawl C/P sector and determined that Congress intended to effectuate that reduction through the vessel buyback program established by the CRP. The Court determined that Congress did not intend to reduce the number of non-AFA trawl C/Ps through the sinking of qualified vessels, which the Secretary recognized and the Court agreed was the ultimate eventuality of the Secretary's interpretation of the CRP.

> Congress did not intend to eliminate the fishery, the logical result of [the Secretary's] reading of the statute. But Congress also intended to reduce the ***number*** of vessels in the fishery through the vessel buyback program. It is not clear the Congress intended, however, to achieve reduction of the number of vessels by the means advocated by [the Secretary] – this is, through the breaking-down and sinking of the fleet. *Id.*, at 1057 (emphasis added).

The Court determined that a regulatory prohibition on the replacement of qualifying vessels frustrated and was contrary to the intent of Congress because "[n]othing in the language or the legislative history of the [CRP] suggests the congress hoped to eventually eliminate the fishery by preventing otherwise qualified owners from replacing their vessels." *Id.*, at 1061. The Court found that the Secretary's interpretation

was not well-reasoned and, more importantly, was impermissible in light of the statutory language and purpose of the CRP.[15]

The Court determined that a one-for-one vessel replacement satisfies the intentions of Congress by sustaining the sector, preventing the increase of capacity by prohibiting multiple replacement vessels, and preserving the intent of Congress to reduce the number of vessel in the sector through the CRP's vessel buyback program. *Id.*, at 1061-62. Consistent with its findings, the Court invalidated regulations that prohibited vessel replacement in the Amendment 80 sector and remanded those regulations to NMFS.

2.4.4.2 Authority for action alternatives considered in Amendment 97 with the CRP and the Court's ruling in Arctic Sole Seafoods.

The Court in *Arctic Sole Seafoods* interpreted the CRP, and absent Congressional legislation that speaks to the issue, the Council and NMFS must follow that interpretation. Given the Court's decision, the Council and NMFS must develop regulations that permit vessel replacement consistent with the CRP's statutory language and the intent of Congress, as determined by the Court in *Arctic Sole Seafoods*. Both action alternatives under consideration in Amendment 97 (Alternatives 2 and 3) would permit vessel replacement in the Amendment 80 sector and are therefore authorized under and consistent with the CRP and the Court's ruling. Additionally, both action alternatives would restrict a qualified owner to using either the original qualifying vessel or a replacement vessel in the Amendment 80 sector. Because this provision maintains, but does not increase the number of vessels eligible to participate in the Amendment 80 sector, this up to a one-for-one vessel replacement restriction is authorized by and consistent with the CRP and the Court's ruling.

The action alternatives differ in the reasons for which a vessel may be replaced. Alternative 2 would allow vessel replacement only in cases of vessel loss (either constructive or actual total loss) or if the vessel is permanently ineligible to be used in a U.S. fishery, under 46 U.S.C. 14108. Alternative 3 would allow vessel replacement for any reason, including provisions permitting owners of Amendment 80 QS to assign QS from an originally qualifying Amendment 80 vessel to any replacement vessel, including a vessel currently assigned Amendment 80 QS, for any reason. The statutory language of the CRP and its legislative history are silent as to reasons for which a qualifying vessel could be replaced. The *Arctic Sole Seafoods* case examined the question of whether Arctic Sole Seafoods could replace a qualifying vessel that had sunk, with a non-qualifying vessel, thus requiring the Court to interpret the CRP and then apply that interpretation to the specific facts of the case. While the Court's ruling applied to the specific case before it, the Court's interpretation of the CRP has broad application and is not confined to the specific facts of the case. The Court found that the language of the CRP was ambiguous as to whether qualifying owners had to use the vessels that qualified

[15] Id., at 1060 ("In addition to the fact that it failed to provide a good reason for its decision, NMFS' interpretation of the CRP is impermissible in light of the language of and the purposes behind the statute.")

the owners for the sector, and held that an interpretation that requires qualified owners to use only qualifying vessels is impermissible.[16]

Given the Court's decision and the lack of Congressional guidance on reasons for vessel replacement, Alternative 3, which permits vessel replacement for any reason, is authorized by and consistent with the CRP. Alternative 2 permits vessel replacement, but only in the case of vessel loss or permanent ineligibility. Although the Court held that an absolute requirement that qualified owners use only qualifying vessels is impermissible, the Court also concluded, "To the extent that it restricts access to the BSAI non-pollock groundfish fishery to qualifying vessels without allowing a qualified owner to replace a lost qualifying vessel with a single substitute vessel, the regulations must be set aside because they are arbitrary, capricious, and otherwise not in accordance with law."[17] Because Alternative 2 permits vessel replacement when a qualifying vessel is no longer available, Alternative 2 maintains a qualified owner's participation in the Amendment 80 sector, consistent with the CRP and the Court's decision. The Council did not select Alternative 2 as its preferred alternative under Amendment 97; however, if Alternative 2 had been selected as the preferred alternative, the Council would have needed to explain why such limits on the reasons for vessel replacement are appropriate under the National Standards and other provisions of the MSA.

Finally, the Amendment 97 analysis considers five options that could be applied to either Alternative 2 or 3. As with reasons for vessel replacement, the CRP is silent concerning length or sideboard restrictions that would be applicable to the replacement vessel, and the Court's decision did not consider this aspect of vessel replacement. The Court interpreted the CRP as maintaining or reducing the ***number*** of vessels eligible to participate in the Amendment 80 sector and that any reduction in the number of eligible vessels would come from participation in the voluntary buyback program established by the CRP. Therefore, the Council may consider options that impose length or sideboard restrictions on a replacement vessel under the CRP, but any length or sideboard restrictions imposed on a replacement vessel must not be so restrictive that a qualified owner is practically prevented from actually replacing a vessel. Additionally, any length or sideboard restriction must be consistent with the National Standards and other provisions of the MSA, and other applicable law.

2.4.5 Current composition of the Amendment 80 sector

Under the criteria established under the CRP, and the recommendations developed by the Council, NMFS could issue up to 28 QS permits for the originally qualifying vessels. Table 1 lists the vessels that are eligible to generate QS, the owners of those vessels, and the length overall of the LLP licenses that were originally issued for those vessels.

Table 2 shows whether those owners assigned their vessels and associated QS permits to either a cooperative, limited access fishery, or chose not to apply for QS for 2010. In 2010, nine QS permits have been assigned to the limited access fishery, 18 to a single cooperative, and one potential QS permit has not been allocated QS. In 2009, eight vessels were assigned to the limited access fishery, 17 to a single cooperative, and

[16] Id., at 1061.
[17] Id., at 1062.

three potential QS permits held by two unique persons had not been allocated QS. In 2008, 17 QS permits were assigned to the cooperative, seven were assigned to the limited access fishery, and four QS permits held by three unique QS holders were not assigned QS, because those QS holders did not apply. In 2009, one QS holder, Arctic Sole Seafoods, who did not apply for QS in 2008, chose to apply for QS and join the Amendment 80 sector in 2009. This decision appears to have been based largely on the Court Order. The owner of the F/V *Arctic Rose*, an originally qualifying Amendment 80 vessel, has replaced that vessel with the F/V *Ocean Cape* and has designated that vessel for use in the limited access fishery. In 2009, the QS permits based on the catch history of the *Bering Enterprise* and *Harvester Enterprise* were applied for, and issued. Only the QS permit that could be derived from the *Golden Fleece* has not been issued.

Table 1 indicates vessels that may be considered as smaller vessels, in bold. Generally, smaller vessels have less sophisticated processing operations and may not be able to retain as many different products, or retain products as effectively or economically as larger vessels with more expansive processing operations, and greater hold capacity. There is not a clear distinction between large and small vessels in the Amendment 80 fleet. During the development of Amendment 79, the Council determined that vessels less than 125 feet LOA may be less capable of meeting the GRS on an individual basis. The Council's decision was based on input from the Council's technical committee during the development of Amendment 79. The Council was advised by the technical committee, as well as by other public input, that vessels less than 125 feet LOA typically had smaller hold capacity, the costs of GRS compliance may be higher relative to their net revenue when compared to larger vessels, and vessels less than 125 feet LOA caught a much smaller proportion of the total catch by non-AFA trawl catcher/processors (i.e., Amendment 80 vessels) than vessels 125 feet or greater LOA.

Similarly, the Amendment 80 Analysis indicated that vessels of smaller sizes had a lower retention rate than larger vessels.[18] For purposes of this analysis, smaller vessels would refer to vessels that are most likely to have a difficult time achieving GRS requirements, if fishing independently. The Amendment 80 analysis examined various size classes of Amendment 80 vessels, as a means to assess the relative retention rate of vessels. Table 1-98 in the Amendment 80 Analysis noted that vessels with average length overall of less than 144 feet, retained an average of 63 percent of their total catch during 1995 through 2003. This is slightly less than the initial GRS of 65 percent. While the retention rates during 1995 through 2003 may not reflect current retention rates, particularly for vessels targeting specific species with higher retention rates, or under cooperative management, which reduces the incentive to race for fish, it provides some indication of the relative size of vessels that may have a difficult time meeting higher GRS requirements. This analysis assumes that vessels less than 144 feet LOA are smaller vessels. In addition to all of the vessels that the Council identified as potentially having greater enforcement costs in the Amendment 79 analysis, it includes several additional vessels with poorer retention rates. As the GRS increases, the definition of a smaller vessel would likely change as even larger vessels may become more constrained by the GRS, but such changes in the definition of a large or small vessel is not considered

[18] See Analysis at: www.alaskafisheries.noaa.gov/sustainablefisheries/amds/80/earirfrfa0907.pdf, Table 1-98

for this analysis. Amendment 93, which examines the Amendment 80 cooperative formation standards, considered vessels less than 145 feet LOA as small vessels for purposes of that analysis. The approach used here is consistent with that approach.

The vessel lengths provided in Table 1 are based on NMFS data from the Federal Fishery Permit (FFP) database. Vessel length data can be inconsistent across various data sources. For example, USCG documentation designating the length of a vessel may measure length differently than the regulatory definition of LOA used by NMFS, and therefore, may differ from the vessel length reported to NMFS. Also, it is possible that the length on USCG documentation or the FFP may not reflect changes made to a vessel after length data have been reported. Table 1 also notes the maximum length overall (MLOA) on the LLP license designating the vessel. No vessel may exceed the MLOA of the LLP licenses designating a vessel, but it may be smaller than the MLOA of the LLP license designation.

Table 1 denotes the current ownership structure within the Amendment 80 sector, the original qualifying vessels that are no longer active in the Amendment 80 fleet (*in italics*) due to an actual or constructive loss (i.e., *Alaska Ranger, Arctic Sole, Prosperity*), or because those vessels have been reflagged under foreign ownership and are no longer eligible to reenter U.S. fisheries under the provisions of 46 U.S.C. 12108 (i.e., *Bering Enterprise*). Data concerning the common ownership of vessels was provided primarily by members of the Amendment 80 sector, with additional information provided by a review of NMFS records.

Table 1: Active Amendment 80 vessels and LLP licenses

Owner[1]	Amendment 80 Vessel(s) with length overall (LOA) as reported on Federal Fisheries Permit[2]	LLP license currently assigned to vessel and MLOA[2]
Fishing Company of Alaska (FCA), Inc. (Management entity for owner)	Alaska Juris (238 ft)	LLG 2082 (238 ft)
	Alaska Ranger[3] (203 ft)	LLG 2118 (203 ft)
	Alaska Spirit (221 ft)	LLG 3043 (221 ft)
	Alaska Victory (227 ft)	LLG 2080 (227 ft)
	Alaska Voyager (203 ft)	LLG 2084 (228 ft)
	Alaska Warrior (215 ft)	LLG 2083 (215 ft)
United States Seafoods, LLC (Management entity for owners)	**Ocean Alaska**[4] (107 ft)	LLG 4360 (124 ft)
	Alliance (107 ft)	LLG 2905 (124 ft)
	Legacy (132 ft)	LLG 3714 (132 ft)
	Prosperity (138 ft - QS assigned to LLP license derived from vessel)	LLG 1802 (138 ft) derived from vessel
	Seafreeze Alaska (295 ft)	LLG 4692 (296 ft)
Iquiqui U.S., LLC	Arica (186 ft)	LLG 2429 (186 ft)
	Cape Horn (158 ft)	LLG 2432 (158 ft)
	Rebecca Irene (140 ft)	LLG 3958 (140 ft)
	Tremont (124 ft)	LLG 2785 (131 ft)
	Unimak (185 ft)	LLG 3957 (185 ft)
O'Hara Corporation	*Bering Enterprise*[5] (183 ft - QS assigned to LLP derived from vessel)	LLG 3744 (183 ft) derived from vessel
	Constellation (150 ft)	LLG 1147 (150 ft)

	Defender (124 ft)	LLG 3217 (124 ft)
	Enterprise (120 ft)	LLG 4231 (132 ft)
	Harvester Enterprise (181 ft)	LLG 3744 (183 ft)
Fishermen's Finest (Management Entity for owners)	American No. 1 (160 ft)	LLG 2028 (160 ft)
	US Intrepid (185 ft)	LLG 3662 (185 ft)
Cascade Fishing, Inc. (Management Entity for owners)	Seafisher (230 ft)	LLG 2104 (230 ft)
Ocean Peace	Ocean Peace (219 ft)	LLG 2138 (219 ft)
Jubilee Fisheries	**Vaerdal** (124 ft)	LLG 1402 (124 ft)
Arctic Sole Seafoods	**Ocean Cape** (99 ft QS assigned to LLP derived from originally qualifying vessel ***Arctic Rose***)	LLG 3895 (122 ft)
Golden Fleece	**Golden Fleece** (104 ft)	LLG 2524 (124 ft)

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

2 LOA data for a vessel is derived from RAM FFP license database at http://alaskafisheries.noaa.gov/sustainablefisheries/amds/80/default.htm. MLOA for the LLP licenses is derived from the RAM LLP database (see URL above). Vessel lengths listed in the RAM database may differ from vessel lengths listed in USCG Vessel Documentation files.

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

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

5 The *Bering Enterprise* LLP license is currently held by Trident Seafoods, Inc., but will be assigned to O'Hara Corporation in 2010 (Dave Benson, Pers. Comm.). Because this transaction is likely to occur, the QS assigned to the *Bering Enterprise* LLP license is considered to be assigned to the O'Hara Corporation for purposes of this analysis.

Table 2: Owners of Amendment 80 vessels, QS permits, LLP licenses and QS holdings derived from Amendment 80 vessels, and participation in 2010 cooperative and limited access fishery

Participants in 2010 Amendment 80 Limited Access Fishery				
Participant Data		Percentage of Initial QS pool held by owner		
Owner[1]	**Amendment 80 Vessel(s)/LLPs**	**Species**	**Percentage by species**	**Percentage of aggregate QS pool**
Fishing Company of Alaska (FCA), Inc. (Management entity for	Alaska Juris *Alaska Ranger* Alaska Spirit Alaska Victory Alaska Voyager Alaska Warrior	Flathead Sole (FSOL)	10.7	35.9
		Pacific cod (PCOD)	16.0	
		Rock sole (ROCK)	23.5	
		Yellowfin sole (YFIN)	38.3	
		AI POP (POP)	53.0	

owner)		Atka mackerel (AMCK)	58.2	
Arctic Sole Seafoods	**Ocean Cape**	FSOL	0.8	0.3
		PCOD	0.4	
		RSOL	0.6	
		YFIN	0.2	
		POP	0	
		AMCK	0	
Trident Seafoods	*Bering Enterprise*	FSOL	0.5	0.2
		RSOL	0.2	
		YFIN	0.5	
United States Seafoods, LLC (Management entity for owners)	**Ocean Alaska**	FSOL	1.6	See aggregate total listed under Amendment 80 cooperative below
		PCOD	0.6	
		RSOL	0.6	
		YFIN	0.7	
		POP	0	
		AMCK	0	
Participants in 2010 Amendment 80 Cooperative (Best Use Cooperative)				
United States Seafoods, LLC (Cont.)	**Alliance** **Legacy** ***Prosperity*** Seafreeze Alaska	FSOL	6.5	9.6 (Includes Ocean Alaska)
		PCOD	11.8	
		RSOL	8.9	
		YFIN	7.0	
		POP	14.3	
		AMCK	9.8	
Iquiqui U.S., LLC	Arica Cape Horn **Rebecca Irene** **Tremont** Unimak	FSOL	35.5	16.9
		PCOD	23.4	
		RSOL	26.6	
		YFIN	20.6	
		POP	0	
		AMCK	0.3	
O'Hara Corporation	Constellation **Defender** **Enterprise** Harvester Enterprise	FSOL	33.0	12.6
		PCOD	19.3	
		RSOL	17.2	
		YFIN	13.7	
		POP	0	
		AMCK	0.7	
Fishermen's Finest (Management Entity for owners)	American No. 1 U.S. Intrepid	FSOL	5.4	8.1
		PCOD	14.8	
		RSOL	14.6	
		YFIN	8.2	
		POP	0.4	
		AMCK	2.2	
Cascade Fishing, Inc. (Management Entity for owners)	Seafisher	FSOL	1.1	8.1
		PCOD	5.2	
		RSOL	1.9	
		YFIN	4.8	
		POP	18.6	
		AMCK	18.6	
Ocean Peace	Ocean Peace	FSOL	5.3	6.0
		PCOD	5.2	
		RSOL	4.2	
		YFIN	4.0	
		POP	13.6	
		AMCK	9.2	

Jubilee Fisheries	**Vaerdal**	FSOL	1.5	1.9
		PCOD	3.5	
		RSOL	3.5	
		YFIN	1.7	
		POP	0	
		AMCK	0.7	
Owner who did not apply for Amendment 80 QS and is not participating in 2010				
Golden Fleece	**Golden Fleece**	FSOL	0.2	0.1
		PCOD	0.5	
		RSOL	0.3	
		YFIN	0	
		POP	0	
		AMCK	0	

It is worth noting that one participant, U.S. Seafoods, has assigned vessels to the single cooperative that formed in 2008, 2009, and 2010, as well as one vessel, *F/V Ocean Alask*a, to the limited access fishery. This choice likely reflects the perceived advantage that vessel may gain when fishing in the limited access fishery, relative to the cooperative. Similarly, Arctic Sole Seafoods, has assigned its vessel to the limited access fishery, presumably for the same reason, or because it was unable or unwilling to successfully negotiate entry into the cooperative. The LLP license derived from the *Bering Enterprise* is currently held by Trident Corporation, and the proportion of the Amendment 80 species TAC derived from that LLP licenses is assigned to the limited access fishery for 2010, because the Trident Corporation is not a member of BUC. The LLP license derived from the *Bering Enterprise* was reportedly scheduled to be transferred to the O'Hara Corporation in early 2010. The transfer of the *Bering Enterprise* LLP license from Trident Seafoods to O'Hara Corporation did not occur in 2009, due to limitations on the number of times an LLP license may transfer during a calendar year (see regulations at 50 CFR 679.4(k)). Because the ITAC derived from the *Bering Enterprise* LLP license is not associated with a specific vessel, other vessels in the limited access fishery will have access to that TAC.

2.4.6 The AFA and applicability to Amendment 80 replacement vessels

2.4.6.1 Summary of AFA provisions applicable to Amendment 80 replacement vessels

In October 2008, the Council requested that this analysis incorporate a review of specific statutory provisions of the AFA that could preclude Amendment 80 replacement vessels longer than 165 feet or exceeding minimum tonnage and horsepower requirements from obtaining necessary fishery endorsements from the USCG that are necessary to fish in U.S. waters (46 USC 12108). Stated differently, the Council requested an assessment of whether newly constructed Amendment 80 replacement vessels must comply with length, horsepower, and tonnage provisions applicable to AFA replacement vessels. NMFS consulted with NOAA General Counsel and U.S. Maritime Administration (MARAD) General Counsel and determined that section 208(g) of the AFA that limits the conditions under which AFA vessels can be replaced does not apply to Amendment 80 replacement vessels.

In order to participate in a U.S. fishery, a vessel must obtain a certificate of documentation with a fishery endorsement either from the U.S. Coast Guard or MARAD

(See, e.g., 46 U.S.C. §§ 12102(a), 12113(b)(1), 12151(b)). Vessels greater than 100 feet in length must receive this documentation through MARAD. Federal law prohibits larger vessels from obtaining a fishery endorsement unless specific conditions are met. These prohibitions are currently codified at 46 U.S.C. 12113(d).

Unless an exemption applies, a vessel is not eligible for a fishery endorsement if it is greater than 165 feet in registered length; is more than 750 gross registered tons (as measured pursuant to 46 U.S.C. Chapter 145) or 1900 gross registered tons (as measured pursuant to 46 U.S.C. Chapter 143); or possesses a main propulsion engine or engines rated to produce a total of more than 3,000 shaft horsepower, excluding auxiliary engines for hydraulic power, electrical generation, bow or stern thrusters, or similar purposes. One exemption states that a vessel that is prohibited from receiving a fishery endorsement because it exceeds one or more of the three size limits will be eligible for a fishery endorsement if the owner of such vessel demonstrates to MARAD that the regional fishery management council of jurisdiction established under section 302(a)(1) of the MSA has recommended after October 21, 1998, and the Secretary has approved, conservation and management measures to allow such vessel to be used in fisheries under such council's authority.

Because several of the options considered by the Council for length of replacement vessel would permit an Amendment 80 vessel to be longer than 165 feet registered length and may require greater tonnage or horsepower than permitted by the 46 USC 12113(d) for a fishery endorsement, NMFS consulted with NOAA General Counsel and MARAD General Counsel to determine what action on the part of the Council and NMFS would satisfy this exemption. NOAA General Counsel and MARAD General Counsel determined that the Council would need to recommend, and the Secretary would need to approve, conservation and management measures that would allow such a vessel to be used in the Amendment 80 fisheries. Under the preferred alternative, the Council recommended conservation and management measures that would permit an Amendment 80 replacement vessel to exceed the specific length (i.e., the 165 foot (59.4 m) limit), tonnage, and horsepower limits specified at 46 U.S.C. § 12113(d).

If the Secretary approves the preferred alternative, the Secretary will have approved conservation and management measures that would permit an Amendment 80 replacement vessel to exceed the specific length (i.e., the 165 foot (59.4 m) limit), tonnage, and horsepower limits specified at 46 USC 12113(d). Secretarial approval is intended to provide MARAD with a clear indication that the Council and NMFS have recommended that Amendment 80 replacement vessels meeting or exceeding the specific length, tonnage, or horsepower limits set forth at 46 USC 12133(d)(1) are eligible to receive a fishery endorsement consistent with 46 U.S.C. 12113(d)(2)(B) and MARAD regulations at 46 CFR 356.47(c). MARAD has stated that it would request documentation from NMFS demonstrating the Secretary's approval of measures that permit Amendment 80 replacement vessels to exceed these existing limits, prior to issuing a fishery endorsement to an Amendment 80 replacement vessel.

Specific vessel replacement provisions of the AFA would limit the size and horsepower of one Amendment 80 vessel that is also an eligible AFA vessel (*F/V Ocean Peace*) if the vessel owners wanted to use that replacement vessel in the Bering Sea directed pollock fishery.

2.4.6.2 Statutory and regulatory provisions applicable to Amendment 80 replacement vessels.

The AFA made two amendments to fishery endorsement provisions that have raised concerns among some participants of the Amendment 80 sector. First, the AFA amended fishery endorsement provisions at 46 U.S.C. 12102(c)(6) to prohibit larger vessels from obtaining a fishery endorsement unless specific conditions are met. Second, section 208(g) contains specific vessel replacement provisions that are applicable to vessels eligible to fish in the directed pollock fishery in the Bering Sea.

In order to participate in a U.S. fishery, a vessel must obtain a certificate of documentation with a fishery endorsement either from the U.S. Coast Guard or MARAD (*See, e.g.*, 46 U.S.C. §§ 12102(a), 12151(b)). Vessels greater than 100 feet in length must receive this documentation through MARAD. The AFA amended fishery endorsement requirements at 46 U.S.C. § 12102(c)(6) to prohibit vessels longer than 165 feet or that exceed specific horsepower and tonnage from receiving a fishery endorsement unless specific conditions are met. 46 U.S.C. 12102(c)(6) as amended by the AFA follows:

> (6) A vessel greater than 165 feet in registered length, of more than 750 gross registered tons, or that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower is not eligible for a fishery endorsement under section 12108 of this title unless—
>
> (A) (i) a certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;
>
> (ii) the vessel is not placed under foreign registry after October 21, 1998; and
>
> (iii) if the fishery endorsement is invalidated after October 21, 1998, application is made for a new fishery endorsement within 15 business days of the invalidation; *or*
>
> (B) *the owner of the vessel demonstrates to the Secretary that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852 (a)(1)) has recommended after October 21, 1998, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act* (Pub. L. 105-277, div. C title II) (16 U.S.C. 1851 note) to allow the vessel to be used in fisheries under the council's authority.

((46 U.S.C. § 12113(d)(2) (Pub. L. 109-304 § 5, 120 Stat. 1496-97 (Oct. 6, 2006)) (emphasis added); *see also* 46 C.F.R. § 356.47).

MARAD has adopted implementing regulations that mirror 46 U.S.C. § 12102(c)(6) as amended by the AFA. The relevant regulations are at 46 C.F.R. §§ 356.47(a) and (c):

> (a) Unless exempted in paragraph (b), (c) or (d) of this section, a vessel is not eligible for a fishery endorsement under 46 U.S.C. § 12108 if:
>
> (1) It is greater than 165 feet in registered length;

(2) It is more than 750 gross registered tons (as measured pursuant to 46 U.S.C. Chapter 145) or 1,900 gross registered tons (as measured pursuant to 46 U.S.C Chapter 143); or

(3) It possesses a main propulsion engine or engines rated to produce a total of more than 3,000 shaft horsepower; such limitation shall not include auxiliary engines for hydraulic power, electrical generation, bow or stern thrusters, or similar purposes.

* * *

(c) A vessel that is prohibited from receiving a fishery endorsement under paragraph (a) of this section will be eligible if the owner of such vessel demonstrates to MARAD that the regional fishery management council of jurisdiction established under § 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1852(a)(1)) has recommended after October 21, 1998, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act of 1998, Title II, Division C, Pub. L. 105-277, to allow such vessel to be used in fisheries under such council's authority.

While "accordance" is left undefined by the statute and in MARAD regulations, the dictionary defines "accordance" as: Agreement; harmony; concord; conformity. Black's Law Dictionary (4th Ed. 1951).[19] Some members of the Amendment 80 fleet are concerned that this provision in the AFA and implementing regulations could effectively preclude the Council and NMFS from authorizing replacement of Amendment 80 vessels (i.e., non-AFA vessels) with vessels that are greater than 165 feet in length (or that exceed the applicable tonnage or horsepower limits). Their concern appears to be based on an interpretation of 46 U.S.C. § 12113(d)(2)(B)[20] and its interplay with section 208(g) of the AFA.

Section 208(g) of the AFA prescribes restrictions that apply to the replacement of vessels eligible to participate in the directed Bering Sea pollock fishery:

> (g) REPLACEMENT VESSELS.—In the event of the actual total loss or constructive total loss of a vessel eligible under subsections (a), (b), (c), (d), or (e), the owner of such vessel may replace such vessel with a vessel which shall be eligible in the same manner under that subsection as the eligible vessel, provided that—
>
> (1) such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent;
>
> (2) the replacement vessel was built in the United States and if ever rebuilt, was rebuilt in the United States;

[19] In other words, the requirement to adopt conservation and management measures in accordance with the American Fisheries Act does not require the Council to adopt such measures pursuant to the AFA (i.e., under the authority of the AFA and by way of procedures prescribed by the AFA).

[20] Public Law 109-304 reorganized Title 46, Chapter 121. Prior to this re-organization, a provision was codified at 46 U.S.C. § 12102(c)(5) that is substantively identical to the provision quoted above, which is now codified at 46 U.S.C. § 12113(d). Thus, the cross-reference in AFA section 208(g)(6) refers, at least in part, to the language from Title 46 that is set forth above in the block quotation.

(3) the fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

(4) if the eligible vessel is greater than 165 feet in registered length, of more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

(5) if the eligible vessel is less than 165 feet in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing less than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel; and

(6) the replacement vessel otherwise qualifies under federal law for a fishery endorsement, including under section 12102(c) of title 46, United States Code, as amended by this Act.

Section 208(g) of the AFA provides that the owner of a "vessel eligible under subsections (a), (b), (c), (d), or (e)" of section 208 may replace such vessel in the event of total or constructive loss of an eligible vessel. The eligible vessels cited under 208(g) are all AFA vessels. Section 208(g) of the AFA makes no reference to non-AFA vessels, such as those in the Amendment 80 fleet. Two restrictions are relevant here. First, and most significant, in order to replace an AFA-eligible vessel, the replacement vessel must "otherwise qualif[y] under federal law for a fishery endorsement, including under section 12102(c) of title 46 . . . ."[21] AFA § 208(g)(6). Second, AFA vessels that are greater than 165 feet in length (or exceed the applicable tonnage or horsepower limits) may only be replaced by vessels of equal or lesser size. AFA § 208(g)(4). Such restrictions pertain only to vessels that replace AFA vessels ("AFA replacement vessels"). AFA § 208(g) (addressing replacement of "vessels eligible under subsections (a), (b), (c), (d), or (e)").

Section 208(g) of the AFA does not say anything about the replacement of non-AFA vessels; therefore, the AFA does not impede the ability of the Council and NMFS to adopt conservation and management measures that render large (e.g., vessels longer than 165 feet) replacement vessels eligible for fishery endorsements, provided those vessels are not AFA vessels. Because section 208(g) does not apply to Amendment 80 replacement vessels, it would not limit the ability of a vessel owner to replace an Amendment 80 vessel only "[i]n the event of the actual total loss or constructive total loss of a vessel."

Allowing large non-AFA vessels to be replaced by other large vessels would be in accordance with the AFA. The concerned members of the Amendment 80 fleet apparently give an expansive interpretation to the phrase "in accordance with the American Fisheries Act," in 46 U.S.C. § 12113(d)(2)(B), such that it would lengthen the reach of section 208(g) of the AFA by imposing its restrictions on AFA replacement vessels more generally to all replacement vessels. This reading is not supported by the

[21] Public Law 109-304 reorganized Title 46, Chapter 121. The cross-reference in AFA section 208(g)(6) refers, at least in part, to the language from Title 46 that is set forth above in the block quotation.

plain language of either provision, and there is nothing in the House Report for Public Law 109-304 that would suggest that Congress intended such a result.

Although section 208(g) of the AFA does not apply to Amendment 80 replacement vessels, Amendment 80 vessels must comply with the general requirements to obtain a fishery endorsement under 46 U.S.C. 12106(c)(6). Therefore, any Amendment 80 replacement vessel that does not already have a fishery endorsement and that is greater than 165 feet in length or that exceeds the tonnage and horsepower restrictions in 46 U.S.C. 12106(c)(6) can receive that endorsement only if the regulations implementing this provision at 46 C.F.R. 356.47(c) are met. Specifically, the owner of an Amendment 80 replacement vessel must demonstrate to MARAD that the North Pacific Council has recommended, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act of 1998 to allow the vessel to be used in fisheries under the Council's authority. NOAA General Counsel and MARAD staff concur that so long as the Council's recommendation to allow a larger Amendment 80 replacement vessel is not otherwise in disagreement, or discord with the AFA. Under the preferred alternative the Council has provided a general recommendation to allow Amendment 80 replacement vessels to exceed the specific length, horsepower, and tonnage requirements in regulation. Because Amendment 80 vessels, with one exception, are ineligible to fish in the directed pollock fishery in the BSAI, it appears that allowing Amendment 80 vessels to exceed the limitations at 46 C.F.R. 356.47 would be in accordance with the AFA

NOAA General Counsel and MARAD staff concur that the Council's recommendation and the Secretary's approval is probably best accomplished by the Council recommending an FMP amendment that is then approved by the Secretary that specifies that Amendment 80 replacement vessels may exceed the length, horsepower, and tonnage limits in regulation at 46 C.F.R. 356.47 when participating in fisheries other than the BSAI directed pollock fishery that are under the Council's authority. MARAD has stated that it would request documentation from NMFS of the Secretary's approval of any such FMP amendment, prior to issuing a fishery endorsement to an Amendment 80 replacement vessel.

As noted earlier, one Amendment 80 vessel, the *Ocean Peace* is also eligible to fish in the directed pollock fishery in the Bering Sea under section 208(e)(21) of the AFA. A replacement vessel for the *Ocean Peace* would be eligible to fish in the directed pollock fishery in the Bering Sea only if it meets the requirements of section 208(g) of the AFA. NOAA General Counsel reviewed this provision and concur that the Council could recommend, and the Secretary could approve, measures that would allow the *Ocean Peace* to be replaced as an Amendment 80 vessel for reasons other than actual or constructive total loss and exceed the length, horsepower, and tonnage requirements specified under section 208(g) of the AFA, but that replacement vessel would be ineligible to fish in the directed pollock fishery in the Bering Sea absent a legislative amendment to the AFA.

2.4.6.3 Use of AFA vessels as Amendment 80 replacement vessels.

During the development of the analysis for Amendment 97, NMFS cited the CRP as the rationale for restricting AFA vessels, AFA C/Ps in particular, from being eligible to fish as an Amendment 80 replacement vessels (see Sections 2.4.3 and 2.4.9.2). NMFS

first issued this guidance in October 2008 and the Council used and relied on this guidance in developing the suite of alternatives for Amendment 97. Because the Council and NMFS thought there was a statutory prohibition on the use of AFA vessels as Amendment 80 replacement vessels, the Council did not consider alternatives that would permit the use of AFA vessels as Amendment 80 replacement vessels or include a specific criterion prohibiting the use of AFA vessels in the alternatives under consideration. The Council did not receive any public comment challenging the interpretation of the CRP.

After the Council selected its preferred alternative for Amendment 97 but before Secretarial review of Amendment 97 began, NMFS and NOAA General Counsel re-reviewed the CRP in light of the court order in *Arctic Sole Seafoods, Inc.*, and determined that the CRP did not prohibit the use of an AFA vessel as an Amendment 80 replacement vessel. NMFS and NOAA General Counsel determined that the criteria set forth in the CRP apply only to originally qualifying vessels and that the CRP and case law interpreting it permit vessels that do not meet the criteria to be used as Amendment 80 replacement vessels. For example, Amendment 80 replacement vessels are not required to have "harvested with trawl gear and processed not less than a total of 150 metric tons of non-pollock groundfish during the period of January 1, 1997 through December 31, 2002." Without a statutory prohibition in the CRP or a specific prohibition recommended by the Council, NMFS stated in the preamble of the proposed rule for Amendment 97 that the proposed rule does not prohibit the use of an AFA vessel as an Amendment 80 replacement vessel. NMFS received a number of comments on this statement, some supporting and many opposing the use of AFA vessels as Amendment 80 replacement vessels.

