

INITIAL REVIEW DRAFT

REGULATORY IMPACT REVIEW/
INITIAL REGULATORY FLEXIBILITY ANALYSIS

For a Proposed Amendment to the Fishery Management Plan for the Groundfish
Fishery of the Bering Sea and Aleutian Islands and Gulf of Alaska

AFA Vessel Replacement

September 19, 2012

North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, Alaska 99501
Tel: (907) 271-2809

TABLE OF CONTENTS

EXECUTIVE SUMMARY	vi
Problem Statement	vi
Description of Alternatives.....	vi
Potential Effects of the Alternatives and Options	vii
Alternative 1 (no action).....	vii
Alternative 2 (status quo)	viii
Options for Non-Exempt AFA Catcher Vessels.....	xi
Option for Sideboard Exempt Vessels.....	xv
Vessel Removal Provision.....	xvi
1.0 REGULATORY IMPACT REVIEW.....	17
1.1 What is a Regulatory Impact Review?	17
1.2 Statutory Authority for this Action.....	18
1.3 The American Fisheries Act.....	18
1.3.1 Provisions Affecting AFA Vessel Replacement.....	18
1.4 Section 602 of the Coast Guard Authorization Act of 2010.....	19
1.5 Council Problem Statement.....	20
1.6 Description of Alternatives.....	22
1.7 Description of Management	25
1.7.1 License Limitation Program	25
1.8 Description of the American Fisheries Act Sectors.....	27
1.8.1 AFA inshore catcher vessel sector and mothership cooperatives.....	27
1.8.2 AFA Catcher Processor Sector	42
1.9 Description of Community Conditions.....	47
1.10 Potential Effects of the Alternatives	49
1.10.1 Alternative 1: No action	49
1.10.2 Alternative 2: Status quo	50
1.10.3 Options for non-exempt vessels	58
1.10.4 Option for Sideboard Exempt Vessels.....	64
1.10.5 Vessel Removal Provisions	65
1.10.6 Potential Effects on Net Benefits to the Nation.....	65
2.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS	66
2.2 Reason for Considering the Proposed Action.....	68
2.3 Objectives of, and the Legal Basis for, the Proposed Rule.....	69
2.4 Number and Description of Small Entities Regulated by the Proposed Action	69
2.5 Recordkeeping and Reporting Requirements	70
2.6 An Identification, to the Extent Practicable, of all Relevant Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule	70
2.7 Description of Significant Alternatives	70
3.0 CONSISTENCY WITH APPLICABLE LAW AND POLICY.....	70
3.1 National Standards.....	70
3.2 Section 303(a)(9) – Fisheries Impact Statement.....	72
3.3 BSAI Groundfish FMP Management Policy.....	72
4.0 REFERENCES	72
5.0 LIST OF PREPARERS AND PERSONS CONSULTED.....	73
Prepared by.....	73
Agencies Consulted.....	73
Persons Consulted	73
Appendix A. Coast Guard Authorization Act of 2010	
Appendix B. NMFS Review of Coast Guard Authorization Act of 2010	

LIST OF TABLES

Table 1-1	2011 listed BSAI AFA catcher vessel groundfish sideboard limits (mt).....	30
Table 1-2	2011 AFA Catcher vessel prohibited species catch sideboard limits for the BSAI ¹	31
Table 1-3	2011 listed GOA AFA catcher vessel groundfish sideboard limits (mt)	32
Table 1-4	AFA catcher vessel halibut PSC sideboard limits	33
Table 1-5	Exclusive fishing seasons for trawl catcher vessels operating in the BSAI and GOA directed pollock fisheries	34
Table 1-6	Number of AFA catcher vessels (inshore and mothership eligible) active in 2011 by vessel length with sideboard exempts and GOA area endorsements.....	35
Table 1-7	Number of AFA catcher vessels (inshore and mothership) active in 2011 by year vessel was built.....	35
Table 1-8	Number of AFA catcher vessels operating in the BSAI with retained catch by species from 2003 through 2011.....	36
Table 1-9	Retained catch (mt) by AFA catcher vessels by BSAI species from 2003 through 2011	36
Table 1-10	Number of AFA catcher vessels operating in the Central GOA with retained catch by species from 2003 through 2011	37
Table 1-11	Retained catch (mt) by AFA catcher vessels by Central GOA species from 2003 through 2011	37
Table 1-12	Number of AFA catcher vessels operating in the Western GOA with retained catch by species from 2003 through 2011	37
Table 1-13	Retained catch (mt) by AFA catcher vessels by Western GOA species from 2003 through 2011	38
Table 1-14	AFA catcher vessel crab, halibut, and salmon PSC in the BSAI, Central GOA, and Western GOA from 2003 through 2011	38
Table 1-15	Exvessel revenue by species in the BSAI for the AFA catcher vessels from 2003 through 2011 (\$thousand).....	39
Table 1-16	Exvessel revenue by species in the Central GOA for the AFA catcher vessels from 2003 through 2011 (\$thousand).....	39
Table 1-17	Exvessel revenue by species in the Western GOA for the AFA catcher vessels from 2003 through 2011 (\$thousand).....	39
Table 1-18	Count of sideboard exempt and non-exempt AFA GOA endorsed catcher vessels active in the BSAI by species from 2003 through 2011	40
Table 1-19	Catch (mt) of sideboard exempt and non-exempt AFA GOA endorsed catcher vessels in the BSAI by species from 2003 through 2011	40
Table 1-20	Number of AFA catcher vessels that are exempt from GOA sideboards active in the Central GOA by species from 2003 through 2011	41
Table 1-21	Retained catch (mt) for AFA catcher vessels that are exempt from GOA groundfish sideboard limit by Central GOA species from 2003 through 2011	41
Table 1-22	Number of AFA catcher vessels that are exempt from GOA sideboards active in the Western GOA by species from 2003 through 2011	41
Table 1-23	Exvessel revenue by species in the BSAI for the AFA GOA sideboard exempt vessels from 2003 through 2011 (\$thousand).....	42
Table 1-24	Exvessel revenue by species in the Central GOA for the AFA GOA sideboard exempt vessels from 2003 through 2011 (\$thousand).....	42
Table 1-25	Number of active AFA catcher processors by vessel length with GOA area endorsements	43
Table 1-26	Number of active AFA catcher processors by year vessel was built	43
Table 1-27	2011 listed BSAI AFA catcher processor groundfish sideboard limits (mt)	45
Table 1-28	2011 BSAI AFA listed catcher processor prohibited species sideboard limits ¹	45

Table 1-29	Number of AFA catcher processors operating in the BSAI with retained catch by species from 2003 through 2011.....	46
Table 1-30	Retained catch (mt) by AFA catcher processors by BSAI species from 2003 through 2011	46
Table 1-31	AFA catcher processor crab, halibut, and salmon PSC in the BSAI GOA from 2003 through 2011	47
Table 1-32	First wholesale gross value by species in the BSAI for the AFA catcher processors from 2003 through 2011 (\$thousand).....	47
Table 1-33	Number of AFA catcher vessels and the MLOA of their GOA endorsed LLP licenses.....	55
Table 1-34	Number of non-AFA catcher vessels active in the Central and Western GOA by species from 2003 through 2011.....	56
Table 1-35	Catch (mt) of non-AFA catcher vessels active in the Central and Western GOA by species from 2003 through 2011.....	56
Table 1-36	Number of trawl catcher vessel LLP licenses by MLOA and GOA subarea endorsement.....	57
Table 1-37	Number of AFA non-exempt catcher vessels that are active in the GOA subareas by species from 2003 through 2011.....	61
Table 1-38	Retained catch (mt) for AFA non-exempt catcher vessels that are active in the GOA subareas by species from 2003 through 2011	62
Table 1-39	Vessel length, MLOA, gross tons, and horsepower of non-exempt AFA catcher vessels operating in the GOA on October 15, 2010.....	63

EXECUTIVE SUMMARY

This document is a Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIF/IRFA) is to clarify American Fisheries Act (AFA) vessel replacement provisions of the Coast Guard Authorization Act of 2010 (Coast Guard Act) and to prevent participating AFA vessels that are replaced from increasing fishing effort beyond historical catch in the Gulf of Alaska (GOA). Specifically, the Coast Guard Act addresses the replacement and removal of vessels eligible to participate in the Bering Sea pollock fishery under the AFA (see Appendix A for Section 602 of the Coast Guard Act and Appendix B for NMFS review of the Act). The Coast Guard Act expressly authorizes the Council to recommend for approval by the Secretary of Commerce conservation and management measures, including size limits and measures to control fishing capacity to ensure that the Coast Guard Act does not diminish the effectiveness of the fishery management of the Bering Sea (BS) and Aleutian Islands (AI), and the GOA. To that end, the Council developed proposed alternatives to prevent increased capacity in the GOA groundfish fisheries by replacement or rebuilt AFA vessels and to extinguish GOA sideboard exemptions for AFA catcher vessels removed from the BS pollock fishery.

Problem Statement

Passage of the Coast Guard Act necessitates updating the BSAI Groundfish Fishery Management Plan and groundfish regulations to bring them into compliance with the Coast Guard Authorization Act. Currently, the language in both the BSAI Groundfish FMP and groundfish regulations are not consistent with prevailing management rules established by the Coast Guard Act. To correct this inconsistency, NMFS has proposed a housekeeping action to bring the BSAI Groundfish FMP and groundfish regulations into compliance with existing current practices.

In addition, *Section 2* of the Coast Guard Act expressly authorizes the Council to recommend for approval by the Secretary of Commerce measures to control fishing capacity so as not to diminish the effectiveness GOA groundfish management. In addition, *Section 6* of the Coast Guard Act created two ambiguities concerning GOA eligibility. Using this authority of *Section 2*, while also addressing the ambiguity of *Section 6*, the Council has included a range of options for clarifying the GOA eligibility for replacement and rebuilt AFA catcher vessels operating in GOA and limiting the potential for increased fishing capacity of replacement and rebuilt vessels while operating in the GOA. The Council at its February 2012 meeting provided the following problem statement:

Groundfish sideboard protections are included in the AFA to prevent participating AFA vessels from increasing fishing effort beyond historical catch in the GOA. Ambiguities exist pertaining to groundfish sideboards in the AFA vessel replacement provisions of the Coast Guard Authorization Act of 2010 (Coast Guard Act). For vessels with multiple licenses, it is unclear whether the MLOA on the Bering Sea LLP or the GOA LLP applies to a replacement vessel when fishing in the GOA. Additionally, if an AFA vessel exempt from the GOA sideboards is removed from the fishery and assigns its pollock quota to another vessel, the Coast Guard Act is unclear whether the GOA exemption is transferable in addition to the pollock quota. Action is needed to clarify vessel replacement provisions of the Coast Guard Act and prevent increased capacity in the GOA groundfish fisheries by AFA vessels.

Description of Alternatives

Alternative 1 (no action) – AFA vessel owners may not rebuild or replace their vessels, except in the case of total or constructive loss—NOT COMPLIANT WITH THE COAST GUARD ACT.

Alternative 2 (status quo) – AFA vessel owners are allowed to rebuild or replace their vessels, as provided in the Coast Guard Act.