The Council's preferred alternative for Amendment 97 does not specifically recommend that NMFS prohibit or otherwise establish regulations to limit the use of AFA vessels as Amendment 80 replacement vessels. However, this analysis, which includes the analysis provided to the Council in June 2010, describes the impacts that would occur under the alternatives assuming AFA vessels are not used as Amendment 80 replacement vessels. This document does not contain an analysis of the impacts that may occur if AFA vessels are permitted to actively participate in Amendment 80 fisheries as Amendment 80 replacement vessels. Additionally, the Council's preferred alternative for Amendment 97 and this analysis does not address potential statutory or regulatory conflicts that may limit the ability of an AFA vessel from actively participating in both AFA and Amendment 80 fisheries. If a listed AFA vessel would be approved by NMFS for use as an Amendment 80 replacement vessel, that vessel would not be released from the monitoring and enforcement requirements, sideboard restrictions, and the PSC limits that may be applicable to that AFA vessel. Any vessel eligible to participate in both fisheries would be required to meet the statutory and regulatory requirements for both fisheries, possibly impacting that vessel's ability to participate in either fishery. For example, a listed AFA C/P that replaces an Amendment 80 vessel would be subject to existing directed fishing and halibut PSC sideboard limits applicable to listed AFA C/Ps. Under section 213(c) of the AFA, the Council and NMFS may supersede the sideboard provisions of the Act to mitigate adverse effect in fisheries caused by the AFA. AFA C/P vessel owners may ask the Council and NMFS to examine changes to existing sideboard

limits for AFA C/P's that would accommodate the use of an AFA C/P as an Amendment 80 replacement vessel.

Also, replaced AFA vessels are prohibited by statute from participation in fisheries other than AFA fisheries. Under section 602 of the Coast Guard Authorization Act of 2010 (Pub. L. 111-281, Title VI, Sec. 602), replaced AFA vessels are not eligible for a fishery endorsement in any fishery other than an AFA fishery and are prohibited from fishing other federal fisheries, including Amendment 80 fisheries. As described in more detail in the Council's "AFA Vessel Replacement on GOA Sideboard" discussion paper (NPFMC 2012), the U.S. Coast Guard Authorization Act stipulates that, once replaced, a vessel loses not only its AFA fishing privileges but also any fishery privileges in other fisheries, including sideboard fisheries.

2.4.7 Fishing practices of the Amendment 80 sector: 2003 through 2009

2.4.7.1 Limitations on data

The MSA and agreements with the State of Alaska require that any analysis using catch data may not reveal data from an individual without prior consent of that person.[22] To ensure that analyses do not indirectly reveal individual data, the Council and NMFS have established a "rule of three" policy that prohibits the release of catch data comprised of fewer than three independent entities. The definition of an entity is subject to interpretation. Council staff and Council analyses have considered each vessel as a unique entity when reporting vessel catch data.

Under the Amendment 80 Program, NMFS inseason staff interpret "an entity" as a unique company. In cases where NMFS is aware of common ownership of more than one vessel by a company, which is the case with the Amendment 80 sector, NMFS considers the catch from all vessels within that common ownership structure as being derived from a single entity. Generally, NMFS considers a fishery cooperative as a single entity, for purposes of the release of confidential data, even though a fishery cooperative may be comprised of multiple companies that do not share a common ownership.

NMFS received waivers from the Amendment 80 sector to release aggregate BSAI limited access fishery and cooperative fishery data from the 2008 fishing year. A similar request was made for waivers to release aggregate limited access fishery and

[22] Section 402(b)(3) of the MSA notes, "The Secretary [of Commerce] shall, by regulation prescribe such measures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act [MSA], except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information." Similarly, State of Alaska statutes governing the use of fishery data at Section 16.05.815(a) notes that "records required by regulations of the department (ADF&G) concerning the landings of fish, shellfish, or fishery products, and annual statistical reports of fishermen, buyers, and processors required by regulation of the department are confidential and may not be released by the department or by the Alaska Commercial Fisheries Entry Commission except as set out in this subsection." This statute also notes that records and reports may be released to NMFS (and other entities) provided NMFS "agrees to maintain the confidentiality of the records and reports." NMFS has established a Memorandum of Understanding with ADF&G on the use and release of State of Alaska data.

cooperative data for 2009, and the relevant parties in the Amendment 80 sector agreed to release data.

2.4.7.2 Fishery performance in 2008 and 2009 vs. 2003 through 2007

Vessels have been operating under the Amendment 80 Program for only two full years, and past experience with LAPPs suggests that fishing patterns in the first few years of a new management program may not necessarily be indicative of long-term fishing patterns that develop. As an example, a smaller proportion of the QS holders were active in crab harvesting cooperatives in the first year of the BSAI Crab Rationalization Program than currently, and there were a number of participants that chose not to participate in AFA inshore cooperatives in the first year of that LAPP.

The analysis provides limited comparisons between performance of the cooperative and limited access fishery in 2008 and 2009, compared to eligible Amendment 80 vessels from 2003 through 2007. This time period for comparison was selected as most representative of current fishing practices.

Data presented in these tables include data from the *F/V Alaska Ranger*. That vessel sank on March 23, 2008. In some cases, data from that vessel are extrapolated from weekly production reports, rather than observer data, which was lost with the vessel. These extrapolations may not accurately reflect fishery performance of the vessel.

Table 3 identifies the TAC of BSAI groundfish species, total catch by all vessels, catch by Amendment 80 vessels, and the percentage of TAC and total catch attributed to Amendment 80 vessels. This table provides total catch in the cooperative and limited access fishery for 2008 and 2009.

Table 4 describes the PSC usage by Amendment 80 vessels in the BSAI in metric tons, or numbers of animals (for crab and non-Chinook salmon), and calculates the PSC rate of each PSC species, per metric ton of groundfish catch, by Amendment 80 vessels. This table provides total PSC in the cooperative and limited access fishery for 2008 and 2009.

Tables 5a and 5b provide an overview of catch of groundfish and use of PSC in the BSAI by the Amendment 80 sector in 2008 and 2009, relative to the initial allocation of ITAC to the Amendment 80 sector. These tables provide total catch and PSC in the cooperative and limited access fishery for 2008 and 2009.

Tables 6a and 6b provides an overview of the percentage of the QS pool assigned to the limited access fishery and cooperative in 2008 and 2009 to provide a context for the potential number of participants and amount of QS that could be assigned to a cooperative.

Tables 7 and 8 are similar to Table 3, and identify the TAC of select GOA groundfish species and species groups that historically have been targeted by Amendment 80 vessels, total catch by all vessels, catch by Amendment 80 vessels, and the percentage of TAC and total catch attributed to Amendment 80 vessels. Table 7 describes catch in the Western GOA (Area 610), and Table 8 describes the Central GOA (Areas 620 and 630). Data from the West Yakutat District (Area 640) is not presented due to confidentiality concerns. The waivers granted by industry participants for 2008 and 2009 catch data specifically referenced the BSAI cooperative and limited access fisheries, therefore data in the GOA is not described separately for the Amendment 80 cooperative and limited access fisheries, to avoid the release of potentially confidential data.

Table 9 is similar to Table 4, and describes halibut PSC by Amendment 80 vessels in the GOA in metric tons. Crab and salmon PSC are not subject to limits in the GOA, as they are in the BSAI, and therefore are not constraining on groundfish operations and are not analyzed. Because these data include PSC by Amendment 80 vessels in the Central GOA rockfish fishery, it is not appropriate to calculate PSC rates per metric ton of groundfish.

Table 3: Total BSAI groundfish catch by all vessels and Amendment 80 vessels from 2003-2009

Year	Species	Non-CDQ TAC (mt)	Total Catch (All vessels)	Amendment 80 (A80) Catch (mt)	A80 Catch as % of Non-CDQ TAC	A80 Catch as % of Total Catch
2003	**Aleutian Islands POP (AI POP)**	10,787	**12,756**	**12,714**	**117.86%**	99.67%
	Atka Mackerel	51,000	**54,045**	**51,804**	**101.58%**	95.85%
	Flathead sole	17,000	13,807	11,521	67.77%	83.45%
	Pacific cod	176,375	**196,495**	29,728	16.86%	15.13%
	Rock sole	37,400	35,498	32,315	86.40%	91.04%
	Yellowfin sole	71,188	**74,251**	68,818	96.67%	92.68%
	Alaska Plaice	165,000	9,673	9,318	5.65%	96.33%
	Arrowtooth Flounder	10,200	**12,858**	9,560	93.73%	74.35%
	Greenland Turbot	3,400	**3,465**	857	25.21%	24.74%
	Northern Rockfish	5,100	4,651	4,545	89.12%	97.73%
	Other flatfish	2,550	**2,871**	2,400	94.13%	83.60%
	Other Rockfish	1,355	717	418	30.83%	58.30%
	Other Species	27,463	25,562	7,349	26.76%	28.75%
	Pollock	1,343,634	1,342,145	26,421	1.97%	1.97%
	Sablefish	5,076	1,937	211	4.15%	10.88%
	Shortraker/Rougheye Rockfish	822	397	217	26.35%	54.57%
	Squid	1,675	843	53	3.19%	6.34%
	Total	1,930,025	1,791,968	268,249	13.90%	14.97%
2004	**AI POP**	9,496	**10,479**	**10,448**	**110.02%**	99.71%
	Atka Mackerel	53,550	**56,068**	**54,400**	**101.59%**	97.03%
	Flathead sole	16,150	16,846	14,195	87.89%	84.26%
	Pacific cod	183,175	**196,131**	37,983	20.74%	19.37%
	Rock sole	34,850	**47,789**	**43,910**	**126.00%**	91.88%
	Yellowfin sole	73,164	69,188	63,292	86.51%	91.48%
	Alaska Plaice	8,500	7,587	7,267	85.49%	95.78%
	Arrowtooth Flounder	10,200	**17,721**	**14,659**	**143.72%**	82.72%
	Greenland Turbot	2,975	2,199	624	20.98%	28.39%
	Northern Rockfish	4,250	**4,280**	4,176	98.25%	97.55%
	Other flatfish	2,550	**4,699**	**3,986**	**156.31%**	84.83%
	Other Rockfish	930	635	383	41.15%	60.31%
	Other Species	23,124	**26,051**	7,568	32.73%	29.05%
	Pollock	1,347,660	1,331,102	35,552	2.64%	2.67%
	Rougheye Rockfish	166	**206**	160	96.20%	77.56%
	Sablefish	5,078	1,821	280	5.52%	15.39%
	Shortraker Rockfish	447	213	83	18.52%	38.82%
	Squid	1,084	861	34	3.17%	4.00%
	Total	1,777,349	1,793,875	298,999	16.82%	16.67%
2005	**AI POP**	9,520	8,930	8,687	91.24%	97.27%
	Atka Mackerel	53,550	**57,643**	**56,572**	**105.64%**	98.14%
	Flathead sole	16,575	15,217	12,101	73.01%	79.52%
	Pacific cod	175,100	**190,942**	30,532	17.44%	15.99%
	Rock sole	35,275	**35,539**	33,179	94.06%	93.36%
	Yellowfin sole	77,083	**87,794**	**79,264**	**102.83%**	90.28%
	Alaska Plaice	8,500	**11,071**	**9,986**	**117.48%**	90.20%
	Arrowtooth Flounder	10,200	**13,660**	**10,763**	**105.52%**	78.79%
	Greenland Turbot	2,975	2,535	652	21.91%	25.71%
	Northern Rockfish	4,250	3,748	3,568	83.95%	95.20%
	Other flatfish	2,975	**4,525**	**3,667**	**123.27%**	81.04%
	Other Rockfish	893	452	254	28.49%	56.26%
	Other Species	24,650	**27,005**	6,124	24.84%	22.68%
	Pollock	1,347,760	1,334,531	29,711	2.20%	2.23%
	Rougheye Rockfish	190	85	75	39.32%	87.47%
	Sablefish	4,790	1,983	359	7.49%	18.09%
	Shortraker Rockfish	507	161	40	7.83%	24.61%
	Squid	1,084	**1,112**	35	3.22%	3.14%
	Total	1,766,357	1,796,933	285,567	16.17%	15.89%

2006	**AI POP**	9,520	**11,053**	**11,005**	**115.60%**	99.57%
	Atka Mackerel	53,550	**57,471**	**56,110**	**104.78%**	97.63%
	Flathead sole	16,575	**17,568**	13,705	82.69%	78.01%
	Pacific cod	161,302	**178,219**	29,351	18.20%	16.47%
	Rock sole	35,275	34,281	31,015	87.92%	90.47%
	Yellowfin sole	81,346	**92,747**	78,285	96.24%	84.41%
	Alaska Plaice	6,800	**17,076**	**13,403**	**197.11%**	78.49%
	Arrowtooth Flounder	11,050	**12,699**	9,147	82.77%	72.03%
	Greenland Turbot	2,329	1,943	267	11.45%	13.73%
	Northern Rockfish	3,825	3,423	3,282	85.79%	95.87%
	Other flatfish	2,975	**2,991**	2,206	74.16%	73.77%
	Other Rockfish	893	560	250	28.03%	44.72%
	Other Species	24,650	24,599	7,484	30.36%	30.42%
	Pollock	1,353,610	1,337,264	23,595	1.74%	1.76%
	Rougheye Rockfish	190	**201**	167	87.74%	83.14%
	Sablefish	4,765	1,702	101	2.11%	5.90%
	Shortraker Rockfish	493	199	67	13.65%	33.79%
	Squid	1,084	**1,321**	14	1.27%	1.04%
	Total	1,770,232	1,795,315	279,454	15.79%	15.57%
2007	**AI POP**	15,080	**16,337**	**15,683**	**104.00%**	96.00%
	Atka Mackerel	53,550	**54,168**	**53,740**	**100.36%**	99.21%
	Flathead sole	25,500	17,669	12,444	48.80%	70.43%
	Pacific cod	145,112	**160,851**	33,475	23.07%	20.81%
	Rock sole	46,750	33,097	30,905	66.11%	93.38%
	Yellowfin sole	115,600	110,948	87,984	76.11%	79.30%
	Alaska Plaice	21,250	18,587	14,739	69.36%	79.30%
	Arrowtooth Flounder	17,000	10,479	6,056	35.63%	57.79%
	Greenland Turbot	2,074	1,753	271	13.08%	15.48%
	Northern Rockfish	6,962	3,854	3,771	54.17%	97.86%
	Other flatfish	8,500	5,482	4,359	51.28%	79.51%
	Other Rockfish	849	564	300	35.32%	53.17%
	Other Species	31,752	23,477	9,646	30.38%	41.09%
	Pollock	1,271,510	1,216,105	20,925	1.65%	1.72%
	Rougheye Rockfish	172	155	116	67.38%	74.87%
	Sablefish	2,284	1,697	91	4.00%	5.38%
	Shortraker Rockfish	424	287	71	16.82%	24.87%
	Squid	1,675	1,073	13	0.75%	1.17%
	Total	1,766,044	1,676,580	294,590	16.68%	17.57%
Year	Species	Non-CDQ TAC (mt)	Total Catch (All vessels)	Amendment 80 (A80) Catch (mt)	A80 Catch as % of Non-CDQ TAC	A80 Catch as % of Total Catch
2003-2007 Average	**AI POP**	10,881	**11,911**	**11,707**	**107.60%**	98.29%
	Atka Mackerel	53,040	**55,879**	**54,525**	**102.80%**	97.58%
	Flathead sole	18,360	16,221	12,793	69.68%	78.87%
	Pacific cod	168,213	**184,528**	32,214	19.15%	17.46%
	Rock sole	37,910	37,241	34,265	90.39%	92.01%
	Yellowfin sole	83,676	**86,986**	75,529	90.26%	86.83%
	Alaska Plaice	42,010	12,799	10,942	26.05%	85.50%
	Arrowtooth Flounder	11,730	**13,483**	10,037	85.57%	74.44%
	Greenland Turbot	2,751	2,379	534	19.42%	22.46%
	Northern Rockfish	4,877	3,991	3,868	79.31%	96.92%
	Other flatfish	3,910	**4,114**	3,324	85.00%	80.80%
	Other Rockfish	984	585	321	32.62%	54.84%
	Other Species	26,328	25,339	7,634	29.00%	30.13%
	Pollock	1,332,835	1,312,229	27,241	2.04%	2.08%
	Rougheye Rockfish	180	162	129	72.01%	79.96%
	Sablefish	4,399	1,828	208	4.73%	11.39%
	Shortraker Rockfish	468	215	65	13.96%	30.34%
	Squid	1,320	1,042	30	2.26%	2.86%
	Total	1,803,870	1,770,930	285,367	15.82%	16.11%

Year	Species	Non-CDQ TAC (mt)	Total Catch (All vessels)	Amendment 80 (A80) Catch (mt)	A80 Catch as % of Non-CDQ TAC	A80 Catch as % of Total Catch
All A80 Vessels 2008	**AI POP**	15,628	15,232	14,852	95.03%	97.51%
	Atka Mackerel	54,205	51,762	50,906	93.91%	98.35%
	Flathead sole	44,650	24,040	19,068	42.71%	79.32%
	Pacific cod	152,453	**153,007**	15,752	10.33%	10.29%
	Rock sole	66,975	49,358	44,540	66.50%	90.24%
	Yellowfin sole	200,925	141,214	119,815	59.63%	84.85%
	Alaska Plaice	42,500	16,823	14,805	34.83%	88.00%
	Arrowtooth Flounder	63,750	20,951	17,267	27.09%	82.42%
	Greenland Turbot	2,159	**2,562**	1,694	78.44%	66.11%
	Northern Rockfish	6,953	2,946	2,785	40.05%	94.55%
	Other flatfish	18,360	3,448	2,822	15.37%	81.86%
	Other Rockfish	849	549	363	42.78%	66.16%
	Other Species	42,500	25,696	7,326	17.24%	28.51%
	Pollock	917,110	890,595	20,320	2.22%	2.28%
	Rougheye Rockfish	172	**193**	117	68.08%	60.67%
	Sablefish	4,213	1,613	231	5.49%	14.33%
	Shortraker Rockfish	360	144	70	19.31%	48.33%
	Squid	1,675	1,496	82	4.89%	5.47%
	Total	1,635,437	1,401,627	332,815	20.35%	23.74%

Year	Species	TAC (mt)	Total A80 Catch (All A80 vessels)	A80 Cooperative Catch (mt)	A80 Cooperative Catch as % TAC	A80 Cooperative Catch as % of Total A80 Catch
A80 Coop Vessels 2008	**AI POP**	15,628	14,852	7,056	45.15%	47.51%
	Atka Mackerel	54,205	50,906	21,436	39.55%	42.11%
	Flathead sole	44,650	19,068	16,933	37.92%	88.80%
	Pacific cod	152,453	15,752	13,518	8.87%	85.82%
	Rock sole	66,975	44,540	34,983	52.23%	78.54%
	Yellowfin sole	200,925	119,815	84,851	42.23%	70.82%
	Alaska Plaice	42,500	14,805	10,040	23.62%	67.81%
	Arrowtooth Flounder	63,750	17,267	16,474	25.84%	95.40%
	Greenland Turbot	2,159	1,694	1,637	75.82%	96.66%
	Northern Rockfish	6,953	2,785	1,236	17.78%	44.38%
	Other flatfish	18,360	2,822	2,540	13.83%	89.99%
	Other Rockfish	849	363	214	25.25%	59.03%
	Other Species	42,500	7,326	5,497	12.93%	75.03%
	Pollock	917,110	20,320	16,900	1.84%	83.17%
	Rougheye Rockfish	172	117	53	30.99%	45.52%
	Sablefish	4,213	231	216	5.12%	93.29%
	Shortraker Rockfish	360	70	49	13.50%	69.93%
	Squid	1,675	82	77	4.58%	93.65%
	Total	1,635,437	332,815	233,707	14.29%	70.22%

Year	Species	Non-CDQ TAC (mt)	Total A80 Catch (All A80 vessels)	A80 L. Access Catch (mt)	A80 L. Access Catch as % TAC	A80 L. Access Catch as % of Total A80 Catch
A80 L. Access Vessels 2008	**AI POP**	15,628	14,852	7,796	49.88%	52.49%
	Atka Mackerel	54,205	50,906	29,471	54.37%	57.89%
	Flathead sole	44,650	19,068	2,135	4.78%	11.20%
	Pacific cod	152,453	15,752	2,234	1.47%	14.18%
	Rock sole	66,975	44,540	9,557	14.27%	21.46%
	Yellowfin sole	200,925	119,815	34,965	17.40%	29.18%
	Alaska Plaice	42,500	14,805	4,765	11.21%	32.19%
	Arrowtooth Flounder	63,750	17,267	794	1.24%	4.60%
	Greenland Turbot	2,159	1,694	57	2.62%	3.34%
	Northern Rockfish	6,953	2,785	1,549	22.28%	55.62%
	Other flatfish	18,360	2,822	283	1.54%	10.01%
	Other Rockfish	849	363	149	17.53%	40.97%
	Other Species	42,500	7,326	1,829	4.30%	24.97%
	Pollock	917,110	20,320	3,420	0.37%	16.83%
	Rougheye Rockfish	172	117	64	37.09%	54.48%
	Sablefish	4,213	231	16	0.37%	6.71%
	Shortraker Rockfish	360	70	21	5.81%	30.07%
	Squid	1,675	82	5	0.31%	6.35%
	Total	1,635,437	332,815	99,107	6.06%	29.78%

Year	Species	Non-CDQ TAC (mt)	Total non-CDQ Catch (All vessels)	Amendment 80 (A80) Catch (mt)	A80 Catch as % of Non-CDQ TAC	A80 Catch as % of Total Catch
All A80 Vessels 2009	**AI POP**	13,377	13,237	12,348	92.31%	93.28%
	Atka Mackerel	68,225	64,756	61,532	90.19%	95.02%
	Flathead sole	53,580	19,041	13,924	25.99%	73.13%
	Pacific cod	157,650	155,290	21,662	13.74%	13.95%
	Rock sole	80,370	47,728	37,592	46.77%	78.76%
	Yellowfin sole	187,530	105,787	92,843	49.51%	87.76%
	Alaska Plaice	42,500	13,659	12,428	29.24%	90.99%
	Arrowtooth Flounder	63,750	28,685	24,766	38.85%	86.34%
	Greenland Turbot	6,273	4,316	2,878	45.88%	66.69%
	Northern Rockfish	6,086	2,715	2,560	42.06%	94.29%
	Other flatfish	14,790	2,143	1,783	12.06%	83.20%
	Other Rockfish	884	538	265	29.93%	49.15%
	Other Species	42,500	24,971	7,824	18.41%	31.33%
	Pollock	750,650	729,975	20,238	2.70%	2.77%
	Rougheye Rockfish	458	196	148	32.21%	75.40%
	Sablefish	4,032	1,616	155	3.85%	9.60%
	Shortraker Rockfish	329	195	113	34.37%	57.97%
	Squid	1,675	344	143	8.54%	41.57%
	Total	1,494,659	1,215,193	313,200	20.95%	25.77%

Year	Species	TAC (mt)	Total A80 Catch (All A80 vessels)	A80 Cooperative Catch (mt)	A80 Cooperative Catch as % TAC	A80 Cooperative Catch as % of Total A80 Catch
A80 Coop Vessels 2009	**AI POP**	15,628	12,348	6,906	44.19%	55.92%
	Atka Mackerel	54,205	61,532	26,144	48.23%	42.49%
	Flathead sole	44,650	13,924	12,031	26.94%	86.40%
	Pacific cod	152,453	21,662	19,637	12.88%	90.65%
	Rock sole	66,975	37,592	33,668	50.27%	89.56%
	Yellowfin sole	200,925	92,843	69,564	34.62%	74.93%
	Alaska Plaice	42,500	12,428	10,781	25.37%	86.74%
	Arrowtooth Flounder	63,750	24,766	23,321	36.58%	94.16%
	Greenland Turbot	2,159	2,878	2,704	125.26%	93.97%
	Northern Rockfish	6,953	2,560	1,213	17.45%	47.39%
	Other flatfish	18,360	1,783	1,685	9.18%	94.52%
	Other Rockfish	849	265	160	18.82%	60.38%
	Other Species	42,500	7,824	6,173	14.53%	78.90%
	Pollock	917,110	20,238	18,152	1.98%	89.69%
	Rougheye Rockfish	172	148	58	33.87%	39.49%
	Sablefish	4,213	155	146	3.46%	93.90%
	Shortraker Rockfish	360	113	86	23.81%	75.80%
	Squid	1,675	143	129	7.68%	89.91%
	Total	1,635,437	313,200	232,557	14.22%	74.25%

Year	Species	Non-CDQ TAC (mt)	Total A80 Catch (All A80 vessels)	A80 L. Access Catch (mt)	A80 L. Access Catch as % TAC	A80 L. Access Catch as % of Total A80 Catch
A80 L. Access Vessels 2009	**AI POP**	15,628	12,348	6,627	42.41%	50.07%
	Atka Mackerel	54,205	61,532	36,385	67.12%	56.19%
	Flathead sole	44,650	13,924	1,893	4.24%	9.94%
	Pacific cod	152,453	21,662	2,025	1.33%	1.30%
	Rock sole	66,975	37,592	3,923	5.86%	8.22%
	Yellowfin sole	200,925	92,843	23,279	11.59%	22.01%
	Alaska Plaice	42,500	12,428	1,648	3.88%	12.06%
	Arrowtooth Flounder	63,750	24,766	1,445	2.27%	5.04%
	Greenland Turbot	2,159	2,878	174	8.04%	4.02%
	Northern Rockfish	6,953	2,560	1,347	19.37%	49.60%
	Other flatfish	18,360	1,783	98	0.53%	4.56%
	Other Rockfish	849	265	105	12.35%	19.47%
	Other Species	42,500	7,824	1,651	3.88%	6.61%
	Pollock	917,110	20,238	2,086	0.23%	0.29%
	Rougheye Rockfish	172	148	89	51.90%	45.62%
	Sablefish	4,213	155	9	0.22%	0.59%
	Shortraker Rockfish	360	113	27	7.60%	14.03%
	Squid	1,675	143	14	0.86%	4.19%
	Total	1,635,437	313,200	82,825	5.06%	26.44%

Note: Table 3 catch data do not include CDQ or State of Alaska Aleutian Islands Pacific cod fisheries data. Species allocated under the Amendment 80 Program are in bold. In 2003, Rougheye and Shortraker rockfish were assigned a combined TAC. The average TAC for Rougheye and Shortraker does not include 2003 data, as with the other species for the 2003 through 2007 period. TAC and catch data for AI POP exclude all Bering Sea POP. Catch of species that exceeded the TAC is noted in bold. Catch data for Amendment 80 vessels do not include catch received from other vessels for processing (i.e., no data from deliveries of "bags over the side" are included).

Table 4: PSC by Amendment 80 vessels: 2003 through 2009

Species	Year	Total PSC by Amendment 80 vessels	Total groundfish catch by Amendment 80 vessels (mt)	PSC per mt of groundfish caught	Percentage of average 2003-2007 PSC
PSC Species Allocated under Amendment 80 Program					
Halibut (mt)	2003	2,649	268,249	0.009873	106.67%
	2004	2,800	298,999	0.009365	101.19%
	2005	2,698	285,567	0.009446	102.06%
	2006	2,541	279,454	0.009091	98.23%
	2007	2,519	294,590	0.008552	92.40%
	Ave. 2003-2007	2,641	285,367	0.009256	100.00%
	2008 -- All A80	**1,969**	**332,815**	**0.005917**	**63.93%**
	2008-- A80 Coop	1,293	233,707	0.005533	59.78%
	2008 -- A80 L. Access	676	99,107	0.006821	73.70%
	2009 -- All A80	**2,074**	**315,085**	**0.006582**	**71.12%**
	2009-- A80 Coop	1,497	232,557	0.006437	69.55%
	2009 -- A80 L. Access	577	82,825	0.006966	75.27%
Zone 1 *C. bairdi* (Number of animals)	2003	298,260	268,249	1.111877	152.18%
	2004	201,952	298,999	0.675427	92.44%
	2005	204,679	285,567	0.716746	98.10%
	2006	194,835	279,454	0.697199	95.42%
	2007	142,783	294,590	0.484684	66.34%
	Ave. 2003-2007	208,502	285,367	0.730644	100.00%
	2008 -- All A80	**141,418**	**332,815**	**0.424915**	**58.16%**
	2008-- A80 Coop	106,683	233,707	0.456482	62.48%
	2008 -- A80 L. Access	34,735	99,107	0.350480	47.97%
	2009 -- All A80	**166,289**	**315,085**	**0.527759**	**72.23%**
	2009-- A80 Coop	131,718	232,557	0.566390	77.52%
	2009 -- A80 L. Access	34,571	82,825	0.417398	57.13%
Zone 2 *C. bairdi* (Number of animals)	2003	575,585	268,249	2.145712	133.43%
	2004	367,327	298,999	1.228523	76.40%
	2005	430,732	285,567	1.508340	93.80%
	2006	502,716	279,454	1.798922	111.87%
	2007	418,098	294,590	1.419254	88.26%
	Ave. 2003-2007	458,892	285,367	1.608075	100.00%
	2008 -- All A80	**385,662**	**332,815**	**1.158788**	**72.06%**
	2008-- A80 Coop	211,799	233,707	0.906259	56.36%
	2008 -- A80 L. Access	173,863	99,107	1.754296	109.09%
	2009 -- All A80	**227,669**	**315,085**	**0.722564**	**44.93%**
	2009-- A80 Coop	135,339	232,557	0.581961	36.19%

	2009 -- A80 L. Access	92,330	82,825	1.114760	69.32%
Table 5 (cont.)					
Zone 1 *C. opilio* COBLZ (Number of Animals)	2003	584,362	268,249	2.178433	42.24%
	2004	1,710,702	298,999	5.721431	110.94%
	2005	3,109,441	285,567	10.888657	211.13%
	2006	818,705	279,454	2.929658	56.81%
	2007	1,135,312	294,590	3.853870	74.73%
	Ave. 2003-2007	1,471,704	285,367	5.157234	100.00%
	2008 -- All A80	**600,898**	**332,815**	**1.805502**	**35.01%**
	2008-- A80 Coop	286,785	233,707	1.227113	23.79%
	2008 -- A80 L. Access	314114	99,107	3.169443	61.46%
	2009 -- All A80	**355002**	**315,085**	**1.126686**	**21.85%**
	2009-- A80 Coop	315586	232,557	1.357026	26.31%
	2009 -- A80 L. Access	39416	82,825	0.475895	9.23%
Zone 1 Bristol Bay Red King Crab (Number of Animals)	2003	75,719	268,249	0.282272	101.01%
	2004	74,661	298,999	0.249703	89.35%
	2005	96,576	285,567	0.338191	121.02%
	2006	68,962	279,454	0.246775	88.30%
	2007	82,827	294,590	0.281159	100.61%
	Ave. 2003-2007	79,749	285,367	0.279461	100.00%
	2008 -- All A80	**78,358**	**332,815**	**0.235440**	**84.25%**
	2008-- A80 Coop	48,931	233,707	0.209369	74.92%
	2008 -- A80 L. Access	29,427	99,107	0.296922	106.25%
	2009 -- All A80	**59,429**	**315,085**	**0.188613**	**67.49%**
	2009-- A80 Coop	50,406	232,557	0.216747	77.56%
	2009 -- A80 L. Access	9,023	82,825	0.108941	38.98%
Herring (mt)	2003	52	268,249	0.000193	89.52%
	2004	95	298,999	0.000316	146.80%
	2005	80	285,567	0.000280	130.12%
	2006	24	279,454	0.000086	39.89%
	2007	57	294,590	0.000193	89.87%
	Ave. 2003-2007	61	285,367	0.000215	100.00%
	2008 -- All A80	**79**	**332,815**	**0.000236**	**109.83%**
	2009 -- All A80	**23**	**315,085**	**0.000073**	**33.90%**
Non-Chinook Salmon (No. of animals)	2003	109	268,249	0.000408	4.08%
	2004	4,513	298,999	0.015092	150.92%
	2005	225	285,567	0.000789	7.89%
	2006	9,001	279,454	0.032210	322.10%
	2007	420	294,590	0.001425	14.25%
	Ave. 2003-2007	2,854	285,367	0.010000	100.00%
	2008 -- All A80	**871**	**332,815**	**0.002617**	**26.17%**
	2009 -- All A80	**1,247**	**315,085**	**0.003958**	**39.58%**

Notes: Table 4 does not include CDQ or State of Alaska Aleutian Islands Pacific cod fisheries data. Data for Amendment 80 vessels do not include catch received from other vessels for processing.

Table 5a: Percent of Amendment 80 allocations caught or used by Amendment 80 sector (2008)

Species	Initial TAC Allocation to Amendment 80 vessels (mt or No. of animals)	Total Catch or Use by Amendment 80 vessels (mt or No. of animals)	Percentage of Allocation Caught or Used (mt or No. of animals)
All Amendment 80 Vessels			
Groundfish (mt)			
Aleutian Islands POP (AI POP)	14,936	14,852	**99.44%**
Atka Mackerel	51,953	50,906	**97.98%**
Flathead sole	40,150	19,068	**47.49%**
Pacific cod	20,429	15,752	**77.10%**
Rock sole	61,975	44,540	**71.87%**
Yellowfin sole	160,413	119,815	**74.69%**
PSC			
Halibut (mt)	2,525	1,969	**77.99%**
Zone 1 *C. bairdi* (No. of animals)	460,674	141,418	**30.70%**
Zone 2 *C. bairdi* (No. of animals)	784,789	385,662	**49.14%**
Zone 1 C.opilio COBLZ (No. of Animals)	2,386,668	600,898	**25.18%**
Zone 1 Bristol Bay Red King Crab (No.of Animals)	104,427	78,358	**75.04%**
Amendment 80 Cooperative			
Groundfish (mt)			
Aleutian Islands POP (AI POP)	7,016	7,056	**100.57%**
Atka Mackerel	22,914	21,436	**93.55%**
Flathead sole	35,758	16,933	**47.35%**
Pacific cod	17,135	13,518	**78.89%**
Rock sole	47,003	34,983	**74.43%**
Yellowfin sole	98,982	84,851	**85.72%**
PSC			
Halibut (mt)	1,837	1,293	**70.39%**
Zone 1 *C. bairdi* (No. of animals)	340,520	106,683	**31.33%**
Zone 2 *C. bairdi* (No. of animals)	580,311	211,799	**36.50%**
Zone 1 C.opilio COBLZ (No. of Animals)	1,632,432	286,785	**17.57%**
Zone 1 Bristol Bay Red King Crab (No.of Animals)	78,631	48,931	**62.23%**
Amendment 80 Limited Access Fishery			
Groundfish (mt)			
Aleutian Islands POP (AI POP)	7,920	7,796	**98.43%**
Atka Mackerel	30,339	29,471	**97.14%**
Flathead sole	4,392	2,135	**48.61%**
Pacific cod	3,294	2,234	**67.81%**
Rock sole	14,972	9,557	**63.83%**
Yellowfin sole	61,431	34,965	**56.92%**
PSC			
Halibut (mt)	688	676	**98.26%**
Zone 1 *C. bairdi* (No. of animals)	120,154	34,735	**28.91%**
Zone 2 *C. bairdi* (No. of animals)	204,477	173,863	**85.03%**
Zone 1 C.opilio COBLZ (No. of Animals)	754,235	314,114	**41.65%**
Zone 1 Bristol Bay Red King Crab (No.of Animals)	31,284	29,427	**94.06%**

Table 5b: Percent of Amendment 80 allocations caught or used by Amendment 80 sector (2009)

Species	Initial TAC Allocation to Amendment 80 vessels (mt or No. of animals)	Total Catch or Use by Amendment 80 vessels (mt or No. of animals)	Percentage of Allocation Caught or Used (mt or No. of animals)
All Amendment 80 Vessels			
Groundfish (mt)			
Aleutian Islands POP (AI POP)	12,396	12,348	**99.61%**
Atka Mackerel	62,034	61,532	**99.19%**
Flathead sole	49,080	13,924	**28.37%**
Pacific cod	27,125	21,662	**79.86%**
Rock sole	75,370	37,592	**49.88%**
Yellowfin sole	146,376	92,843	**63.43%**
PSC			
Halibut (mt)	2,475	2,074	**83.80%**
Zone 1 *C. bairdi* (No. of animals)	437,658	166,289	**38.00%**
Zone 2 *C. bairdi* (No. of animals)	745,536	227,669	**30.54%**
Zone 1 C.opilio COBLZ (No. of Animals)	2,341,763	355,002	**15.16%**
Zone 1 Bristol Bay Red King Crab (No.of Animals)	104,437	59,429	**56.90%**
Amendment 80 Cooperative			
Groundfish (mt)			
Aleutian Islands POP (AI POP)	4,940	4,572	**92.55%**
Atka Mackerel	27,456	26,144	**95.22%**
Flathead sole	43,351	12,031	**27.75%**
Pacific cod	23,654	19,637	**83.02%**
Rock sole	56,811	33,668	**59.26%**
Yellowfin sole	87,987	69,564	**79.06%**
PSC			
Halibut (mt)	1,793	1,497	**83.49%**
Zone 1 *C. bairdi* (No. of animals)	321,922	131,718	**40.92%**
Zone 2 *C. bairdi* (No. of animals)	548,443	135,339	**24.68%**
Zone 1 C.opilio COBLZ (No. of Animals)	1,544,825	315,586	**20.43%**
Zone 1 Bristol Bay Red King Crab (No.of Animals)	74,351	50,406	**67.79%**
Amendment 80 Limited Access Fishery			
Groundfish (mt)			
Aleutian Islands POP (AI POP)	6,573	6,627	**100.83%**
Atka Mackerel	38,398	36,385	**94.76%**
Flathead sole	5,729	1,893	**33.04%**
Pacific cod	3,471	2,025	**58.34%**
Rock sole	18,559	3,923	**21.14%**
Yellowfin sole	58,389	23,279	**39.87%**
PSC			
Halibut (mt)	682	577	**84.67%**
Zone 1 *C. bairdi* (No. of animals)	115,736	34,571	**29.87%**
Zone 2 *C. bairdi* (No. of animals)	197,093	21,305	**10.81%**
Zone 1 C.opilio COBLZ (No. of Animals)	722,587	39,416	**5.45%**
Zone 1 Bristol Bay Red King Crab (No.of Animals)	30,086	9,023	**29.99%**

Notes: Tables 5a and 5b catch data do not include CDQ or State of Alaska Aleutian Islands Pacific cod fisheries. Catch data for Amendment 80 vessels do not include catch received from other vessels for processing. In 2008, Aleutian Islands POP was not exceeded by the cooperative, because catch includes reallocated catch from the BSAI trawl limited access sector through inseason action.