For AFA non-exempt vessels to fish in the GOA, a replacement/rebuilt vessel

Option 2.1: May not exceed the most restrictive MLOA specified on any GOA LLP assigned to the vessel at the time the vessel owner applies to NMFS for replacement or rebuilding. (The MLOA of any BSAI LLP assigned to the vessel to be replaced does not apply.)

Option 2.2: May not exceed the most restrictive MLOA specified on any GOA LLP assigned to the vessel at the time the Coast Guard Act was approved (October 15, 2010). (The MLOA of any BSAI LLP assigned to the vessel to be replaced does not apply).

Option 2.3: Must abide by current 10% limit on increasing the existing length, horsepower, and tonnage, at the time the Coast Guard Act was approved (October 15, 2010).

For AFA exempt vessels to fish in the GOA, a replacement/rebuilt vessel

Option 2.4: May not exceed the LOA specified on the FFP for the vessel to be replaced or rebuilt at the time the Coast Guard Act was approved (October 15, 2010).

Vessel removal provisions

Upon removal of an exempt vessel, the sideboard exemption is extinguished and cannot be transferred to another vessel.

Potential Effects of the Alternatives and Options

Alternative 1 (no action)

Under Alternative 1 (no action), AFA vessels replacement would be based on the original AFA provisions only (prior to the signing of the Coast Guard Act). At that time, an AFA vessel could only be replaced in the event of a total or constructive loss of such vessel, and the replacement vessel was subject to limitations on vessel length, gross tons, and shaft horsepower. Replacement vessels under the no action alternative are also limited by the MLOA of the LLP license that is named on the vessel. In addition, the size of rebuilt or replaced AFA vessel under this alternative is also limited by the “large vessel” restrictions of the AFA. If a replaced AFA vessel is less than 165 feet in registered length and fewer than 750 gross registered tons, and has engines incapable of producing more than 3,000 shaft horsepower, the replacement vessel cannot exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the original vessel. If the eligible AFA replaced vessel exceeds 165 feet registered length or 750 gross registered tons, or produces more than 3,000 shaft horsepower, the replacement vessel must be the same or lesser registered length, gross registered tons, and shaft horsepower. Also vessels greater than these limitations are prohibited from obtaining a fishery endorsement, unless the vessel carried a fisheries endorsement prior to September 25, 1997 or the Council has recommended (and the Secretary of Commerce has approved) a conservation and management measure to allow the vessel to be used in fisheries under its authority. Since the Council has not adopted such a measure for the AFA vessels under the no action alternative, any AFA vessel that does not already have a fishery endorsement, and is greater than 165 feet in length or that exceeds 750 tons, or 3,000 horsepower, could not receive a fishery endorsement under the no action alternative.¹

¹ The vessel size restriction contained in the original AFA applies to all U.S. fisheries. The AFA does provide authority, however, to regional fishery management councils, to allow for vessels larger than the stated size limits to operate in fisheries under their authority. Size restrictions appear to have been included in the original AFA as a tool to address overcapacity in fisheries. In Alaska, the Council has already removed vessel size restrictions for trawl

Both the LLP and the AFA restrictions were designed to stabilize capacity in fisheries. The MLOA was originally instituted in 1995, under the Council's groundfish vessel moratorium program. It was an initial step to contain the growth in capacity in the groundfish fisheries², while the Council developed long-term, comprehensive management programs.

In general, the LLP and AFA restrictions prior to AFA revisions included in the Coast Guard Authorization Act of 2010 impeded AFA vessel owners in rebuilding or replacing their AFA vessels for the purposes of operational efficiency thereby limiting the opportunity for AFA vessel owners to improve efficiency of their AFA vessels. One of the primary advantages of replacing a fishing vessel is to incorporate improved hull design, engine efficiency, hold design, processing plant efficiency, and other advancements in marine design that improve a vessel's overall efficiency. Many of the existing AFA vessels were not originally constructed as fishing vessels but were converted to such use. Inherently, these vessels are less well designed for fishing than a newly constructed fishing vessel would be. Replacing or rebuilding vessels for efficiency reasons allows owners the potential to reduce costs of production. In addition, liberalized vessel replacement rules for vessel owners may also provide opportunities to increase revenue through better use of catch.

Alternative 2 (status quo)

Under Alternative 2 (status quo), owners of an AFA catcher processors and catcher vessels are allowed to rebuild or replace their vessel for improved vessel safety and operational efficiencies. The replacement or rebuilt vessel will be eligible in the same manner as the replaced vessel, and subject to the same restrictions as the replaced vessel. There are no size or horsepower limitations for rebuilt or replacement vessels.

The only limitation for AFA replacement and rebuilt vessels relate to their participation in the GOA. Under the status quo alternative, an AFA vessel that is rebuilt or replaced may participate in the BS regardless of whether the vessel length exceeds the MLOA. To participate in the GOA, however, the vessel must have a GOA endorsed LLP license with an MLOA that does not exceed the length of the replacement or rebuilt vessel. Replacement or rebuilt AFA vessels that exceed the MLOA any license assigned to the vessel at the time of replacement or rebuilding, may assign another GOA endorsed LLP license with an MLOA that does not exceed the vessel length to participate in the GOA.

The replacement (or rebuilt) vessel is eligible in the same manner as the replaced (or original) vessel, and subject to the same restrictions as the replaced vessel. Certain limitations applied to transferring of LLP licenses would no longer apply to transfers to an AFA replacement vessel. For example, the limitation on transferring a groundfish LLP once per year would not apply, if the second transfer is to a replacement vessel. In addition, transfers of a LLP from a replaced vessel to a replacement vessel, at the time of the replacement, is permitted, regardless of whether the replacement vessel exceeds the MLOA of the LLP license.

Fishing permits and licenses held by the owner of the original or replaced AFA catcher processors and catcher vessels shall be transferred to the rebuilt vessel or replacement vessel. Replacement AFA catcher vessels are prohibited from harvesting fish in any federal fishery outside of the North Pacific, except in the case of the Pacific whiting fishery. Replaced vessels are prohibited from fishing in any fishery (unless that vessel is used to replace another AFA vessel).

catcher processors in the Amendment 80 sector and is considering liberalizing the restriction for the BSAI freezer longline sector.

² The Council analysis noted that restricting vessel length is not necessarily a guaranteed way to restrict vessel capacity, but that it was the best regulatory proxy at the time.

Owners of AFA catcher vessels that participate in an inshore cooperative may also remove a vessel from the BS pollock fishery and assign its directed pollock fishing allowance to one or more vessels in its cooperative as selected by the owner. Those vessels selected to receive the directed pollock allowance must remain in the cooperative for a least one year after the catcher vessel is removed from the fishery. The removed vessel is prohibited from fishing in any fishery except as a replacement AFA vessel. For inshore eligible AFA sideboard exempt catcher vessels, the Coast Guard Act makes no provision for the transfer of a sideboard exemption status to another inshore cooperative vessel. Recognizing the absence of direction in the Coast Guard Act on this issue, the Council clarified at the February 2012 meeting that the sideboard exempt status of removed inshore eligible AFA catcher vessels will be extinguished.

In addition to the no action and status quo alternatives, the Council at the February 2012 meeting adopted several options concerning AFA vessels participating in the GOA groundfish fisheries. These options address whether and how replaced or rebuilt AFA vessels may be used in the GOA.

Catcher Processors

Under the status quo, AFA catcher processors owners are able to replace or rebuild their vessels without limits to the length, horsepower, or weight restrictions. Given the age of some of these catcher processors, there is the potential for improvement in operational efficiency amongst these vessels. AFA catcher processor fleet can take advantage of new hull designs and improved technology to increase operational efficiency of the vessel. However, given the current level of efficiency of most AFA catcher processors and the high cost of replacing AFA catcher processors, most owners of large AFA catcher processors would likely not replace their vessels in the immediate future. Owners of smaller and older AFA catcher processors, lacking a fish meal plant, are potentially more inclined to replace their vessels in the immediate future. Lacking the ability to produce fish meal and fish oil leaves these smaller vessels at a competitive disadvantage relative to larger AFA catcher processors.

There is likely limited opportunity for adverse effects in other BSAI fisheries from liberalizing vessel replacement provisions for AFA catcher processors, as most other available target fisheries for this fleet are already constrained by sector allocations and sideboards. Other than pollock and Pacific cod, which are allocated via sector allocations, the remaining groundfish fisheries in the BSAI are restricted by sideboard limits and are generally closed to directed fishing because the sideboard is insufficient to support a directed fishery.

One AFA catcher processor is eligible to fish in the GOA and has a Western GOA endorsement on its LLP license. This vessel would be limited to the MLOA on the GOA LLP license named on the vessel. The current length overall is 199 feet. The MLOA on its LLP license is 219 feet. Although this vessel is not limited by AFA GOA groundfish sideboards, the vessel is limited by Amendment 80 and Rockfish Program GOA sideboards.

Although nearly all of the AFA catcher processors meet the highest safety standard for fish processing in the United States, the average age of the AFA catcher processor fleet is approximately 38 years. As these vessels continue to age, replacement of some of the older and smaller vessels in this fleet may be desirable. Since all replacement vessels will be classed and loadlined, the ability to replace vessels for the purposes of improving safety will likely continue to result in improved safety for the sector.

Catcher Vessels

Under the status quo, AFA catcher vessel owners are able to replace or rebuild their vessels without limits to the length, horsepower, or weight restrictions. Many of these vessels are older and were first used as oil field supply vessels that were later converted to pollock vessels. These vessels, relative to fishery specific vessels, are inefficient AFA catcher vessels. In addition, many of these vessels were built in era of open access fisheries. However, the implementation of AFA in 1999 introduced sector allocations for BSAI pollock and cooperative formation, which reduced significantly the race for fish in this fishery.

Liberalized vessel replacement and rebuilding provisions in the status quo alternative provides a greater opportunity for improved production efficiency relative to the no action alternative. Replacement or rebuilt AFA catcher vessels could use new molded hull designs that are more fuel efficient than old chine hulls.

The limitation on vessel length for participation in the GOA could limit the gains in operational efficiency for AFA catcher vessels. Under the status quo alternative, AFA catcher vessels that are rebuilt or replaced that exceed the MLOA specified on the most restrictive LLP license are prohibited from participating in the GOA groundfish fisheries. AFA vessels with little or no GOA groundfish history would likely discount the potential benefits of future GOA groundfish activity relative to the potential benefits gained from a more efficient operation in the BSAI from using a larger vessel.

There are 15 active AFA catcher vessels that are exempt from the GOA groundfish sideboards and additional 20 active AFA catcher vessels that have GOA endorsed LLP license that are restricted by GOA groundfish sideboards. The remaining 55 active AFA catcher vessels have a BS only endorsed LLP license. There are five AFA catcher vessels with multiple LLP licenses. Only two of these vessels have GOA endorsements. Each has only one license that has GOA endorsements; one with a Central GOA endorsement and one with both Central and Western GOA endorsement.

Given that all of the AFA catcher vessel owners with a LLP license can now replace or rebuild their vessels and even lengthen their vessels to some degree while still maintaining their ability to fish in the GOA, there is the potential these vessels could impact other GOA groundfish participants, particularly trawlers. There are number of trawl vessels that are active in the pollock, Pacific cod, flatfish, and rockfish fisheries in the Central GOA and slightly fewer vessels in the Western GOA. AFA sideboards for the GOA groundfish fisheries were designed to limit the impacts of AFA vessels on other GOA groundfish participants, but there is still the potential for replaced or rebuilt AFA catcher vessels to impact non-AFA trawl vessels. The primary reason GOA sideboards are limited in protecting non-AFA vessels is because much of the sideboard limits were unharvested. In absence of AFA sideboard activity, the non-AFA trawlers have increased their dependency on these GOA groundfish fisheries.

As for impacts to the non-AFA vessels that operate in the BSAI, the impacts will likely be restricted to the Pacific cod fishery, particularly the winter cod fishery. The remaining groundfish fisheries are sideboarded and are typically closed to the AFA catcher vessels, as the available sideboard amounts are inadequate to support directed fishing. The vessel replacement provisions in status quo could increase the potential for adverse impacts to non-AFA trawl catcher vessels through shortened season from increased harvest capacity on the winter cod grounds.

Potential implications to GOA groundfish fisheries also exist when an AFA catcher vessel owner wants to build a replacement or rebuilt vessel that is longer than vessel's MLOA. Under this option, the vessel owner could purchase an LLP license with a MLOA that can accommodate the new vessel length prior to entering the GOA groundfish fisheries. From the perspective of the GOA groundfish fisheries, allowing non-exempt AFA catcher vessels owners to purchase LLP licenses with a longer MLOA could impact other GOA trawl groundfish participants. The impact on other GOA groundfish participants from non-exempt AFA catcher vessels that entry the GOA fisheries using an LLP license that accommodates the vessel's expanded length are ultimately limited by GOA sideboard restrictions and the limited quantity of GOA endorsed LLPs that can accommodate these vessels. Nearly all of the trawl catcher vessel LLP licenses with Central GOA and Western GOA endorsements have a MLOA less than 125 feet LOA. Since there is an absence of trawl catcher vessel LLP licenses with GOA endorsements that have an MLOA greater than 125 feet LOA, AFA exempt and non-exempt catcher vessels would likely expand vessel lengths using the MLOA of the LLP license current named on the vessel thereby limiting the impact to non-AFA trawl GOA groundfish participants from a significant influx of new vessel capacity.

The ability to remove inshore eligible AFA catcher vessels would likely improve operational efficiency of the fleet by eliminating unnecessary storage of inactive, obsolete vessels. Since AFA prevented owners from permanently transferring pollock quota, these inefficient inshore eligible AFA catcher vessels were then either placed into storage or were utilized in other maritime activities. However, since enactment of the Coast Guard Authorization Act of 2010, vessel owners of inshore eligible AFA catcher vessels can now permanently retire inshore eligible AFA catcher vessels from the fishery by transferring the vessel's pollock quota to other AFA catcher vessels in the inshore cooperative. This approach allows inshore eligible AFA catcher vessels to take advantage of the efficiency gains from stacking pollock quota from removed vessels on more efficient AFA catcher vessels. In addition, the ability to replace or rebuild vessels without limitations (except GOA vessels) may complement the efficiency gains from removing vessels by allowing the larger replacement vessels to be designed to accommodate the additional pollock quota.

As for safety, only four AFA catcher vessels are classed and loadlined certified. The remainder of the fleet is only required to meet the basic fishing vessel safety regulations found in 46 CFR Part 28. Any newly-built AFA catcher vessels would have to meet the requirements for classification and loadline. Existing AFA catcher vessels (built before 1995) which are modified in a way that changes their dimensions (lengthening, sponsoning, changes in fish hold size) after July 1, 2012 would have to meet yet to be developed Alternate Safety Compliance program standards required by the Coast Guard Authorization Act of 2010 (46 USC 4503(d)(2)). An Alternate Safety Compliance program has not been developed at this time. When such a program is developed, it will be developed in cooperation with the commercial fishing industry and may be developed for a specific region and fishery (such as the AFA catcher vessel fleet). Since all replacement AFA catcher vessels will be classed and loadlined, and extensively modified AFA catcher vessels must meet the ACSA standards, the replacement and rebuilt AFA catcher vessels will likely improve the safety of the fleet.

Options for Non-Exempt AFA Catcher Vessels

Option 2.1: May not exceed the most restrictive MLOA specified on any GOA LLP assigned to the vessel at the time the vessel owner applies to NMFS for replacement or rebuilding. (The MLOA of any BSAI LLP assigned to the vessel to be replaced does not apply.)

Option 2.1 would prohibit a replaced or rebuilt non-exempt AFA vessel that exceeds the most restrictive MLOA on a GOA LLP license assigned to the vessel at the time the owner applies to NMFS for replacement or rebuilding from participating in the GOA groundfish fisheries. This alternative would allow AFA vessels with a BSAI endorsed LLP license to purchase a GOA endorsed LLP license prior to applying to NMFS for replacement or rebuilding in order to participate in the GOA groundfish fisheries with a replacement or rebuilt vessel. The GOA limitation in this option is the same GOA limitation in the status quo alternative.

In assessing this option, the Council should consider an aspect of the provision that could be inequitable to some vessels, particularly those with current activity in the GOA fisheries. A vessel that has historically fished with a license endorsed for both the GOA and BS might later acquire a larger second GOA license to assign to the vessel to allow for replacement or rebuilding to a length greater than its BS/GOA license MLOA. This vessel would be precluded from fishing in the GOA under this option, despite its second GOA license because it is limited by the most restrictive MLOA of the GOA licenses. Compare this to a vessel that is replaced or rebuilt that has a BS only license with the same MLOA as the other vessel's original license. This vessel could acquire the same larger MLOA GOA license prior to replacement or rebuilding and would be allowed to fish in the GOA fisheries because it did not have a GOA endorsement on its original BS license. A cleaner option would allow a vessel to participate in any GOA management area (CGOA or WGOA) provided the replacement or rebuilt vessel does not exceed the MLOA on the least restrictive license for that area at the time of replacement or rebuilding. This

provision would allow vessel to continue any GOA fishing provided they meet the requirements of their LLPs for the respective areas at the time of vessel replacement or rebuilding. Any other option would create an environment in which vessels have an incentive to move licenses on and off vessels prior to replacement or rebuilding to maximize fishing opportunities in the GOA fisheries. Alternatively, the Council could choose a different option that more directly and clearly defines fishing opportunities.

This option, similar to the status quo alternative, provides the opportunity for an owner of a non-exempt AFA catcher vessel to enter GOA fisheries after replacement or rebuilding the vessel. However, this option could reduce efficiency gains slightly from the status quo by limiting replacement and rebuilt non-exempt AFA catcher vessels to the most restrictive MLOA of the GOA endorsed LLP licenses, at the time of replacement. The ability to use a vessel in the GOA is curtailed to a large degree by the number of LLP licenses endorsed for the GOA that have an MLOA greater than 124 feet. Nevertheless, the ability to enter non-exempt AFA catcher vessels in the GOA could allow for greater gains in efficiency of replacement and rebuilt vessels less than 124 feet.

Similar to the status quo alternative, under this option, owners of AFA catcher vessels will likely take into consideration the costs and benefits of participating in both the BSAI and GOA groundfish fisheries while including the potential for lower efficiency gains from a limitation in vessel length. In general, non-exempt AFA catcher vessels with extensive GOA groundfish history would likely be deterred from building beyond any constraining GOA license MLOA. Non-exempt AFA catcher vessels with little or no GOA groundfish history would likely discount the potential benefits of future GOA groundfish active relative to the potential benefits gained from a more efficient operation in the BSAI potentially brought about by a larger vessel. However, it is possible that some vessels may coordinate their choices with other vessels. By defining GOA eligibility on the license assigned to a vessel at the time of rebuilding or replacement, this option allows for greater coordination across AFA vessels, which could result in changes in participation patterns of AFA vessels in GOA fisheries. These changes in participation should maintain similar opportunities for efficiency improvements in the AFA catcher vessel fleet, as a whole, under this option, in comparison to the status quo.

Given that non-exempt AFA catcher vessels could be replaced or rebuilt under this option, while maintaining their eligibility to fish in the GOA, there is some potential these replacement or rebuilt vessels could impact other GOA groundfish vessels, particularly trawl vessels. Although GOA groundfish sideboards provide an upper limit for non-exempt AFA catcher vessels, there still exists the potential for replacement or rebuilt non-exempt AFA catcher vessels to impact non-AFA trawl vessels.

The most prevalent effect likely arises from the entry of vessels from the AFA that are not increased in size, which are freed up by other vessels in the AFA increasing their harvest capacity in the Bering Sea. For example, if a few vessels in a cooperative are replaced by vessels with substantially greater harvest capacity, it is possible that other vessels in that cooperative that have not been replaced or rebuilt may enter the GOA fisheries (with either their own GOA endorsed license or possibly with a transferred license from either another AFA vessel or a non-AFA vessel. The effects of this type of entry will be limited by sideboards, natural constraints on efficiency gains that might deter this practice, and by the availability of licenses needed to qualify the various vessels for the BS and GOA fisheries.

Option 2.2: May not exceed the most restrictive MLOA specified on any GOA LLP assigned to the vessel at the time the Coast Guard Act was approved (October 15, 2010). (The MLOA of any BSAI LLP assigned to the vessel to be replaced does not apply).

Option 2.2 is the most restrictive option applicable to non-exempt AFA catcher vessels and the most directly interpretable and predictable. Under it, a replaced or rebuilt non-exempt AFA catcher vessel is prohibited from operating in the GOA if the vessel's LOA exceeds the most restrictive MLOA specified on any GOA LLP license assigned to the AFA vessel at the time the Coast Guard Act was approved

(October 15, 2010). LLP licenses endorsed only for the BS are not considered in determining the constraining MLOA. By applying the license on a particular date, this option clearly defines vessels that are and are not eligible to continue in the GOA, if those vessels are replaced. Yet, in considering the effects of the action, it must be noted that vessels that are not replaced or rebuilt are free to enter the GOA fisheries, provided they carry the requisite LLP.

On October 15, 2010, there were a total of 20 non-exempt AFA catcher vessels that were active in the GOA groundfish fisheries (see Table 1-33 and Table 1-39). Of the 20 AFA non-exempt catcher vessels with GOA endorsed LLP licenses, 12 vessels are within 10 feet of their MLOA, 5 vessels are within 10 feet and 20 feet of their MLOA, and 4 vessels are within 20 feet and 50 feet of their MLOA. 15 of the non-exempt AFA catcher vessels have a Central GOA endorsement and 9 vessels have Western GOA endorsements.

This option, unlike status quo and Option 2.1, specifies the non-exempt AFA catcher vessels that, as of October 15, 2010, can be replaced or rebuilt and are thereafter participate in the GOA groundfish fisheries. In addition, this option specifies constraints on the vessel length for the rebuilt or replacement vessel.