Table 6a: Amendment 80 QS allocations to the cooperative and limited access fishery (2008)

Species	Percent of QS pool assigned to A80 cooperative	TAC or PSC assigned to A80 cooperative	Percent of QS pool assigned to A80 limited access fishery	TAC or PSC assigned to A80 limited access fishery
Groundfish (mt)				
Aleutian Islands POP (AI POP)	46.98%	7,016	53.02%	7,919
Atka Mackerel	41.63%	21,611	58.37%	30,335
Flathead sole	89.06%	37,986	10.94%	4,665
Pacific cod	83.88%	17,135	16.12%	3,294
Rock sole	75.82%	49,279	24.18%	15,696
Yellowfin sole	60.22%	86,529	39.78%	57,168
PSC				
Halibut (mt)	72.75%	1,837	27.25%	688
Zone 1 *C. bairdi* (No. of animals)	73.94%	340,520	26.06%	31,284
Zone 2 *C. bairdi* (No. of animals)	73.92%	580,311	26.08%	754,235
Zone 1 C.opilio COBLZ (No. of Animals)	68.40%	1,632,432	31.60%	120,154
Zone 1 Bristol Bay Red King Crab (No.of Animals)	71.54%	580,311	28.46%	204,477

Table 6b: Amendment 80 QS allocations to the cooperative and limited access fishery (2009)

Species	Percent of QS pool assigned to A80 cooperative	TAC or PSC assigned to A80 cooperative	Percent of QS pool assigned to A80 limited access fishery	TAC or PSC assigned to A80 limited access fishery
Groundfish (mt)				
Aleutian Islands POP (AI POP)	42.91%	4,940	57.09%	6,573
Atka Mackerel	41.69%	27,456	58.31%	38,398
Flathead sole	88.33%	43,351	11.67%	5,729
Pacific cod	87.20%	23,654	12.80%	3,471
Rock sole	75.38%	56,811	24.62%	18,559
Yellowfin sole	60.11%	87,987	39.89%	58,389
PSC				
Halibut (mt)	72.44%	1,793	27.56%	682
Zone 1 *C. bairdi* (No. of animals)	73.56%	321,922	26.44%	115,736
Zone 2 *C. bairdi* (No. of animals)	73.56%	548,443	26.44%	197,093
Zone 1 C.opilio COBLZ (No. of Animals)	68.13%	1,544,825	31.87%	722,587
Zone 1 Bristol Bay Red King Crab (No.of Animals)	71.19%	74,351	28.81%	30,086

Table 7: Total groundfish catch of select species by all vessels and all Amendment 80 Vessels in the Western GOA (Area 610) from 2003-2009

Year	Species	TAC (mt)	Total Catch (All vessels)	Amendment 80 (A80) Catch (mt)	A80 Catch as % of TAC	A80 Catch as % of Total Catch
2003	Arrowtooth Flounder	8,000	8,211	7,818	97.72%	95.21%
	Flathead Sole	2,000	525	424	21.18%	80.65%
	Northern Rockfish	890	449	432	48.54%	96.15%
	Pacific cod	15,450	16,235	644	4.17%	3.96%
	Pelagic Shelf Rockfish (PSR)	510	226	211	41.41%	93.29%
	Pacific Ocean Perch (POP)	2,700	2,124	2,114	78.28%	99.51%
	Shallow water flatfish	4,500	202	104	2.32%	51.61%
	Total	34,050	27,973	11,746	34.50%	41.99%
2004	Arrowtooth Flounder	8,000	9,518	2,565	32.06%	26.94%
	Flathead Sole	2,000	2,585	730	36.49%	28.23%
	Northern Rockfish	770	1,030	1,015	**131.75%**	98.49%
	Pacific cod	16,957	15,614	644	3.80%	4.12%
	Pelagic Shelf Rockfish (PSR)	370	285	244	65.95%	85.73%
	Pacific Ocean Perch (POP)	2,520	2,196	2,194	87.04%	99.89%
	Shallow water flatfish	4,500	186	72	1.61%	38.79%
	Total	35,117	31,414	7,462	21.25%	23.75%
2005	Arrowtooth Flounder	8,000	2,545	2,077	25.97%	81.63%
	Flathead Sole	2,000	611	567	28.34%	92.72%
	Northern Rockfish	808	575	569	70.40%	99.01%
	Pacific cod	15,687	36,160	261	1.66%	0.72%
	Pelagic Shelf Rockfish (PSR)	377	121	106	28.09%	87.67%
	Pacific Ocean Perch (POP)	2,567	2,338	2,335	90.97%	99.89%
	Shallow water flatfish	4,500	122	81	1.80%	66.15%
	Total	33,939	42,472	5,996	17.67%	14.12%
2006	Arrowtooth Flounder	8,000	2,042	1,369	17.11%	67.03%
	Flathead Sole	2,000	462	400	19.99%	86.48%
	Northern Rockfish	1,483	972	879	59.27%	90.39%
	Pacific cod	20,141	40,205	232	1.15%	0.58%
	Pelagic Shelf Rockfish (PSR)	1,438	558	524	36.44%	93.97%
	Pacific Ocean Perch (POP)	4,155	4,051	4,019	96.73%	99.22%
	Shallow water flatfish	4,500	240	99	2.19%	41.12%
	Total	41,717	48,530	7,521	18.03%	15.50%
2007	Arrowtooth Flounder	8,000	3,147	2,507	31.34%	79.68%
	Flathead Sole	2,000	696	567	28.37%	81.50%
	Northern Rockfish	1,439	1,108	1,063	73.87%	95.95%
	Pacific cod	20,141	38,455	576	2.86%	1.50%
	Pelagic Shelf Rockfish (PSR)	1,466	595	571	38.92%	95.85%
	Pacific Ocean Perch (POP)	4,244	4,430	4,330	**102.02%**	97.74%
	Shallow water flatfish	4,500	281	60	1.33%	21.24%
	Total	41,790	48,712	9,674	23.15%	19.86%

Ave. 2003-2007	Arrowtooth Flounder		5,093	3,267		64.15%
	Flathead Sole		976	537		55.07%
	Northern Rockfish		827	791		95.72%
	Pacific cod		29,334	471		1.61%
	Pelagic Shelf Rockfish (PSR)		357	331		92.77%
	Pacific Ocean Perch (POP)		3,028	2,998		99.03%
	Shallow water flatfish		206	83		40.30%
	Total	-	39,820	8,480		21.29%
2008	Arrowtooth Flounder	8,000	3,175	2,074	25.93%	65.33%
	Flathead Sole	2,000	288	203	10.14%	70.36%
	Northern Rockfish	2,141	1,918	1,871	87.37%	97.52%
	Pacific cod	19,449	41,947	465	2.39%	1.11%
	Pelagic Shelf Rockfish (PSR)	1,003	577	565	56.35%	97.95%
	Pacific Ocean Perch (POP)	3,686	3,682	3,453	93.67%	93.77%
	Shallow water flatfish	4,500	761	56	1.25%	7.38%
	Total	40,779	52,348	8,686	21.30%	16.59%
2009	Arrowtooth Flounder	8,000	1,521	1,210	15.13%	79.55%
	Flathead Sole	2,000	303	178	8.90%	58.75%
	Northern Rockfish	2,054	1,947	1,943	94.60%	99.79%
	Pacific cod	16,175	15,165	466	2.88%	3.07%
	Pelagic Shelf Rockfish (PSR)	819	717	699	85.35%	97.49%
	Pacific Ocean Perch (POP)	3,713	3,806	3,453	93.00%	90.73%
	Shallow water flatfish	4,500	97	69	1.53%	71.13%
	Total	37,261	23,556	8,018	21.52%	34.04%

Table 8: Total groundfish catch of select species by all vessels and all Amendment 80 Vessels in the Central GOA (Area 620 & 630) from 2003-2009

2003	Arrowtooth Flounder	25,000	22,149	14,524	58.09%	65.57%
	Flathead Sole	5,000	1,934	1,300	26.01%	67.22%
	Pacific cod	22,690	24,869	1,568	6.91%	6.31%
	Shallow water flatfish	13,000	4,442	54	0.42%	1.22%
	Total	65,690	53,395	17,446	26.56%	32.67%
2004	Arrowtooth Flounder	25,000	16,169	3,872	15.49%	23.95%
	Flathead Sole	5,000	2,473	524	10.49%	21.21%
	Pacific cod	27,116	27,421	832	3.07%	3.03%
	Shallow water flatfish	13,000	3,010	278	2.14%	9.23%
	Total	70,116	49,073	5,506	7.85%	11.22%
2005	Arrowtooth Flounder	25,000	17,379	7,035	28.14%	40.48%
	Flathead Sole	5,000	1,941	1,215	24.29%	62.58%
	Pacific cod	25,086	22,751	877	3.50%	3.85%
	Shallow water flatfish	13,000	4,676	347	2.67%	7.43%
	Total	68,086	46,747	9,474	13.91%	20.27%
2006	Arrowtooth Flounder	25,000	25,579	10,504	42.02%	41.06%
	Flathead Sole	5,000	2,679	1,469	29.37%	54.82%
	Pacific cod	28,405	23,171	1,029	3.62%	4.44%
	Shallow water flatfish	13,000	7,411	279	2.15%	3.76%
	Total	71,405	58,839	13,280	18.60%	22.57%
2007	Arrowtooth Flounder	30,000	22,187	14,561	48.54%	65.63%
	Flathead Sole	5,000	2,467	1,037	20.73%	42.02%
	Pacific cod	28,405	26,213	640	2.25%	2.44%
	Shallow water flatfish	13,000	8,511	35	0.27%	0.41%
	Total	76,405	59,377	16,272	21.30%	27.41%
Ave. 2003-2007	Arrowtooth Flounder		20,692	10,504		50.76%
	Flathead Sole		2,299	1,109		48.24%
	Pacific cod		24,885	989		3.97%
	Shallow water flatfish		5,610	199		3.54%
	Total	-	53,486	12,800		23.93%
2008	Arrowtooth Flounder	30,000	26,048	7,790	25.97%	29.91%
	Flathead Sole	5,000	3,135	1,427	28.53%	45.51%
	Pacific cod	28,426	27,747	554	1.95%	2.00%
	Shallow water flatfish	13,000	8,922	37	0.29%	0.42%
	Total	76,426	65,852	9,807	12.83%	14.89%
2009	Arrowtooth Flounder	30,000	23,303	2,913	9.71%	12.50%
	Flathead Sole	5,000	3,355	427	8.54%	12.73%
	Pacific cod	23,641	23,227	707	2.99%	3.04%
	Shallow water flatfish	13,000	8,384	70	0.54%	0.83%
	Total	71,641	58,269	4,117	5.75%	7.07%

Notes: Table 7 and 8 contain data from species that have been traditionally harvested by Amendment 80 vessels. Catch from the West Yakutat District (Area 640) are excluded for confidentiality. Data from some fisheries (e.g., rex sole, deep water flatfish) have been excluded for confidentiality. Catch data from fisheries that are not open to directed fishing are not included, because those species are on bycatch or PSC status (e.g., Shortraker and thornyhead rockfish). Catch data from Central GOA rockfish fisheries are not included, because those species are harvested under the Central GOA Rockfish Program and are not available to Amendment 80 vessels, other than those qualified for that rockfish program.

Table 9: Total halibut PSC by all vessels and all Amendment 80 Vessels in the Central & Western GOA (Areas 610, 620 & 630) from 2003-2009

Management Area	Year	Total Halibut PSC (All vessels) (mt)	Amendment 80 Vessel Halibut PSC (mt)	Amendment 80 PSC as % of Total PSC
Western GOA (Area 610)	2003	405	255	63%
	2004	594	176	30%
	2005	202	136	67%
	2006	258	90	35%
	2007	325	188	58%
	Ave. 2003-2007	357	169	47%
	2008	307	127	41%
	2009	259	82	31%
Central GOA (Areas 620 & 630)	2003	1,955	590	30%
	2004	2,498	590	24%
	2005	2,112	427	20%
	2006	2,057	467	23%
	2007	1,907	245	13%
	Ave. 2003-2007	2,106	464	22%
	2008	2,043	333	16%
	2009	1,809	211	12%

Notes: Table 9 displays PSC data from all fisheries in the Central and Western GOA, including fixed-gear and fisheries not included in Tables 7 and 8. Table 9 includes PSC data from the Central GOA Rockfish Program fisheries. Confidentiality requirements limit NMFS' ability to release PSC that is more narrowly defined to specific target fisheries.

2.4.7.3 Trends and factors in Amendment 80 fishery performance

Although conclusions based on two years of data (2008 and 2009), when compared to historical fishery patterns (2003 through 2007), should be considered tenuous and may not reflect future fishery performance, these data suggest several conditions may exist. First, according to Table 3, in each year from 2003 through 2007, the Amendment 80 fleet exceeded the TAC for either the Aleutian Islands POP fishery or the Atka mackerel fishery. With the implementation of Amendment 80, neither TAC was exceeded in 2008, although the fleet participating in the limited access fishery slightly exceeded the Pacific ocean perch TAC in 2009. The ability to consistently harvest the TAC is typically observed under LAPP management. It is notable that the Amendment 80 fleet did not exceed TAC, even though a substantial portion of the total Amendment 80 ITAC was harvested by vessels under the limited access fishery (see Tables 6a and 6b). This suggests that the limited number of participants in the limited access fishery faced less competition. This may have reduced the incentive to race for fish to some degree and improved the ability of NMFS to maintain the fishery catch below TAC. As

an example, NMFS inseason staff noted improved communication with the limited access fishery participants, when coordinating fishery closures, which facilitated timelier fishery closures.[23]

Second, the Amendment 80 sector harvested a substantially greater portion of the BSAI TAC and total catch in 2008 and 2009, than in any previous year. For example, in 2008, roughly 54,000 metric tons, or 19 percent more groundfish were harvested than the 2003 through 2007 average (see Table 3). Some of this increased catch is due to the sharp increases in yellowfin sole, rock sole, and flathead sole TAC in 2008 and 2009, relative to previous years, providing additional harvest opportunities to the fleet. The Amendment 80 fleet increased its total groundfish harvest without apparently being constrained by its Pacific cod allocation or PSC allowances, in particular halibut PSC (see Table 4). Prior to the start of fishing, several Amendment 80 participants expressed concern that the allocation of Pacific cod and allowance of halibut PSC may not be sufficient to support a directed Pacific cod fishery, and may constrain fishing operations for other Amendment 80 species generally.

Third, although a substantial percentage of the Amendment 80 allocation of flathead sole, rock sole, yellowfin sole was unharvested in 2008 and 2009, when compared to the amount of catch harvested by Amendment 80 vessels in previous years, the fleet caught substantially more of these species. For example, data from Table 3 note that in 2008, the Amendment 80 fleet caught 49 percent, 30 percent, and 62 percent more metric tons of flathead sole, rock sole, and yellowfin sole, respectively, compared to average catches during 2003 through 2007. A cooperative representative noted that market conditions and other economic considerations made by individual companies in the cooperative and limited access fishery may have also affected decisions to harvest catch. Icing conditions during the period when flathead sole is traditionally harvested may have been a factor.

Fourth, even though a substantial portion of the Amendment 80 fleet was not under cooperative management (see Tables 5a and 5b), the fleet dramatically reduced its PSC, both in total amount and in terms of rates, when compared to historical use during 2003 through 2007 (Tables 5a and 5b), and when compared to the total allowance available (Tables 5a and 5b). These data provide perhaps the best evidence that LAPP management can quickly and dramatically change fishing behavior, potentially even among those participants in the smaller race for fish limited access fishery. Nevertheless, a greater percentage of the total halibut and red king crab PSC allotted to the limited access fishery were taken relative to the cooperative (Tables 5a and 5b). The species targeted by the limited access fishery differ from the cooperative, with an overall greater focus on Atka mackerel and Aleutian Islands Pacific ocean perch, which could also account for some of the different PSC rates observed in 2008 and 2009 (Tables 6a and 6b). These data may suggest that PSC limits, and the management of those PSC limits, in the limited access fishery may not constrain fishing operations. Under the limited access fishery, NMFS will close a specific target fishery for a species or complex, once the PSC limit has been reached, rather than all fishing. This reduces the incentive for harvesters to carefully monitor PSC overall, when compared to cooperative management, because the overall effect of reaching a PSC cap is less constraining on multi-species operations.

[23] Steve Whitney, NMFS Inseason staff, Personal communication.

Fifth, assessing the effects of Amendment 80 on fishing behavior in the GOA is complicated by the recent implementation of the Central GOA Rockfish Program. Of the 28 originally qualifying Amendment 80 vessels and Amendment 80 LLP licenses, 12 of those vessels and LLP licenses are eligible to participate in the Central GOA Rockfish Program. The Central GOA Rockfish Program allocated rockfish QS to LLP holders based on landings of primary rockfish species (northern rockfish, pelagic shelf rockfish, and Pacific ocean perch) attributed to that LLP license. On an annual basis, participants may decide to join a rockfish cooperative and receive rockfish cooperative quota based on the sum of the rockfish QS of the LLPs assigned to the cooperative by its members. LLP holders can receive an exclusive harvest privilege, on an annual basis, only by joining a cooperative. LLP holders with QS based on harvesting and processing rockfish onboard a catcher/processor (C/P) can only form cooperatives with other C/P LLP holders. LLP holders with QS based on rockfish harvested on a catcher vessel (CV) designation can only form cooperatives with other CV LLP holders. Alternatively, LLP holders can choose to fish in a limited access fishery within that sector (C/P or CV). The limited access fishery comprises the annual catch amount for the program that is left after C/P or CV cooperatives form. Finally, LLP holders in the C/P sector can choose to "opt-out" of most of the aspects of the Program. Only LLP licenses and vessels assigned to a Central GOA rockfish cooperative or limited access fishery may directed fish for northern rockfish, pelagic shelf rockfish, and Pacific ocean perch in the Central GOA. In addition, the Central GOA Rockfish Program allocates a small portion of the Central GOA TAC of sablefish, thornyhead rockfish, rougheye rockfish, and shortraker rockfish as cooperative quota to participants in a C/P cooperative. Participants in the Rockfish Program's limited access fishery are subject to a reduced maximum retainable allowance (MRA) for these species when they are directed fishing for northern rockfish, pelagic shelf rockfish, and Pacific ocean perch in the Central GOA.

The Central GOA Rockfish Program also imposes a series of sideboard limits on all rockfish QS holders that limits the amount of Western GOA and West Yakutat northern rockfish, pelagic shelf rockfish, and Pacific ocean perch that vessels may harvest in July. Additionally, catcher/processors are subject to limits on the amount of halibut PSC that they may incur in the month of July. These halibut PSC limits are further subdivided by target categories for deep water (e.g., Pacific cod) and shallow water species (e.g., flathead sole). Finally, C/Ps in a cooperative are assigned specific Western GOA and West Yakutat groundfish and deep water and shallow water halibut PSC sideboard limits, applicable to that cooperative. C/Ps participating in the Central GOA Rockfish Program's limited access or opt-out fishery are subject to sideboard limits that are a proportion of the sideboard limits that remain, after cooperative sideboard limits have been determined.

Under the Amendment 80 Program, Amendment 80 vessels fishing in the GOA are subject to similar Western GOA and West Yakutat northern rockfish, pelagic shelf rockfish, and Pacific ocean perch sideboard limits, as well as limits on Pacific cod and pollock (with one exception for the F/V *Golden Fleece*, which is prohibited from directed fishing for rockfish, Pacific cod, or pollock in the GOA). The Amendment 80 Program also imposes deep water and shallow water halibut PSC sideboard limits, but applies them on a seasonal basis (This restriction does not apply to the F/V *Golden Fleece*). In addition, only a specific list of vessels may participate in the directed flatfish fisheries in

the GOA. Table 10 summarizes the sideboard limits applicable under both of these LAPPs.

Table 10: GOA sideboard limits under Central GOA Rockfish Program and Amendment 80 Program

Management Area	Species	LAPP	Sideboard limit
Western GOA (Area 610)	Northern rockfish (NR), pelagic shelf rockfish (PSR), and Pacific ocean perch (POP)	Amendment 80	NR = 100 % of TAC PSR = 76.4 % of TAC POP = 99.4 % of TAC
		Central GOA Rockfish Program	NR = 78.9% of TAC PSR = 63.3% of TAC POP = 76.0% of TAC
	Pacific cod, and Pollock	Amendment 80	Pacific cod = 2.0 % of TAC Pollock = 0.3 % of TAC
Central GOA (Area 620 & 630)	Pacific cod, and Pollock	Amendment 80	Pacific cod = 4.4 % of TAC Pollock (Area 620) = 0.2 % of TAC Pollock (Area 630) = 0.2 % of TAC
West Yakutat (Area 640)	NR, PSR, POP	Amendment 80	PSR = 89.6 % of TAC POP = 96.1 % of TAC
		Central GOA Rockfish Program	PSR = 72.4% of TAC POP = 76.0% of TAC
	Pacific cod, and Pollock	Amendment 80	Pacific cod = 3.4 % of TAC Pollock = 0.2 % of TAC
All GOA	Shallow water species Halibut PSC	Amendment 80	Season 1 = 0.48 % of trawl PSC limit Season 2 = 1.89 % of trawl PSC limit Season 3 = 1.46 % of trawl PSC limit Season 4 = 0.74 % of trawl PSC limit Season 5 = 2.27 % of trawl PSC limit
		Central GOA Rockfish Program	(Season 3) = 0.54 % of trawl PSC limit
	Deep water species Halibut PSC	Amendment 80	Season 1 = 1.15 % of trawl PSC limit Season 2 = 10.72 % of trawl PSC limit Season 3 = 5.21 % of trawl PSC limit Season 4 = 0.14 % of trawl PSC limit Season 5 = 3.71 % of trawl PSC limit
		Central GOA Rockfish Program	(Season 3) = 3.99 % of trawl PSC limit
Additional vessel specific sideboard restrictions			
All GOA for F/V *Golden Fleece*	N/A	Amendment 80	F/V *Golden Fleece* is prohibited from directed fishing Western GOA and West Yakutat rockfish, All GOA Pacific cod and pollock. Vessel is not subject to Amendment 80 halibut PSC sideboard limits.
All GOA for directed flatfish			Only the 11 Amendment 80 vessels listed in Table 39 to part 679 may directed fish for flatfish in the GOA.

Notes: Central GOA Rockfish Program sideboard limits in Table 10 apply only from July 1 through July 31. Each cooperative receives a specific sideboard limit that is a sub-allocation of this total limit. All Rockfish Program limited access and opt-out fishery vessels are subject to the sideboard limit remaining after allocation to Rockfish Cooperatives. Rockfish halibut PSC sideboard limits in July correspond to Season 3. Halibut PSC limit season dates are defined in the annual GOA harvest specifications. Halibut PSC allowances for Deep-water species include directed fishing for: arrowtooth flounder; deep-water

flatfish; and rex sole. Halibut PSC allowances for Shallow-water species include directed fishing for: flathead sole, Pacific cod, pollock, shallow-water flatfish, and other species.

Because of the complex interrelationship of the Central GOA Rockfish Program allocations, Amendment 80 sideboard limits in the GOA, and Central GOA Program sideboard limits in the GOA for non-Central GOA rockfish fisheries, it is difficult to discern if fishing patterns in the GOA in 2008 and 2009 are primarily due to Amendment 80, the Central GOA Rockfish Program, a combination of both LAPPs, or other factors. A more complete description of the complicated catch accounting and management arrangements that may exist between the Amendment 80 and Central GOA Rockfish Program is found in the EA/RIR/IRFA prepared to relieve sideboard measures applicable to catcher/processors eligible to participate in Central GOA Rockfish Program and the BSAI.[24]

Although vessels fishing in cooperatives in the BSAI could expand their efforts in the GOA, the potential effect on fishing practices in the GOA from these cooperatives would probably be limited to shifts in harvest patterns among Amendment 80 vessels active in the Western GOA and West Yakutat rockfish fisheries, but not necessarily changes in the total amount of catch taken in those fisheries or the specific vessels active in those fisheries. This conclusion is supported by the following factors:

First, increased effort in the Central GOA rockfish fisheries by Amendment 80 vessels is prevented by the Central GOA Rockfish Program.

Second, based on data in Table 8, historically almost all of the Western GOA TAC has been caught almost exclusively by Amendment 80 vessels and the sideboard applicable to those rockfish fisheries in the Western GOA and West Yakutat District are not constraining (see Table 10). In 2008 and 2009, Amendment 80 vessels caught roughly the same amount of Western GOA rockfish as they had historically. However, NMFS staff noted that harvest rates of Western GOA rockfish fisheries were higher in 2008 and 2009 than in previous years, suggesting that the participation patterns of vessels may have shifted.[25] Prior to Amendment 80, GOA and BSAI rockfish fisheries opened on July 1, forcing vessel operators to make operational choices to ensure that they had adequate fishing opportunities in these management areas. Vessels that had previously chosen to leave the Western GOA earlier in July to ensure they had adequate opportunity in the BSAI, or that did not fish extensively in the Western GOA, may have additional incentive to fish in the Western GOA in a race for fish, before or after fishing under a cooperative. A similar pattern of incentives could exist in the West Yakutat District, but those data cannot be released, due to confidentiality restrictions. Additional discussion on this topic is provided in section 2.5.4.

Third, increased effort in GOA flatfish fisheries is unlikely, because the Amendment 80 Program limits the number of Amendment 80 vessels that can fish in the GOA directed flatfish fisheries to 11 vessels.[26] Although it is possible that participation in an Amendment 80 cooperative could allow those vessels to enter the GOA if they were

[24] This document is available through the Council's website at: http://www.alaskafisheries.noaa.gov/npfmc/analyses/RPP_cpJulystandown508.pdf

[25] Steve Whitney, NMFS Inseason staff, personal communication.

[26] See Table 39 to part 679 for a list of the eligible Amendment 80 vessels at: http://www.alaskafisheries.noaa.gov/rr/tables/tabl39.pdf

not constrained by a race for fish in the BSAI, data from Tables 7 and 8 do not indicate a substantial increase of flatfish harvests in 2008 and 2009, relative to the average harvests during 2003 through 2007. In addition, all the Amendment 80 vessels eligible to directed fish for flatfish in the GOA were assigned to the Amendment 80 cooperative in 2008 and 2009, with one exception (i.e., *F/V Ocean Alaska*). This would suggest that any effect of Amendment 80 cooperatives on GOA flatfish patterns should have been observed, assuming other factors such as the need to use vessels to harvest the relatively large BSAI TAC of flatfish species in 2008 and 2009, has not diverted effort that would have been used in the GOA under typical circumstances. The number of Amendment 80 vessels directed fishing for flatfish in the GOA is shown in Table 11. NMFS Inseason staff indicate that the specific Amendment 80 vessels historically active in the GOA directed flatfish fisheries in 2008 and 2009 were consistently active in prior years as well.[27] It is not clear why the number of vessels active in GOA flatfish fisheries has declined in 2008 and 2009. Potentially, the private contractual arrangements within the Amendment 80 sector to manage GOA halibut PSC in 2008 and 2009 have allowed some vessel owners to coordinate their fishing operations and consolidate their flatfish operations onto fewer vessels.

Table 11. Number of Amendment 80 vessels eligible to directed flatfish in the GOA that did directed fish for flatfish 2003-2009

Year	2003	2004	2005	2006	2007	2008	2009
Number of vessels	11	7	7	7	9	6	6

2.4.8 Factors affecting vessel replacement

2.4.8.1 GRS compliance

In June 2010, the Council recommended that NMFS remove specific regulatory requirements to meet a GRS. Instead the Council has recommended new reporting requirements to ensure that non-AFA trawl C/Ps maintain or improve retention and utilization of groundfish. A proposed rule to remove GRS program from regulation and replace it with an annual groundfish retention reporting requirement should publish in the *Federal Register* in 2012.

Larger vessels may be better suited to maintain or improve retention and utilization of catch, due to the greater amount of space available onboard to accommodate increased storage capacity. Some industry representatives have noted that a key driver for seeking vessel replacement is to replace existing vessels with larger classed vessels that can improve retention of groundfish, potentially through the use of fish meal plants, that are not feasible on smaller vessels that are not classed or load lined. Generally, larger vessels would be more likely to have lower operational costs, when retaining increased amounts of product, than smaller vessels that would be required to make more frequent offloads.

[27] Steve Whitney and Josh Keaton, NMFS Inseason staff, Pers. Comm.

Since the implementation of the GRS program, changes in operations to meet minimum retention requirements have increased operational costs at a proportionally greater rate for smaller vessels, and encourage smaller vessel owners to enter into and maintain cooperative membership with members that own larger vessels that may be better able to meet the GRS requirements and increase their groundfish retention rates. Smaller vessels may be perceived as less able to maintain or improve retention and utilization of groundfish catch. Similarly, smaller vessel may be expected to adversely affect the ability of the cooperative to maintain or improve retention and utilization of groundfish catch, because they have a low retention rate, these factors could adversely affect their negotiating leverage, particularly if other larger vessels can form and maintain cooperative participation without the smaller vessels. Ultimately, one would expect that smaller vessel operators may have a strong incentive to replace existing vessels, with vessels better able to meet the obligation to improve the retention and utilization of catch, to ensure the overall viability of their operations, and to maintain their desirability as a potential participant in an Amendment 80 cooperative.

While this action enables Amendment 80 vessel owners to replace their current vessels for any reason, there may be significant financial and economic disincentives to do so, except in the case of actual loss. For example, owing to the average age of the Amendment 80 vessels currently operate in this fishery, referenced earlier, it is likely that most are fully (or substantially) paid off. Acquisition of a 'new,' larger, state-of-the-art vessel means a very substantial financial expenditure and, presumably, amortized debt to service. This added capital debt will, presumably, have to be serviced from the proceeds of the resulting increased catch in these same Amendment 80 QS fisheries. However, the amount of QS remains unchanged and all these operations are effectively 'capped,' as far as the amounts of economically valuable species they may reasonably expect to have access to (e.g., sideboards). Furthermore, the push to increase groundfish retention, by introducing value-added processing capability, fish meal, and freezer capacity on these new vessels, means retaining the bycatch of species, sizes, and conditions of groundfish for which there will be little or no economic return (at least until economically viable product forms can be developed and markets established). It is, therefore, not immediately clear how compelling an incentive "… allowing replacement for any reason" will prove to be for the current Amendment 80 fleet's owners. Each operator will have to weigh the financial risks of assuming the costs of acquiring and operating a 'new' larger vessel, against the potential economic yield of applying that new capacity to the existing Amendment 80 quota share structure and groundfish bycatch retention obligation.

While it is not possible to predict the outcome of these investment and operational decisions, there is another factor that may have an influence. The ability for Amendment 80 QS holders to enter into cooperative fishing agreements, means that they are able to have their QS fished aboard another (presumably, more efficient) vessel within their co-op, rather than incurring the costs and risk associated with building and operating a new, larger, more operationally sophisticated vessel of their own. That is, some current Amendment 80 vessel owners may find that avoiding these substantial capital costs, while still earn income from their QS as a member of a fishing cooperative, is a rational choice. Taken jointly, these latter considerations may serve to temper expectations of

widespread capital invest in state-of-the-art replacement vessels in the Amendment 80 fleet.

2.4.9 Recent GRS Performance

Based on a review of 2008 data, it appears that all vessels in the limited access fishery and the cooperative met the GRS requirements independently. However, it is possible that a number of vessels that met the GRS requirements in 2008 may face additional challenges as the GRS is increased. Tables 12 and 13 provide an overview of the fishery performance in 2008. Although fishery performance in 2008 may not be indicative of future retention rates, it appears that very few, and possible none, of the vessels could achieve an 85 percent retention rate, assuming current practices continue. Tables 14a through 14c provide an overview of GRS retention by vessels that are less than 145' LOA, from 145' to 200' LOA, and vessels greater than 200' LOA. These categories are consistent with the discussion of retention rates by vessel size in Section 2.5.2. In addition, Table 15 provides retention rate by the Best Use Cooperative (BUC) and the limited access fishery for 2008. Note that this table includes data from fisheries other than the Amendment 80 allocated species and, therefore, differs from retention data presented in BUC's 2008 cooperative report, which includes retention only for Amendment 80 species. Retention data from the limited access fishery are likely to underestimate total retention by the limited access fishery due to extrapolations of catch and retention from the *F/V Alaska Ranger*. Tables 14a through 14c provide total retention by vessel size class from 2003 through 2009. The total catch from 2003 through 2007 is shown to provide a longer term perspective on average retention rates prior to the implementation of the GRS and Amendment 80. Tables 15a and 15b provide an overview of retention rates, by species category, by quintiles or all of the Amendment 80 species and most non-Amendment 80 species. The table does not provide specific retention rates for sablefish, rougheye rockfish, and shortraker rockfish to avoid the potential release of confidential data. Overall, those three species comprise a small proportion of total groundfish harvest and retention.

Retention rates from 2009 for cooperatives and the limited access fishery (Tables 12 and 13) are not included because complete data were not available at the time this document was produced. Subsequent versions of this analysis will contain these data.