This option reduces production efficiency gains slightly from the preceding option. Similar to the other options, owners of non-exempt AFA catcher vessels may replace or rebuild their vessels in order improved production efficiency through more efficient hull forms or more efficient propulsion systems. However, this option may deter some vessel replacement and rebuilding and consequent efficiency gains by prohibiting the replacement and rebuilt vessel from participating in the GOA if its length exceeds the most restrictive MLOA on a GOA endorsed LLP license assigned to the vessel on October 15, 2010. Relative to both of the preceding options, this alternative provides less flexibility since the owner of the non-exempt AFA catcher vessel is constrained by the MLOA of GOA endorsed LLP licenses assigned to the vessel on October 15, 2010. In other words, reassignment of licenses that have a larger MLOA at the time of rebuilding or replacing the vessel will not allow the vessel to be extended beyond the MLOA of the most restrictive GOA endorsed LLP license on the vessel on the date specified in the Coast Guard Act. This limitation could deter some vessel owners from rebuilding or replacing a vessel (or limiting the size increase from the rebuilding or replacing), if that vessel historically participated in the GOA fisheries.

Option 2.2 is more protective of non AFA GOA groundfish participants than the status quo or Option 2.1. Given that all 20 non-exempt AFA catcher vessels with GOA endorsed LLP licenses can now be replaced or rebuilt to a larger length, to some degree, there is the potential for these replacement or rebuilt vessels to impact other GOA groundfish vessels, particularly trawl vessels. As seen in Table 1-34 and Table 1-35, there are number of trawl vessels that are active in the GOA pollock, Pacific cod, flatfish, and rockfish fisheries in the GOA. Although GOA groundfish sideboards provide an upper limit for non-exempt AFA catcher vessels, there still exists the potential for replaced or rebuilt AFA catcher vessels to impact non-AFA trawl vessels. However, unlike the status quo alternative and Option 2.1, this alternative specifies 20 GOA eligible non-exempt AFA catcher vessels that can be replaced or rebuilt and participate in the GOA. As shown in Table 1-37 and Table 1-38 these 20 non-exempt AFA catcher vessels that participated in the GOA retained significantly less GOA groundfish relative to the non-AFA catcher vessels. In considering the effects of the option, it should be noted that any vessel that is not replaced or rebuilt could still be entered into a GOA fishery, provided that vessel carries an LLP license that qualifies it for the fishery. As a result, vessel replacements and rebuilds could still impact GOA fisheries, by new participants entering with licenses from current participants who choose to exit after replacement or rebuilding. If AFA participants choose to take advantage of these opportunities to enter vessels that have not be rebuilt or replaced, the differences between this option and the other options for non-exempt vessels is limited.

Option 2.3: Must abide by current 10% limit on increasing the existing length, horsepower, and tonnage, at the time the Coast Guard Act was approved (October 15, 2010).

Option 2.3, in contrast to the previous two options and status quo alternative, takes a different approach to limiting AFA replacement or rebuilt vessels operating in the GOA. Under this option, a replacement or rebuilt AFA vessel cannot exceed by more than 10 percent the original registered length (LOA), gross registered tons, or shaft horsepower of the replaced AFA catcher vessel active on October 15, 2010. Unlike the status quo and Options 2.1 and 2.2, which are based on the MLOA of the LLP, this alternative is a vessel replacement limitation based on the registered length, tons, and horsepower of the existing AFA catcher vessel. The replacement or rebuilt vessel would still require a LLP license with the appropriate GOA endorsement and MLOA.

The restriction to not exceed 10 percent of the original vessel's registered length, gross registered tons, and shaft horsepower will limit the scope of efficiency gains for replaced or rebuilt non-exempt AFA catcher vessels. However, unlike status quo and Options 2.1 and 2.2 under which the limit on vessel applies only to vessel length, this option limits the increase of vessel's horsepower and gross tons. Restricting a replacement or rebuilt non-exempt AFA catcher vessel by its lengths, tons, and horsepower limits could limit the available choices on hull designs and propulsion systems thereby potentially reducing operational efficiency of replacement or rebuilt vessels.

The production efficiency gains under this alternative are similar to those under the status quo and other options applicable to non-exempt AFA vessels. Although this alternative is more restrictive on entry to the GOA fisheries by rebuilt or replacement vessels, the ability of AFA vessels to move permits among vessels to facilitate entry to the GOA fisheries by vessels that have not been replaced or rebuilt should limit the effect of this option on efficiency, in comparison to the other options. As a consequence of this mobility of licenses, it is likely that vessels will continue to participate in the GOA fisheries through the strategic movement of licenses among vessels.

When rebuilding or replacing their non-exempt AFA catcher vessel, an owner with a GOA endorsed LLP license would likely take into consideration the costs and benefits of participating in both the BSAI and GOA groundfish fisheries while abiding by the vessel length limitation relative to the cost and benefits of participating in only the BSAI groundfish fisheries with no limitation on vessel length. In general, the GOA groundfish history of these GOA active non-exempt AFA catcher vessels will deter owners from rebuilding or replacing their non-exempt AFA catcher vessels that exceed the 10 percent limitation on length, tons, and horsepower.

Similar to status quo alternative and Options 2.1 and 2.2, Option 2.3 has the potential to impact other GOA groundfish participants. Given that all 20 non-exempt AFA catcher vessels with GOA endorsed LLP licenses can now be replaced or rebuilt while still maintaining their ability to fish in the GOA, there is the potential these replacement or rebuilt vessels, through expanded harvest capacity, could impact other GOA groundfish vessels, particularly trawl vessels. Although non-exempt AFA catcher vessels are limited by GOA groundfish sideboards, there still exist the potential for replacement or rebuilt AFA catcher vessels to impact non-AFA trawl vessels. In addition, if other AFA vessels increase their harvest capacity and catch portions of the quota available to GOA eligible non-exempt vessels, those non-exempt vessels may be able to increase their fishing effort in the GOA (even without being replaced).

In addition, it is possible for other vessels that have not been replaced or rebuilt to enter the GOA fisheries, if those vessels are assigned GOA licenses with adequate MLOAs. However, this alternative is likely to have less potential effect relative to status quo alternative and Option 2.1 since this option specifies only 20 non-exempt AFA catcher vessels that can be replaced or rebuilt and participate in the GOA. In addition, these 20 non-exempt AFA catcher vessels that participated in the GOA retained significantly less GOA groundfish relative to the non-AFA catcher vessels.

Option for Sideboard Exempt Vessels

Option 2.4: May not exceed the LOA specified on the FFP for the vessel to be replaced or rebuilt at the time the Coast Guard Act was approved (October 15, 2010).

This option applies specifically to GOA sideboard exempt AFA catcher vessels. Under Option 2.4, an AFA sideboard exempt catcher vessel may not exceed its length overall (LOA) specified on its Federal Fishing Permit (FFP) on the date the Coast Guard Act was approved (i.e., October 15, 2010) and continue to participate in the GOA fisheries.³ Although this option allows an AFA sideboard exempt catcher vessels participating in the GOA groundfish fisheries to be replaced or rebuilt and continue to participate in the GOA fisheries, it is substantially more restrictive than the status quo. In any case, vessels subject to this provision would be permitted to replace or rebuild the vessel beyond the LOA on the FFP, but would then be prohibited from participating in GOA fisheries.

As noted in Table 1-33, there were 15 active AFA catcher vessels that are exempt from the GOA groundfish sideboards. Each of the 15 exempt vessels has a Central GOA endorsement and 11 have Western GOA endorsements. Despite the flexibility provided by the LLP MLOAs, these vessels will be constrained by this option from increasing in length beyond their current length.

In general, this option provides the owners of AFA sideboard exempt catcher vessels with the ability to replace or rebuild their vessels, which could provide improved production efficiency relative to the current regulations. Examples of the types of changes that could increase potential operational efficiency might include a more efficient hull form or a more proficient propulsion system. Combined, these two changes alone could increase the fuel efficiency of a vessel.

However, this option would limit the potential greater efficiency gains relative to status quo alternative since the option prohibits replacement or rebuilt AFA sideboard exempt catcher vessels from participating in the GOA if the vessel length exceeds the reported length on the FFP. Vessel owners will weigh the costs and benefits of exceeding the FFP length on rebuilding or replacing the vessel and being prohibited from participating in the GOA groundfish fisheries against not exceeding the FFP length on rebuilding and replacing the vessel and being permitted to continue to operate in the GOA fisheries with the sideboard exemption. In general, given the importance of the GOA groundfish fisheries for these AFA sideboard exempt catcher vessels, these vessels are not likely to replace or rebuild their vessels beyond the FFP vessel length.

Option 2.4 has the potential to impact other GOA groundfish participants, but likely to a much lesser degree than the status quo alternative. This option allows for AFA vessel owners to replace or rebuild their vessels for purposes of improving operational efficiency and safety, which could provide an increased opportunity for gains in harvest capacity that could be used in the GOA groundfish fisheries. There are 15 AFA sideboard exempt catcher vessels with lengths ranging from 77 feet to 107 feet. As noted in Table 1-20 and Table 1-21, AFA sideboard exempt catcher vessels activity in the Central GOA groundfish fisheries is extensive and is nearly equal to the history of the non-AFA trawl catcher vessels, as noted in Table 1-34 and Table 1-35. However, this option, relative to status quo, is not anticipated to have a substantial effect on non-AFA trawl vessels in the GOA groundfish fisheries since the proposed alternative prohibits replacement or rebuilt vessels that exceed the reported FFP from participating in these fisheries. Some efficiency gains could in replaced or rebuilt vessels could allow these vessels to be

³ The vessel length reported on the FFP is supplied by the applicant and is not verified, so vessel lengths for the same vessel can vary from year to year as the FFP application is renewed. Other potential sources of vessel length are those reported the U.S. Coast Guard and Commercial Fisheries Entry Commission (CFEC). The vessel length reported by the U.S. Coast Guard is measured at the water line, whereas the of the CFEC vessel length is also provided by the applicant but does not vary from to year since the application does not need renewing.

more competitive in the GOA fisheries, but non AFA vessels in those fisheries can maintain their competitiveness by similarly replacing or rebuilding their vessels (as is permitted by their LLPs). Owners of these non AFA vessels, in some cases, may have fewer resources, as the AFA allocations provide some financial security to their holders.

Vessel Removal Provision

Finally, the Council has clarified that the sideboard exemption status will be extinguished upon removal of an exempt vessel. Specifically, the Coast Guard Act enables an owner of an AFA catcher vessel that delivers to a shoreside processor to remove the vessel from the Bering Sea pollock fishery and assign the vessel's directed pollock fishing allowance to other vessels in the cooperative, but the Coast Guard Act does not address the transfer of GOA sideboard exemption. The Council clarification makes it clear that that GOA sideboard exemption status will be extinguished when an AFA catcher vessel is removed and not replaced. This clarification is included in the status quo alternative, so see status quo for the effects of this clarification.

1.0 REGULATORY IMPACT REVIEW

The purpose of the proposed action is to clarify American Fisheries Act (AFA) vessel replacement provisions of the Coast Guard Authorization Act of 2010 (Coast Guard Act) and to prevent participating AFA vessels that are replaced from increasing fishing effort beyond historical catch in the Gulf of Alaska (GOA). Specifically, the Coast Guard Act addresses the replacement and removal of vessels eligible to participate in the Bering Sea pollock fishery under the AFA (see Appendix A for Section 602 of the Coast Guard Act and Appendix B for NMFS review of the Act). The Coast Guard Act expressly authorizes the Council to recommend for approval by the Secretary of Commerce, conservation and management measures, including size limits and measures to control fishing capacity to ensure that the Coast Guard Act does not diminish the effectiveness of the fishery management of the Bering Sea (BS) and Aleutian Islands (AI), and the GOA. To that end, the Council developed proposed alternatives to prevent increased capacity in the GOA groundfish fisheries by replacement or rebuilt AFA vessels and to extinguish GOA sideboard exemptions for AFA catcher vessels removed from the BS pollock fishery.

This proposed has no effect individually or cumulatively with respect to environmental consequences on the human environment (as defined in NAO 216-6). The only effects of the action are improved vessel safety, improved production efficiency, and potential economic redistributive arising from vessel replacement of AFA vessels. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

1.1 What is a Regulatory Impact Review?

This RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735, September 30, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement for 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.

EO 12866 further 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.

1.2 Statutory Authority for this Action

NMFS manages the U.S. groundfish fisheries in the portion of its exclusive economic zone within the BSAI according to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area. This FMP were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

1.3 The American Fisheries Act

Until 1998, the Bering Sea directed pollock fishery had been a managed open access fishery, commonly characterized as a “race for fish.” In 1998, however, Congress, as a part of the AFA, rationalized the fishery by limiting participation and allocating specific percentages of the Bering Sea directed pollock fishery total allowable catch (TAC) among the competing sectors of the fishery. The AFA established the allocation of BSAI pollock quota among sectors. The Community Development Quota (CDQ) Program allocation of the pollock total allowable catch is 10%. Of the remaining pollock quota, 40% is allocated to the catcher processors, 50% is allocated to the inshore, and 10% is allocated to the motherships.

The offshore sectors are comprised of 3 motherships and 19 catcher vessels eligible to deliver to those motherships; 20 catcher processors and 7 catcher vessels eligible to fish and deliver a suballocation to those catcher/processors. The inshore sector is made up of a total of 112 catcher vessels and 8 processing plants. The AFA specifies that pollock taken in the inshore sector’s directed fishery can only be taken by those qualified vessels and delivered to those qualified processing plants.

The AFA also allowed for the development of pollock industry cooperatives. Nine cooperatives were developed as a result of the AFA: seven inshore cooperatives, one catcher processor cooperative, and one mothership cooperative. In recent years, one catcher vessel cooperative no longer operates, as all of its member catcher vessels have moved to another cooperative. These two cooperatives are associated with processors owned by the same parent company.

In rationalizing the Bering Sea pollock fishery, the AFA also gave the industry the ability to respond more deliberately and efficiently to market demands than the “race for fish” previously allowed. The AFA also aided the fishery in complying with Steller sea lion conservation measures that, beginning in 1992, created fishery exclusion zones around seal lion rookeries and haulout sites and implemented gradual reductions in seasonal proportions of the TAC that may be taken in Steller sea lion critical habitat.

1.3.1 Provisions Affecting AFA Vessel Replacement

Among the many provisions included in the AFA were two amendments to fishery endorsements provisions that affect vessel replacement. First, 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. Section 208 (g) of the AFA provides that the owner of an eligible vessel may replace such vessel in the event of total or constructive loss of that 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;

- (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.

The second provision affecting AFA vessel replacement prohibits vessels exceeding certain length, tonnage, and horsepower limits from entering fisheries⁴ and from obtaining a fishery endorsement unless specific conditions are met (see 46 U.S.C. 12102(c)(6) and corresponding regulations at 46 C.F.R 356.47). Specifically, vessels greater than 165 feet in length⁵, of more than 750 gross registered tons, or with engines capable of producing more than 3,000 shaft horsepower, are prohibited from obtaining a fishery endorsement, unless the vessel carried a fisheries endorsement prior to September 25, 1997 or the regional fishery management council has recommended (and the Secretary of Commerce has approved) a conservation and management measure to allow the vessel to be used in fisheries under its authority, since enactment of the AFA. Since the Council has adopted no such measure for the AFA vessels, any AFA vessel that does not already have a fishery endorsement, and is greater than 165 feet in length or that exceeds 750 tons, or 3,000 horsepower, cannot receive a fishery endorsement at this time.

The issuance of fishery endorsements, as regulated by 46 C.F.R 356.47, is tasked to the Department of Transportation Maritime Administration. NOAA General Counsel and MARAD staff concurs that if the Council chooses to allow new vessels exceeding these thresholds to participate in the fisheries, such a measure would best be accomplished through an FMP amendment. The amendment would specify that replacement AFA vessels may exceed the length, horsepower and tonnage requirements 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 staff has stated that they would request documentation from NMFS of the Secretary's approval of any such FMP amendment prior to issuing a fishery endorsement to an AFA replacement vessel.

1.4 Section 602 of the Coast Guard Authorization Act of 2010

On October 15, 2010, the Coast Guard Authorization Act of 2010 (Coast Guard Act) was signed into law. Section 602 of the Coast Guard Act amends the AFA to allow for vessel replacement or rebuilding for the purpose of improve vessel safety and operational efficiencies (including fuel efficiency). Prior to the Coast Guard Act, AFA vessels could only be replaced for actual total loss or a constructive total loss of the vessel. Under the Coast Guard Act, the rebuilt or replacement AFA vessel will be eligible in the same manner as the replaced vessel and subject to the same restrictions as the replaced vessel. Fishing permits and licenses held by the owner of the replaced AFA vessel shall be transferred to the rebuilt vessel or

⁴ Other than the directed pollock fishery in the Bering Sea, where vessel replacement is regulated by the AFA provision in section 208(g)

⁵ Note, for the purposes of this regulation, vessel length is measured at the water level, and does not constrain length overall.

replacement vessel. In addition, the Coast Guard Act prohibits replacement AFA catcher vessels from harvesting fish in any federal fishery outside of the North Pacific, except for the Pacific whiting fishery.

The Coast Guard Act also eliminates the size and horsepower limitations that apply to rebuilt vessel and replacement vessels. In other words, a rebuilt or replacement AFA vessel can exceed the maximum length overall (MLOA) specified on the assigned LLP license. However, to protect non-AFA GOA fishery participants from an influx of new capacity from rebuilt or replaced AFA vessels, the Coast Guard Act prohibits any vessel that is rebuilt or replaced that exceeds the MLOA specified on the license that authorizes fishing for groundfish from participating in the GOA groundfish fisheries. At a minimum, an AFA vessel must still be named on an LLP license with the appropriate endorsements and a sufficiently large MLOA to accommodate the vessel's length overall to participate in the GOA.

The Coast Guard Act also limits the use of replaced AFA vessels. The Coast Guard Act stipulates that any AFA vessel that is replaced is prohibited from fishing in any fishery (unless the vessel is used to replace another AFA vessel.)⁶ So, once a vessel is replaced (if not used as an AFA replacement vessel), that vessel loses not only its AFA fishing privileges, but also any fishing privileges in other fisheries, including AFA sideboard fisheries. In other words, the vessel would not be permitted to fish under a sideboard and would appear to lose any sideboard exemption in the GOA.

The Coast Guard Act also provides for vessel removal by enabling owners of AFA catcher vessels that participate in inshore cooperatives to remove a vessel from the Bering Sea pollock fishery and assign its direct pollock fishing allowance to one or more vessels in its cooperative. When the catcher vessel is removed from the pollock fishery, its portion of the directed pollock fishing allowance derived from its qualifying pollock catch history would be assigned to the vessel (or vessels) participating in the same fishery cooperative chosen by the owner. Those vessels selected to receive the directed pollock allowance must remain in the cooperative for a least one year after the catcher vessel is removed from the fishery. Once the vessel is removed from the pollock fishery, the vessel is prohibited from fishing in any fishery (unless that vessel is used to replace another AFA vessel). As a consequence, the removed vessel would also appear to lose any sideboard status associated with its AFA fishing privilege.

1.5 Council Problem Statement

Passage of the Coast Guard Act necessitates updating the BSAI Groundfish Fishery Management Plan and groundfish regulations to bring them into compliance with the Coast Guard Authorization Act. Currently, the language in both the BSAI Groundfish FMP and groundfish regulations are not consistent with prevailing management rules established by the Coast Guard Act. To correct this inconsistency, NMFS has proposed a housekeeping action to bring the BSAI Groundfish FMP and groundfish regulations into compliance with existing current practices.

In addition, *Section 2* of the Coast Guard Act expressly authorizes the Council to recommend for approval by the Secretary of Commerce measures to control fishing capacity so as not to diminish the effectiveness GOA groundfish management. In addition, *Section 6* of the Coast Guard Act created two ambiguities concerning GOA eligibility. Using this authority of *Section 2*, while also addressing the ambiguity of *Section 6*, the Council has included a range of options for clarifying the GOA eligibility for replacement and rebuilt AFA catcher vessels operating in GOA and limiting the potential for increased fishing capacity of replacement and rebuilt vessels while operating in the GOA. The Council at its February 2012 meeting provided the following problem statement:

⁶ Specifically, the Act states that a vessel that is replaced will no longer be eligible for a fishery endorsement under 46 U.S.C. section 12113, unless the vessel in turn replaces another AFA vessel.

Groundfish sideboard protections are included in the AFA to prevent participating AFA vessels from increasing fishing effort beyond historical catch in the GOA. Ambiguities exist pertaining to groundfish sideboards in the AFA vessel replacement provisions of the Coast Guard Authorization Act of 2010 (Coast Guard Act). For vessels with multiple licenses, it is unclear whether the MLOA on the Bering Sea LLP or the GOA LLP applies to a replacement vessel when fishing in the GOA. Additionally, if an AFA vessel exempt from the GOA sideboards is removed from the fishery and assigns its pollock quota to another vessel, the Coast Guard Act is unclear whether the GOA exemption is transferable in addition to the pollock quota. Action is needed to clarify vessel replacement provisions of the Coast Guard Act and prevent increased capacity in the GOA groundfish fisheries by AFA vessels.

Below is a summary of the two ambiguities that were included in the February 2012 discussion paper on AFA vessel replacement.

First, the Coast Guard Act authorizes a replacement vessel to participate in the GOA groundfish fisheries in the same capacity as the replaced vessels, as long as the replacement vessel does not exceed the MLOA of the assigned LLP license. If the replacement vessel exceeds the MLOA, the vessel will be prohibited from participating in the GOA groundfish fishery in any capacity. However, the Coast Guard Act is silent on how to apply this GOA limitation provision to replacement vessels with multiple LLP licenses. A vessel with multiple licenses and with multiple endorsements confounds implementation of the GOA groundfish prohibition when a replacement vessel exceeds the MLOA of one of the two assigned LLP licenses. The second ambiguity in the Coast Guard Act arises due to the removal of an AFA catcher vessel that participates in an inshore cooperative. The Coast Guard Act addresses the transfer of the pollock allowance, but the Coast Guard Act is silent on the transfer of the sideboard exemption status to the assigned vessel or vessels in its cooperative. This absence of direction for both replacement vessels and removed vessels creates ambiguities concerning the application of GOA sideboard exemption.