Table 12: BSAI catch and groundfish retention rate by Amendment 80 vessels by retention percentage (2008)

	Groundfish Retention Rate			
	Less than 70%	70 – 75 %	75- 80%	Greater than 80%
Number of vessels	4	7	7	4
Total Catch (mt)	24,690	102,870	122,356	82,898
Retained Catch (mt)	16,424	74,481	93,224	68,984
Discarded Catch	7,780	28,389	29,132	13,914
Retention Rate	65.38%	72.40%	76.19%	83.22%
Total Catch (All vessels)	332,815			
Retained Catch (All vessels)	252,834			
Percent Retained (All vessels)	**75.97%**			

Table 13: BSAI catch and groundfish retention rate by Amendment 80 fishery sectors (2008)		
	BUC (Cooperative)	Limited Access
Number of vessels	16	7
Total Catch (mt)	233,707	99,107
Retained Catch (mt)	178,840	74,160
Discarded Catch	54,867	24,947
Retention Rate	**76.52%**	**74.83%**

Table 14a: BSAI catch and groundfish retention rate by Amendment 80 vessel size class (2003-2007)			
	Less than 145' LOA	145' to 200' LOA	Greater than 200' LOA
Number of vessels	12	8	9
Total Catch (mt)	360,273	339,337	803,560
Retained Catch (mt)	233,197	194,334	611,325
Discarded Catch	127,075	145,003	192,234
Retention Rate	**64.73%**	**57.27%**	**76.08%**

Table 14b: BSAI catch and groundfish retention rate by Amendment 80 vessel size class (2008)			
	Less than 145' LOA	145' to 200' LOA	Greater than 200' LOA
Number of vessels	12	8	9
Total Catch (mt)	81,219	96,849	154,747
Retained Catch (mt)	57,104	74,660	121,069
Discarded Catch	24,115	22,189	33,698
Retention Rate	**70.03%**	**77.09%**	**78.24%**

Table 14c: BSAI catch and groundfish retention rate by Amendment 80 vessel size class (2009)			
	Less than 145' LOA	145' to 200' LOA	Greater than 200' LOA
Number of vessels	12	8	9
Total Catch (mt)	72,721	100,510	162,581
Retained Catch (mt)	56,001	79,791	133,223
Discarded Catch	16,720	20,719	29,356
Retention Rate	**77.01%**	**79.34%**	**81.94%**

Table 15a: Catch and groundfish retention rate by species by Amendment 80 vessel size class (2008)					
	Groundfish Retention Rate by Species				
Vessel Size Classes	Under 50%	50 to 70%	70 to 80%	80 to 90%	Greater than 90%
Under 145' LOA	Alaska plaice, Northern rockfish, Other flatfish, **Pacific ocean perch**, Other rockfish, Other species, squid	Arrowtooth, Pollock, **Rock sole**	**Yellowfin Sole**, **Flathead sole**, Greenland Turbot	**Atka Mackerel**	**Pacific cod**
145' to 200' LOA	Alaska plaice, Arrowtooth flounder, Other flatfish, Northern rockifsh, Other species, squid	Greenland turbot, Other rockfish	Pollock, **Pacific ocean perch, Rock sole**	**Flathead sole, Yellowfin sole**	**Atka mackerel, Pacific cod**
Over 200' LOA	Alaska plaice, Other flatfish, Northern rockfish, Other species	Greenland turbot, Other rockfish, **Rock sole**	**Flathead sole,** Pollock, **Yellowfin sole**	**Atka mackerel,** Arrowtooth flounder,	**Pacific ocean perch, Pacific cod**

Table 15b: Catch and groundfish retention rate by species by Amendment 80 vessel size class (2009)					
	Groundfish Retention Rate by Species				
Vessel Size Classes	Under 50%	50 to 70%	70 to 80%	80 to 90%	Greater than 90%
Under 145' LOA	**Pacific ocean perch**, Other species	Arrowtooth, Other flatfish, Alaska plaice,	**Atka Mackerel, Rock sole, Yellowfin Sole**, **Flathead sole**, Northern rockfish	**Flathead sole, Yellowfin sole**	**Pacific cod,** Greenland Turbot
145' to 200' LOA	Other flatfish, , Other species	**Pacific ocean perch**, Alaska plaice, Arrowtooth flounder, , Northern rockfish, Other rockfish	Pollock,	**Atka mackerel, Flathead sole, Rock sole, Yellowfin sole**	**Pacific cod** Greenland turbot,
Over 200' LOA	Other Species, Alaska plaice, Other flatfish, Northern rockfish, Squid	**Rock sole, Flathead sole,** pollock	**Yellowfin sole**	**Atka mackerel,** Arrowtooth flounder, Greenland turbot	**Pacific ocean perch, Pacific cod**, Other rockfish

Tables 12 through 15 support the general assertions that larger vessels tend to have higher retention rates than smaller vessels, and that some species (e.g., Atka

mackerel, and Pacific cod) have consistently high retention rates relative to other species (e.g., Alaska plaice). The retention rates in the cooperative and limited access fishery are similar; however, data from the *F/V Alaska Ranger* in 2008 may not accurately reflect species groundfish retention by that vessel prior to its loss at sea.

2.4.9.1 Amendment 80 Safety Performance, Vessel Class, Load line, and the USCG Alternative Compliance and Safety Agreement (ACSA).

The lack of vessel replacement provisions, other than for actual total loss or total constructive loss, ultimately inhibits long term safety improvements for the Amendment 80 fleet. Since 2000, vessel losses and individual fatalities have made the Amendment 80 fleet one of the highest risk federal fisheries within the jurisdiction of the North Pacific Fishery Management Council. Amendment 80 vessels are considered by the USCG as high risk, primarily due to the area in which they operate and the large number of crew they carry. It is likely that these factors have contributed to their high consequence marine casualty history. Table 16 provides summary information on Amendment 80 vessels.

Table 16: Amendment 80 Vessels by Year Built, Legal Measurements, Crew Sizes, and Safety Regime

Name	Year Built	Tonnage	Length	Crew Size	Safety Regime
Alaska Juris	1975	1,658 ITC	218	49	ACSA
Alaska Ranger (sank)	1973	1578	208	47	Enrolled in ACSA
Alaska Spirit	1974	1,418 ITC	221	49	ACSA
Alaska Victory	1975	1,215	206	49	ACSA
Alaska Warrior	1978	1,119	192	49	ACSA
Alliance	1980	197	98	16	Laid Up
American No. 1	1979	560	143	39	ACSA / Load lined
Arica	1973	1,025	158	38	ACSA
Cape Horn	1981	196	146	38	ACSA
Constellation	1981	194	150	39	ACSA
Defender	1984	607 ITC	112	30	ACSA
Enterprise	1983	180	112	38	ACSA
Golden Fleece	1979	268	91	20	ACSA
Harvester Enterprise	1977	1,203	170	54	Pending
Legacy	1983	194	117	32	ACSA

Ocean Alaska	1980	188	91	28	ACSA
Ocean Cape	1977	197	91	20	H & G Only
Ocean Peace	1984	1,144 ITC	200	50	Classed / Load lined
Rebecca Irene	1986	191	115	39	ACSA
Seafisher	1976	1,453 ITC	211	52	ACSA / Load lined
Seafreeze Alaska	1968	1,593	295	85	Classed / Load lined
Tremont	1970	621	116	32	Laid Up
U.S. Intrepid	1979	1,027	173	43	ACSA / Load lined
Unimak	1981	990	166	42	ACSA
Vaerdal	1979	199	111	25	ACSA

High-Risk / High Consequence Work Environment:

Unlike catcher vessels which catch fish and deliver fish in the round to shore plants, Amendment 80 vessels have added hazards because they catch, sort, head, eviscerate, clean, and process fish into various fish products on board the vessel. To conduct these operations, these vessels have large crew complements ranging from 16 to 85 people, with an average size of 42 crew members. In contrast, a typical catcher vessel crew ranges between 4 and 6 people. The majorities of Amendment 80 vessel crews are not professional mariners, but instead are fish processing workers. In addition to large crews, these vessels also carry processing and freezing machinery, hazardous gases for refrigeration, and large amounts of flammable packaging materials which pose hazards that do not exist on catcher vessels. Amendment 80 vessels typically operate from January 20 through late October, although recently some vessels have extended their seasons through December. Because of their ability to freeze, package, and store frozen catch, these vessels can operate in the most remote areas of the BSAI region for extended periods of time, far away from search and rescue support.

Fatality Rates and Fatalities

Since 1990, the National Institute for Occupational Safety and Health (NIOSH) Alaska Pacific Regional Office has monitored safety performance of individual fishing fleets throughout Alaska, by measuring individual fleet fatality rates. Fatality rates are compiled by measuring the ratio of the number of fatalities (the numerator) against an occupation risk exposure (the denominator). This operational risk exposure measurement is based upon several variables; the number of vessels operating, the number of days the vessel is at sea, and the number of crewmen exposed to the occupational risk. Based upon these variables, the BSAI freezer trawl fleets have had a collective fatality rate of 339 per 100,000 workers per year from 2000 through 2009. In comparison, the average fatality rate for the entire Alaskan fishing fleet was 109 per 100,000 workers per year from 2000 through 2009. Table 17 is a summary of all occupational fatalities occurring on Amendment 80 vessels since 2000.

Table 17: Fatalities on Amendment 80 Vessels, 2000-2009				
Year	Vessel Name	Fatality Type	# of Fatalities	# of Crew at risk during this event
2001	Arctic Rose	Vessel loss	15	15
2007	Enterprise	Crushed	1	1
2008	Alaska Ranger	Vessel loss	5	47
2009	Alaska Warrior	Man Overboard	1	1

Since 2000, there have been 2 major vessel losses in this fleet. The sinking of the F/V Arctic Rose resulted in the highest number of fishermen killed in a single event in Alaska since 1990. The sinking of the FPV Alaska Ranger, in which 5 died and 42 were rescued, resulted in one of the largest at-sea rescues in Alaskan history. With such large crew complements on Amendment 80 vessels, the risks for high numbers of fatalities increase, if crews are forced to abandon ship.

Review of Amendment 80 Fleet Safety Regulations

USCG safety regulations for commercial fishing industry vessels are generally not based upon risk (e.g., number of crew members), but instead are based upon the function of the vessel itself. More specifically, safety regulations are based upon the types of fish products made by the vessels. The most stringent safety regulations of classification and load line are reserved for "fish processing vessels." According to 46 USC 2101 (11b), a "fish processing vessel" is "a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling." A vessel which does not prepare fish beyond these eight statutory limitations is regulated to a significantly lesser degree as a "fishing vessel" in accordance with 46 USC 2101 (11a).

Prior to 2006, the Amendment 80 sector had been regulated by the USCG for safety purposes as "fishing vessels" that conducted head and gut (H&G) operations. This meant that these vessels only had to meet minimal standards for the carriage of primary lifesaving equipment. However, in 2005, formal USCG investigations into the loss of the F/V ARCTIC ROSE (2001) and FPV GALAXY (2002) found most Amendment 80 vessels were actually operating (and had been operating for some time) as "fish processing vessels," based on the products they produced. As fish processing vessels, these Amendment 80 vessels were required to be classed or load lined. Due to restrictions imposed by the classification societies of Det Norske Veritas and American Bureau of Shipping, the vast majority of the Amendment 80 sector could not be either load lined or classed due to age restrictions. Neither class society would class an existing vessel older than 20 years (unless that vessel was already classed and load lined). The average age of a vessel within the Amendment 80 fleet is approximately 32 years. Based upon this limitation, 22 of 24 Amendment 80 vessels cannot meet the requirements of class and load line.

Alternate Compliance and Safety Agreement

Because of this inability to meet current safety regulations of load line and classification, the USCG and owners of Amendment 80 vessels collaborated to develop an alternative program to address the safety risks of this fleet.[28] This collaborative effort is known as the Alternative Compliance and Safety Agreement (ACSA). Program development began in June 2005, and implementation was achieved between June 2006 and January 2009. The ACSA program is designed to achieve numerous safety, economic, and fishery management goals, both directly and indirectly.

- Safety: As compared to the safety regime for a fishing vessel, which primarily requires equipment for use after an emergency occurs, ACSA is both a preventative safety regime, as well as a reactive one. Preventative safety components of the ACSA program focus primarily on maintaining hull condition and watertight integrity, prevention of down flooding, ensuring adequate vessel stability, requiring enhanced fire detection and suppression, preventative maintenance for machinery, and maintenance of critical piping systems. Reactive safety components of ACSA include enhanced emergency training, improved lifesaving equipment, and additional firefighting capabilities of the vessel and crew. These standards are achieved through mandatory annual inspections and regular drydock examinations (twice in five years). Through the requirement of ACSA standards, compliant vessels approach levels of safety equivalent to load line and to vessel classification, and in some instances, exceed class and load line requirements. However, because Amendment 80 vessels were not constructed to meet the requirements of class and load line, there are some inherent limitations in achieving a total safety equivalency.

- Economic: Fishing vessels conducting H & G operations are only allowed to produce a limited number of fish products, as outlined in Table 18.

Table 18: H & G Fish Products Allowed for Fishing Vessels		
Bled Only	Headed & Gutted, Western Cut	Whole Fish (for) Meal
Gutted, Head On	Headed & Gutted, Eastern Cut	Bled Fish destined for Meal
Gutted, Head Off	Wings	
Head & Gutted with Roe	Mantles, Octopus or Squid	

By allowing ACSA compliant Amendment 80 vessels to produce fish products that are historically and economically important to this fleet, ACSA minimizes incentives to operate only as H & G fishing vessels that have minimal safety requirements. Vessels that are ACSA compliant are allowed to produce fish products as outlined in Table 19, as well as H & G products outlined in Table 18.

Table 19: Fish Processing Products Allowed on ACSA Vessels		
Headed & Gutted, Tail Removed	Pectoral Girdle	Cheeks
Kirimi (Steak)	Heads	Milt
Roe	Chins	Stomachs

[28] U.S. Coast Guard, Exemption Letters for Existing Fish Processing Vessels. G-PCV Policy Letter 06-03 dated July 1, 2006.

While ACSA vessels may produce products found in Tables 18 and 19, products considered to be "extensive processing" are only allowed on classed and load lined fish processing vessels, or fish processing vessels that meet grandfathering provisions found in existing regulations. These products are described in Table 20.

Table 20: Fish Processing Products Allowed on Classed/Load lined Vessels		
Salted and Split	Fillets, Skinless / Boneless	Fish Meal
Belly Flaps	Fillets, Deep Skin	Fish Oil
Fillets with Skin & Ribs	Surimi	Butterfly, No Backbone
Fillets with Skin, No Ribs	Minced	Bones

- Fishery Management: Amendment 80 vessels have an incentive to ensure compliance with the ACSA, so that the maximum amount of product can be retained, thereby increasing the likelihood that the vessel will meet the GRS requirements.

Application of Various Safety Standards to Amendment 80 Vessels

With the inclusion of the ACSA program, Amendment 80 fish processing vessels (FPVs) can generally be categorized and organized into four sub-categories and are described in Table 21 on a continuum of the most lenient to the most robust safety regulations.

- Head and Gut Fishing Vessel: A vessel under this safety regime is only required to meet safety standards 46 CFR 28 subparts A-C standards. These fishing vessels are also restricted to producing only H&G fish products, as described in Table 18. There is only one vessel in the Amendment 80 fleet, the F/V OCEAN CAPE, which falls within this category.

- ACSA Enrolled Vessels: These Amendment 80 fish processing vessels are neither classed or load lined, but they produce fish products which classify them as "fish processing vessels." To continue to be allowed to produce fish products, listed in Table 19, these vessels must be in compliance with the ACSA program. Eighteen Amendment 80 vessels fall into this category. These vessels are also required to meet 46 CFR 28 Subparts A-C standards, as well as 46 CFR 28.710 Subpart F Standards.

- ACSA Enrolled & Load lined: These Amendment 80 fish processing vessels are not classed, but do have a current load line. They produce fish products which classify them as "fish processing vessels." To continue to be allowed to produce fish products listed in Table 20, these vessels must be in compliance with the ACSA program. Three Amendment 80 vessels fall into this category. In addition to meeting requirements for load line, they are also required to meet 46 CFR 28 Subparts A-C standards, as well as 46 CFR 28.710 Subpart F Standards.

- Vessels with Classification and Load line: These Amendment 80 vessels are fish processing vessels that were built or converted for use as a fish processor after 1991.

These vessels represent the highest safety standards for fish processing vessels in the United States. There are no limits on the products that can be made by these vessels, and they may be used to produce any product listed in Tables 18 through 20. Two Amendment 80 vessels are classed and load lined.

- Newly Constructed Fish Processing Vessel: A newly constructed fish processing vessels would have to meet all new construction, stability, safety, and manning requirements, making such a vessel inherently safer.

Table 21: Various Safety Regulations Applying to Amendment 80 Vessels

Type of Vessel	46 CFR 28 Subparts A-C[1]	46 CFR 28 Subpart F[2]	ACSA Program	Load line 46 USC 5101[3]	Class 46 USC 4503[4]	46 CFR 28 Subpart D[5]	46 CFR 28, Subpart E Damage Stability[6]	# of Vessels
Head & Gut Fishing Vessel	X							1
ACSA Vessel	X	X	X					18
ACSA & Load lined Vessel	X	X	X	X				3
Classed & Load lined Vessel	X	X		X	X			2
New Fish Processing Vessel	X	X		X	X	X	X	0

[1] All fishing and fish processing vessels, regardless of type, must be in compliance with 46 CFR 28, subparts A-C. These regulations require the carriage of primary lifesaving equipment.
[2] All fish processing vessels, except for H & G vessels, must meet the requirement of passing a mandatory compliance examination every two years to confirm compliance with safety standards.
[3] A load line is an international shipping safety convention which establishes standards for hull construction, watertight integrity, vessel stability, and maximum loading. Load lined vessels are required to successfully complete annual surveys, and dry dockings every fifth year. Fish processing vessels built after 1974 or converted for use as a fish processor after 1983 must be load lined.
[4] Vessel classification is an international shipping safety convention which establishes standards for design and installation of propulsion, electrical, and refrigeration machinery, electrical wiring and distribution, and critical piping. Additionally, classification establishes standards for structural fire protection and other fire prevention measures. Classed vessels are required to complete annual surveys. Classed vessels are almost always load lined. All fish processing vessels built or converted for use as a fish processor after July 1990 must be classed.
[5] All commercial fishing vessels that carry more than 16 people on board, that are built or had undergone a major conversion after September 15, 1991, must meet additional safety requirements found in 46 CFR 28 Subpart D.
[6] All commercial fishing vessels constructed after September 15, 1991, must meet additional safety requirements for damage stability found in 46 CFR 28, Subpart E.

Safety Implications of Vessel Replacement

While the USCG and Amendment 80 vessel owners have seen significant improvements in vessel safety as a result of the ACSA program, there are limitations to its long-term effectiveness for the Amendment 80 fleet. As noted in the National Transportation and Safety Board's (NTSB) investigation into the sinking of the *Alaska Ranger*, "While the NTSB finds that ACSA has improved the safety of the vessels enrolled in the program, the effectiveness of ACSA is limited because it is a voluntary program." An Amendment 80 fish processing vessel owner could decide to stop producing fish products found in Table 19, remove the vessel from the ACSA program, and operate as a fishing vessel that only produces H & G products, as found in Table 18. Such a decision would degrade the vessel's safety regime, without reducing the vessel's risk profile. This scenario has resonance with several Amendment 80 vessels owners who have stated that the costs associated with the ACSA program may not be worth the economic benefit derived from producing additional fish products.

Another key limitation to the ACSA program is vessel age. The average age of an Amendment 80 vessel is 32 years. USCG marine inspectors in charge of implementing the ACSA program continue to express serious concern over the material condition of this aging fleet. While there is not a significant amount of scientific research on relationships between marine casualty incidents and vessel age, there are a few studies that did find an association with vessel age and the probability of a negative safety event. The first study reviewed USCG accident investigations from 1991 through 2001 of non-fatal crew injuries, fatal crew injuries, and missing crew incidents on freight ship, tanker, and tugboat vessels. Authors found that fatal injuries on freight ships increased with vessel age.[29] Another study from the British Shipbuilders Technology Department concluded that, in general, a positive correlation exists between ship casualty rates and ship age.[30] Only one study was found that looked at the issue of age as a predictor for vessel losses and fatalities in the commercial fishing fleet. The authors found that an increase in vessel age increases the probability of a total loss due to a collision, fire/explosion, material/equipment failure, capsizing, and sinking.[31]

If aging Amendment 80 vessels were allowed to be replaced by newly constructed fish processing vessels, those replacement vessels would be inherently safer, because they would be required to meet the full suite of modern safety standards, as indicated at Table 16. The average length of an existing classed and load lined catcher/processor trawl vessel operating in the BSAI pollock fishery is approximately 260 feet. Arguably, vessels of this size provide a more stable work platform and are better able to withstand the harsh weather found when operating in the Bering Sea. Allowing owners and naval architects maximum flexibility in determining vessel design and vessel dimensions within the well-established rules of classification and load line requirements would enhance the safety of new fish processing vessels. These kinds of improvements in safety would not be realized, however, if an Amendment 80 vessel were to be replaced by another

[29] *Talley, WK, Jin D, Kite-Powell, H. Determinates of Crew Injuries in Vessel Accidents. Marit. Pol. Mgmt., July-Sept 2005. Vol. 32. No. 3, pg. 263-278.*

[30] *Meek M, Brown WR, Fulford KG. A shipbuilders' view of safety. Marit. Pol. Mgmt., 1985, Vol. 12, No. 4, pg. 251-262.*

[31] *Jin D, Kite-Powell H, Talley W. The safety of commercial fishing: Determinants of vessel total losses and injuries. Journal of Safety Research 32 (2001) 209-228.*

Amendment 80 vessel which is not classed or load lined. Given that 22 of 24 Amendment 80 vessels do not meet requirements of class and load line, replacing an Amendment 80 vessel with another Amendment 80 vessel would likely not result in substantial fleet-wide safety improvements. In this situation, vessels and crews would continue to voluntarily operate as ACSA compliant vessels, without the full benefit of the most modern safety practices and standards.

2.4.9.2 New vessel construction costs

If Amendment 80 vessel operators wish undertaking a major modification of a vessel to increase its size, address safety concerns, or otherwise improve its efficiency, those vessel operators would need to have the vessel classed and loadlined because the modified vessel would no longer qualify for certification under the ACSA program[32].. . As fish processing vessels, newly rebuilt (i.e. undergoing major modification) Amendment 80 vessels are required to be classed or load lined. Due to age restrictions imposed by the classification societies of Det Norske Veritas and American Bureau of Shipping, the vast majority of the Amendment 80 sector could not be either load lined or classed. Based upon the age limitation nearly all of the Amendment 80 vessels would not be able to meet the requirements of class and load line. Due to these concerns and others described in section 2.4.9.1 of this analysis, it is highly unlikely a converted Amendment 80 vessel could be classed and loadlined

Industry participants and USCG personnel have noted that there are no larger classed and load line vessels on the market that currently hold a fishery endorsement that could be used in the Amendment 80 fisheries.[33] The only larger vessels that meet these requirements are AFA trawl catcher/processors. These vessels cannot be used to fish in the non-AFA trawl catcher/processor subsector (the Amendment 80 sector) under the provisions of the CRP that define the catcher/processor subsectors eligible to fish for non-pollock groundfish in the BSAI. This advice has been reconsidered based on further review and is described in section 2.4.6.3.

Therefore, Amendment 80 vessel owners are effectively limited to new construction if they want to substantially improve the size, horsepower, tonnage, processing capacity, fuel consumption, handling, or safety components of an Amendment 80 vessel and be able to undertake higher value added processing operations, such as filleting or surimi. Amendment 80 vessel operators would be unable to install a meal plant to help ensure higher groundfish retention rates without building a new vessel. Replacing a vessel with one with greater hold or processing capacity, class and load line certification, or possibly a fish meal plant could increase the retention rate compared to the vessel being replaced.

The costs of new construction vary widely depending on the specific dimensions, hold configuration, engines, and processing equipment of the vessel. Building a new vessel that is capable of multispecies trawl fishing in the BSAI and GOA would cost approximately $20 million to $30 million for a vessel roughly 165 feet in length overall

[32] All commercial fishing vessels that carry more than 16 people on board, that are built or had undergone a major conversion after September 15, 1991, must meet additional safety requirements found in 46 CFR 28 Subpart D.

[33] Kenneth Lawrenson, USCG and Bill Orr, Iquiqui Fisheries (Pers. Comm. 2010).

given current construction costs. Vessels of that size range would be unable to incorporate a meal plant and would have limited hold capacity relative to some of the larger vessels currently in the Amendment 80 fleet. A new 270 foot vessel would cost approximately $80 million to $100 million. [34] Construction times can vary substantially for vessels, but new construction would probably require a minimum of two years from the beginning of construction to final delivery based on the desired characteristics of vessel owners.[35] Additional time would be required to develop blueprints, undertake computer-aided testing, and source materials.

Members of Groundfish Forum have worked with Jensen Marine in Seattle, Washington, to develop a range of possible vessel replacement options. These preliminary plans have included vessels of 165 feet LOA, 210 feet LOA, and 260 feet LOA. Groundfish Forum representatives have indicated that these preliminary conceptual drawings suggest incorporation of a fish meal plant becomes possible at 210 feet LOA, but is more easily incorporated into vessel design under the 260 foot LOA model.

2.4.9.3 Limiting vessel replacement to vessel owners

Under all of the alternatives, except Alternative 1a, only vessel owners may replace vessels. This restriction is consistent with the Court Order. In most cases, this limitation would not be expected to constrain vessel replacement. However, in a few cases, the owner of an original qualifying Amendment 80 vessel and the person holding QS derived from that vessel differ. For example, the QS derived from the *Prosperity* is held by U.S. Seafoods, but U.S. Coast Guard documentation indicates that the owner of the vessel is undetermined at this time. Conceivably a person other than the QS holder could become the documented owner and choose to replace the *Prosperity*. In that case, a vessel without associated QS could become active in the fishery. This would likely pose a risk primarily for participants in the Amendment 80 limited access fishery, because a cooperative would establish contractual obligations that would limit the ability of a vessel to fish more than the amount specified in the cooperative contract – typically, the amount derived from the QS held by the vessel owner.

Practically, it would appear unlikely that such a vessel would become active given the costs of vessel replacement and the dearth of available LLP licenses that could be assigned to the vessel for use in the Amendment 80 sector. However, to ensure that this situation could not exist, the Council recommended, under the preferred alternative (option 4 under alternative 3), an option that would prohibit a replacement vessel from conducting directed fishing in an Amendment 80 fishery without QS being assigned to that vessel. This requirement would effectively require that QS permits must be associated with an Amendment 80 vessel if that vessel is being used in the fisheries.

A secondary issue is the potential desirability of allowing a QS holder to replace a vessel for which he or she does not hold documentation. As an example, the holder of the QS permit that was derived from the *Bering Enterprise* does not hold title to the

[34] Eric Blumhagen (Pers. Comm., January 2010). These costs are approximations based on a preliminary analysis of desirable handling, hold, and safety requirements and could vary substantially depending on the final vessel characteristics.
[35] Bill Orr, Iquiqui Fisheries (Pers. Comm., January 2010).

Bering Enterprise. The *Bering Enterprise* appears to be in service overseas, making it permanently ineligible to receive documentation as a U.S. fishing vessel under 46 USC 12108. Therefore, the *Bering Enterprise* QS holder could never replace the vessel associated with its QS history. To ensure that the *Bering Enterprise* QS holder could replace the vessel associated with its QS history, the Council recommended that persons holding a QS permit associated with a vessel that is permanently ineligible to reenter U.S. fisheries is eligible to replace the vessel associated with its QS permit. This exemption would appear to apply only to vessels that are permanently ineligible to reenter U.S. fisheries. A vessel owner can retain, or obtain, title to vessels that are lost and would not face the same limitation.

2.5 Potential Effects of the Alternatives

Throughout this section, the effects of Alternatives 2 and 3 are considered generally against the no action (Alternative 1a) and the status quo alternative (Alternative 1b). Because of the lack of quantitative data, and the nature of this action (i.e., allowing vessel owners to replace vessels), it is not possible in most cases to provide any quantitative detail on how one alternative, or a specific option, would differ substantially from another alternative.

Alternatives 1b, 2, and 3 would not be expected to differ in their impact on the overall harvests or harvest rate of the Amendment 80 sector. The vessels currently active in the Amendment 80 fleet are able to harvest current and anticipated allocations, and the anticipated rate of vessel loss is less than one vessel per year, given recent trends (e.g., two vessels have been lost from 2000 through 2009). These data suggesting that even if vessel replacement is slower under Alternative 1b than Alternatives 2 or 3, the effect is not likely to be observed on the overall harvest patterns of the Amendment 80 fleet. Alternative 1a would prohibit vessel replacement and could eventually cause the elimination of the Amendment 80 fleet through the attrition of vessels. Alternative 1a would result in the eventual loss of all vessels and the TAC allotted to the Amendment 80 sector would be foregone, unless that TAC was allotted to another sector.

2.5.1 Alternative 1a: No Action

The "No Action" alternative would directly contravene the Federal Court's Order, be inconsistent with NMFS' past practice allowing a replacement vessel for the F/V *Arctic Rose*, and create an untenable disagreement among the FMP and implementing regulations. Under the No Action alternative, once Amendment 80 vessels are lost, they could no longer be replaced. Without a way to replace vessels, there would be a slow reduction of the Amendment fleet through attrition, the impacts of which are not possible to predict. It is important to note that Congress and the Courts have repeatedly rejected this alternative as inconsistent with statues.

Moreover, Alternative 1a would fail to address the numerous safety concerns raised by USCG and NIOSH staff. Under this alternative, vessel owners would need to maintain and update originally qualifying vessels and would be unable to adopt improved safety standards that are possible with new construction. Alternative 1a would fail to meet the specific recommendations of the National Transportation Safety Board (NTSBs) made following the sinking of the *Alaska Ranger* (see Appendix B). The NTSBs

recommended clear regulatory provisions that allow vessel replacement for reasons other than loss. U.S. Coast Guard personnel share this perspective.

It is not possible to fully predict the likelihood that other participants would be able to fully harvest these allocations, given uncertainties about the rate of Amendment 80 vessel loss, the fishing capacity available in the non-Amendment 80 sector to target these species, and the economic feasibility of developing new markets. Historically, most Amendment 80 species have been harvested by catcher/processors, and the economic feasibility for catcher vessels to fully harvest most Amendment 80 species allocations, with the exception of Pacific cod, appears unlikely. Based on harvest patterns described in Section 1.9.2 of the analysis prepared for Amendment 80, it appears unlikely that the current fleet of non-Amendment 80 catcher/processor subsectors or catcher vessels would be able to fully harvest Amendment 80 species allocations, without a substantial increase in fishing effort Alternative 1a would preclude Amendment 80 vessel owners from replacing existing vessels with classed and load lined vessels that could increase the wholesale value of fishery products through the use of fillet or other value-added processing forms. It is not possible to predict the specific amount of potentially foregone value resulting from the inability to replace vessels.

2.5.2 Alternative 1b: Status quo

The status quo alternative would create an untenable disagreement among the FMP, implementing regulations, and the Court Order. Under the status quo, the FMP and implementing regulations prohibit the replacement of any originally qualifying Amendment 80 vessels. However, NMFS would continue to operate under the Court Order that vacated the specific regulatory provisions that preclude vessel replacement. NMFS would continue to strictly apply the Court's Order, as specified in the October 2008 guidance document (see section 2.4.3).

The October 2008 guidance document notes that specific issues were addressed by the Court Order and others can be inferred. The Court Order clearly provides that the owner of an originally qualifying Amendment 80 vessel may "replace a lost qualifying vessel with a single substitute vessel." NMFS inferred that the Court Order: (1) allows a vessel to be replaced due to its ineligibility to receive a fishery endorsement, as well as for actual total loss, and constructive total loss; (2) allows vessels replacing originally qualifying Amendment 80 vessels to be replaced (i.e., replacement of replacement vessels is allowed); (3) does not limit the size of replacement vessels; (4) does not remove existing MLOA limitations on LLP licenses assigned to Amendment 80 vessels; (5) allows NMFS to continue to apply existing GOA sideboard limits to any replacement vessel; (6) does not allow NMFS to permit vessels replacing Amendment 80 GOA flatfish eligible vessels to continue to directed fish for GOA flatfish; and (7) does not allow a vessel replacing the *Golden Fleece* to receive the same sideboard exemptions and prohibitions extended to the original vessel. Although NMFS has provided a clear rationale for inferring these limitations and conditions, there is no regulatory mechanism that specifically addresses them. The lack of regulations addressing this guidance undermines the enforcement of these provisions.

As was the finding with respect to Alternative 1a, Alternative 1b would fail to meet the specific recommendations of the National Transportation Safety Board (NTSBs) made following the sinking of the *Alaska Ranger* (see Appendix B). The NTSBs

recommended clear regulatory provisions that allow vessel replacement for reasons other than loss. U.S. Coast Guard personnel share this perspective.

Potential economic effects of Alternative 1b, relative to other alternatives, are not quantifiable, given the limited data available. Alternatives 2 and 3 and the choice of options under those alternatives would provide a clear regulatory framework and the certainty that vessel operators are likely to need to replace vessels. Vessel owners have indicated that the lack of a regulatory framework severely compromises the willingness of owners to invest in new vessels. Newer vessels are likely to incorporate safer designs and more advanced safety measures. Newer vessels are likely to be designed to meet international class and load line requirements that would allow vessel operators to retain more products than they can currently under the ACSA, thereby improving their retention rate and increasing the ability of vessel owners (and any cooperatives to which those vessels are assigned) to meet the GRS and increase groundfish retention rates. Vessels with higher groundfish retention rates are likely more desirable as cooperative members. Those vessel owners are more likely to receive the benefits of the exclusive harvest privilege provided by a cooperative management.[36]

Under Alternative 1b, vessel owners are unlikely to replace vessels as needed to improve the safety or operational efficiency of existing vessels. Because the loss of a vessel is a sudden and unanticipated event, vessel owners are unlikely to be able to quickly replace a vessel. Vessel owners may face a multi-year gap between the loss of a vessel and the activation of its replacement, particularly if the replacement vessel must be built first. A lengthy gap could severely undermine the financial solvency of a company, particularly companies owning only a single vessel. Companies with more than one vessel may be able to assign other vessels in their fleet to harvest additional catch to compensate for the loss of a vessel. A single vessel company could arrange to have other companies harvest the catch derived from QS held by that company, if that company is participating in a cooperative, or if it is able to make a private arrangement with other vessels in the limited access fishery. However, the financial terms of such an arrangement could be unfavorable, particularly if a company is unable to replace a vessel relatively quickly. A single vessel company holding QS, but no vessel harvesting capacity, would have no outside option to harvest its catch. A single vessel company would have to accept the terms offered, or forego the revenues derived from its QS. A vessel owner who has developed specific processing techniques or has specific markets not served by other vessel operators could lose access to those markets, if other vessel operators cannot modify their vessel operations to meet those needs. It is not possible to quantify the potential impact of a vessel loss, due to the variability in the timeline for activation of a replacement vessel, nor the terms that vessel operator may negotiate to have the catch derived from his or her QS harvested by another company.

Alternative 1b would not allow vessels replacing GOA flatfish eligible vessels to receive the same authorization to directed fish for GOA flatfish. Eventually, as these vessels are lost, no Amendment 80 vessels would be eligible to directed fish for GOA flatfish. Unless non-Amendment 80 vessels (i.e., catcher vessels) expanded their

[36] An extensive discussion of factors affecting cooperative formation and the benefits of cooperative management in the Amendment 80 sector is found in the EA/RIR/IRFA for Amendment 93 and is not repeated here (NMFS/Council, 2010).

operations into these flatfish fisheries, the value of those resources would be foregone. Data from recent years (see Tables 15a, and 15b) indicates that Amendment 80 vessels harvest the bulk of several GOA flatfish species, particularly in the Western GOA.

If Alternatives 2 and 3 result in more rapid and better timed vessel replacement, then Alternative 1b may provide relatively fewer benefits to the fishery participants and the nation.

2.5.3 Alternative 2: Vessels may be replaced only due to loss or permanent ineligibility.

Under Alternative 2, the owner of an Amendment 80 vessel may replace that vessel with another vessel only in cases of actual total loss, constructive total loss, or if that vessel is permanently ineligible to be used in a U.S. fishery under 46 U.S.C. 14108. Alternative 2 would allow vessel replacement that Alternative 1a does not.

Overall, Alternative 2 would have effects similar to Alternative 1b, with two key exceptions. First, Alternative 2 would provide the regulatory framework necessary for vessel owners to make decisions to replace their vessels. Second, under Alternative 2, the Council could have provided clear guidance on the proposed options.

Under Alternative 2, NMFS would propose that proof of vessel loss or permanent ineligibility to receive a fishery endorsement would need to be provided before NMFS would permit a "replacement" vessel to fish in the Amendment 80 sector. In most conditions, other than those described under Option 4b, NMFS would propose that only the U.S. Coast Guard documented vessel owner could replace a vessel, and only one vessel could replace another Amendment 80 vessel at the same time (i.e., at no time could the total Amendment 80 fleet exceed 28 vessels).

Alternative 2 would be expected to have the same effects as Alternative 1b, in terms of the flexibility it provides owners to replace a vessel and the potential economic impacts that may result from a gap between loss of a vessel and activation of its replacement. Although Alternative 2 does provide a clear regulatory framework, its impacts are Amendment 80 vessel owners are likely to be similar to Alternative 1b.

2.5.4 Alternative 3: Vessels may be replaced for any reason

Alternative 3 was selected as the preferred alternative. If implemented, Alternative 3 would provide the greatest flexibility to vessel owners to replace vessels, as necessary, and may minimize some of the adverse impacts that could occur during the time between the decision to replace an Amendment 80 vessel (e.g., loss of a vessel) and its replacement, under Alternatives 1b and 2.

Under Alternative 3, vessel owners could initiate rebuilding or new construction of a vessel while the vessel to be replaced is still active. Although not all vessel owners may have the necessary capital or financing to undertake vessel replacement, Alternative 3 is the only alternative that provides an opportunity for a potentially seamless replacement process (i.e., a planned vessel replacement. It does not, of course, relieve the stresses of replacing a vessel unexpectedly "lost"). The NTSB and the USCG staff support this alternative.

2.5.5 Option 1: Vessel length restrictions

2.5.5.1 Overview of vessel length restrictions

The vessel length restriction options would allow the Council to limit the maximum length of a replacement vessel. The Council has frequently recommended limits on vessel length, as a proxy for controlling fishery effort or defining a suite of fishery participants. Specific examples include separating fishery allocations among groups of fishermen based on the maximum length of the vessel that may be used to fish under that allocation (e.g., the BSAI Pacific cod sector allocations), and limiting the maximum length of vessels that can be used under the authority of those licenses. Although length is only one measure of a vessels fishing capacity, it is a metric that is commonly used, considered to be a reasonable indicator of total harvest capacity, and is relatively easily measured and enforced, compared to other vessel measurements (e.g., vessel hold capacity). For these reasons, the Council has not often sought to limit vessel fishing capacity on a specific vessel by restricting engine horsepower, hold capacity, allowable days of fishing, or other measures.

Although vessel length is a proxy for capacity, a newly constructed replacement vessel is likely to have improved harvest capacity, relative to existing vessels of the same length. A new vessel can incorporate improved hold design, processing plant construction, engines, and other advancements in marine design that improve a vessels capacity and safety. As an example, many of the existing vessels in the Amendment 80 fleet were originally constructed as transport vessels or other service vessels (i.e., "mud boats") that have been rebuilt for fishing.[37] Inherently, these vessels are less well designed for fishing than a new purposefully constructed fishing vessel would be. This analysis does not attempt to quantify the relative increase in harvest capacity between an existing vessel and a new vessel, because these factors are specific to the design of the new vessel and cannot be predicted with any reasonable certainty. The Council should note that any restrictions on the length of replacement vessels, in an effort to limit harvesting capacity, would be offset by the general improvements in harvesting capacity that any newly constructed vessel would provide over the vessel being replaced.

Two questions appear most relevant when considering the appropriateness of vessel length restrictions: (1) will vessel length restrictions reduce the potential for replacement vessels to create a race for fish; and (2) will vessel length restrictions impede vessel replacement?

2.5.5.2 Vessel length restrictions and the race for fish.

Vessel length restrictions could reduce the race for fish if: (1) the effort of those replacement vessels is not controlled by other "output control" measures, such as a cooperative quota or other sideboard restrictions; and (2) vessels would have an incentive to enter a fishery, if vessel length was unrestricted. In most fisheries, Amendment 80 vessels are limited by quotas in the BSAI and GOA sideboards that would appear to limit the incentive for vessel operators to expand their vessel length in an effort to be more competitive in a race for fish. This analysis does not attempt to quantify the potential

[37] Eric Blumhagen, Jensen Marine (Pers. Comm., January 2010).

increase in total harvest, harvest rate, or value a larger replacement vessel could derive relative to existing vessels. It is not possible to predict the specific vessels that would be replaced, the potential increase in length or overall capacity of a specific replacement vessel, or the future exvessel value of fishery stocks with certainty. Therefore, the discussion of the potential for larger vessels to accelerate the race for fish is qualitative.

In the BSAI, Amendment 80 vessels participate in both Amendment 80 and non-Amendment 80 fisheries. Vessels in an Amendment 80 cooperative are not competing in a race for fish for the allocated Amendment 80 species and PSC allowance. Vessel operators would not have an incentive to lengthen a replacement vessel in order to increase harvests of these species. Vessel owners in cooperatives would be driven to replace a vessel by other factors such as safety or economic efficiency. For example, vessel operators could choose to replace vessels with longer vessels to improve groundfish retention rates, place a meal plant onboard the vessel that could aid in improving the overall groundfish retention rate of the cooperative, or to replace one, or more vessels that a vessel owner currently operates to save operational costs.

Vessels in the limited access fishery continue to compete for Amendment 80 species catch and vessel size could provide a competitive advantage. Presumably a vessel owner could choose to enter the limited access fishery with a larger vessel and out-compete other participants. It is not possible to predict the likelihood that a vessel owner would choose to enter a longer vessel in the limited access fishery for this purpose, but the incentives would increase, the greater the difference between potential harvests in the limited access fishery and the amount of catch that the vessel may receive if participating in a cooperative (i.e., a longer replacement vessel with limited associated QS would have a greater incentive to fish in the limited access fishery, than a vessel owner with a larger QS allocation, all else equal). A vessel owner with a larger catch history would be likely to seek cooperative membership to ensure that, if a vessel is not operational, the value of the catch derived from the QS permit associated with that vessel could be harvested by other vessels in the cooperative. Vessels in the limited access fishery do not have that safety net. A vessel operator who constructs a newer, longer, and expensive, vessel with the latest advancements in safety, electronics, and fishing gear would seek to ensure that the potential value of that asset is not put at risk. Unless that vessel could consistently and profitably out-compete the other participants in the limited access fishery, placing a new replacement vessel in the limited access fishery would appear to be a risky business proposition. Furthermore, sustaining this performance pattern over time may be problematic, as well. This is so, because the operations that are being consistently outperformed (i.e., losing their relative share of the catch to the larger, more efficient new entrant) would be foolish to continue to participate in the open access fishery. A rational operator, seeing he or she is at an insurmountable disadvantage, "should" seek to remove their QS from the open access fishery and enter into a cooperative, where their QS is protected. Ultimately, the larger, more efficient "new" vessel will find it has only its own QS to fish for in open access, with all the concerns of a small PSC allowance that could result in early closure. On December 5, 2011 NMFS implemented Amendment 93 to increase the likelihood that Amendment 80 participants could form a cooperative (November 4, 2011; 76 FR 68354). Amendment 93 could further reduce the incentive of a vessel owner to risk the substantial investments in a new vessel in the hopes of being able to compete in the Amendment 80 limited access fishery.

Membership in the limited access fishery can change on an annual basis. If the current participants are able to form a fishery cooperative, then the potential advantage of such a business strategy is greatly reduced, and possibly removed entirely. If the current limited access fishery participants continue to be unable to form a cooperative, perhaps a vessel owner would seek to place a newer longer replacement vessel with limited QS associated with it into the limited access fishery. The recently implemented Amendment 93 is intended to increase the likelihood of cooperative formation. If cooperative formation becomes more likely or if vessel owners are limited in their ability to participate both in a cooperative and in the limited access fishery, then the potential incentive to place a "new" longer vessel in the limited access fishery for the express purpose of accelerating the race for fish is reduced. This analysis assumes that generally, smaller vessels would be less competitive in the race for fish limited access fishery, given their more limited harvesting capacity and hold capacity relative to larger vessels.

Amendment 80 vessel owners also compete for non-Amendment 80 groundfish species in the BSAI. These species comprise a small proportion of the overall harvests of the Amendment 80 vessels (Table 3). Four of the non-Amendment 80 species groundfish are caught in substantial amounts, relative to total catch, by all vessels (Alaska plaice, arrowtooth flounder, Greenland turbot, and northern rockfish), but not in comparison to the TAC for those species. Non-Amendment 80 groundfish species typically have much lower retention rates, owing to market constraints and product value, than the Amendment 80 species (Tables 15a and 15b). Although larger vessels harvest and retain a greater proportion of these species relative to smaller vessels in most cases (Tables 15a and 15b), it would appear unlikely that a vessel owner would choose to place a larger replacement vessel into service in an effort to race for non-Amendment 80 BSAI groundfish. Currently, the TAC for most of these species is substantially greater than recent or historical harvests (Table 3). Vessels are not engaged in a race for fish for these species. Those non-Amendment 80 species that are fully harvested are not open for directed fishing and can be retained only up to the MRA (i.e., shortraker, rougheye, and thornyhead rockfish). After the TAC is reached, those species are designated as "prohibited"" and may not be retained. The entry of larger vessels into the BSAI would not be expected to affect the total harvests or retention of these species.

It is not likely that current fishery conditions for non-Amendment 80 groundfish in the BSAI will change greatly in the foreseeable future in a manner that would encourage the entry of longer replacement vessels. Fishery conditions could change if markets for species improve or handling and processing techniques develop that allow retention of additional species. Those potential changes cannot be predicted. Vessel length restrictions could discourage vessel operators from expanding harvesting efforts of non-Amendment 80 species if those species cannot be retained at a level that would maintain or improve the retention rates for groundfish. Less restrictive vessel length requirements could aid vessel operators in their efforts to expand fishing operations for non-Amendment 80 species, if longer replacement vessels could "profitably" retain a greater proportion of these species. However, given the relatively limited value that is likely to be derived from these species, it appears unlikely that vessel operators would choose to build, or place in service, larger replacement vessels for the primary purpose of expanding fishing effort into non-Amendment 80 groundfish fisheries.

In addition, the Amendment 80 sector is limited by the total amount of halibut PSC and crab PSC that may be incurred when targeting non-Amendment 80 fisheries. Although the fleet has effectively managed halibut PSC in the BSAI, any expanded effort into non-Amendment 80 species would have to be accompanied with matching PSC allowances (Table 4). Vessels fishing under cooperative management negotiate the maximum amount of PSC that members may remove, and larger vessels assigned to a cooperative could not expand fishing in non-Amendment 80 fisheries in ways that would exceed their cooperative agreements on PSC. Similarly, PSC assigned to the limited access fishery would need to be assigned to the appropriate fishery complex to allow vessels to harvest non-Amendment 80 species. This PSC assignment could constrain the overall harvest of non-Amendment 80 species because the amount of PSC assigned to the limited access fishery is shared by both Amendment 80 and non-Amendment 80 fisheries. When the allowance is reached, the fisheries close.

In the unlikely event that effort into non-Amendment 80 species did expand as longer vessels enter the fishery, and a race for fish did develop, the Council could more directly address that issue by allocating QS for those species and incorporating them into the existing Amendment 80 Program. Limiting the maximum size of replacement vessels would, at best, only indirectly address this potential race for fish, should conditions change that result in such an outcome.

The Amendment 80 fleet is constrained by sideboard limitations in GOA groundfish fisheries for pollock, Pacific cod, and several rockfish species (see Table 10). Limits on halibut PSC also constrain the fleet in fisheries that are not otherwise subject to TAC-based sideboard limitations (see Table 10). In 2012 NMFS implement Amendment 83 to the GOA FMP[38], which allocated Western and Central GOA Pacific cod to various gear and operational type sectors. Sector allocations under Amendment 83 to the GOA FMP have limited Amendment 80 catch from the previous sideboard limitations. Because of the small size of the pollock sideboard limit and the inability to effectively manage this limit, NMFS does not open directed fishing for Amendment 80 vessels.

A review of current GOA fisheries suggests that larger replacement vessels are unlikely to affect other non-Amendment 80 participants, given the constraints imposed by the Amendment 80 sideboards and by Pacific cod sector splits under Amendment 83 to the GOA FMP. Potentially, the entry of larger replacement vessels could affect non-Amendment 80 fishery participants in the Central GOA rockfish fishery, if the existing Central GOA Rockfish Program LAPP is not extended. Under the Central GOA Rockfish Program, only specific catcher/processor and catcher LLP licenses, and the vessels designated on those licenses, are eligible to participate in the Central GOA rockfish fisheries. Many of the LLP licenses and vessels eligible to participate in the Central GOA Rockfish Program are Amendment 80 LLPs and vessels**.** Currently, 12 Amendment 80 vessels are eligible for the Central GOA Rockfish Program. Vessel operators are constrained by exclusive TAC allocations to the catcher/processor and catcher vessel sectors. The Central GOA Rockfish Program is scheduled to expire on December 31, 2011. If the Central GOA Rockfish Program is not extended through the implementation of an FMP amendment or by legislation, management of Central GOA rockfish fisheries would revert to management under the LLP. Under that scenario,

[38] Amendment 83 to the GOA FMP (**see www.alaskafisheries.noaa.gov** for additional detail).

Amendment 80 vessels would not be constrained by TAC allocations specific to the eligible catcher/processor sector. Catcher vessels and catcher/processors would be competing for catch shares of Central GOA rockfish species.

If an Amendment 80 vessel operator replaced a smaller vessel with a larger vessel with greater harvest capacity, that vessel could potentially out-compete catcher vessels and other smaller Amendment 80 vessel operators, relative to the current fishing capacity within the fleet. It is not possible to predict whether an Amendment 80 vessel operator would choose to place a larger replacement vessel in the Central GOA rockfish fisheries under this scenario in an effort to race for fish against other Amendment 80 vessels and the shorebased fleet. Current Central GOA rockfish fishery participants would face the greatest risk of additional competition, not from larger Amendment 80 replacement vessels, but from the entry of currently active vessels in the Amendment 80 fleet that may choose to enter Central GOA rockfish fisheries in the absence of LAPP management. Specifically, Amendment 80 cooperative participants not currently active in the Central GOA could choose to enter the Central GOA rockfish fisheries because they are not engaged in a competitive fishery in the BSAI. Most Amendment 80 vessel owners hold LLP licenses that are endorsed for fishing in the Central GOA. Currently, 16 Amendment 80 LLP licenses are endorsed for the Central GOA. Unless the Council chose to limit the number of Amendment 80 vessels that can participate in Central GOA rockfish fisheries in the absence of LAPP management, vessel length restrictions would not be expected to affect overall harvest rates or the race for fish if the Central GOA rockfish program reverts to LLP based management. The Council addressed any potential concern about a race for fish by recommending the Central GOA Rockfish Program LAPP and not recommending that NMFS revert to LLP based management. NMFS published a final rule to implement the rockfish program was published in the *Federal Register* on December 27, 2011 (76 FR 81248).

Amendment 80 vessels are constrained by West Yakutat District and Western GOA rockfish sideboard limits. Those sideboards are nearly as large as, or the same as the TAC of those species (see Table 10). Effectively, the Amendment 80 fleet competes for the TAC for these fisheries. Since the implementation of Amendment 80, the number of fishery participants and the rate of harvest in the Western GOA have increased. Table 22 shows harvest rates in the Western GOA Pacific ocean perch fishery, which is the primary rockfish fishery in the Western GOA and is targeted more intensively than northern rockfish and the pelagic shelf rockfish complex. Management of those two assemblages is more difficult to describe, because the species are harvested together and it is often difficult to discern clear fishery patterns.

Table 22: Harvest rates and season length in Western GOA Pacific ocean perch fishery (2003-2009)

Year	Average daily catch rate of three highest days of catch	Season (noon to noon openings)	Directed fishing days	No. of Amendment 80 vessels fishing	TAC (mt)
2003	365 mt/day	June 29 - July 3	4	9	2,700
2004	346 mt/day	July 4 - July 17	13	11	2,520
2005	336 mt/day	July 5 - July 16	11	9	2,567
2006	720 mt/day	July 1 - July 11	10	9	4,155

2007	323 mt/day	July 1 - July 22, Aug 1 - Aug 6	27	5	4,244
2008	701 mt/day	July 1 - July 4, July 14 - July 18	7	10	3,686
2009	812 mt/day	July 1 - July 4	3	13	3,713

Participation in the West Yakutat District has not changed since Amendment 80 was implemented, although vessels could expand their harvests in these areas if they hold LLP licenses with a Central GOA endorsement. Competition in the West Yakutat District rockfish fisheries appears to be limited, primarily due to the small TACs of those fisheries, relative to the Western GOA and the presence of a competitive long term participant in the fishery.

Although vessel length restrictions could potentially reduce some competition within the Amendment 80 Western GOA rockfish fleet, it is not clear how substantial those changes may be. Currently, the fishery lasts several days. Assuming that the duration of the fishery is approximately the same in future years, limiting a replacement vessel may not substantially affect the overall timing or harvesting patterns in the fishery. More effective measures for controlling the race for fish are available to the Council such as the implementation of quota-based catch shares, or limits on the number of Amendment 80 vessels that could be active in the Western GOA rockfish fisheries. Potentially, less restrictive vessel length provisions could encourage Amendment 80 vessel owners to place larger replacement vessels into the Western GOA rockfish fisheries, if vessel operators perceive a substantial advantage relative to other fishery participants by doing so. Again, given the already short season, it is not clear how substantial an advantage a longer vessel would have, relative to the existing fleet. It is not possible to predict the increased harvests from a larger replacement vessel relative to a smaller one, or the potential increase in value that an operator may derive from those harvests.

Amendment 80 vessels are also constrained by a halibut PSC limit in the GOA deep-water complex during the third season (July 1 through July 31) that limits total harvests to 10.62 percent of the trawl PSC limit (212 mt). GOA rockfish fisheries, other than those managed under the Central GOA Rockfish Program, open on July 1. If larger vessels enter the fishery and the race for fish accelerates, vessel operators could have an incentive to fish in areas or use techniques that increase halibut PSC. Conceivably, this increased halibut PSC could constrain harvests in the rockfish fisheries, as well as harvests by other Amendment 80 vessels fishing in other deep-water complex fisheries (e.g., arrowtooth flounder, rex sole) that are subject to the third season deep-water halibut PSC limit. However, reported GOA halibut PSC, by Amendment 80 vessels, from 2008 and 2009 suggests that PSC in the GOA has not increased dramatically relative to the sideboard limit or average removals from 2003 through 2007 (see Table 9). Based on these limited data, it does not appear that the increase in Western GOA harvest rates has resulted in increased halibut PSC. It appears unlikely that restrictive vessel length provisions would affect halibut PSC by Amendment 80 vessels. Although vessel length restrictions could reduce the potential total fishing capacity in the Amendment 80 Western GOA rockfish fisheries, the overall effect of that reduction, relative to the currently rapid rate of harvests in those fisheries, would appear to be limited. Again, it is not possible to predict which vessels would be replaced and whether vessel length restrictions would substantially affect harvest rates.

Vessel length restrictions would not be expected to affect the harvest rate or amounts taken by Amendment 80 vessels in GOA flatfish fisheries. Flatfish harvests in the GOA are constrained, both by the number of Amendment 80 vessels that are eligible to directed fish for flatfish and by halibut PSC limits (see Table 10). Only 11 originally qualified Amendment 80 vessels are eligible to directed fish flatfish in the GOA. If the Council had recommended to not allow replacement vessels to be active in those fisheries, as under Option 2a, then vessel length restrictions are irrelevant. If those vessels are allowed to be replaced, retaining eligibility to target flatfish, then vessels are constrained not by TAC, but by halibut PSC limits, and vessels are "racing" for PSC, rather than TAC. However, it is not clear that the entry of larger vessels into the Amendment 80 fishery would necessarily result in a more rapid attainment of the halibut PSC limit that would constrain other GOA flatfish participants in their efforts to harvest flatfish. Larger vessels may be able to harvest a greater quantity of flatfish and any resulting halibut PSC, or those vessels may be better able to operate in other fishing grounds or areas that have lower halibut PSC rates than existing vessels in the Amendment 80 fleet.

Thus far, GOA flatfish participants have coordinated internally and with NMFS to manage halibut PSC. It is reasonable to assume that this coordination would continue, even if larger vessels entered the GOA flatfish fisheries. Given the constraining halibut PSC limits assigned to the Amendment 80 sector, and the potential harvest rates within those fisheries, NMFS Inseason staff open the shallow-water and deep-water complexes only if reasonably sure that harvest rates can be controlled. For example, NMFS has opened the shallow-water complex to directed fishing only when Amendment 80 sector participants, specifically BUC, have carefully coordinated with NMFS to ensure that these halibut PSC limits would not be exceeded. Nothing suggests that allowing larger vessels to enter the GOA flatfish fisheries would necessarily result in the loss of collaborative industry PSC arrangements (i.e., create a potential "race for PSC") that would adversely affect other fishery participants.

Table 11 notes that currently roughly half of the vessels that are eligible to directed fish for flatfish are doing so. This suggests that even if existing vessels are replaced with longer vessels, there may be limited incentives to use those vessels in GOA flatfish fisheries. Currently, BUC manages GOA halibut PSC sideboard limits in the flatfish fisheries on behalf of its members, under private contractual arrangements.[39] Although cooperative membership may change over time, currently all eligible vessels are coordinating effort in the GOA flatfish fisheries. Presuming the BUC membership remains stable overtime; one would expect GOA flatfish to continue to be managed under cooperative arrangements that limit the potential risks to any one member that a larger vessel will enter the fishery and incur halibut PSC removals, beyond the limits established by the BUC's private arrangement.

Overall, it appears unlikely that a vessel owner would choose to replace an existing vessel with a larger vessel for the express purpose of being more competitive in a race for fish. Although the non-Amendment 80 BSAI groundfish fisheries are not constrained by quotas and the Western GOA rockfish fisheries are currently fully prosecuted by Amendment 80 vessels, these fisheries represent a small proportion of the

[39] Jason Anderson, BUC representative (Pers. Comm., January 2010).

overall harvest by Amendment 80 vessels. The entry of larger vessels, relative to the existing size of the participating fleet over a period of many years, is not likely to substantially increase the overall harvest rates of the fishery within the foreseeable future. The Western GOA rockfish fisheries are fully harvested with a trend of increasing harvest rates. Although it is highly unlikely that a race for fish could occur in the foreseeable future, the Council could chose to address the rapid pace of harvest in that fishery more directly through other management techniques, such as quota-based management. Limiting the size of replacement vessels would constrain only one component of the potential harvest capacity of a vessel.

2.5.5.3 Vessel length restrictions and potential effects on vessel replacement

Several vessel owners have noted that restrictions on the size of replacement vessels could have a chilling effect on any vessel replacement. Some smaller vessel operators may have little incentive to replace vessels if they cannot substantially improve the hold capacity of those vessels. Smaller vessels, considered here as vessels less than 145 feet in length overall, require more trips to travel to and from fishing grounds to offload product. One vessel owner has noted that the smaller vessels in his fleet spend roughly 40 percent of their days at sea travelling to and from fishing grounds. Replacing a smaller vessel with a larger vessel with greater hold capacity could reduce travel times and associated fuel costs substantially depending on the size of the replacement vessel.[40]

It is not clear whether limitations on vessel size would concern all vessel operators. Larger vessels, particularly those vessels greater than 250 feet, are generally considered long enough to incorporate a meal plant, fillet lines, or other improvements in vessel processing and may not be constrained by limits on vessel length. Smaller vessel owners are likely to be most dramatically affected by limitations on the length of replacement vessels. Smaller vessel owners may wish to replace one, or more, of their smaller vessels with a single longer vessel that can be used to fish the entire allocation assigned to the replaced vessels, with the resulting savings on fuel, crew costs, maintenance, insurance, and other operational costs associated with operating two or more vessels instead of one. At least one owner of relatively smaller vessels has expressed a desire to replace more than one vessel with a single replacement vessel.[41] The Council noted that this opportunity could be precluded if the Council chose to limit the length of replacement vessels, depending on the length limit selected. This analysis does not attempt to quantify the potential economic advantage of replacing multiple vessels with a single vessel, due to the unknown nature of the operational costs of the vessels being replaced and the replacement vessel. Vessel owners who wish to replace smaller vessels with larger vessels to incorporate improved safety features could also be constrained by vessel length limits.

2.5.5.4 Methodology for establishing a vessel length limitation

Although the preferred alternative includes a 295 foot length limit for replacement vessel, NMFS proposed that the Council establish the LOA of the original qualifying

[40] Bill Orr, Manager Iquiqui Fisheries (Pers. Comm. January 2010).
[41] Frank O'Hara, Owner/Manager, O'Hara Fisheries (Pers. Comm. January 2010).

vessel as the benchmark for determining the maximum LOA of any replacement vessel under any the vessel length limits considered by the Council. Using the LOA at the time of final Council action to reduce the potential that vessel owners may choose to increase the LOA of vessels for the purposes of establishing a longer maximum LOA for any replacement vessel during the time between final Council action and the implementation of a final rule. The Council considered limits on the length of replacement vessels to address specific policy goals; thus, allowing the LOA of original qualifying vessels to be increased between the time of final Council action and the implementation of a final rule may frustrate those goals. Had the Council adopted an alternative approach for establishing the LOA of a vessel, it will need to provide that rationale. NMFS also proposes that once the LOA for an original qualifying vessel is established, any length restriction based on that LOA will apply to the first replacement vessel for the original qualifying vessel, and all subsequent replacement vessels. This methodology would ensure that all replacement vessels would have the same LOA criterion, consistently applied over time.

Absent direction from the Council, NMFS would use the LOA data in its FFP database at the time of final Council action as the basis for determining the LOA for all original qualifying vessels. This approach would be consistent with the data used in this analysis. These data are presumed to be correct. NMFS proposes to allow the vessel owners to provide corrected LOA data to NMFS. Presuming Amendment 97 is approved, NMFS would allow vessel owners a period of time, after the effective date of the final rule, to correct the LOA data. NMFS would require that vessel owners provide clear and unambiguous written documentation of the LOA of an original qualifying vessel, at the time of final Council action, before NMFS would modify its LOA database. This approach is consistent with requirements established in other regulations that allow a person to rebut NMFS' presumptions about specific data (e.g., catch history used in QS allocations). If no corrected data are provided, then NMFS will use the LOA in its FFP database at the time of final Council action.

2.5.5.5 Vessel length limitation considerations and comparisons to the AFA catcher/processor fleet

The Council recommended a 295 foot vessel length limit as part of the preferred alternative to best meet the objectives of this action. The primary argument for establishing a limit on the size of replacement vessels is that a vessel length limit may address potential adverse effects of new fishing capacity entering the fishery. As noted in the section 2.5.5.2, the Amendment 80 fleet is constrained by quotas for most fisheries in the BSAI, and by sideboard limitations in the GOA. Presumably, these restrictions will remain in place and will continue to constrain the fleet in most fisheries. At this time, it appears unlikely that either catch share management in the BSAI or the GOA sideboards would be removed. If catch share programs are removed, then larger replacement vessels could be at a competitive advantage, relative to other vessels, unless the Council takes other measures to limit those vessels. Should the Council decide to modify the Amendment 80 Program, it could address harvest limits directly at the time of any such modification. It is not clear what specific vessel length may be appropriate to constrain the potentially adverse competitive effects of a larger vessel relative to the existing

vessels in the fleet. The potential increase in fishing effort from a 300 foot vessel would presumably be greater than that of a 250 foot vessel, but the proportional increase in fishing effort is difficult to quantify, given the range of unique vessel characteristics (e.g., horsepower, processing and hold capacity) that may apply to a given vessel.

Previous public comment on this issue noted that vessel size could constrain the type of fishing operations possible on a vessel, and the economic viability of a replacement vessel. The previous section describes these concerns. Briefly, members of the Amendment 80 fleet have indicated that vessel length restrictions that curtail the ability to undertake value added processing operations, such as fillet and surimi production, could discourage vessel replacement. Vessel operators have also indicated that vessel length is perhaps less important for increasing harvest rates than for providing a large enough vessel to provide adequate hold capacity. Depending on the nature of a specific fishery, a vessel may be constrained primarily by the rate of throughput and vessel hold capacity. A longer vessel could allow vessel operators to fish for longer periods of time and reduce the number of trips required to offload products. Fewer trips would reduce fuel consumption and would allow vessel owners to minimize the time required to harvest their quota. This analysis does not provide a precise quantitative analysis of the amount of time that vessels currently spend transiting to and from port relative to vessel size. These data are not easily analyzed, due to the inability to clearly discern whether vessels are transiting to port from the fishing grounds to offload product, transfer crew, for maintenance, or for other reasons. Hold configurations and product forms vary from vessel to vessel, thereby complicating the ability to correlate vessel length and hold capacity. It is difficult to judge the specific vessel length at which fillet and fish meal operations can be economically incorporated onboard a vessel. Information from a marine architect that has worked with the Amendment 80 fleet suggests that fillet lines and meal plant operations may be difficult to incorporate onboard a vessel less than 220 feet LOA (see section 2.4.8.3). Conceptual designs for potential replacement vessels suggest that Amendment 80 vessels of roughly 260 feet LOA may be best suited to incorporate fillet and fish meal plant operations, while providing adequate hold capacity.

Operations from the AFA catcher/processor fleet may provide some guidance on the relative size of vessels that undertake fillet and fish meal operations in the BSAI. Although the AFA catcher/processor fleet targets primarily pollock, they do target and process yellowfin sole and Pacific cod in the same fisheries and regions as many of the Amendment 80 vessels. AFA trawl catcher/processors also have developed processing methods and products that some members of the Amendment 80 fleet have expressed interest in developing using newly constructed vessels. Table 23 notes the LOA of the AFA catcher/processor fleet and the vessels that have undertaken fillet or fishmeal operations from 2003 through 2009. The average size of the AFA fleet is 280 feet LOA. The smallest AFA vessel recently engaging in fillet operations is 201 feet. The smallest AFA vessel with recent recorded fishmeal production is 256 feet LOA. These data support information from marine architects that fillet and fish meal operations appear to become viable once vessel length exceeds 220 feet. Both fillet and fishmeal operations are now undertaken by vessels exceeding 250 feet LOA in the AFA fleet. AFA vessels active in fillet production average 271 feet LOA, and vessels with fishmeal plants average 316 feet LOA.

The fatality rates onboard the larger AFA trawl catcher/vessels is zero from 2000 through 2009.[42] The available data do not establish a causal relationship between vessel length and fatality rates. However, the greater length of AFA vessels may be one of the factors contributing to the lower fatality rate by providing a more stable platform in a greater range of sea conditions, and may have more space for incorporating safety equipment and features than is possible on existing Amendment 80 vessels. The Council may wish to consider the operational parameters of the AFA catcher/processor fleet if it chooses to recommend vessel length limits for the Amendment 80 fleet.

[42] C. Woodley and J. Lincoln., Pers. Comm. May 2010.

Table 23: AFA catcher/processor LOA, fillet and fishmeal production (2003-2009)			
AFA catcher/processors	LOA on FFP	Fillet production recorded (2003 -2009)	Fishmeal production recorded (2003-2009)
Northern Glacier	201	Yes	
American Enterprise	210		
Ocean Peace	219		
U.S. Enterprise	224		
Starbound	240	Yes	
Ocean Rover	256	Yes	Yes
Seattle Enterprise	270	Yes	
Highland Light	270	Yes	
American Dynasty	272	Yes	Yes
Arctic Fjord	275	Yes	
Kodiak Enterprise	275	Yes	
Pacific Glacier	276	Yes	
Endurance	278		
American Triumph	285	Yes	Yes
Katie Ann	296	Yes	
Island Enterprise	304	Yes	Yes
Arctic Storm	334	Yes	Yes
Northern Jaeger	336	Yes	Yes
Northern Eagle	341	Yes	Yes
Northern Hawk	341	Yes	Yes
Alaska Ocean	376	Yes	Yes
Average Fleet Length	**280**	**271**	**316**

2.5.5.6 Vessel length limitation options

The six options for limiting vessel length and the various suboptions that could apply to these options are listed below.

Option 1 (Applicable to Alternatives 2 and 3): Vessel size restrictions.

(a) A replacement vessel may not have a length overall greater than the original qualifying Amendment 80 vessel it replaces.

(b) The maximum length overall (MLOA) requirements on LLP licenses assigned to an Amendment 80 vessel would still apply.

(b) A replacement vessel may have a length overall 10% or 20% greater than the original qualifying Amendment 80 vessel it replaces.

(d) A replacement vessel could not have an LOA 50, 100, or 150 feet greater than the original qualifying length of the vessel.

(e) No length restriction on replacement vessels (the MLOA requirements on LLP licenses assigned to an Amendment 80 vessel would not apply).

Suboption 1: (Applicable to all options); Different vessel size restrictions may be applied to large (>145 feet LOA or 200 feet LOA) and small (<145 feet LOA or 200 feet LOA) vessels.

Suboption 2: (Applicable to options b, c, d, or e); 180 foot minimum size restriction.

Suboption 3: (Applicable to option e): The replacement vessel cannot be fished in the Amendment 80 limited access sector.

(f) A replacement vessel cannot exceed an LOA of 295 feet.

Each of the suboptions that apply to the Options 1b, 1c, and 1d are described here. The Council motion notes that in some cases, these suboptions would apply to all of the options (Options 1a through 1e). However, this analysis did not apply suboptions 1 and 2 to Option 1a (Original Amendment 80 LOA is limiting) and Option 1b (Original LLP license). The application of these suboptions to Options 1a and 1b did not produce a clear result that was useful from an analytical perspective. Option 1a limits the length of the replacement vessel to the LOA of the original qualifying vessel. Option 1b limits the LOA of a replacement vessel based on the MLOA of the LLP license used on the replacement vessel. Suboptions 1 and 2 would modify the LOA of a vessel, not the MLOA of an LLP license. It is not clear how applying suboptions 1 or 2 would allow a vessel owner to replace a vessel with a longer vessel and be consistent with the intent of Options 1a or 1b.