Specific to the first ambiguity, five AFA vessels had multiple LLP licenses on October 15, 2010, the effective date of the Coast Guard Act. Language from the Coast Guard Act makes it clear that a replacement vessel that exceeds the MLOA specified on the assigned groundfish LLP licenses is prohibited from participating in the GOA groundfish fisheries. However, the Coast Guard Act is unclear in the case of a replacement vessel with two LLP licenses, one endorsed for the BS and the other endorsed for the GOA. The Coast Guard Act itself does not expressly state whether exceeding the MLOA of the LLP license that authorizes fishing in the BS or the MLOA of the LLP license that authorizes fishing in the GOA would prevent a vessel from participating in GOA groundfish fisheries. Looking at the five AFA vessels with multiple LLP licenses, only two vessels have GOA endorsements. These two vessels each have only one license that has GOA endorsements; one with a Central GOA endorsement and one with both Central and Western GOA endorsement. Both vessels are between 20' and 50' shorter than the MLOA for the GOA endorsed LLP licenses. With the respect to their BS endorsed LLP license, one vessel is within 10' of the MLOA of the LLP license, while the other vessel is between 100' and 125' shorter than the MLOA of that LLP license.

Looking at the specifics surrounding the second ambiguity, the Coast Guard Act makes no provision for the transfer of a sideboard exemption associated with an AFA catcher vessel that is removed from the fishery. The Coast Guard Act enables an owner to an AFA catcher vessel that delivers to a shoreside processor to remove the vessel from the Bering Sea pollock fishery and assign the vessel's directed pollock fishing allowance to other vessels in its cooperative, but is silent on the transfer of GOA sideboard exemption.

GOA sideboard exemptions were developed for AFA vessels with a significant economic dependence on the GOA groundfish fisheries.⁷ The exemption applied to AFA trawl catcher vessels less than 125' LOA that landed less than 1,700 metric tons of BSAI pollock on average during 1995 through 1997 and made at least 40 GOA groundfish landings during the same time period. Since these vessels are exempt from GOA sideboards, the catch history of these vessels is not included in the determination of sideboard limits and catch does not count towards the sideboard limits. In addition, exempt vessels cannot lease their BS pollock if they exceed their 1995 through 1997 GOA harvest levels.

Based on the provision included in the Coast Guard Act, when an AFA vessel is removed from the pollock fishery, for purposes of issuing cooperative quota, NMFS must assign its portion of the directed pollock fishing allowance to the vessel chosen by the owner, or among selected catcher vessels participating in the cooperative, provided the recipient vessel(s) remain(s) in the cooperative for at least one year after the vessel is removed from the fishery. Since the Coast Guard Act makes provisions for the transfer for the pollock fishing allowance but not sideboard exemption, the Council is proposing to extinguish GOA sideboard exemption for a removed AFA vessel.

1.6 Description of Alternatives

Alternative 1 (no action): - AFA vessel owners may not rebuild or replace their vessels, except in the case of total or constructive loss - NOT COMPLIANT WITH THE COAST GUARD ACT.

Alternative 2 (status quo): AFA vessel owners are allowed to rebuild or replace their vessels, as provided in the Coast Guard Act.

For AFA non-exempt vessels to fish in the GOA, a replacement/rebuilt vessel

Option 2.1: May not exceed the most restrictive MLOA specified on any GOA LLP assigned to the vessel at the time the vessel owner applies to NMFS for replacement or rebuilding. (The MLOA of any BSAI LLP assigned to the vessel to be replaced does not apply.)

Option 2.2: May not exceed the most restrictive MLOA specified on any GOA LLP assigned to the vessel at the time the Coast Guard Act was approved (October 15, 2010). (The MLOA of any BSAI LLP assigned to the vessel to be replaced does not apply).

Option 2.3: Must abide by current 10% limit on increasing the existing length, horsepower, and tonnage, at the time the Coast Guard Act was approved (October 15, 2010).

For AFA exempt vessels to fish in the GOA, a replacement/rebuilt vessel

Option 2.4: May not exceed the LOA specified on the FFP for the vessel to be replaced or rebuilt at the time the Coast Guard Act was approved (October 15, 2010).

Vessel removal provisions

Upon removal of an exempt vessel, the sideboard exemption is extinguished and cannot be transferred to another vessel.

Under **Alternative 1 (no action)**, AFA vessels replacement would be based on the original AFA provisions only (prior to the signing of the Coast Guard Act). At that time, an AFA vessel could only be

⁷ Sixteen AFA catcher vessels qualified for GOA groundfish sideboard exemption.

replaced in the event of a total or constructive loss of such vessel, and the replacement vessel was subject to limitations on vessel length, gross tons, and shaft horsepower. Replacement vessels under the no action alternative are also limited by the MLOA of the LLP license that is named on the vessel. In addition, the size of rebuilt or replaced AFA vessel under this alternative is also limited by the “large vessel” restrictions of the AFA. If a replaced AFA vessel is less than 165 feet in registered length and fewer than 750 gross registered tons, and has engines incapable of producing more than 3,000 shaft horsepower, the replacement vessel cannot exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the original vessel. If the eligible AFA replaced vessel exceeds 165 feet registered length or 750 gross registered tons, or produces more than 3,000 shaft horsepower, the replacement vessel must be the same or lesser registered length, gross registered tons, and shaft horsepower. Also vessels greater than these limitations are prohibited from obtaining a fishery endorsement, unless the vessel carried a fisheries endorsement prior to September 25, 1997 or the Council has recommended (and the Secretary of Commerce has approved) a conservation and management measure to allow the vessel to be used in fisheries under its authority. Since the Council has not adopted such a measure for the AFA vessels under the no action alternative, any AFA vessel that does not already have a fishery endorsement, and is greater than 165 feet in length or that exceeds 750 tons, or 3,000 horsepower, could not receive a fishery endorsement under the no action alternative.⁸

Both the LLP and the AFA restrictions were designed to stabilize capacity in fisheries. The MLOA was originally instituted in 1995, under the Council’s groundfish vessel moratorium program. It was an initial step to contain the growth in capacity in the groundfish fisheries⁹, while the Council developed long-term, comprehensive management programs.

Under **Alternative 2 (status quo)**, owners of an AFA catcher processors and catcher vessels are allowed to rebuild or replace their vessel for improved vessel safety and operational efficiencies. The replacement or rebuilt vessel will be eligible in the same manner as the replaced vessel, and subject to the same restrictions as the replaced vessel. There are no size or horsepower limitations for rebuilt or replacement vessels.

The only limitation for AFA replacement and rebuilt vessels relate to their participation in the GOA. Under the status quo alternative, an AFA vessel that is rebuilt or replaced may participate in the BS regardless of whether the vessel length exceeds the MLOA. To participate in the GOA, however, the vessel must have a GOA endorsed LLP license with an MLOA that does not exceed the length of the replacement or rebuilt vessel. Replacement or rebuilt AFA vessels that exceed the MLOA any license assigned to the vessel at the time of replacement or rebuilding, may assign another GOA endorsed LLP license with an MLOA that does not exceed the vessel length to participate in the GOA.

The replacement (or rebuilt) vessel is eligible in the same manner as the replaced (or original) vessel, and subject to the same restrictions as the replaced vessel. Certain limitations applied to transferring of LLP licenses would no longer apply to transfers to an AFA replacement vessel. For example, the limitation on transferring a groundfish LLP once per year would not apply, if the second transfer is to a replacement vessel. In addition, transfers of a LLP from a replaced vessel to a replacement vessel, at the time of the

⁸ The vessel size restriction contained in the original AFA applies to all U.S. fisheries. The AFA does provide authority, however, to regional fishery management councils, to allow for vessels larger than the stated size limits to operate in fisheries under their authority. Size restrictions appear to have been included in the original AFA as a tool to address overcapacity in fisheries. In Alaska, the Council has already removed vessel size restrictions for trawl catcher processors in the Amendment 80 sector and is considering liberalizing the restriction for the BSAI freezer longline sector.

⁹ The Council analysis noted that restricting vessel length is not necessarily a guaranteed way to restrict vessel capacity, but that it was the best regulatory proxy at the time.

replacement, is permitted, regardless of whether the replacement vessel exceeds the MLOA of the LLP license.

Fishing permits and licenses held by the owner of the original or replaced AFA catcher processors and catcher vessels shall be transferred to the rebuilt vessel or replacement vessel. Replacement AFA catcher vessels are prohibited from harvesting fish in any federal fishery outside of the North Pacific, except in the case of the Pacific whiting fishery. Replaced vessels are prohibited from fishing in any fishery (unless that vessel is used to replace another AFA vessel).

Owners of AFA catcher vessels that participate in an inshore cooperative may also remove a vessel from the BS pollock fishery and assign its directed pollock fishing allowance to one or more vessels in its cooperative as selected by the owner. Those vessels selected to receive the directed pollock allowance must remain in the cooperative for a least one year after the catcher vessel is removed from the fishery. The removed vessel is prohibited from fishing in any fishery except as a replacement AFA vessel. For inshore eligible AFA sideboard exempt catcher vessels, the Coast Guard Act makes no provision for the transfer of a sideboard exemption status to another inshore cooperative vessel. Recognizing the absence of direction in the Coast Guard Act on this issue, the Council clarified at the February 2012 meeting that the sideboard exempt status of removed inshore eligible AFA catcher vessels will be extinguished.

In addition to the no action and status quo alternatives, the Council at the February 2012 meeting adopted several options concerning AFA vessels participating in the GOA groundfish fisheries. These options address whether and how replaced or rebuilt AFA vessels may be used in the GOA.

Option 2.1 would prohibit a replacement or rebuilt non-exempt AFA catcher vessel that exceeds the most restrictive MLOA on a GOA LLP license assigned to the vessel at the time of replacement or rebuilding from participating in the GOA groundfish fisheries. Vessels that do not have a GOA endorsed license at the time of the replacement or rebuilding would not be permitted to fish in the GOA fisheries. This option would allow an owner of a non-exempt AFA catcher vessel to assign a GOA endorsed LLP license up to the date of applying to NMFS for replacement or rebuilding, in order to participate in the GOA groundfish fisheries, provided the MLOA on that license is at least as large as the rebuilt or replacement vessel's length.

Option 2.2 is the most restrictive option applicable to non-exempt AFA catcher vessels and the most directly interpretable and predictable. Under it, a replaced or rebuilt non-exempt AFA catcher vessel is prohibited from operating in the GOA if the vessel's LOA exceeds the most restrictive MLOA specified on any GOA LLP license assigned to the AFA vessel at the time the Coast Guard Act was approved (October 15, 2010). LLP licenses endorsed only for the BS are not considered in determining the constraining MLOA. By applying the license on a particular date, this option clearly defines vessels that are and are not eligible to continue in the GOA, if those vessels are replaced. Yet, in considering the effects of the action, it must be noted that vessels that are not replaced or rebuilt are free to enter the GOA fisheries, provided they carry the requisite LLP.

This option, unlike status quo and Option 2.1, specifies the non-exempt AFA catcher vessels that, as of October 15, 2010, can be replaced or rebuilt and are thereafter participate in the GOA groundfish fisheries. In addition, this option specifies constraints on the vessel length for the rebuilt or replacement vessel.

Option 2.3, in contrast to the previous two options and status quo alternative, takes a different approach to limiting AFA replacement or rebuilt vessels operating in the GOA. Under this option, a replacement or rebuilt AFA vessel cannot exceed by more than 10 percent the original registered length (LOA), gross registered tons, or shaft horsepower of the replaced AFA catcher vessel active on October 15, 2010.