2.5.5.7 Option 1a: Limit replacement vessels to the size of the current vessel.

As noted in the general discussion above, limiting replacement vessels to the size of the original qualifying vessel could reduce growth in overall harvesting capacity of the Amendment 80 fleet, but is unlikely to provide any notable change in the incentives to race for fish. Option 1a is most likely to limit the ability of smaller vessel operators to improve the operational capacity of their vessel and could hinder the incorporation of newer safety features into a vessel if the size of the original qualifying vessel is small relative to the space or design requirements needed to incorporate those improvements. This option could preclude smaller vessel operators from being able to replace multiple vessels with a single larger vessel, unless the vessel being replaced can be modified (i.e., made wider or deeper) to accommodate the additional harvest capacity necessary to accommodate the anticipated catch that would have been derived from the replaced vessels.

Owners of larger vessel (e.g., those greater than 220 feet in length) would be less constrained by this alternative, because replacement vessels equal to the length of these larger existing vessels could incorporate meal plants, larger holds, improved safety equipment, or other modifications that could improve the vessel's efficiency.

2.5.5.8 Option 1b: Limit replacement vessels to the MLOA of the LLP license.

Option 1b would have similar impacts to Option 1a, with the exemption that a limited number of vessel owners who hold LLP licenses that would allow use of a vessel larger than the LLP license is currently assigned to could use those licenses to increase the length of the replacement vessel, up to the length of the MLOA of the LLP license. LLP licenses derived from vessels greater than 125 feet were set at the length of the vessel from which those LLP licenses were originally derived (see regulations at 50 CFR 679.2 defining MLOA). Table 1 indicates that in most cases the LOA of the original qualifying vessel and the MLOA of the LLP license derived from that vessel are the same. In almost all of the eight cases where the LLP MLOA and vessel LOA differ, those differences are small (see Table 1).

Under this option, vessel owners could expand the length of their vessel only if they obtain a trawl catcher/processor LLP license with the necessary Bering Sea (BS) or Aleutian Islands (AI) endorsement. These licenses cannot be derived from the fishing activity of an AFA vessel, because those LLP licenses can only designate AFA vessels (see regulations at 50 CFR 679.4(k)(10)). Almost all non-AFA trawl catcher/processor BS or AI LLP licenses are assigned to the Amendment 80 sector currently. Most of these LLP licenses are assigned to vessels that are active in other fisheries, specifically the hook-and-line Pacific cod fishery, and are, therefore, unlikely to be sold to Amendment 80 vessel owners (see Table 24).

Table 24: Non-AFA trawl catcher/processor LLP licenses that could be assigned to Amendment 80 Vessels.

LLP licenses that could be used on an Amendment 80 vessel	MLOA	Vessel currently assigned LLP license	LLP License holder	Endorsements on LLP license (All are Trawl and C/P endorsed)
LLG 3714	132 ft.	Alaska Beauty	United States Seafoods, LLC	BS, AI
LLG 1820	240 ft.	Alaska Knight		BS, AI, CG, WG
LLG 609	220 ft.	Alaska Pioneer	FCA	BS, AI, Non-Trawl, C/P Pacific Cod Hook-and-Line
LLG 3681	124 ft	Bering Prowler	Prowler, LLC	BS, AI, CG, Non-Trawl, C/P Pacific Cod Hook-and-Line
LLG 1713	163 ft	Clipper Express	Clipper Express, LLC	BS, AI, CG, Non-Trawl, C/P Pacific Cod Hook-and-Line
LLG 3741	188 ft	Epic Explorer	B&N Fisheries	BS, AI, CG
LLG 3637	162 ft	U.S. Liberator	Liberator Fisheries, LLC	BS, AI, Non-Trawl, C/P Pacific Cod Hook-and-Line

Only two of these LLP licenses have a long MLOA (greater than or equal to 220 feet MLOA). Given the lack of additional licenses with long MLOAs that vessel owners may reasonably be expected to be able to receive, Option 1c would not be expected to differ substantially from Option 1b. Conceivably, holders of larger licenses (i.e., FCA and U.S. Seafoods) could sell their licenses to other vessel owners or rebuild their vessels using these licenses, but the additional flexibility to increase vessel length under this option relative to Option 1a appears very limited for most vessel owners.

2.5.5.9 Option 1c: Replacement vessels may have a length overall of 10% or 20% greater than the original qualifying Amendment 80 vessel it replaces.

This option would allow vessels to increase their LOA by a percentage relative to the LOA of the original qualifying vessel. The Council recommended this option to provide a limited increase in LOA from the existing size of vessels. Table 25 details the maximum LOA permissible for replacement vessels for each of the original qualifying vessels with suboptions 1 and 2.

Table 25: Option 1c, Suboptions 1 & 2: Maximum Vessel Replacement Lengths

Amendment 80 Vessel(s) with length overall (LOA) as reported on FFP	All vessels can be replaced up to 10% greater	All vessels may be replaced up to 20% greater	Vessels under 145' LOA may be replaced up to 20% greater, vessels over 145' LOA may be replaced up to 10% greater	Vessels under 200' LOA may be replaced up to 20% greater, vessels over 200' LOA may be replaced up to 10% greater	Vessels may be replaced up to 180' or increased by 10%, whichever is greater	Vessels may be replaced up to 180' or increased by 20%, whichever is greater
Ocean Cape (99 ft)	109	119	119	119	180	180
Golden Fleece (104 ft)	114	125	125	125	180	180
Alliance (107 ft)	118	128	128	128	180	180
Ocean Alaska (107 ft)	118	128	128	128	180	180
Enterprise (120 ft)	132	144	144	144	180	180
Defender (124 ft)	136	149	149	149	180	180
Tremont (124 ft)	136	149	149	149	180	180
Vaerdal (124 ft)	136	149	149	149	180	180
Legacy (132 ft)	145	158	158	158	180	180
Prosperity (138 ft)	152	166	166	166	180	180
Rebecca Irene (140 ft)	154	168	168	168	180	180
Constellation (150 ft)	165	180	165	180	180	180
Cape Horn (158 ft)	174	190	174	190	180	190
American No. 1 (160 ft)	176	192	176	192	180	192
Harvester Enterprise (181 ft)	199	217	199	217	199	217
Bering Enterprise (183 ft)	201	220	201	220	201	220
US Intrepid (185 ft)	204	222	204	222	204	222

Unimak (185 ft)	204	222	204	222	204	222
Arica (186 ft)	205	223	205	223	205	223
Alaska Ranger (203 ft)	223	244	223	223	223	244
Alaska Voyager (203 ft)	223	244	223	223	223	244
Alaska Warrior (215 ft)	237	258	237	237	237	258
Ocean Peace (219 ft)	241	263	241	241	241	263
Alaska Spirit (221 ft)	243	265	243	243	243	265
Alaska Victory (227 ft)	250	272	250	250	250	272
Seafisher (230 ft)	253	276	253	253	253	276
Alaska Juris (238 ft)	262	286	262	262	262	286
Seafreeze Alaska (295 ft)	325	354	325	325	325	354
Average Fleet Length	**187**	**204**	**192**	**197**	**207**	**218**

Overall, this suboption would provide for a slight increase from the fleetwide average length of 170 feet LOA to 187 feet LOA under the most constraining limit (10% increase in LOA). The most liberal combination of options (10% increase with suboption 2) would allow an increase in the maximum fleetwide LOA to 218 feet. Under this option, most of the fleet would be constrained by the 180 foot limit. Under all of the combinations, the longest vessels in the fleet (i.e., those over 200' LOA) would most likely be able to incorporate fillet production and fish meal plants, but most of the smaller vessels in the fleet would probably be limited in their ability to expand the use of their vessels to incorporate these additional processing capacities.

2.5.5.10 Option 1d: Replacement vessels may have an LOA 50', 100', or 150' greater than the original qualifying Amendment 80 vessel it replaces.

This option would allow vessels to increase their LOA by a fixed number of feet, relative to the LOA of the original qualifying vessel. Tables 26 and 27 detail the maximum size increases for the replacement vessels for each of the original qualifying vessels with suboptions 1 and 2. Table 26 has ranges of vessel length combinations with suboption 1 that create conditions under which vessels with shorter original LOA would be able to be replaced with vessels that are larger than would be allowed for original qualifying vessels with a longer LOA. The replacement vessels for each of the original Amendment 80 vessels that are subject to these conditions are noted with italics and asterisks. Before the Council could recommend one of these options or suboptions the Council needed to establish a rationale, detailing why such a result would not create an inequitable result for vessel owners.

Table 26: Option 1c (with and without Suboption 2): Maximum Vessel Replacement Lengths

Amendment 80 Vessel(s) with length overall (LOA) as reported on FFP	Vessels may be rebuilt up to 50' greater	Vessels may be rebuilt up to 100' greater	Vessels may be rebuilt up to 150' greater	Vessels may be rebuilt up to the longer of 180' LOA, or 50' greater
Ocean Cape (99 ft)	149	199	249	180
Golden Fleece (104 ft)	154	204	254	180
Alliance (107 ft)	157	207	257	180
Ocean Alaska (107 ft)	157	207	257	180
Enterprise (120 ft)	170	220	270	180
Defender (124 ft)	174	224	274	180
Tremont (124 ft)	174	224	274	180
Vaerdal (124 ft)	174	224	274	180
Legacy (132 ft)	182	232	282	182
Prosperity (138 ft)	188	238	288	188
Rebecca Irene (140 ft)	190	240	290	190
Constellation (150 ft)	200	250	300	200
Cape Horn (158 ft)	208	258	308	208
American No. 1 (160 ft)	210	260	310	210
Harvester Enterprise (181 ft)	231	281	331	231
Bering Enterprise (183 ft)	233	283	333	233
US Intrepid (185 ft)	235	285	335	235
Unimak (185 ft)	235	285	335	235
Arica (186 ft)	236	286	336	236
Alaska Ranger (203 ft)	253	303	353	253
Alaska Voyager (203 ft)	253	303	353	253
Alaska Warrior (215 ft)	265	315	365	265
Ocean Peace (219 ft)	269	319	369	269
Alaska Spirit (221 ft)	271	321	371	271
Alaska Victory (227 ft)	277	327	377	277
Seafisher (230 ft)	280	330	380	280
Alaska Juris (238 ft)	288	338	388	288
Seafreeze Alaska (295 ft)	345	395	445	345
Average Fleet Length	**220'**	**270'**	**320'**	**225'**

Table 27: Option 1d, Suboption 1: Maximum Vessel Replacement Lengths						
Amendment 80 Vessel(s) with length overall (LOA) as reported on FFP	Vessels under 145' LOA may be rebuilt up to 100' greater, vessels over 145' LOA may be rebuilt up to 50' greater	Vessels under 200' LOA may be rebuilt up to 100' greater, vessels over 200' LOA may be rebuilt up to 50' greater	Vessels under 145' LOA may be rebuilt up to 150' greater, vessels over 145' LOA may be rebuilt up to 50' greater	Vessels under 200' LOA may be rebuilt up to 150' greater, vessels over 200' LOA may be rebuilt up to 50' greater	Vessels under 145' LOA may be rebuilt up to 150' greater, vessels over 145' LOA may be rebuilt up to 100' greater	Vessels under 200' LOA may be rebuilt up to 150' greater, vessels over 200' LOA may be rebuilt up to 100' greater
Ocean Cape (99 ft)	199	199	249	249	249	249
Golden Fleece (104 ft)	204	204	254	254	254	254
Alliance (107 ft)	207	207	257	257	257	257
Ocean Alaska (107 ft)	207	207	257	257	257	257
Enterprise (120 ft)	220	220	270	270	270	270
Defender (124 ft)	224	224	274	274	274	274
Tremont (124 ft)	224	224	274	274	274	274
Vaerdal (124 ft)	224	224	274	274	274	274
Legacy (132 ft)	232	232	282	282	282	282
Prosperity (138 ft)	238	238	288	288	288	288
Rebecca Irene (140 ft)	240	240	290	290	290	290
Constellation (150 ft)	*200**	250	*200**	300	*250**	300
Cape Horn (158 ft)	*208*	258	*208*	308	*258*	308
American No. 1 (160 ft)	*210*	260	*210*	310	*260*	310
Harvester Enterprise (181 ft)	*231*	281	*231*	331	*281*	331
Bering Enterprise (183 ft)	*233*	283	*233*	333	*283*	333
US Intrepid (185 ft)	*235*	285	*235*	335	*285*	335
Unimak (185 ft)	*235*	285	*235*	335	*285*	335
Arica (186 ft)	*236**	286	*236*	336	*286**	336
Alaska Ranger (203 ft)	253	*253**	*253*	*253**	303	*303**
Alaska Voyager (203 ft)	253	*253*	*253*	*253*	303	*303*
Alaska Warrior (215 ft)	265	*265*	*265*	*265*	315	*315*
Ocean Peace (219 ft)	269	*269*	*269*	*269*	319	*319*

Alaska Spirit (221 ft)	271	*271*	*271*	*271*	321	*321*
Alaska Victory (227 ft)	277	*277*	*277*	*277*	327	*327*
Seafisher (230 ft)	280	*280**	*280*	*280*	330	*330**
Alaska Juris (238 ft)	288	288	*288**	*288**	338	338
Seafreeze Alaska (295 ft)	345	345	345	345	395	395
Average Fleet Length	**239'**	**254'**	**259'**	**288'**	**290'**	**304'**

Generally, Option 1d would allow replacement vessels that are substantially longer than those permitted under Options 1a, 1b, or 1c. Under the most liberal option (an additional 150' LOA increase), the maximum vessel length limit would provide an opportunity for all but the smallest vessel owners to increase their vessel length to a point at which replacement vessels would be able to incorporate fillet and meal plants.

2.5.5.11 Option 1e: No length restriction on replacement vessels

This option would remove MLOA from Amendment 80 LLP licenses. As noted in the general discussion above, allowing vessel owners to replace vessels, as necessary, would not appear to substantially increase the risk that a race for fish would ensue. This option would offer vessel owners, particularly operators of smaller vessels, the greatest flexibility to replace their vessels to incorporate necessary improvements.

If the MLOA no longer applied to an LLP license, once it is assigned to the Amendment 80 sector, the use of that LLP license in other fisheries is limited. Once an LLP license is assigned to an Amendment 80 vessel, it can only be used on an Amendment 80 vessel. In addition, a vessel owner must ensure that an Amendment 80 LLP license is assigned to an Amendment 80 vessel at all times (see 50 CFR 679.7(o)(2) for more detail). These restrictions, and the inability to have more than a maximum of 28 Amendment 80 vessels in the fleet, limits the potential maximum number of vessels that could be active in Amendment 80 fisheries

2.5.5.12 Option 1f: A 295' length restriction on replacement vessels

This option would limit the maximum size of replacement vessels to 295' LOA. As noted in Table 1, the largest vessel in the non-AFA trawl C/P fleet is the *Seafreeze Alaska* at 295' LOA, according to their FFP. Overall, this option would allow all vessels in the fleet to reach the same LOA and would promote an equal standard to all vessels. As noted in other options, vessels over 200' LOA would most likely be able to incorporate fillet production and fish meal plants. This option would allow all vessels to compete with the same competitive advantages associated with a larger vessel fleet. This option is consistent with the Council's intent and public testimony and would allow the Amendment 80 fleet to improve participation in international markets, to improve vessel safety, and to maximize the utilization of catch, while establishing a maximum vessel size and maximum fleet fishing capacity. Any increase in fleet size and fishing capacity has the potential for fishing effort to move from the Amendment 80 fisheries in the BSAI to other non-AFA fisheries including the GOA flatfish fishery. The Amendment 80 fleet is constrained by harvest limits in the GOA, commonly known as sideboards, that limit the catch of pollock, Pacific cod, northern rockfish, Pacific ocean perch, and pelagic shelf rockfish, as well as halibut PSC based on harvest patterns during 1998 through 2004.

Only specific Amendment 80 vessels that met minimum participation thresholds in GOA flatfish fisheries during 1998 through 2004 are allowed to target those species. There are 11 Amendment 80 vessels currently active in GOA flatfish fisheries. These vessels are constrained by their halibut PSC limits; thus, the GOA TACs for some flatfish species are typically not fully harvested. There is no conservation or management concern in the GOA flatfish fisheries at this time.

This option is similar to Option 1e in that it would provide significant flexibility to smaller vessel to incorporate needed improvements for both efficiency and safety. Option 1f differs from option 1e in that it would not remove the MLOA from the Amendment 80 LLP license. Instead, NMFS would not approve a replacement vessel application for vessels greater than 295 feet LOA. NMFS would also establish an MLOA of 295 feet for all Amendment 80 replacement vessels named on Amendment 80 LLP licenses.

The Council selected alternative 3 option 1f as part of their preferred alternative. The Council noted at final action that fishing capacity in the Amendment 80 fleet is expected to expand; however, spillover effort should be limited in other fisheries. Once an LLP license is assigned to an Amendment 80 vessel, the use of that LLP license in other fisheries is limited. Once an LLP license is assigned to an Amendment 80 vessel, it can only be used on an Amendment 80 vessel. In addition, a vessel owner must ensure that an Amendment 80 LLP license is assigned to an Amendment 80 vessel at all times (see 50 CFR 679.7(o)(2) for more detail). These restrictions, and the inability to have more than a maximum of 28 Amendment 80 vessels in the fleet, limits the potential maximum number of vessels that could be active in the fishery. Allowing Amendment 80 vessels to increase capacity could lead to increased effort in the non-rationalized fisheries in which the Amendment 80 fleet participates; however, these target species are typically not fully harvested and are not a conservation or management concern at this time, as shown in Tables 7 and 8.

2.5.6 Option 2: Limitations on GOA flatfish vessels

Only 11 originally qualifying Amendment 80 vessels can directed fish in GOA flatfish fisheries. Those vessels are listed in Table 28.

Table 28: Amendment 80 vessels eligible to fish GOA flatfish

Vessel	Vessel size	LLP licenses and endorsements currently on vessel
Alliance	107 ft.	LLG 2905 (124 ft) -- CG
American No. 1	160 ft	LLG 2028 (160 ft) – CG, WG
Defender	124 ft	LLG 3217 (124 ft) – CG, WG
Golden Fleece	104 ft	LLG 2524 (124 ft) -- CG
Legacy	132 ft	LLG 3714 (132 ft) – CG, WG
Ocean Alaska	107 ft	LLG 4360 (124 ft) – CG, WG
Ocean Peace	219 ft	LLG 2138 (219 ft) – WG
Seafreeze Alaska	295 ft	LLG 4692 (296 ft) – WG
U.S. Intrepid	185 ft	LLG 3662 (185 ft) – CG, WG
Unimak	185 ft	LLG 3957 (185 ft) – CG
Vaerdal	124 ft	LLG 1402 (124 ft) – CG, WG

2.5.6.1 Option 2a: Replacement vessels are not authorized to directed fish for GOA flatfish

Under this option, a vessel owner who replaces a vessel would not be able to continue fishing in GOA flatfish fisheries with the new vessel. This would effectively remove all fishing opportunities in fisheries that have been historically harvested by Amendment 80 vessels. The Council had sought to recognize this historical activity in its qualification recommendations under Amendment 80, by defining a suite of minimum weeks of directed flatfish fishing during 1998 through 2004.[43] Had the Council selected this option, each owner possessing a single vessel that is eligible to participate in the GOA flatfish fisheries would lose the ability to target these fisheries if a vessel was replaced, due to loss or other circumstances. Owners of multiple vessels that are eligible to directed fish in GOA flatfish fisheries would be less disadvantaged initially, but ultimately, this option would preclude the ability of those vessel owners to participate in directed GOA flatfish fisheries as these eligible vessels are replaced.

Historically, Amendment 80 vessels have been most active in deep-water complex flatfish fisheries (e.g., rex sole, arrowtooth flounder), with limited participation in shallow-water species. Tables 9 and 10 indicate that catch of some GOA flatfish species in 2008 and 2009 were lower, relative to the average harvests 2003 through 2007. Some flatfish harvests by Amendment 80 vessels cannot be revealed due to confidentiality restrictions. Halibut PSC sideboards in the shallow-water complex tightly constrain the Amendment 80 flatfish fleet. (see Table 28 to part 679). If the Amendment 80 sector is precluded from directed fishing GOA flatfish, conceivably other sectors would increase their harvest of flatfish and exploit the associated halibut PSC allowance. This would appear most likely in the Central GOA arrowtooth fisheries, where a sizeable proportion of that fishery is taken by non-Amendment 80 vessels (see Table 9). Other non-Amendment 80 vessels could expand their efforts in GOA flatfish fisheries as the eligible Amendment 80 vessels are replaced. This analysis cannot predict which vessels would be replaced, the rate of vessel replacement, the specific effects on GOA flatfish fisheries, or the long term trend for non-Amendment 80 harvests.

Generally, this option would appear to run contrary to the specific goals the Council established under Amendment 80, to recognize past participation in specific GOA fisheries by the Amendment 80 fleet.[44] If the Council had recommended this option, it would have had to provide a rationale as to why prohibiting the Amendment 80 fleet from directed fishing for GOA flatfish is now appropriate through attrition, as these eligible vessels are replaced.

[43] The proposed rule for Amendment 80 notes, "The Program would reduce fishing pressure in the GOA by Amendment 80 vessels on non-Amendment 80 sector harvesters with substantial flatfish participation, by authorizing only those Amendment 80 vessels …. [w]ith more than 10 weeks conducting directed fishing for GOA flatfish fisheries during 1998 through 2004." (72 FR 30092). Additional detail is found in the EA/RIR/IRFA prepared for Amendment 80 (see references).

[44] Additional detail is found in the EA/RIR/IRFA prepared for Amendment 80 (see references).

2.5.6.2 Option 2b: Replacement vessels are authorized to directed fish for GOA flatfish

This option would allow an owner of an eligible vessel, who has historically fished in GOA flatfish fisheries, to retain that ability after replacing his or her vessel. The Amendment 80 fleet is constrained by harvest limits in the GOA, commonly known as sideboards, that limit the catch of pollock, Pacific cod, northern rockfish, Pacific ocean perch, and pelagic shelf rockfish, as well as halibut PSC based on harvest patterns during 1998 through 2004. Only specific Amendment 80 vessels that met minimum participation thresholds in GOA flatfish fisheries during 1998 through 2004 are allowed to target those species. Overall this option would maintain the total number of vessels that are eligible to directed fish GOA flatfish.

The Council and NMFS recognize the potential for fishing effort to move from the Amendment 80 fisheries in the BSAI to other non-AFA fisheries including the GOA flatfish fishery. These vessels are constrained by their halibut PSC limits; thus, the GOA TACs for some flatfish species are typically not fully harvested. Moreover, there is no conservation or management concern in the GOA flatfish fisheries at this time. As noted in the vessel length overview discussion on halibut PSC, BUC currently manages the halibut PSC allowance of its member vessels and this arrangement is anticipated to continue. These private arrangements to manage GOA halibut PSC sideboards suggest that this option would not necessarily result in increased effort in GOA flatfish fisheries that would adversely affect other Amendment 80 participants or non-Amendment 80 participants. This option is not intended to prohibit or limit GOA flatfish harvest by replacement vessels, to ensure that eligible Amendment 80 vessels owners would not have to choose between vessel safety improvements and the ability to continue to harvest GOA flatfish.

2.5.6.3 Option 2c: Replacement vessels are authorized to directed fish for GOA flatfish with sideboard limitations

This option would allow eligible Amendment 80 vessels to be replaced and retain their eligibility to directed fish for flatfish with limitations on the amount of flatfish that vessels could target Currently, all Amendment 80 vessels (with the exception of the *Golden Fleece*) are subject to sideboard limitations on the amount of halibut PSC that may be used. During the development of the Amendment 80 Program, the Council chose not to limit the amount of flatfish harvested by Amendment 80 vessels, because the halibut PSC limit was considered to adequately constrain the fleet. In addition, the TACs for many flatfish species in the GOA have not been fully harvested (see Table 29 and 30) and limitations on flatfish harvests did not appear to be necessary to address a potential race for fish among fishery participants.

Current Amendment 80 GOA sideboard limitations are based on the amount of total catch from 1998 through 2004. Tables 28 and 29 provide the total catch of Amendment 80 flatfish in the Western and Central GOA. Catch from the West Yakutat District (Area 640) cannot be displayed due to confidentiality of the data.

Table 29: Total flatfish catch from Amendment 80 vessels in the Central GOA (1998 – 2009)

Year	Species	TAC (mt)	Catch (mt)	Percentage

				of TAC
1998	Arrowtooth Flounder	25,000	2,458	9.83%
	Deep-water flatfish	3,690	291	7.89%
	Flathead sole	5,000	502	10.04%
	Rex sole	5,490	431	7.85%
	Shallow-water flatfish	12,950	146	1.13%
1999	Arrowtooth Flounder	25,000	2,287	9.15%
	Deep-water flatfish	3,690	309	8.37%
	Flathead sole	5,000	126	2.52%
	Rex sole	5,490	2,162	39.38%
	Shallow-water flatfish	12,950	62	0.48%
2000	Arrowtooth Flounder	25,000	5,473	21.89%
	Deep-water flatfish	2,710	215	7.93%
	Flathead sole	5,000	163	3.26%
	Rex sole	5,660	2,477	43.76%
	Shallow-water flatfish	12,950	402	3.10%
2001	Arrowtooth Flounder	25,000	5,264	21.06%
	Deep-water flatfish	2,710	149	5.50%
	Flathead sole	5,000	492	9.84%
	Rex sole	5,660	2,169	38.32%
	Shallow-water flatfish	12,950	143	1.10%
2002	Arrowtooth Flounder	25,000	5,684	22.74%
	Deep-water flatfish	2,280	161	7.06%
	Flathead sole	5,000	342	6.84%
	Rex sole	5,540	2,316	41.81%
	Shallow-water flatfish	13,000	128	0.98%
2003	Arrowtooth Flounder	25,000	14,524	58.10%
	Deep-water flatfish	2,220	280	12.61%
	Flathead sole	5,000	1,300	26.00%
	Rex sole	5,540	1,817	32.80%
	Shallow-water flatfish	13,000	54	0.42%
2004	Arrowtooth Flounder	25,000	3,872	15.49%
	Deep-water flatfish	2,970	21	0.71%
	Flathead sole	5,000	524	10.48%
	Rex sole	7,340	347	4.73%
	Shallow-water flatfish	13,000	278	2.14%
2005	Arrowtooth Flounder	25,000	7,035	28.14%
	Deep-water flatfish	3,340	56	1.68%
	Flathead sole	5,000	1,215	24.30%
	Rex sole	7,340	**	**
	Shallow-water flatfish	13,000	347	2.67%
2006	Arrowtooth Flounder	25,000	10,504	42.02%
	Deep-water flatfish	4,139	**	**
	Flathead sole	5,000	1,469	29.38%
	Rex sole	5,506	387	7.03%

	Shallow-water flatfish	13,000	279	2.15%
2007	Arrowtooth Flounder	30,000	14,561	48.54%
	Deep-water flatfish	4,163	**	**
	Flathead sole	5,000	1,037	20.74%
	Rex sole	5,446	729	13.39%
	Shallow-water flatfish	13,000	35	0.27%
2008	Arrowtooth Flounder	25,000	7,790	31.16%
	Deep-water flatfish	6,721	**	**
	Flathead sole	5,000	1,427	28.54%
	Rex sole	6,731	1,647	24.47%
	Shallow-water flatfish	13,000	37	0.28%
2009	Arrowtooth Flounder	25,000	2,913	11.65%
	Deep-water flatfish	6,927	81	1.17%
	Flathead sole	5,000	178	3.56%
	Rex sole	6,630	**	**
	Shallow-water flatfish	13,000	70	0.54%
1998-2004 TAC and total catch	Arrowtooth Flounder	175,000	39,562	22.61%
	Deep-water flatfish	20,270	1,426	7.04%
	Flathead sole	35,000	3,449	9.85%
	Rex sole	40,720	11,719	28.78%
	Shallow-water flatfish	90,800	1,213	1.34%

Table 30: Total flatfish catch from Amendment 80 vessels in the Western GOA (1998 – 2009)

Year	Species	TAC (mt)	Catch (mt)	Percentage of TAC
1998	Arrowtooth Flounder	8,000	2,458	30.73%
	Deep-water flatfish	340	**	**
	Flathead sole	2,000	502	25.10%
	Rex sole	1,190	431	36.22%
	Shallow-water flatfish	4,500	65	1.44%
1999	Arrowtooth Flounder	8,000	2,287	28.59%
	Deep-water flatfish	340	**	**
	Flathead sole	2,000	126	6.30%
	Rex sole	1,190	597	50.17%
	Shallow-water flatfish	4,500	62	1.38%
2000	Arrowtooth Flounder	8,000	5,473	68.41%
	Deep-water flatfish	280	17	6.07%
	Flathead sole	2,000	163	8.15%
	Rex sole	1,230	877	71.30%
	Shallow-water flatfish	4,500	402	8.93%
2001	Arrowtooth Flounder	8,000	5,264	65.80%
	Deep-water flatfish	280	**	**
	Flathead sole	2,000	492	24.60%
	Rex sole	1,230	431	35.04%
	Shallow-water flatfish	4500	143	3.18%

2002	Arrowtooth Flounder	8,000	5,684	71.05%
	Deep-water flatfish	180	**	**
	Flathead sole	2,000	342	17.10%
	Rex sole	1,280	396	30.94%
	Shallow-water flatfish	4,500	128	2.84%
2003	Arrowtooth Flounder	8,000	7,818	97.73%
	Deep-water flatfish	180	**	**
	Flathead sole	2,000	424	21.20%
	Rex sole	1,280	**	**
	Shallow-water flatfish	4,500	104	2.31%
2004	Arrowtooth Flounder	8,000	2,565	32.06%
	Deep-water flatfish	310	21	6.77%
	Flathead sole	2,000	730	36.50%
	Rex sole	1,680	768	45.71%
	Shallow-water flatfish	4,500	72	1.60%
2005	Arrowtooth Flounder	8,000	2,077	25.96%
	Deep-water flatfish	330	**	**
	Flathead sole	2,000	567	28.35%
	Rex sole	1,680	566	33.69%
	Shallow-water flatfish	4,500	81	1.80%
2006	Arrowtooth Flounder	8,000	1,369	17.11%
	Deep-water flatfish	420	4	0.95%
	Flathead sole	2,000	400	20.00%
	Rex sole	1,159	346	29.85%
	Shallow-water flatfish	4,500	65	1.44%
2007	Arrowtooth Flounder	8,000	2,507	31.34%
	Deep-water flatfish	420	**	**
	Flathead sole	2,000	567	28.35%
	Rex sole	1,147	408	35.57%
	Shallow-water flatfish	4,500	60	1.33%
2008	Arrowtooth Flounder	8,000	2,074	25.93%
	Deep-water flatfish	690	8	1.16%
	Flathead sole	2,000	203	10.15%
	Rex sole	1,022	179	17.51%
	Shallow-water flatfish	4,500	56	1.24%
2009	Arrowtooth Flounder	8,000	1,210	15.13%
	Deep-water flatfish	706	8	1.13%
	Flathead sole	2,000	178	8.90%
	Rex sole	1,007	**	**
	Shallow-water flatfish	4,500	69	1.53%
1998 – 2004 Total TAC and Catch	Arrowtooth Flounder	56,000	31,549	56.34%
	Deep-water flatfish	1,910	**	**
	Flathead sole	14,000	2,779	19.85%
	Rex sole	9,080	**	**

	Shallow-water flatfish	31,500	976	3.10%
"**" Denotes confidential data				

The Council would need to address several issues if it wished to establish GOA flatfish sideboards for Amendment 80 vessels. First, total catch for a number of species cannot be revealed due to confidential data. NMFS is unable to show deep-water flatfish and rex sole catch in the Western GOA and all five of the flatfish stocks from the West Yakutat District during this time frame due to confidentiality restrictions. The Council has made recommendations to establish sideboards in the past without having complete data on total catch (e.g., catcher vessel sideboard limitations applicable to catcher vessels in the Central GOA Rockfish Program), but it would not be able to provide some rationale and consideration of the potential effects of those sideboards on the affected vessels.

Second, the Council would need to determine how these sideboards would be applied. Several approaches are possible. The Council considered applying a GOA flatfish sideboard to all of the Amendment 80 vessels. Presuming these sideboards are administered consistent with existing practices, NMFS would close directed fishing for a sideboard limited species once the limit is caught, or projected to be caught. Alternatively, NMFS could establish a sideboard limit applicable only to those vessels that are eligible to directed fish for flatfish. The Council should note that the total catch amounts provided in Tables 28 and 29 are based on total catch by all Amendment 80 vessels, not only the Amendment 80 flatfish eligible vessels. NMFS is not able to reveal total catch by flatfish eligible vessels for most flatfish species, due to confidentiality. If the total catch limits specified in Tables 28 and 29 were met by the eligible flatfish vessels, then NMFS would close directed fishing for those vessels. Finally, the Council considered management mechanisms to limit catch only by replacement vessels. This approach is administratively complicated. The Council would have to specify how the sideboard limit for each replacement vessel would be determined. The Council could limit catch for each replacement vessel based on the proportional catch of the original qualifying vessel during 1998 through 2004, relative to other eligible flatfish vessels. This approach would effectively create a vessel specific sideboard limit for each replacement vessel as it becomes active. If the Council recommended this approach, NMFS would most likely have to provide each vessel owner with an opportunity to challenge the data used to establish that vessel specific sideboard limit. As with other administrative challenges, this process could be time consuming. Until that administrative appeal process was resolved, the vessel would not be subject to sideboard limits in the GOA.

2.5.7 Option 3: Limitations on *Golden Fleece* replacement vessel

During the development of the Amendment 80 Program, the Council analyzed harvest patterns of Amendment 80 vessels in the GOA. These data identified at least one vessel with historical harvest patterns during the 1998 through 2004 qualifying years that differed substantially from all other Amendment 80 vessels. Specifically, the Council reviewed catch data that identified at least one vessel with catch in GOA flatfish fisheries in far greater proportion to its catch in the BSAI. This Amendment 80 vessel fished in GOA flatfish fisheries for at least 80 percent of all weeks that the vessel was used to fish

during the 2000 through 2003 time period. The draft EA/RIR/ IRFA for the Amendment 80 Program describes the unique harvest history of this vessel in greater detail.

The Council recognized that any vessel that met the 2000 through 2003 GOA flatfish harvest criteria, described above, was an Amendment 80 vessel primarily dependent on GOA flatfish fisheries. To reduce the potentially adverse effects that the proposed GOA halibut PSC sideboard measures could have on the ability of such a vessel to continue fishing in GOA flatfish fisheries, the Council recommended an exemption to the GOA halibut PSC sideboard limits for any Amendment 80 vessel that met these criteria. NMFS identified only one Amendment 80 vessel, the *Golden Fleece*, with the distinctive harvest pattern that would qualify that vessel to be granted an exemption from the GOA halibut PSC sideboard limit.

The Program accommodated the harvest activities of the *Golden Fleece* by prohibiting the *Golden Fleece* from directed fishing for Pacific cod, pollock, or in any rockfish fishery in the GOA. However, the *Golden Fleece* would not be subject to the GOA halibut PSC sideboard limit. These restrictions would allow the *Golden Fleece* to continue fishing as it has historically, while limiting the potential for the vessel to expand its effort into other groundfish fisheries in which it has not traditionally participated.