Unlike the status quo and Options 2.1 and 2.2, which are based on the MLOA of the LLP, this alternative is a vessel replacement limitation based on the registered length, tons, and horsepower of the existing AFA catcher vessel. The replacement or rebuilt vessel would still require a LLP license with the appropriate GOA endorsement and MLOA.

Under **Option 2.4**, applies specifically to GOA sideboard exempt AFA catcher vessels. Under Option 2.4, an AFA sideboard exempt catcher vessel may not exceed its length overall (LOA) specified on its Federal Fishing Permit (FFP) on the date the Coast Guard Act was approved (i.e., October 15, 2010) and continue to participate in the GOA fisheries.¹⁰ Although this option allows an AFA sideboard exempt catcher vessels participating in the GOA groundfish fisheries to be replaced or rebuilt and continue to participate in the GOA fisheries, it is substantially more restrictive than the status quo. In any case, vessels subject to this provision would be permitted to replace or rebuild the vessel beyond the LOA on the FFP, but would then be prohibited from participating in GOA fisheries.

Finally, concerning the **vessel removal provision**, the Council has clarified that the sideboard exemption status will be extinguished upon removal of an exempt vessel. Specifically, the Coast Guard Act enables an owner of an AFA catcher vessel that delivers to a shoreside processor to remove the vessel from the Bering Sea pollock fishery and assign the vessel's directed pollock fishing allowance to other vessels in the cooperative, but the Coast Guard Act does not address the transfer of GOA sideboard exemption. The Council clarification makes it clear that that GOA sideboard exemption status will be extinguished when an AFA catcher vessel is removed and not replaced. This clarification is included in the status quo alternative.

1.7 Description of Management

1.7.1 License Limitation Program

All of the Federal fisheries in the North Pacific are managed under limited access. Entry to most of those fisheries is limited by the License Limitation Program (LLP). The LLP became effective on January 1, 2000. The program limits the number, size, and specific operation of vessels fishing groundfish and crab in the BSAI and GOA, based on historical participation. Licenses are endorsed for separate management areas (Bering Sea (BS), Aleutian Islands (AI), Western GOA (WGOA), Central GOA (CGOA), and Southeast Outside), and operation type (catcher vessel (CV) or catcher/processor (CP)). Since 2003, BSAI groundfish LLP licenses have also been endorsed for Pacific cod¹¹. Fixed gear vessels $\geq 60'$, participating in the BSAI Pacific cod fishery, must qualify for Pacific cod endorsements, by gear type (longline or pot) and operation type (catcher vessel or catcher/processor).

LLP licenses also specify a maximum length overall (MLOA) for licensed vessels, which constrains the license from being used with a vessel whose LOA exceeds the MLOA listed on the LLP. The MLOA for a qualifying vessel was first calculated as part of the vessel moratorium action that preceded the development of the LLP (NPFMC 1994). The Council's objective with the moratorium was to freeze the number of vessels participating in the groundfish, crab, and halibut fisheries, and control continued growth in fishing capacity while the Council developed a comprehensive long-term management plan for the fisheries under its jurisdiction. At the moratorium's inception, a "twenty percent rule" was adopted for

¹⁰ The vessel length reported on the FFP is supplied by the applicant and is not verified, so vessel lengths for the same vessel can vary from year to year as the FFP application is renewed. Other potential sources of vessel length are those reported the U.S. Coast Guard and Commercial Fisheries Entry Commission (CFEC). The vessel length reported by the U.S. Coast Guard is measured at the water line, whereas the of the CFEC vessel length is also provided by the applicant but does not vary from to year since the application does not need renewing.

¹¹ Similar provisions are now required in the GOA, beginning in 2012.

qualifying vessels less than 125 ft, such that the MLOA was determined to be 1.2 times the LOA, or 125 ft (whichever is less). For vessels with an LOA of greater than 125 ft, the MLOA was calculated as equivalent to the LOA of the qualifying vessel. The twenty percent rule was intended to allow some flexibility for vessels less than 125 ft to accommodate ongoing modifications in operations, while only allowing marginal increases in overall catching capacity and capitalization. The LLP continued the MLOA requirement as a provision of the license. The LLP also established three vessel length classes (less than 60' LOA, greater than or equal to 60' but less than 125' LOA, or greater than 125' LOA), noting that a vessel length upgrade under the 20 percent rule could not exceed the length constraint of their vessel class.

In most of the limited entry fisheries are managed as derby fisheries. Notable exceptions are the BS pollock fisheries, the BSAI non-pollock catcher processor fisheries (known as the Amendment 80 fisheries, and the Central Gulf of Alaska rockfish fisheries, which are all managed with cooperative programs. In the derby fisheries, after the directed fishery opening, managers monitor inseason catches, closing the directed fishery when the harvest reaches directed fishing allowance. Inseason management credits both directed harvest and incidental harvest against the TAC for groundfish species, to ensure that they are not over harvested. NOAA Fisheries allows vessels to retain incidental catch of groundfish species (if the TAC has not be reached) taken in other directed fisheries that are open, up to maximum retainable amount (MRA). If the fishery is closed to directed fishing and the TAC is reached, NOAA Fisheries issues a prohibition on retention for that species and all catch of that species must be discarded. If a fishery is closed to directed fishing for one of these species, the Acceptable Biological Catch (ABC) has been taken, and the harvest is approaching the overfishing level, then NOAA Fisheries could close target fisheries that have the potential to incidentally harvest that species.

The Bering Sea pollock fishery is managed under the cooperative structure defined by the AFA (see section 1.8). The annual BSAI Bering Sea pollock fishery is divided into two seasons: the "A" season, which opens in January and typically ends in April, and the "B" season, which typically runs from July through the end of October. The "A" season fishery has historically focused on roe-bearing females, and is concentrated north and west of Unimak Island and along the 100-meter contour between Unimak and the Pribilof Islands. "A" season pollock also provide other primary products such as surimi and fillet blocks, but yields on these products are slightly lower than in the "B" season, when pollock carry a lower roe content and are thus primarily processed for surimi and fillet blocks. The "B" season fishery takes place west of 170° W.

For the BSAI Pacific cod fishery, it is managed by sector allocations after an allocation to the CDQ program. The trawl sectors are: trawl catcher vessels, Amendment 80 catcher/processors, and AFA catcher/processors. The allocations are set by regulation into three seasons: the "A" season runs from January 20 through April 1; the "B" season from April 1 through June 10; and finally, the "C" season is open June 10 through November. Most of the trawl Pacific cod is targeted in the A and B seasons.

The BSAI Atka mackerel, Pacific ocean perch (POP), and yellowfin sole fisheries are managed under the Amendment 80 program and allocated to the CDQ groups, Amendment 80 catcher/processors, and the BSAI trawl limited access sector. The Atka mackerel fishery is divided equally into two seasons: the "A" season, which opens in January until June 10, and the "B" season, opens June 10 through the end of October. The POP fishery for the BSAI trawl limited access sector has one seasonal allocation of April 15 to December 31. The BSAI rock sole and flathead sole fisheries are managed under the Amendment 80 program and allocated to the CDQ groups and Amendment 80 catcher/processors.

In the GOA, the pollock fishery managed as a limited entry derby fishery. The fishery is divided into four seasons in the Central and Western GOA, beginning January 20 (A season), March 10 (B season), August 25 (C season) and October 1 (D season), with 25 percent of the total TAC allocated to each season. For trawl vessels targeting Pacific cod, there are two seasons: "A" season runs from January 20 through June

10 and the “B” season runs from September 1 through November 1. For the remaining GOA groundfish, halibut PSC limits tend to restrict their harvest. Halibut PSC limits often constrain harvest of groundfish species assigned to the deep- and shallow-water fishery complexes, developed to manage halibut mortality. GOA Halibut PSC apportionments occur during five periods: January 20 – April 1, April 1 – July 5, July 5 – September 1, September 1 – October 1, and October 1 – December 31.

Pacific halibut, Pacific herring, Pacific salmon and steelhead, king crab, and Tanner crab are prohibited species and, as such, must be avoided while fishing for groundfish. Incidental catch of the prohibited species must be returned to the sea with a minimum of injury, except when their retention is authorized by other applicable laws. PSC is apportioned between trawl and non-trawl fisheries and by target fishery and season. The halibut PSC limit for trawl gear is currently 3,675 mt for the BSAI and 2,000 mt for the GOA. In both the BSAI and GOA, halibut PSC limits often prevent the annual quota of many groundfish species (particularly flatfish) from being harvested. The PSC limits for *C. bairdi* and *C. opilio* crab are dependent upon the abundance of these species of crab, while the PSC limit for red king crab is dependent on the abundance and spawning biomass of red king crab. For Chinook salmon in the BSAI pollock fishery, the AFA fleets as a whole can fish under a hard cap of 47,591 fish, or participate in a NMFS-approved incentive program and fish under a higher cap level of 60,000 fish. These cap limits are allocated by season and among sectors. Once a seasonal cap for a sector is reached, pollock fishing in the Bering Sea is closed for the remainder of the season for that sector. Vessels that do not choose to fish under an incentive plan agreement would be limited to a proportion of a lower cap of 28,496 fish.

All vessels participating in the groundfish fisheries are required to retain all catch of pollock and Pacific cod, when directed fishing for these species is open, regardless of gear type employed and target fishery. When directed for one of these species is prohibited, retention of that species is required only up to any maximum retainable amount in effect for that species. No discarding of whole fish of these species is allowed, either prior to or subsequent to that species being brought on board the vessel, except as required in the regulations. At-sea discarding of any processed product from pollock or Pacific cod is also prohibited, unless required by other regulations.

1.8 Description of the American Fisheries Act Sectors

AFA is composed of the AFA catcher vessel sector and AFA catcher processor sector. The following is a description of these sectors.

1.8.1 AFA inshore catcher vessel sector and mothership cooperatives

The AFA trawl catcher vessel sector includes all trawl catcher vessels that are issued an AFA permit making them eligible to participate in the directed BSAI pollock fishery. The catcher vessel sector is composed of catcher vessels that eligible to deliver BS pollock to inshore processors and catcher vessels that are eligible to deliver BS pollock to motherships.

Eligible catcher vessels may deliver BS pollock to seven eligible AFA inshore processors and may form cooperatives associated with a one of the seven inshore processors. These catcher vessels are not required to join a cooperative and those that do not join a cooperative are managed by NMFS under the “inshore open access fishery.” In recent years, all inshore catcher vessels have joined one of seven inshore cooperatives. Annually, NMFS allocates the inshore sector’s allocation of pollock among the inshore cooperatives and, if necessary, the inshore open access fishery. NMFS permits the inshore cooperatives, allocates pollock to them, and manages these allocations through a regulatory prohibition against an inshore cooperative exceeding its pollock allocation.

The inshore catcher vessel cooperatives are required to submit copies of their contracts to NMFS annually. These contracts must contain the information required in NMFS regulations, including information about the cooperative structure, vessels that are parties to the contract, and the primary inshore processor that will receive at least 90 percent of the pollock deliveries from these catcher vessels. Each catcher vessel in a cooperative must have an AFA permit with an inshore endorsement, a license limitation program permit authorizing the vessel to engage in trawl fishing for pollock in the Bering Sea, and no sanctions on the AFA or license limitation program permits. Although the contract requirements are governed by NMFS regulations, compliance with the provisions of the contract (primarily the 90 percent processor delivery requirements) are not enforced by NMFS, but are enforced through the private contractual arrangement of the cooperative.