The Council recommended this provision under the assumption that exempting the *Golden Fleece* from the halibut PSC limits would not be expected to increase the amount of halibut PSC removed by Amendment 80 vessels overall. The proposed rule to the Amendment 80 Program noted that:

> It is anticipated that the F/V GOLDEN FLEECE would maintain its current fishing patterns, including its halibut PSC rates, and the overall use of PSC by all Amendment 80 vessels would not be expected to be greater than currently. Exempting the F/V GOLDEN FLEECE from the halibut PSC limits would ensure that the F/V GOLDEN FLEECE would not be adversely affected by other Amendment 80 vessels that could choose to fish in the GOA, use halibut PSC, and potentially, cause the GOA halibut PSC sideboard limit to be reached, thereby limiting the ability of the F/V GOLDEN FLEECE to fully harvest its traditional flatfish fisheries. Additionally, the F/V GOLDEN FLEECE would not be subject to the proposed M&E [Monitoring and Enforcement] requirements for other Amendment 80 vessels while fishing in the GOA. Many of the M&E requirements established for Amendment 80 vessels would be necessary to properly track halibut PSC. This same degree of precision would not be required for the F/VGOLDEN FLEECE. (72 FR 30091, May 30, 2007).

The M&E requirements applicable to the *Golden Fleece* include reduced observer coverage relative to other Amendment 80 vessels (e.g., 30 percent coverage versus 100 percent coverage).

2.5.7.1 Option 3a: Golden Fleece *replacement vessels are subject to the* Golden Fleece sideboards.

The Council did not explicitly state that these sideboards would apply to the *Golden Fleece,* regardless of any future modifications made to the vessel. The Council

did anticipate that the patterns of fishing would stay the same for this vessel. If those fishing patterns changed substantially, due to the replacement of the *Golden Fleece* with a longer vessel that may have additional harvest capacity and fishing patterns, then the Council may need to revisit the appropriateness of the sideboard and M&E measures now applicable.

Because the *Golden Fleece* is not subject to halibut PSC limits in the GOA, if that vessel is replaced with a new vessel, that vessel could increase its harvest of GOA flatfish without being subject to any limitation. Conceivably, this lack of constraint could adversely affect other non-Amendment 80 participants in other flatfish fisheries who would be competing with the *Golden Fleece* replacement vessel for the seasonal PSC allowance. A substantially longer replacement vessel would be subject to much lower monitoring and enforcement costs than other similarly situated vessels operating in the GOA, because it would be subject to the M&E requirements applicable to the *Golden Fleece* (e.g., the replacement vessel could exceed 125 feet LOA and would not be subject to 100 percent observer coverage, if this provision was retained).

2.5.7.2 Option 3b: Golden Fleece *replacement vessels are not subject to the* Golden Fleece sideboards.

Under this option, the *Golden Fleece* replacement vessel would not receive the specific exemptions applicable to the *Golden Fleece.* This provision would presume that the Council wished to recognize the specific harvest patterns and conditions that existed for only one vessel when it crafted the *Golden Fleece* sideboard provisions. The Council could consider a number of measures to reintegrate the *Golden Fleece* replacement vessel into the existing general Amendment 80 GOA sideboards. The Council recommend that any replacement vessel be eligible to directed fish for GOA rockfish, Pacific cod, and pollock, and be subject to halibut PSC limits and the M&E requirements now applicable to all Amendment 80 vessels. This provision would make no distinction between the *Golden Fleece* replacement vessel and all other Amendment 80 vessels.

The Council could also have accommodate the reintegration of this replacement vessel by adding an amount to the Amendment 80 sideboards that represents the proportional harvest of GOA rockfish, Pacific cod, pollock, and use of halibut PSC by the *Golden Fleece* during the 1998 through 2004 time frame. This adjustment would essentially recalibrate the GOA sideboards to include the "catch history" of the *Golden Fleece*. Due to confidentiality requirements, that catch history cannot be disclosed in this analysis, but if selected as the Council's preferred alternative, would be integrated into any final rule that implemented GOA sideboard limitations. Alternatively, the Council could have recommend that the *Golden Fleece* replacement vessel retain the current suite of GOA sideboard measures applicable to the *Golden Fleece* if the replacement vessel did not exceed the length of the *Golden Fleece*. The Council would need to more generally consider the applicability of the rationale provided for granting specific GOA sideboard provisions to any replacement for the *Golden Fleece*.

2.5.7.3 Option 3c: if the replacement vessel for the Golden Fleece is greater than the MLOA of the license that was originally assigned to the Golden Fleece, then that replacement vessel will be subject to all sideboards that apply to other Amendment 80 vessels, with the catch and PSC of the Golden Fleece added to the existing GOA sideboards. If the Golden Fleece replacement vessel is less

than or equal to the MLOA of the license that was originally assigned to the Golden Fleece, then the Golden Fleece sideboards would apply.

Under this option, the *Golden Fleece* could be replaced by a larger vessel, but it would be subject to limitations depending on the size of the replacement vessel. The MLOA of the LLP license (LLG 2524) originally assigned to the *Golden Fleece* is 124 feet. The Council's motion from February 2010, used the term "LOA" rather than "MLOA". The LOA of the *Golden Fleece* is 104 feet LOA. Under this option, the vessel owner could replace the *Golden Fleece* with a vessel up to 124 feet LOA and continue to be subject to the same sideboard measures that currently apply to the *Golden Fleece*. If the replacement vessel exceeds 124 feet, then the replacement vessel would be subject to all sideboard restrictions that apply to all other Amendment 80 vessels.

If a replacement vessel greater than 124 feet enters into service, NMFS would need to adjust the Amendment 80 GOA sideboard limits to increase the limit to incorporate the catch of sideboard species and halibut PSC by the *Golden Fleece* during the 1998 through 2004 time frame. Because these data are confidential, they cannot be released for this analysis. Because the *Golden Fleece* has targeted primarily GOA flatfish fisheries, the GOA sideboard that would be most substantially affected by including *Golden Fleece* catch data is the halibut PSC sideboard. Because the Amendment 80 sideboard limits are specified as part of the annual harvest specification process, administration of this suboption would require NMFS to modify the Amendment 80 sideboard limit prior to the start of a fishing year. Therefore, if the *Golden Fleece* is replaced with a vessel greater than 124 feet LOA during a calendar year, NMFS would not adjust the annual harvest specifications, or the Amendment 80 sideboard limits during that year. Adjusting sideboard limits in the middle of a fishing year could require public notice and comment rulemaking that would likely require additional analysis. This process would most likely not be completed within a given year, particularly if the replacement vessel entered service later in the year. NMFS would, under these circumstances, be expected to adjust the harvest specifications, and the Amendment 80 sideboard limits, to be effective in the fishing year after the replacement vessel entered service. This procedure would create a slight delay between the adjustment of the Amendment 80 sideboard limits and the entry of a new replacement vessel.

2.5.8 Option 4: Allow QS permit to be transferred to a replacement vessel

Regulations at 50 CFR 679.90(f) allow a QS permit assigned to an Amendment 80 vessel to be transferred only to the LLP license originally assigned to that Amendment 80 vessel, as specified in Table 31 to part 679. This limitation was established before the Court Order. It does not provide an opportunity for a vessel owner to replace a vessel and have the QS associated with that vessel assigned to the replacement vessel, instead of the LLP license derived from the original qualifying vessel. This option could be desirable in cases where the vessel owner no longer holds the LLP license originally derived from the Amendment 80 vessel. Option 4 would not otherwise affect the current assignment of QS permits. Option 4 would not require that a QS permit has to be assigned to a replacement vessel. QS permits now assigned to LLP licenses would remain on those LLP licenses and would not be able to be, or be required to be,

reassigned to a replacement vessel. The option would only affect future assignment of QS permits if a vessel replacement provision was implemented.

2.5.8.1 Option 4a: A replacement vessel cannot enter an Amendment 80 fishery without QS being assigned to the vessel.

Industry participants have raised concerns that vessel owners could have an incentive to enter a replacement vessel into the Amendment 80 sector without having any underlying QS permits being assigned to that vessel. In a few cases, the owner of an original qualifying Amendment 80 vessel and the person holding QS derived from that vessel differ. For example, the QS derived from the *Prosperity* is held by U.S. Seafoods, but U.S. Coast Guard documentation indicates that the owner of the *Prosperity* is undetermined at this time. Conceivably, a person other than the QS holder could become the documented owner and choose to replace the *Prosperity*. In that case a vessel without associated QS could become active in the fishery. This would likely pose a risk primarily for participants in the Amendment 80 limited access fishery, because a cooperative could establish contractual obligations that would limit the ability of a vessel to fish more than an agreed amount.

A vessel owner may have an incentive to enter that replacement vessel into the Amendment 80 limited access fishery, if it is perceived that such a vessel would be able to out-compete other participants in the limited access fishery. Owners of a replacement vessel without associated QS could have an incentive to actively preclude vessel owners from cooperative formation if they could assign a replacement vessel to the limited access fishery without having any QS associated with the vessel.

Under this option, a vessel owner would need to ensure that QS is assigned to a vessel to be eligible to fish in the Amendment 80 sector. This could be through directly assigning QS from the original vessel to the replacement vessel, or by assigning an LLP/QS license to the replacement vessel. This requirement would serve as a disincentive for vessel owners to assign a replacement vessel to the limited access fishery. This provision could reduce the risk that a person, who is not linked to the Amendment 80 fishery, other than through holding title to a lost vessel, could choose to replace that vessel and enter that replacement vessel into the Amendment 80 limited access fishery. This option would not require that the vessel owner assign the same QS originally derived from the vessel being replaced.

2.5.8.2 Option 4b: Persons holding a QS permit associated with a vessel that is permanently ineligible to re-enter US fisheries is eligible to replace the vessel with its QS permit.

Generally, only vessel owners may replace vessels. In most cases, this limitation would not be expected to constrain vessel replacement. However, vessel replacement becomes more difficult if an Amendment 80 QS holder does not hold documentation for a vessel. As an example, the holder of the *Bering Enterprise* QS permit does not hold title to the *Bering Enterprise*. The *Bering Enterprise* is in service overseas and is permanently ineligible to receive documentation as a U.S. fishing vessel, under 46 USC

12108. Therefore, the *Bering Enterprise* QS holder could never replace the vessel associated with its QS history. Based on this concern, the Council recommended an option that would allow persons holding QS permit associated with a vessel that is permanently ineligible to reenter U.S. fisheries to replace the vessel associated with its QS permit. This exemption would appear to apply only to vessels that are permanently ineligible to reenter U.S. fisheries. A vessel owner can retain, or obtain, title to vessels that are lost.

As part of the preferred alternative NMFS would verify which vessels are permanently ineligible to reenter US fisheries. NMFS would make this determination based on the best available information provided by the USCG at the time the final rule implementing Amendment 97 becomes effective. NMFS would permit the holder of the original QS permit to enter a replacement vessel into the Amendment 80 fisheries, if the person holding the QS, sought to replace a vessel NMFS determined to be ineligible. If a vessel subsequently becomes ineligible to receive documentation under 46 USC 12108, then the person holding the QS derived from that vessel would become eligible to replace that vessel, once that ineligibility is established through USCG documentation.

2.5.9 Option 5: Limit replaced vessels from participating in other fisheries in the GOA and BSAI (Applicable to Alternatives 2 and 3):

2.5.9.1 Option 5a: Any vessel replaced under this program would be ineligible to be designated on an FFP or an LLP.

In February 2010, the Council recommended adding Option 5a that would prohibit an Amendment 80 replaced vessel from receiving an FFP or an LLP license. Under Alternative 3, vessels can be replaced for any reason. It is possible that the replaced vessel could continue to be used in other fisheries (e.g., GOA flatfish fisheries, the BSAI trawl limited access fishery, or other fisheries outside the jurisdiction of the North Pacific Council). Because the replacement vessel would become an Amendment 80 vessel, the status of the replaced vessel is unclear. Conceivably, a vessel owner could use the replaced vessel in other fisheries free from Amendment 80 sideboard limits.

The Council and NMFS are limited in their ability to address the status of replacement vessels. NMFS does not have general authority to remove a fishery endorsement issued by the USCG under 46 USC 12108. NMFS has been able to permanently remove a vessel's ability to receive a fishery endorsement only when granted specific statutory authority by Congress (e.g., NMFS removed a vessel's fishing endorsement under the Crab Buyback Program, under the authority of the Consolidated Appropriations of 2001 (Pub L. 106-555, sec. 144)).

Absent specific authority from Congress to limit replaced vessels from the Amendment 80 fleet, NMFS and the Council have two options to limit the potential use of replaced vessels through FFP or LLP prohibitions. First, the Council could have recommend that any replaced vessel would not be eligible to be designated on an FFP. Such action would effectively disallow the use of a replaced vessel in the EEZ off Alaska. Second, the Council could have recommended that replaced vessels would be ineligible to be designated on an LLP. Similarly, this would effectively disallow the use of a replaced vessel to fish for federal groundfish in the EEZ off Alaska.

Generally, the Council has supported some form of restriction on vessels that are eligible for, or benefit from, its catch share programs. Once catch shares are allocated,

fishery participants no longer require as much fishing capacity as necessary under a race for fish. Catch share programs shift the value in fisheries from physical assets, such as fishing vessels, to the value that the quota represents as a long-term asset. Once catch share programs are implemented, the value of fishing vessels tends to decrease in the catch share fishery relative to the value of the quota. These changes can incentivize vessel owners to redeploy their vessels in other fisheries, or sell those vessels to participants in other fisheries who can use the vessels. The entry of replaced Amendment 80 vessels in other fisheries could adversely affect other fishery participants.[45] Many of the Amendment 80 vessels are large, relative to other vessels, particularly those vessels operating in the GOA, and have the ability to harvest and process large quantities of fish relative to other participants. It is not possible to predict whether replaced Amendment 80 vessels would become active in other fisheries, but if those vessels did become active in other fisheries (e.g., GOA flatfish fisheries), the harvesting capacity of these replaced vessels would likely be greater than many of the existing participants and could redistribute catch patterns. This additional harvesting capacity could accelerate the race for fish if the harvesting capacity is sufficiently large. An accelerated race for fish could decrease the precision of TAC management in non-catch share fisheries. Additional fishing capacity may increase the risk that the TAC for a fishery is exceeded if managers cannot close the fishery in time. Alternatively, managers may close a fishery before the TAC is fully reached if the possible or anticipated capacity far exceeds the available TAC.

Although the Council indicated a preference for limiting FFPs and LLP licenses in February 2010, subsequent review indicates that this approach may be problematic. FFPs and LLP licenses are assigned to or designate specific vessels. Removing FFPs from a specific vessel, or redesignating an LLP license, would require NMFS to provide the permit holder with a due process proceeding. If a permit or license holder sought to appeal these proceedings, this could add additional time and complexity to the process. Conceivably, this process would be required once for the FFP and once for the LLP license. **The Council may wish to reconsider limiting replaced vessels using a sideboard limit rather than a limitation on the use of an FFP or an LLP**

2.5.9.2 Option 5b: Sideboard limit of Zero for replaced vessels without QS

At final action, the Council recommended sideboards that limit replaced Amendment 80 vessels to zero groundfish in the BSAI or GOA. Such a recommendation would not be subject to the same due process challenges, as Option 5a. If the sideboard limit of zero is applied to all vessels replaced under this program, NMFS would not be required to provide each vessel owner with due process each time a vessel is replaced. In addition, NMFS has already established the process of using sideboards as a means to control the use of vessels that benefit from catch share programs. The Council has recommended sideboard limits of zero, or close to zero, in both the Central GOA

[45] An extensive discussion about the shift of value in fishing operations under quota based management is outlined in *Sharing the Fish* (NRC, 1999), and the EIS prepared for the BSAI Crab Rationalization Program (NPFMC 2004). Analyses prepared for the Amendment 80 Program and Central GOA Rationalization Program (NPFMC, 2006 and 2007) describe the potential effects of effort entering non-catch share programs.

Rockfish and Amendment 80 Programs. Using the Option 5b approach, the Council would build on established practice.

A zero sideboard limit would effectively prohibit replaced vessels from directed fishing for federally managed groundfish in the BSAI and GOA. Such a sideboard limit would prevent the harvesting capacity of a replaced vessel from displacing existing fishery participants or accelerating race for fish. Alternatively, the Council could have prohibited the use of a replaced Amendment 80 vessel to directed fish in all fisheries that are not subject to catch-share management. Under this scenario, a vessel could enter fisheries that have quota share allocations (e.g., halibut IFQ, sablefish IFQ, Central GOA rockfish, BSAI crab), but would not increase effort in fisheries still subject to a race for fish. Establishing a sideboard limit would not preclude the ability of a replaced vessel from being used in State of Alaska (State) waters or State fisheries (e.g., the concurrent State managed parallel fishery, or State Guideline Harvest Level (GHL) Pacific cod fisheries). If it chose, the State could take action to limit the use of replaced vessels within State waters under its regulatory authority, if it deemed that action appropriate and necessary. Generally, vessels are prohibited from using bottom trawl gear in State waters and State fisheries (e.g., vessels may only use pot or jig gear in State GHL Pacific cod fisheries). This analysis does not provide a quantitative assessment of the potential harvests of replacement vessels within State waters or State fisheries, because it is outside the scope considered by this action. None of these options would constrain the ability of a replaced vessel from being used in fisheries under the jurisdiction of other Fishery Management Councils.

2.5.9.3 Suboption: Replaced vessels may be used to replace other Amendment 80 vessels.

Under this suboption, replaced vessels could continue to be used in the Amendment 80 sector to replace other Amendment 80 vessels. Under this suboption, once a vessel has been replaced, it would be subject to any restrictions applicable under Option 5b (e.g., sideboards) unless that vessel was used in the Amendment 80 sector. Once a replaced vessel is assigned to the Amendment 80 sector as a replacement vessel, any sideboard restrictions applicable under Option 5b would be lifted. The vessel would be defined as a replacement vessel, subject to all the regulations, including the GOA sideboards, that otherwise apply to Amendment 80 vessels.

This suboption would provide flexibility to vessel owners who wish to use existing vessels to replace other vessels. A potential advantage for vessel owners is that the existing Amendment 80 vessels are fitted for the appropriate fisheries, and may be easier and cheaper to obtain than newly constructed vessels. This suboption could discourage vessel owners from replacing Amendment 80 vessels with newly constructed vessels, if an existing vessel in the Amendment 80 fleet would otherwise meet the needs of a replacement vessel. USCG personnel have indicated a preference for retiring existing Amendment 80 vessels to encourage newer and safer vessels. Arguably, if a vessel owner replaces one or more Amendment 80 vessels with an existing Amendment 80 vessel, that replacement vessel could have improved safety features than the vessel that is being replaced. Although the existing Amendment 80 vessels are not subject to the stringent safety requirements that would apply to new construction (see Table 21),

vessel owners may be able to retrofit their vessels to incorporate improved safety and design features.

2.5.10 Requirement under all alternatives

Monitoring and enforcement, permitting, recordkeeping and reporting, prohibitions, and general GOA sideboard measures (except as may be possible under Option 3) that apply to original Amendment 80 vessels would continue to apply to all replacement vessels. This requirement merely extends existing practices and limitation to any replacement vessel and would treat any replacement vessel the same as any similarly situated original qualifying vessel. The regulations that apply to Amendment 80 vessels are best described in the final rule implementing Amendment 80 (September 14, 2007; 72 FR 52668).

2.6 Summary of Potential Effects of the Alternatives

2.6.1 Effects of the alternatives on fishing patterns

Under all alternatives (except Alternative 1a), Amendment 80 vessels could be replaced. Alternative 1a would preclude vessel owners from being eligible to replace their vessels, and eventually lead to the extinguishment of the Amendment 80 sector. Alternatives 1b through 3 would not be anticipated to affect overall fishing patterns in the foreseeable future, given the anticipated slow pace of vessel replacement, the quota-based allocations in the BSAI, and GOA sideboards applicable to the Amendment 80 fleet. Given the high cost of vessel replacement, this analysis assumes that vessel operators would be replacing vessels to minimize costs and maximize return, based primarily on existing fishing allocations in the BSAI Amendment 80 sector and not in an effort to expand harvest in other smaller non-Amendment 80 fisheries. Alternative 3 would provide the greatest flexibility to vessel owners and minimize the potential gap between removal of a vessel and operation of its replacement. Under Alternative 3, the replaced vessels could become active in other non-Amendment 80 fisheries, probably GOA fisheries or the BSAI trawl limited access fishery, unless specifically restricted from doing so.

It is likely that replacement vessels would be newly constructed vessels and have improved hold capacity, fuel efficiency, and harvest capacity relative to existing similarly sized vessels in the Amendment 80 fleet. Under Option 1c, vessel operators would have the greatest flexibility to replace vessels to incorporate additional processing equipment and hold capacity that could improve overall groundfish retention and increase the potential suite of product forms that can be produced. Options 1a and 1b would limit the potential length of replacement vessels and could constrain some vessel owners, particularly smaller single vessel owners, who may wish to expand the overall retention rates and product forms of their fishing operations. Options 1a, 1b, and 1c would not be expected to result in an increased incentive for Amendment 80 vessel operators to race for fish. The analysis notes that the Amendment 80 fleet appears to be engaged in increased competition in the Western GOA rockfish fisheries. Vessel length restrictions would not be expected to have a substantial impact on the harvest rate in this fishery.

Option 1f, a 295' MLOA, would have similar effects to having no vessel size limit for accommodating operational efficiencies. Option lf would put limits on the

maximum amount of harvesting and hold capacity within the fleet; however, this option balances the stated objectives of the Council to provide replacement opportunities and improvements in safety and catch utilization with the desire to limit consolidation of the fleet and growth in capacity.

Option 2a would ultimately result in the inability of Amendment 80 vessels to directed fish for flatfish in the GOA. Unless other vessels increased effort, which they presumably would if justified by market demand, these flatfish fisheries would be harvested at a lower proportion than currently. Option 2b would allow replacement vessels to continue to directed fish for GOA flatfish, but would not be expected to result in substantially greater harvests, because Amendment 80 vessels are constrained by GOA sideboards. Currently, the Amendment 80 fleet coordinates halibut PSC management in the GOA to reduce these rates. This arrangement is expected to continue under either Option 2a or 2b.

Option 3a would apply specific sideboard measures to the replacement vessel for the *Golden Fleece*. Most importantly, this replacement vessel would be exempt from halibut PSC sideboard limits in the GOA. Conceivably, this lack of constraint could adversely affect other non-Amendment 80 participants in other flatfish fisheries, who would be competing with the *Golden Fleece* replacement vessel for catch share of the target species, before the seasonal PSC allowance, is exhausted. A substantially larger replacement vessel operating under this option would also be subject to much lower monitoring and enforcement costs than other similarly situated vessels operating in the GOA. Option 3b would apply existing GOA sideboard limitations, including halibut PSC limits, to the *Golden Fleece* replacement vessel. This option could reduce potential risks that a *Golden Fleece* replacement vessel would adversely affect other non-Amendment 80 fishery participants.

Option 4 would not affect fishing operations, because it affects only the assignment of a QS permit, not the characteristics of replacement vessels or fishing practices onboard those vessels.

Overall, vessel replacement would be expected to result in the replacement of smaller vessels with larger vessels that can accommodate additional hold and processing capacity. Vessel owners may choose to replace multiple vessels with a single larger vessel that can more efficiently harvest the allocations assigned under cooperative management. This consolidation would not be expected to result in reduced harvests overall. It likely will, however, increase effective fishing capacity within the Amendment 80 sector.

2.6.2 Potential effects on net benefits to the Nation

Overall, this action is likely to have a limited effect on net benefits realized by the Nation. Under all of the alternatives, (except Alternative 1a), vessels can be replaced. Alternatives 2 and 3 provide a clear regulatory framework to do so, and are more likely to result in vessel replacement. Generally, Alternatives 2 and 3 would be expected to encourage vessel replacement, and therefore may encourage fishing practices that are more likely to result in fully harvesting the TAC assigned to the Amendment 80 sector. To the extent that vessel replacement allows harvesters additional time to focus on improving quality, retention, market development, and product forms, there may be some consumer benefits realized by the proposed action. Conceivably, the proposed

alternatives may increase the economic efficiency of a harvester by allowing the use of more efficient vessels or the consolidation of fishing operations from multiple vessels on a single vessel. Option 1e would provide vessel owners with the greatest flexibility to realize these benefits. Alternative 3 would allow vessel owners to replace vessels before the actual loss of the vessel, which would reduce the potential costs associated with foregone harvests, if a vessel is lost before it is eligible for replacement. Vessel owners could make more efficient use of capital under Alternative 3. Allowing vessel owners to replace vessel before loss would allow financing to be arranged, design options explored, and construction bids to be obtained and negotiated. Under Alternative 3, scarce capital resources could be more efficiently allocated and have greater net benefit to these Nation. The lack of any quantitative data makes it impossible to rigorously assess the relative differences in expected net benefits among the alternatives.

2.6.3 Potential effects on management, enforcement, and safety

Overall, none of the alternatives or options would be expected to increase management costs. If vessel operators have greater flexibility to replace vessels, as needed, with the desired size (e.g., Alternative 3), the total number of active vessels may decrease. This could result in reduced management costs associated with monitoring a larger number of vessels, debriefing additional observers, and inspecting scales and observer sampling stations required on vessels. If smaller vessels are replaced with larger vessels, groundfish retention rates would be expected to increase, potentially reducing the risk of enforcement actions against a cooperative or vessel operator. Option 1c would provide the greatest flexibility to efficiently optimize vessel size.

USCG personnel have noted that newly constructed vessels are generally safer than older vessels. Alternative 3 would provide vessel owners with the greatest flexibility to replace vessels, to incorporate improved safety designs, before a vessel is lost. The ability to seamlessly replace a vessel, before it is lost, could encourage more rapid vessel replacement. It would also allow the vessel's owner to recover the remaining asset value represented in the vessel (e.g., sell the vessel), which, in turn, would reduce the absolute cost of a new vessel. Option 1e would provide vessel operators with the greatest flexibility to increase the length of replacement vessels to accommodate improved safety, operational efficiency, and harvesting-processing designs.

NMFS does not have specific data that can quantify the potential changes in the number of vessels that may be replaced, the vessels that would leave the fishery, the timing of vessel replacement, the overall impact on monitoring and enforcement costs, or the potential improvements in reducing fishery casualties that may result from vessel replacement.

2.6.4 Potential effects on fishing crew and communities

Vessel owners may choose to replace vessels to consolidate fishing operations from multiple vessels on to a single more efficient platform. If vessel operators consolidate fishing operations, total crew employment would be expected to decrease. This decreased employment could be offset by the increased fishing time of the replacement vessel or the incorporation of new processing and fishing practices of the remaining vessels that could require additional crew. NMFS has no information to suggest that payments to crew would differ on replacement vessels, relative to existing

vessel operations. Potentially, if a vessel is harvesting a greater amount of fish and resulting product forms have increased value, some of that additional value could be received by crew, if a vessel is operating under a revenue sharing arrangement. It may also be true that, with the newly incurred costs of the replacement vessel and equipment, the "vessel's share" may have to increase, relative to other shares, to cover the amortized debt service payment. While these factors will vary case-by-case, the final choice of a specific alternative, option(s), and/or suboption(s) will very significantly influence the impact and distribution of all replacement decisions.[46]

NMFS has no quantitative information to suggest that the alternatives differ with respect to effects on fishing communities. It is not clear that the alternatives would result in changes in the total amount of time vessels spend in port, the amount of provisions purchased, or other factors that may affect communities. One may reasonably hypothesize that larger vessels will tend to need equivalently larger-scale service, support, and logistical capabilities in the community port facilities they frequent. For example, the service needs and logistical demands of a vessel, say, under 100 feet in length are likely more readily accommodated than those same needs and demands of a vessel 280 feet in length. With the projected increase in the size of the vessels in the Amendment 80 fleet, the pattern of port calls could change, with larger communities/ports displacing smaller communities/ports in these fisheries.

2.6.5 Preferred Alternative

The Council selected **Alternative 3** and various options for final action. The preferred alternative is based on Advisory Panel recommendations to allow the owner of an Amendment 80 vessel to replace that vessel with another vessel for any purpose. This action is consistent with the purpose and need statement, and is intended to address the regulatory deficiencies that were identified by and addressed by the recent court order. The preferred alternative is intended to improve the retention and utilization of catch by the Amendment 80 sector, through provisions to allow gradual replacement of the aging fleet with larger safer vessels. Larger replacement vessels would provide non-AFA trawl C/P vessel owners with the flexibility to incorporate a broad range of processing capabilities, opening up opportunities that are not currently available on all vessels. The preferred alternative would require that replacement vessels meet contemporary vessel construction standards that are intended to improve safety at sea. Moreover, the preferred alternative would address concerns with expanding the fishing capacity in the BSAI and GOA.

Alternative 3 would limit vessel replacement so that each vessel in the Amendment 80 fleet could be replaced by another single vessel; however, only one vessel of these vessels could participate in an Amendment 80 fishery at any given time. The Council recommended Alternative 3 as a continuum of vessel replacement and not a one-

[46] Clearly, confronting the technical, financial, and managerial demands of replacing a vessel following a catastrophic loss, perhaps including human injuries or fatalities, carries significant burdens for all involved (owners, operators, crew and families, communities, etc., than is the case when replacement of an operating vessel can be planned for and executed, well in advance of the time when the replaced and replacement vessels exchange places in the fishery.

time replacement opportunity. The Council selected **Option 1f** that a replacement vessel cannot exceed an LOA of 295 feet (89.9 m). The Council recommends a maximum size limit on replacement vessels, because it would provide vessel owners and operators the with the flexibility to add value added processing and improve safety, while providing an upper boundary on total fleet capacity, albeit significantly greater capacity than that of the existing fleet. The longest Amendment 80 vessel has a 295 foot (89.9 m) LOA and, by allowing all replacement vessels to be built up to 295 feet (89.9 m) LOA, the Council intents this provision to provide equal advantages to all participants. Regulations implementing a maximum size for the fleet would aid the Council and NMFS to analyze the maximum fishery impact of the Amendment 80 fleet. Although impacts of the 295 feet (89.9 m) MLOA limit are similar to the no limit alternative, unanticipated consequences might occur if the Council had chosen to allow an unrestricted vessel length limit.

The Council recommended **Option 2b** to ensure that any vessel that replaces an original qualifying Amendment 80 vessel, eligible to directed fish for flatfish in the GOA, will continue to be allowed to directed fish in the GOA flatfish fishery. The 11 vessels currently active in GOA flatfish fisheries are constrained by their halibut PSC limits; thus, the GOA TACs for some species are typically not fully harvested. This action is not intended to address the potential expansion of the harvest by non-AFA trawl C/Ps in GOA flatfish fisheries, because there is no conservation or management concern at this time. The Council recommends this option, rather than options that would remove or limit GOA flatfish harvest by replacement vessels, to ensure that vessel owners would not have to choose between vessel safety improvements and the ability to continue to harvest GOA flatfish.

The Council recommends **Option 3c**, which addressed *Golden Fleece* sideboard restrictions. The Council's preferred alternative specifically addresses the F/V *Golden Fleece.* This provision recognizes the special standing that this vessel has received under Amendment 80 and its implementing regulations. If the *Golden Fleece* replacement vessel is less than or equal to the MLOA of the license that was originally assigned to the *Golden Fleece*, then the *Golden Fleece* sideboards would apply to the new vessel. If the replacement vessel for the *Golden Fleece* is greater than the MLOA of the LLP license that was originally assigned to the Golden Fleece, then that replacement vessel will be subject to all sideboards that apply to other Amendment 80 vessels, with the catch and PSC allowance of the *Golden Fleece* folded into the general Amendment 80 sideboard limits. Under the latter scenario, the replacement vessel would not retain the special F/V *Golden Fleece* sideboard restrictions.

The Council recommends **Options 4a** and **4b** that clarify the assignment of QS from lost vessels. The preferred alternative would allow the owner of an Amendment 80 vessel to assign a QS permit from an original qualifying Amendment 80 vessel to the replacement vessel or to the LLP license derived from the originally qualifying vessel. However, the Council recommends that QS for a lost vessel or a vessel that sold overseas or is otherwise in eligible to participate in domestic fisheries could be assigned to a replacement vessel or the LLP permit derived from the originally qualifying vessel. This provision is intended to address instances where the LLP license and vessel ownership are no longer linked. These options are intended to reduce the potential for a race for fish in the Amendment 80 limited access fishery, by prohibiting a replaced or replacement

vessel from entering any Amendment 80 fishery without QS being assigned to that vessel or the associated permit.

Moreover, the Council recommends **Option 5b** to ensure that Amendment 80 vessels without Amendment 80 QS assigned to them would be assigned a sideboard limit of zero in both the GOA and BSAI. The Council selected this option to avoid the management delays associated with administrative due processes that are triggered when an FFP permit or LLP license is removed. This action would prevent replaced vessels from increasing fishing effort in non-rationalized fisheries in a way that is consistent with similar actions in other fisheries. This provision is not intended to limit the replaced vessels from receiving deliveries from other vessels for processing (e.g., stationary floating processors, community quota entity floating processor) or from participating in fisheries under the jurisdiction of other regional fishery management councils.

The preferred alternative also includes a suboption of **Option 5** that provides that any vessel replaced under this program may be used to replace other Amendment 80 vessels. The Council's recommendation to allow existing Amendment 80 vessels to replace other Amendment 80 vessels is a practical step toward the goal of increasing safety in the Amendment 80 fleet, especially important to owners of multiple vessels. This action addresses safety concerns by requiring that replacement vessels must be classed and load lined or meets the requirements of ACSA to be used in an Amendment 80 fishery as a replacement vessel. This provision would include replacement vessels that are currently participating in an Amendment 80 fishery.

As required by section 208(g) of the AFA, which limits the conditions under which Amendment 80 vessels can be replaced, the Council's motion provides MARAD with a clear indication that the Council and NMFS would allow vessels that meet or exceed specific limits in the North Pacific if they are operating in an Amendment 80 fishery, as described in section 2.4.6.1 of this analysis. The Council recommends any Amendment 80 replacement vessel that is greater than 165 feet (59.4 m) in registered length or more than 750 gross tons, or that has an engine or engines capable of producing a total or more than 3,000 shaft horsepower be authorized for use in the EEZ under the jurisdiction of the Council. This recommendation is intended to clarify that any Amendment 80 replacement vessel is eligible to receive a certificate of documentation consistent with 46 U.S.C. 12113 and MARAD regulations at 46 CFR 356.47.

3 ENVIRONMENTAL ASSESSMENT

The purpose of this section is to analyze the environmental impacts of the proposed federal action to modify vessel replacement provisions of Amendment 80 Program. An environmental assessment (EA) is intended, in a concise manner, to provide sufficient evidence of whether or not the environmental impacts of the action is significant (40 CFR 1508.9).

This EA includes a brief discussion of: the purpose and need for the proposal (Section 3.1); the alternatives under consideration (Section 3.2); a description of the preferred alternative (Section 3.3); and the environmental impacts of the preferred alternative and alternatives (Section 3.4). The fourth requirement, a list of agencies and persons consulted, is provided in Sections 6, 7, and 8 of this document.

3.1 Purpose and Need

The purpose of the proposed action is to amend the FMP and federal regulations related to the Amendment 80 Program to establish a process for the owners of Amendment 80 vessels to replace eligible trawl C/P vessels. The proposed action is necessary to rectify the currently untenable disagreement among the FMP, implementing regulations, and a recent Court Order. Currently, the FMP and implementing regulations prohibit the replacement of any originally qualifying Amendment 80 vessels; however, the National Marine Fisheries Service (NMFS) is operating under a Court Order (*Arctic Sole Seafoods, Inc. v. Gutierrez*, Case No. 07-1676MJP; May 19, 2008) that vacated the specific regulatory provisions that preclude vessel replacement, as specified in the October 2008 guidance document (see section 2.4.3).

The October 2008 guidance document notes that specific issues were addressed by the Court Order and others can be inferred. The Court Order clearly provides that the owner of an originally qualifying Amendment 80 vessel may "replace a lost qualifying vessel with a single substitute vessel." NMFS inferred that the Court Order: (1) allows a vessel to be replaced due to its ineligibility to receive a fishery endorsement, as well as for actual total loss, and constructive total loss; (2) allows vessels replacing originally qualifying Amendment 80 vessels to be replaced (i.e., replacement of replacement vessels is allowed); (3) does not limit the size of replacement vessels; (4) does not remove existing MLOA limitations on LLP licenses assigned to Amendment 80 vessels; (5) allows NMFS to continue to apply existing GOA sideboard limits to any replacement vessel; (6) does not allow NMFS to permit vessels replacing Amendment 80 GOA flatfish eligible vessels to continue to directed fish for GOA flatfish; and (7) does not allow a vessel replacing the *Golden Fleece* to receive the same sideboard exemptions and prohibitions extended to the original vessel. Although NMFS has provided a clear rationale for inferring these limitations and conditions, there is no regulatory mechanism that specifically addresses them. The lack of regulations addressing this guidance undermines the enforcement of these provisions.

Not taking action to address these deficiencies would also fail to meet the National Transportation Safety Board's (NTSBs) specific recommendations issued following the sinking of the *Alaska Ranger* (see Appendix B). The NTSBs recommended clear regulatory provisions that allow vessel replacement for reasons other than loss. U.S. Coast Guard personnel share this perspective.

The proposed action and alternatives would provide a clear regulatory framework and the certainty that vessel operators are likely to need to replace vessels. Vessel owners have indicated that the lack of a regulatory framework severely compromises the willingness of owners to invest in new vessels. Newer vessels are likely to incorporate safer designs and more advanced safety measures. Newer vessels are likely to be designed to meet international class and load line requirements that would allow vessel operators to retain more products than they can currently under the ACSA, thereby improving their retention rate and increasing the ability of vessel owners (and any cooperatives to which those vessels are assigned) to meet the GRS and increase groundfish retention rates. Vessels with higher groundfish retention rates are likely more desirable as cooperative members. Those vessel owners are more likely to receive the benefits of the exclusive harvest privilege provided by a cooperative management.

In the absence of action, owners of Amendment 80 trawl C/Ps are unlikely to replace vessels as needed to improve the safety or operational efficiency of existing vessels. Because the loss of a vessel is a sudden and unanticipated event, vessel owners are unlikely to be able to quickly replace a vessel. Vessel owners may face a multi-year gap between the loss of a vessel and the activation of its replacement, particularly if the replacement vessel must be built first. A lengthy gap could severely undermine the financial solvency of a company, particularly companies owning only a single vessel.

To guide the development of alternative and the analysis, the North Pacific Fishery Management Council (Council) adopted this problem statement in February 2010:

> Allowing Amendment 80 vessel owners to replace their vessels, due to actual total loss, constructive total loss, permanently ineligibility to be used in a U.S. fishery, or for other reasons, would allow vessel owners to improve vessel safety, meet international class and load line requirements that would allow a broader range of onboard processing options, or otherwise improve the economic efficiency of their vessels. Allowing smaller vessels to be replaced with larger vessels could improve the ability of vessel owners to comply with the groundfish retention standard (GRS) applicable to all Amendment 80 vessels.

3.2 Proposed Alternatives

The alternatives recommended by the Council in October 2008, and as modified in February 2010, April 2010, and June 2010 are listed below. These alternatives include limitations on the length of replacement vessels, management of specific GOA flatfish sideboards, management of sideboards applicable to the *Golden Fleece*, and the implications of vessel replacement on QS assignments. In the February 2010, initial review analysis, staff noted that general requirements applicable to original qualifying Amendment 80 vessels would apply to any replacement vessel.

Based on the comments provided by the Council's Scientific and Statistical Committee during initial review, staff have proposed clarifying the difference between a no action alternative (Alternative 1a) under which the NMFS would not implement the Court Order, and a status quo option (Alternative 1b) under which NMFS would implement the Court Order, but he Council would and NMFS would not modify the FMP or regulations to be consistent with the Court Order. These two alternatives would address concerns that the status quo alternative does not provide an accurate description of the effects of no action. In addition, staff members have noted a clerical correction in Alternatives 2 and 3, and Option 3c. The correction to Alternatives 2 and 3 adds a missing word and clarifies the intent regarding the replacement of a vessel. Option 3c refers to the "LOA" of an LLP license. Length limits are established on licenses with a MLOA, not an LOA. These two staff suggested changes are noted in strikeout and bold.

The Council took final action in June 2010. In selecting the preferred alternative, the Council specified how each of the selected options applied to the preferred alternative.

- Alternative 1a: No Action. Vessels may not be replaced.
- Alternative 1b: Status quo. Vessels may be replaced consistent with the Court Order without accompanying changes in the FMP or regulations

- Alternative 2: The owner of an Amendment 80 vessel may replace that vessel with another vessel only in cases of actual total loss, constructive total loss, or if that vessel becomes permanently ineligible to be used in a U.S. fishery under 46 U.S.C. 14108. Only one replacement vessel may be used at any given time (one-for-one replacement).
- Alternative 3: The owner of an Amendment 80 vessel may replace that vessel with another vessel for any purpose. Only one replacement vessel may be used at any given time, up to a one-for-one replacement.

  - Option 1 (Applicable to Alternatives 2 and 3): Vessel size restrictions.

  (a) A replacement vessel may not have a length overall greater than the original qualifying Amendment 80 vessel it replaces.

  (b) The maximum length overall (MLOA) requirements on LLP licenses assigned to an Amendment 80 vessel would still apply.

  (b) A replacement vessel may have a length overall 10% or 20% greater than the original qualifying Amendment 80 vessel it replaces.

  (d) A replacement vessel could not have an LOA 50, 100, or 150 feet greater than the original qualifying length of the vessel.

  (e) No length restriction on replacement vessels (the MLOA requirements on LLP licenses assigned to an Amendment 80 vessel would not apply).

  Suboption 1: (Applicable to all options); Different vessel size restrictions may be applied to large (>145 feet LOA or 200 feet LOA) and small (<145 feet LOA or 200 feet LOA) vessels.

  Suboption 2: (Applicable to options b, c, d, or e); 180 foot minimum size restriction.

  Suboption 3: (Applicable to option e): The replacement vessel cannot be fished in the Amendment 80 limited access sector.

  (f) A replacement vessel cannot exceed an LOA of 295 feet.

  - Option 2 (Applicable to Alternatives 2 and 3): GOA flatfish sideboard restrictions. A replacement vessel that replaces an original qualifying Amendment 80 vessel that is allowed to directed flatfish in the GOA:

  (a) would not be allowed to directed fish for flatfish.

  (b) would be allowed to directed fish for flatfish.

  Suboption: Replaced vessels that are not considered an actual total loss or a constructive total loss would be subject to a flatfish sideboard limit.

  - Option 3 (Applicable to Alternatives 2 and 3): *Golden Fleece* sideboard restrictions. A replacement vessel that replaces the *Golden Fleece*:

  (a) would not receive the same exemptions that apply to the *Golden Fleece*.

  (b) would receive the same exemptions that apply to the *Golden Fleece*.

  (c) if the replacement vessel for the *Golden Fleece* is greater than the MLOA of the license that was originally assigned to the *Golden Fleece*, then that replacement vessel will be subject to all sideboards that apply to other Amendment 80 vessels, with the catch and PSC of the *Golden Fleece* added to the existing GOA sideboards. If the *Golden Fleece* replacement vessel is less than or

equal to the MLOA of the license that was originally assigned to the *Golden Fleece*, then the *Golden Fleece* sideboards would apply.

- Option 4: Allow QS permit to be transferred to a replacement vessel. Allow the owner of an Amendment 80 Vessel to choose to assign a QS permit from an original qualifying Amendment 80 vessel to the replacement vessel or to the LLP license derived from the originally qualifying vessel.

  (a) A replacement vessel cannot enter an Amendment 80 fishery without QS being assigned to that vessel.

  (b) Persons holding a QS permit associated with a vessel that is permanently ineligible to re-enter U.S. fisheries is eligible to replace the vessel associated with its QS permit.

- Option 5: Limit replaced vessels from participating in other fisheries in the GOA and BSAI(Applicable to Alternatives 2 and 3):

  (a) Any vessel replaced under this program would be ineligible to be designated on an FFP or an LLP.

  (b) Sideboard limits of zero for replaced vessels in BSAI and GOA

  Suboption: Replaced vessels may be used to replace other Amendment 80 vessels.

Requirement under all alternatives: Monitoring and enforcement, permitting, recordkeeping and reporting, prohibitions, and general GOA sideboard measures that apply to original Amendment 80 vessels would continue to apply to all replacement vessels.

3.3 Preferred Alternative

This section clearly describes the Council's preferred alternative. The preferred alternative recommends the criteria NMFS should use to establish a process for Amendment 80 vessel owners to replace Amendment 80 vessels. The Council took final action in June 2010.

Preferred Alternative: The owner of an Amendment 80 vessel may replace that vessel with another vessel for any purpose. Only one replacement vessel may be used at any given time, up to a one-for-one replacement.

Vessel size restrictions: A replacement vessel cannot exceed an LOA of 295 feet.

GOA flatfish sideboard restrictions: A replacement vessel that replaces an original qualifying Amendment 80 vessel that is allowed to directed flatfish in the GOA would be allowed to directed fish for flatfish.

Sideboard restrictions for a replacement vessel that replaces the *Golden Fleece*: If the replacement vessel for the *Golden Fleece* is greater than the MLOA of the license that was originally assigned to *the Golden Fleece*, then that replacement vessel will be subject to all sideboards that apply to other Amendment 80 vessels, with the catch and PSC use of

the *Golden Fleece* added to the existing GOA sideboards. If the *Golden Fleece* replacement vessel is less than or equal to the MLOA of the license that was originally assigned to the *Golden Fleece*, then the *Golden Fleece* sideboards would apply.

Allow QS permit to be transferred to a replacement vessel: Allow the owner of an Amendment 80 vessel to assign a QS permit from an original qualifying Amendment 80 vessel to the replacement vessel or to the LLP license derived from the originally qualifying vessel. A replacement vessel cannot enter an Amendment 80 fishery without QS being assigned to that vessel or the associated permit. Persons holding a QS permit associated with a vessel that is permanently ineligible to re-enter US fisheries is eligible to replace the vessel associated with its QS permit.

Any vessel replaced under this program may be used to replace other Amendment 80 vessels: Vessels not assigned to the Amendment 80 fishery would have a sideboard limit of zero in BSAI and GOA groundfish fisheries. Vessels must be classed and load lined or meet the requirements of ACSA to be used to replace other Amendment 80 vessels.

U.S. Maritime Administration (MARAD) Provisions: MARAD The Council recommends any Amendment 80 replacement vessel that is greater than 165 feet in registered length, of more than 750 gross registered tons, or that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower be authorized for use in the Exclusive Economic Zone under the jurisdiction of the North Pacific Fishery Management Council. This recommendation is intended to clarify that any Amendment 80 replacement vessel is eligible to receive a certificate of documentation consistent with 46 U.S.C. 12113 and MARAD regulations at 46 CFR 356.47.

Management Applicable to Replacement Vessels: Monitoring and enforcement, permitting, recordkeeping and reporting, prohibitions, and general GOA sideboard measures that apply to original Amendment 80 vessels would continue to apply to all replacement vessels.

3.4 Probable Environmental Impacts

The physical and biological effects of the alternatives on the environment and animal species are discussed together in Section 3.4.1. Economic and socioeconomic effects of the alternatives are primarily analyzed in the RIR in Section 2.6, but are summarized in Section 3.4.22. Cumulative effects are addressed in Section 3.4.3.

The EAs for the Amendment 80 catch share program (NMFS 2007c) and for Amendment 93 (NMFS 2011) conclude that the cumulative effects of fishing under the Amendment 80 Program on the resources were not significant. No direct or indirect effects are anticipated to occur with any of the alternative analyzed under the proposed action because none of the alternatives would change fishing practices from those previously analyzed.

3.4.1 Physical and biological impacts

3.4.1.1.1 Alternative 1a

Alternative 1a was not selected as part of the preferred alternative. This option represents the no action alternative. Had the Council selected this alternative, they would have recommended no changes to regulations affecting Amendment 80 vessel replacement, and vessel replacement would not be permitted. The Amendment 80 Program established a fishery management program to reduce bycatch, improve retention of groundfish species, and establish a limited access privilege program in the BSAI that provides for the formation of harvesting cooperatives with exclusive harvest privileges.

The EA for Amendment 80 to the FMP (NMFS 2009) evaluates all physical and biological resources affected by the groundfish fisheries, and describes the impact of the fisheries. A "beneficial" or "adverse" impact leaves the resource in better or worse, respectively, condition than it would be in an unfished condition. "Significant" impacts are those adverse or beneficial impacts that meet specified criteria for each resource component, but generally are those impacts that affect the species population outside the range of natural variability, and which may affect the sustainability of the species or species group. The Amendment 80 Program does not increase fishing effort, alter areas of fishing operations, or affect catch of non-fishery marine resources in a significant manner.

The EAs for the Amendment 80 catch share program (NMFS 2007c) and for Amendment 93 (NMFS 2011) conclude that the cumulative effects of fishing under the Amendment 80 Program on the resources were not significant. Direct effects of fishing include fishing mortality, changes in biomass, and changes in populations structure due to the spatial and temporal concentration of catch. Indirect effects include the changes in prey availability and changes in habitat suitability. No direct or indirect effects are anticipated to occur with any of the alternative analyzed, including the preferred alternative, because none of the alternatives would change fishing practices from those previously analyzed.

3.4.1.1.2 Alternative 1b

Alternative 1b was not selected as part of the preferred alternative. Alternative 1b represents the status quo, had the Council recommended this alterative, no changes would have been made to regulations affecting Amendment 80 vessel replacement. Vessel replacement would be permitted consistent with the Court Order detailed in Section 2.4.3 of this analysis. Status quo groundfish fishing has been evaluated generally in the EA for annual harvest specifications (NMFS 2007c) and more specifically in the EA for the Amendment 80 catch share program (NMFS 2007a). Following the Court Order in 2008, NMFS reviewed all physical and biological resources affected by the groundfish fisheries, and the impact of the Amendment 80 fleet on fisheries in the EA for Amendment 93 (NMFS 2011).

No direct or indirect effects are anticipated to occur with any of the alternative analyzed under the proposed action because none of the alternatives would change fishing practices from those previously analyzed. The EAs for Amendments 80 and 93 finds that under status quo groundfish fishery management there are no adverse impacts to fish species generally (target, non-specified, forage, or prohibited species). The EAs for the Amendment 80 catch share program (NMFS 2007c) and for Amendment 93 (NMFS 2011) conclude that the cumulative effects of fishing under the Amendment 80

Program on the resources were not significant. Direct effects of fishing include fishing mortality, changes in biomass, and changes in populations structure due to the spatial and temporal concentration of catch. Indirect effects include the changes in prey availability and changes in habitat suitability.

Direct and indirect effects on marine mammals and seabirds have been identified as adverse but not significant, and effects on essential fish habitat are minimal and temporary. Effects on ecosystem relationships are also analyzed as adverse but not significant. Vessel replacement is one aspect of the Amendment 80 Program that has no potential to impact the human environment.

3.4.1.1.3 Alternative 2

Alternative 2 was not selected as part of the preferred alternative. The net effect of Alternative 2 is to provide a regulatory framework for vessel operators to replace a vessel due to the loss or permanent ineligibility of a vessel to be used. Alternative 2 contains various options that would affect the length of replacement vessels, the GOA sideboard limitations applicable to a replacement vessel, or the assignment of a QS permit that is associated with a vessel as outlined in Section 2.2 and discussed in Sections 2.5 and 2.6 of this document.

Section 2.5 describes the potential impacts on vessel owners and operators as well as other fisheries under the specific combination of options selected under alternative 2. In terms of effects on the physical and biological environment, however, the effect of alternative 2 is likely to be the same as Alternative 1. Under Alternative 2, vessels can be replaced either under the provisions of the Court Order, or under the specific provisions applicable under Alternative 2. Section 2.5 notes that vessel replacement would not be likely to increase the amount of the status quo level of fishing that has been analyzed by NMFS (2011) and determined to have no significant adverse impacts on fish species, marine mammals, seabirds, habitat, or ecosystem relationships. Under Alternative 2, the status quo level of fishing activity would continue. Under Alternative 2, Amendment 80 vessels would continue to be constrained by the TAC and specific management measures within the Amendment 80 sector that limit the overall harvest of TAC and use of PSC. As a result, there are no significant adverse impacts expected under Alternative 2.

Vessel replacement is expected to have no impacts on target species. The TAC is determined annually based on the carrying capacity of target species, and effective monitoring and enforcement are in place to ensure that TACs are not exceeded. Therefore, regardless of the replacement of a vessel, the TAC of target species will not increase under this component, nor will Alternative 2 increase the likelihood that the TAC will be exceeded.

Changes in interactions with other fish species, marine mammals, seabirds, habitat, and ecosystem relations are tied to changes in target fishery effort. Vessels would still have to comply with existing federal regulations protecting Steller sea lion rookeries and haulouts.[47]

Alternative 2 is not considered a change in the action upon which the last ESA Section 7 consultation was based, NOAA Fisheries, Protected Resources Division. Given

[47]See http://www.alaskafisheries.noaa.gov/sustainablefisheries/2003hrvstspecssl.htm for regulations and maps.

the fact that fishing activity would not increase under Alternative 2, and the measures currently in place to protect the physical and biological environment, the potential effect of Alternative 2 on an ecosystem scale is very limited. As a result, no effects are anticipated to marine mammals, seabirds, habitat, or ecosystem relations.

3.4.1.1.4 Alternative 3: the Preferred Alternative

Alternative 3 was selected as the preferred alternative and is described in more detail in Section 3.3. The net effect of preferred alternative is similar to that of Alternative 2. The preferred alternative is intended to provide a regulatory framework for vessel operators to replace a vessel or for any purpose deemed appropriate by the vessel owner. The preferred alternative includes options to limit the length of replacement vessels to 295 foot (89.9 m) MLOA, GOA catch limitations, known as amendment 80 sideboard limits, applicable to a replacement vessel, and measures affecting the assignment of a QS permit that is associated with a vessel as outlined in Section 2.2 and discussed in Sections 2.5 and 2.6 of this document.

Section 2.5 of this analysis describes the potential impacts on vessel owners and operators as well as other fisheries under the specific combination of options selected as part of the preferred alternative. In terms of effects on the physical and biological environment, however, the effect of the preferred analysis is likely to be the same as Alternative 1b. Under the preferred alternative, vessels can be replaced either under the provisions of the Court Order, or under the specific provisions applicable the preferred alternative, as described in Section 3.3. As described in Section 2.5 of this analysis, vessel replacement would not be likely to increase the amount of the status quo level of fishing that has been analyzed by NMFS in the EA for Amendment 93 (NMFS 2011) and determined to have no significant adverse impacts on fish species, marine mammals, seabirds, habitat, or ecosystem relationships.

The EAs for the Amendment 80 catch share program (NMFS 2007c) and for Amendment 93 (NMFS 2011) conclude that the cumulative effects of fishing under the Amendment 80 Program on the resources were not significant. Direct effects of fishing harvesting include fishing mortality, changes in biomass, and changes in populations structure due to the spatial and temporal concentration of catch. Indirect effects include the changes in prey availability and changes in habitat suitability. No direct or indirect effects are anticipated to occur with any of the alternative analyzed, including the preferred alternative, because none of the alternatives would change fishing practices from those previously analyzed.

Under the preferred alternative, the status quo level of fishing activity would continue. Under the preferred alternative, Amendment 80 vessels would continue to be constrained by the TAC and specific management measures within the Amendment 80 sector that limit the overall harvest of TAC and use of PSC. As a result, there are no significant adverse impacts are expected under the preferred alternative.

Effects on target species from vessel replacement should not be significant. The TAC is determined annually based on the carrying capacity of target species, and effective monitoring and enforcement are in place to ensure that TACs are not exceeded. Therefore, regardless of the replacement of a vessel, the TAC of target species will not increase under this component, nor will the preferred alternative increase the likelihood that the TAC will be exceeded.

Changes in interactions with other fish species, marine mammals, seabirds, habitat, and ecosystem relations are tied to changes in target fishery effort. Vessels would still have to comply with existing federal regulations protecting Steller sea lion rookeries and haulouts.[48]

The preferred alternative is not considered a change in the action upon which the last ESA Section 7 consultation was based, NOAA Fisheries, Protected Resources Division. Given the fact that fishing activity would not increase under the preferred alternative, and the measures currently in place to protect the physical and biological environment, the potential effect of the preferred alternative on an ecosystem scale is very limited. As a result, no impacts to marine mammals, seabirds, habitat, or ecosystem relations are anticipated.

3.4.2 Economic and socioeconomic impacts

The economic and socioeconomic impacts of the proposed amendment are addressed in the Regulatory Impact Review, Section 2 of this report. Alternatives 2 and the preferred alternative have very similar general effects, only the conditions under which a vessel may be replaced changes. The Options applicable under all of the alternatives, including the preferred alternative, could have economic or socioeconomic effects, but is not clear that those effects would differ substantially from the status quo. Had they been selected as part of the preferred alternative Options 1a and 1b would limit the length of replacement vessels and potentially the types of processing products that can be produce on a vessel. Option 1c would provide greater flexibility to increase the size of a replacement vessel, but it may not result in economic or socioeconomic effects that differ from Options 1a or 1b or the status quo depending on the specific characteristics of the vessels. Option 1c was not included in the preferred alternative. Those characteristics cannot be known at this time. Option 1f was included in the preferred alternative. Although this option limits the maximum size of vessels to 295 foot (89.9 m) LOA, this length limit is not likely to limit the types of processing products that can be produced on a vessel, as described in Section 2.5.5 of this report. Option 2a could constrain the ability of vessel owners to continue to operate in specific GOA flatfish fisheries, but the overall effect of Option 2a on total GOA flatfish harvests cannot be predicted and cannot be known at this time.

3.4.3 Cumulative effects

NEPA requires that EAs analyze the potential cumulative effects of a proposed action and its alternatives. An EA must consider cumulative effects when determining whether an action significantly affects environmental quality. Cumulative effects are those combined effects on the quality of the human environment that result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions. (40 CFR 1508.7, 1508.25(a), and 1508.25(c)) Cumulative impacts can result from individually minor, but collectively significant, action taking place over time. The concept behind cumulative effects analysis is to capture the total effects of many actions over time that would be missed by evaluating each action individually. Concurrently, the Council on Environmental Quality (CEQ)

[48]See http://www.alaskafisheries.noaa.gov/sustainablefisheries/2003hrvstspecssl.htm for regulations and maps.

guidelines recognize that it is most practical to focus cumulative effects analysis on only those effects that are truly meaningful.

The cumulative effects of the fisheries under the Amendment 80 Program were analyzed in the EA for the Amendment 80 catch share program (NMFS 2007c) and the EA for Amendment 93 (NMFS 2011). These EAs concludes that the cumulative effects of fishing under the Amendment 80 Program on the resources analyzed were not significant. Direct effects of fishing include fishing mortality, changes in biomass, and changes in populations structure due to the spatial and temporal concentration of catch. Indirect effects include the changes in prey availability and changes in habitat suitability. No direct or indirect effects are anticipated to occur with any of the alternative analyzed including the preferred alternative as none of the alternatives would change fishing practices.

Cumulatively significant impacts on the quality of the human environment are not anticipated as a result of the proposed action because no direct or indirect effects on the resources have been identified. While there are no expected cumulative impacts on the biological and physical environment, fishing communities, fishing safety, or consumers, there may be economic effects on the groundfish fishery sectors as a result of the proposed action in combination with other actions. As discussed in the RIR, participants in the groundfish fishery sectors, specifically the Amendment 80 sector, have experienced several regulatory changes in the past several years that have affected their economic performance.

4 INITIAL REGULATORY FLEXIBILITY ANALYSIS

4.1 Introduction

This Initial Regulatory Flexibility Analysis (IRFA) addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601-612). This IRFA evaluates the potential adverse economic impacts on small entities directly regulated by the proposed action.

The RFA, first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a federal regulation. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse economic impacts on small entities as a group distinct from other entities, and on the consideration of alternatives that may minimize adverse economic impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either 'certify' that the action will not have a significant adverse economic impact on a substantial number of small entities, and support that certification with the 'factual basis' upon which the decision is based; or it must prepare and make available for public review an IRFA.

When an agency publishes a final rule, it must prepare a Final Regulatory Flexibility Analysis (FRFA).

In determining the scope, or 'universe', of the entities to be considered in an IRFA, the National Marine Fisheries Service (NMFS) generally includes only those entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis.

Data on cost structure, affiliation, and operational procedures and strategies in the fishing sectors subject to the proposed regulatory action are insufficient, at present, to permit preparation of a 'factual basis' upon which to certify that the preferred alternative does not have the potential to result in a "significant adverse economic impact on a substantial number of small entities," as defined under the RFA. Because, based upon all available information, it is not possible to 'certify' this outcome, should the proposed action be adopted by the Secretary of Commerce, a formal IRFA, focusing on the complete range of available alternatives (including the North Pacific Fishery Management Council's [Council's] preferred alternative), has been prepared and is included in this package for Secretarial review.

4.2 IRFA Requirements

4.2.1 What is required in an IRFA

Under 5 U.S.C., Section 603(b) of the RFA, each IRFA is required to contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply, including a description of the adverse economic impacts of the proposed rule on directly regulated small entities;
-
- A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:

    1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. The use of performance, rather than design standards;
4. An exemption from coverage of the rule, or any part thereof, for such small entities.

In preparing an IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed action (and alternatives to the proposed action), or more general descriptive statements, if quantification is not practicable or reliable.

4.3 Definition of a Small Entity

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a 'small business' as having the same meaning as 'small business concern', which is defined under Section 3 of the Small Business Act. 'Small business' or 'small business concern' includes any firm that is independently owned and operated and not dominant in its field of operation. The SBA has further defined a "small business concern" as one "organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor…A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the firm is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture."

The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. Effective January 5, 2006, a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of $4.0 million for all its affiliated operations worldwide.[49] A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. Finally, a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

[49]Effective January 6, 2006, SBA updated the Gross Annual Receipts thresholds for determining "small entity" status under the RFA. This is a periodic action to account for the impact of economic inflation. The revised threshold for "commercial fishing" operations (which, at present, has been determined by NMFS HQ to include catcher-processors, as well as catcher vessels) changed from $3.5 million to $4.0 million in annual gross receipts, from all its economic activities and affiliated operations, worldwide.

The SBA has established "principles of affiliation" to determine whether a business concern is "independently owned and operated." In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when: (1) a person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) if two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners, controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The RFA defines "small organizations" as any not-for-profit enterprise that is independently owned and operated, and is not dominant in its field.

Small governmental jurisdictions. The RFA defines "small governmental jurisdictions" as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

4.4 Reason for Considering the Proposed Action

The reasons for considering the proposed action are discussed earlier in this analysis and are only summarized here. The purpose and need statement for the action is included below**:**

Purpose and Need

Allowing Amendment 80 vessel owners to replace their vessels due to actual total loss, constructive total loss, permanently ineligibility to be used in a U.S. fishery, or for other reasons would allow vessel owners to improve vessel safety, meet international class and load line requirements that would allow a broader range of onboard processing options, or to otherwise improve the economic efficiency of their vessels. Allowing smaller vessels to be replaced with larger vessels could improve the ability of vessel owners to comply with the groundfish retention standard (GRS) applicable to all Amendment 80 vessels.

4.5 Objectives of Proposed Action and its Legal Basis

Under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), in the Alaska region, the Council has the responsibility to prepare fishery management plans and associated regulations for the marine resources found to require conservation and management. The Secretary of Commerce has authority to approve the Council's recommendations, at which time, NMFS is charged with carrying out the federal mandates of the Department of Commerce with regard to marine fish, including the publication of federal regulations. The Alaska Regional Office and Alaska Fisheries Science Center of NMFS, research, draft, implement, and support the management actions recommended by the Council, upon approval by the Secretary of Commerce.

The groundfish fisheries in the BSAI and GOA are managed under two fishery management plans: the Bering Sea and Aleutian Islands Groundfish Fishery Management Plan and the Gulf of Alaska Groundfish Fishery Management Plan. The proposed action is a federal regulatory amendment; the fisheries that would be affected occur within the Exclusive Economic Zone waters administered under the BSAI FMP. The proposed action would modify the criteria necessary for replacing an Amendment 80 vessel. The intent is to provide additional incentives for Amendment 80 participants to improve the economic and structural stability of their fishing vessels and address potential safety considerations.

There are several options under the action alternatives. The alternatives, options, and suboptions considered under this amendment package are treated at length in Section 2 of this integrated RIR/EA/IRFA document.

4.6 Number and Description of Directed Regulated Small Entities

Information concerning ownership of vessels and QS holdings that would be used to estimate the number of small entities that are directly regulated by this action is somewhat limited, as is typically the case for NPFMC analyses. To estimate the number of small versus large entities, gross earnings from all fisheries of record for 2009 were matched with the vessels, the known ownership of those vessels, and the known affiliations of those vessels in the BSAI or GOA groundfish fisheries for that year. NMFS has specific information on the ownership of vessels and the affiliations that exist based on data provided by the Amendment 80 sector, as well as a review of ownership data independently available to NMFS on FFP and LLP applications. The vessels with a

common ownership linkage, and therefore affiliation, are reported in Table 2 in section 2.4.5 of this document. In addition, those vessels that are assigned to a cooperative and receive an exclusive harvest privilege would be categorized as large entities for the purpose of the RFA, under the principles of affiliation, due to their participation in a harvesting cooperative.

NMFS knows that up to 28 non-AFA trawl C/Ps could be active in the Amendment 80 fishery. Those persons who apply for and receive Amendment 80 QS are eligible to fish in the Amendment 80 sector, and those QS holders would be directly regulated by the proposed action. Vessels that are assigned Amendment 80 QS and that are eligible to fish in the Amendment 80 sector are commonly known as Amendment 80 vessels. Currently, there are 27 Amendment 80 vessels that would be directly regulated based on this action. One vessel owner who could be eligible for the Amendment 80 Program and could apply for Amendment 80 QS has not done so, and would not be directly regulated by the proposed action unless and until the owner is approved to do so. Based on the known affiliations and ownership of the Amendment 80 vessels, all but one of the Amendment 80 vessel owners would be categorized as large entities for the purpose of the RFA. Thus, this analysis estimates that only one small entity would be directly regulated by the proposed action. It is possible that this one small entity could be linked by company affiliation to a large entity, which may then qualify that entity as large entity, but complete information is not available to determine any such linkages.

4.7 Recordkeeping and Reporting Requirements

Recordkeeping and reporting requirements are not expected to change as a result of the proposed action. The action under consideration requires no additional reporting, recordkeeping, or other compliance requirements that differ from the status quo.

4.8 Relevant Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Action

No relevant federal rules have been identified that would duplicate or overlap with the proposed action under any of the proposed alternatives.

4.9 Description of Significant Alternatives to the Proposed Action

An IRFA also requires a description of any significant alternatives to the preferred alternative that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities.

The suite of potential actions includes three alternatives. A detailed description of these alternatives is provided in Section 2 of the analysis. Alternative 1 is the "no action" alternative. This alternative would not address the Federal Court Order to provide for replacement of Amendment 80 vessels and would not be consistent with the purpose and need of this action. Alternative 2 would allow an Amendment 80 vessel owner to replace a vessel under conditions of loss or permanent ineligibility. This alternative would meet the minimum requirements of the court order but was not selected because it may limit a vessel's ability to add modern safety upgrades. It also carried a substantially higher economic cost to achieve the same regulatory outcome for the fishing sector, causing it to fail the requirement that it minimize the adverse economic impacts on directly regulated

small entities. Alternative 3, the preferred alternative of the Council and NMFS, would allow a vessel owner to replace a vessel for any purpose. Based on the best available scientific data and information, none of the alternatives to the preferred alternative appear to have the potential to accomplish the stated objectives of the MSA and other applicable statutes (as reflected in the proposed action), while minimizing any significant adverse economic impact on small entities beyond those achieved under the proposed action. The proposed action would improve the safety and efficiency of vessels owned by at least one small entity, and enhance its participation in the Amendment 80 fisheries.

5 CONSISTENCY WITH APPLICABLE LAW AND POLICY

This section examines the consistency of cooperative formation standard alternatives with the National Standards and Fishery Impact Statement requirements in the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and Executive Order 12866.

5.1 National Standards

Below are the ten National Standards as contained in the MSA, and a brief discussion of the consistency of the proposed alternatives with each of those National Standards, as applicable.

National Standard 1
Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

None of the alternatives considered in this action would affect overfishing of groundfish in the BSAI or GOA. The alternatives would also not affect, on a continuing basis, the ability to achieve the optimum yield from each groundfish fishery.

National Standard 2
Conservation and management measures shall be based upon the best scientific information available.

The analysis for this amendment is based upon the most recent and best scientific information available. It was necessary for NMFS staff to develop a series of new databases to complete the analyses contained herein.

National Standard 3
To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The proposed action is consistent with the management of individual stocks as a unit or interrelated stocks as a unit or in close coordination.

National Standard 4

Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The proposed alternatives treat all vessel owners the same regardless of residency. The proposed alternatives would be implemented without discrimination among participants and are intended to promote conservation of the groundfish resources in the BSAI and GOA.

National Standard 5
Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

This action will potentially provide opportunities for vessel owners to replace vessels due to loss or for other reasons. To the extent that the use of replacement vessels allows more complete use of the fishery resources, it will improve efficiency in utilization of the trawl groundfish resource in the BSAI and GOA.

National Standard 6
Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

None of the proposed alternatives are expected to affect the availability of and variability in the groundfish resources in the BSAI and GOA in future years. The harvest would be managed to and limited by the TACs for each species, regardless of the proposed action considered in this amendment.

National Standard 7
Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

This action would not impose additional costs for compliance, and does not duplicate any other management action.

National Standard 8
Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

This action is not expected to have adverse impacts on communities or affect community sustainability, primarily because it is unlikely that any alternative would result in extinguishing harvest opportunities for vessels with a high degree of economic dependence upon the trawl groundfish fisheries. This action would not remove the ability of fishing vessels, communities, or crew to continue to sustain participation in the Amendment 80 fishery.

National Standard 9
Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

This proposed amendment could help to minimize bycatch by providing additional incentives for harvesters to participate in a cooperative and realize the potential benefits of limited access privilege programs.

National Standard 10
Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The alternatives proposed should help improve safety at sea because it will allow vessel owners to replace existing vessels with newer vessels that can accommodate improved safety designs. The alternatives could provide incentives for the participants in that cooperative to remove vessels from the fishery that do incorporate the latest safety designs and could allow vessel operators to minimize the risks faced by vessels or crew.

5.2 Section 303(a)(9) – Fisheries Impact Statement

Section 303(a)(9) of the MSA requires that any management measure submitted by the Council take into account potential impacts on the participants in the fisheries, as well as participants in adjacent fisheries. The impacts on participants in the trawl groundfish fisheries in the BSAI and GOA have been discussed in previous sections of this document (see Section 2). The proposed action is not anticipated to have effects on participants in other fisheries.

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