Mothership eligible catcher vessels have formed a cooperative called the Mothership Fleet Cooperative. Under the AFA, fishery cooperatives are authorized to form in the mothership sector if at least 80 percent of the mothership sector catcher vessels enter into a fishery cooperative. The three motherships also are eligible to join the cooperative and retain a limited anti-trust exemption under the Fisherman's Collective Marketing Act. The three motherships in this sector have not formed a separate cooperative and are not members of the Mothership Fleet Cooperative.

The AFA trawl catcher vessel sector is defined under the AFA, and thus the number of eligible participants has been determined and is fairly constant. These vessels currently operate in a cooperative system established through the AFA for BSAI pollock. A total of 111 catcher vessels and 8 processing plants qualified for the catcher vessel shoreside fleet. In addition, the AFA specifically listed three eligible motherships and 19 catcher vessels eligible to deliver to these motherships. In contrast to the inshore eligible catcher vessels, the AFA requires a "cooperative of the whole" for the mothership eligible catcher vessels. Thirteen of these catcher vessels are 'dual qualified' for both the mothership and inshore fleets. Combining the catcher vessels from each of the two fleets, taking into account 'dual qualified' catcher vessels, there are a total of 117 unique catcher vessels that are issued an AFA permit making them eligible to participate in the directed BSAI pollock fishery.

BSAI and GOA Sideboards

As a part of AFA, the Council developed a variety of sideboards to prevent vessels from increasing their catch in other fisheries. Sideboard limits do not guarantee the sector that is sideboarded any amount of groundfish TAC. If other sectors take the available TAC before the sideboard limit is taken, both the sideboard fishery and the directed fishery will be closed to directed fishing. If the sideboard fleet reaches their sideboard limit before the TAC is taken, the sideboard fishery would be closed to directed fishing, but the remainder of the fleet may continue to fish under the remaining TAC.

NMFS will only open directed fishing for a species when adequate sideboard amounts exist at the start of the fishing year to cover both the bycatch needs of that species in other fisheries and the directed fishery harvests. NMFS will determine the bycatch of each species that is required in all of the catcher processor target fisheries and the catcher vessel target fisheries, and then they will subtract that amount from the available sideboard cap. The remainder is the amount of a species the AFA catcher processors and AFA catcher vessels could use in a directed fishery. If that sideboard amount is too small to manage as a target fishery, NMFS would issue a closure notice at the beginning of the year and directed fishing for that sideboard species would not open.

BSAI Sideboards

AFA catcher vessels operating in the BSAI, sideboard limits for each groundfish species, other than Pacific cod, are based on their retained catch in the target fisheries during the 1995 through 1997 period

relative to TACs available to catcher vessels for that species. For Pacific cod, AFA catcher vessels are split into two categories, those that are subject to the BSAI Pacific cod sideboard limit and those that are exempt. The Council elected to exempt AFA catcher vessels from the Pacific cod sideboards if the vessel's annual BSAI pollock landings averaged less than 1,700 mt from 1995 through 1997 and the vessel made 30 or more landings of BSAI Pacific cod during that time period. The rationale for this exemption was that many of the AFA catcher vessels with relatively low pollock catch history have traditionally targeted BSAI Pacific cod during the winter cod fishery. In addition to the BSAI Pacific cod exemption, AFA catcher vessels with mothership endorsements are exempt from BSAI Pacific cod sideboard limit directed fishing closures after March 1 of each fishing year. Of the 111 AFA catcher vessels, 9 are exempt from BSAI Pacific cod sideboards limits and 19 have mothership endorsements so are exempt after March 1. The remaining 83 AFA catcher vessels are subject to BSAI Pacific cod sideboard limits.

As noted in Table 1-1, harvesting caps were sufficient to open only the Pacific cod trawl fishery to directed fishing in 2011 and catch in those fisheries was significantly lower than the sideboard limit. The remaining sideboard fisheries were closed for directed fishing. As for yellowfin sole, there was no sideboard limit for the 2011 period since the aggregate ITAC was greater than or equal to 125,000 mt. Table 1-2 provides the 2011 BSAI PSC sideboard limits for AFA catcher vessels.

Table 1-1 2011 listed BSAI AFA catcher vessel groundfish sideboard limits (mt)

Target Species	Area/season	2011 ITAC available to trawl C/Vs ¹ (mt)	2011 AFA C/V sideboard limit (mt)	2011 AFA C/V Sideboard usage (mt)
Pacific cod/Jig gear	BSAI	n/a	0	Closed to directed fishing
Pacific cod/Hook-and-line CV	BSAI Jan 1 -Jun 10	207	0	Closed to directed fishing
	BSAI Jun 10-Dec 31	199	0	Closed to directed fishing
Pacific cod/pot gear CV	BSAI Jan 1 -Jun 10	8,685	5	Closed to directed fishing
	BSAI Jun 10-Dec 31	8,345	5	Closed to directed fishing
Pacific cod CV<60 LOA using hook and line or pot gear	BSAI	4,055	2	Closed to directed fishing
Pacific cod trawl gear CV	BSAI Jan 20-Apr 1	33,290	28,659	16,472
	BSAI Apr 1-Jun 10	4,949	4,261	863
	BSAI Jun 10-Nov 1	6,748	5,809	1,732
Sablefish trawl gear	BS	1,211	110	Closed to directed fishing
	AI	404	26	Closed to directed fishing
Atka mackerel	Eastern AI/BS Jan 1-June 10	17,994	58	Closed to directed fishing
	Eastern AI/BS Jun 10-Nov 1	17,994	58	Closed to directed fishing
	Central AI/BS Jan 1-June 10	5,037	1	Closed to directed fishing
	Central AI/BS Jun 10-Nov 1	5,037	1	Closed to directed fishing
	Western AI Jan 1-June 10	n/a	0	Closed to directed fishing
	Western AI/BS Jun 10-Nov 1	n/a	0	Closed to directed fishing
Rock Sole	BSAI	75,905	2,588	Closed to directed fishing
Greenland turbot	BS	2,975	192	Closed to directed fishing
	AI	1,318	27	Closed to directed fishing
Arrowtooth flounder	BSAI	22,015	1,519	Closed to directed fishing
Kamchatka flounder	BSAI	15,045	1,038	Closed to directed fishing
Alaska plaice	BSAI	13,600	600	Closed to directed fishing
Other flatfish	BSAI	2,550	112	Closed to directed fishing
Flathead sole	BS	37,102	1,874	Closed to directed fishing
Pacific ocean perch	BS	4,854	485	Closed to directed fishing
	Eastern AI	5,054	39	Closed to directed fishing
	Central AI	4,429	11	Closed to directed fishing
	Western AI	n/a	0	Closed to directed fishing
Northern rockfish	BSAI	4,000	34	Closed to directed fishing
Shortraker rockfish	BSAI	393	1	Closed to directed fishing
Rougheye rockfish	EBS/EAI	234	1	Closed to directed fishing
	CAI/WAI	220	1	Closed to directed fishing
Other rockfish	BS	500	2	Closed to directed fishing
	AI	425	5	Closed to directed fishing
Squids	BSAI	361	138	Closed to directed fishing
Skates	BSAI	14,025	759	Closed to directed fishing
Sharks	BSAI	43	2	Closed to directed fishing
Octopuses	BSAI	128	7	Closed to directed fishing
Sculpins	BSAI	4,420	239	Closed to directed fishing

¹Aleutian Islands Pacific ocean perch, and BSAI Atka mackerel, flathead sole, rock sole, yellow fin sole are multiplied by the remainder of the TAC after t

Note: AFA catcher vessels are not subject to a sideboard limit for yellow fin sole in the BSAI during the year if the aggregate ITAC of yellow fin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than or equal to 125,000 mt.

Table 1-2 2011 AFA Catcher vessel prohibited species catch sideboard limits for the BSAI¹

PSC species	Target fishery category ²	2011 PSC limit after subtraction of PSQ reserves	2011 AFA Catcher vessel PSC sideboard limit
Halibut	Pacific cod trawl	n/a	887
	Pacific cod hook-and-line or pot	n/a	2
	Yellowfin sole total	n/a	101
	Rock sole/flathead sole/other flatfish ³	n/a	228
	Greenland turbot/turbot/arrowtooth/sablefish ⁴	n/a	0
	Rockfish	n/a	2
	Pollock/Atka mackerel/other species ⁵	n/a	5
Red king crab Zone 1 ^{4 6}	N/A	175,921	52,600
<i>C. opilio</i> COBLZ ^{4 6}	n/a	7,421,259	1,246,771
<i>C. bairdi</i> Zone 1 ^{4 6}	n/a	741,190	244,593
<i>C. bairdi</i> Zone 2 ⁶	n/a	2,250,360	418,567

¹ Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
² Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
³ "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellow fin sole, Kamchatka flounder, and arrow tooth flounder
⁴ Arrow tooth flounder for PSC monitoring includes Kamchatka flounder
⁵ "Other species" for PSC monitoring includes sculpins, skarks, skates, and octopuses.
⁶ Refer to § 679.2 for definitions of areas.

GOA Sideboards

In the GOA, AFA catcher vessels are divided into two categories, those vessels subject to sideboard limits and those vessels exempt from sideboard limits. Similar to the BSAI, the Council provided an exemption for AFA catcher vessels that have demonstrated dependence on GOA fisheries, while having limited history in the BSAI pollock fishery. To qualify as an exempt AFA catcher vessel, the vessel must 1) be less than 125 feet length overall, 2) have landings of pollock in the BSAI of less than 5,100 [or 1,700 metric tons, annually] from 1995 through 1997, and 3) made at least 40 landings of GOA groundfish from 1995 through 1997. Of the 111 AFA catcher vessels, 17 are exempt from GOA sideboards limit. Although not incorporated in regulation, the Council recommended and approved the exemption with the understanding that no GOA sideboard exempt vessel would lease its BS pollock in a year that it exceeds its GOA average harvest level from 1995 through 1997. To ensure that Council's intent is satisfied, the Catcher Vessel Inter-cooperative Agreement binds vessels to this limitation.

The remaining 94 AFA catcher vessels are subject to the GOA sideboard limits, which are calculated based on the catch histories of these non-exempt vessels. Specifically, the sideboard ratio is aggregate retained catch for each groundfish species or species group during 1995 through 1995 period relative to the sum of the TACs for the species or species group. An inter-cooperative agreement divides the sideboard limit among the cooperatives and set penalties for exceeding the limits. Table 1-3 provides the GOA sideboard limits and usage for the non-exempt AFA catcher vessels for the 2011 fishing year.

Sideboard limits were also developed for halibut PSC in the GOA. The sideboard limit is calculated based on the retained groundfish catch by non-exempt AFA catcher vessels in the shallow-water and deep-water complex from 1995 through 1997 relative to total retained catch in the shallow-water and deep-water complex (Table 1-4). Under these sideboard limits, fisheries in the applicable complex are closed for the remainder of a season, once NOAA Fisheries determines that the sideboard will be reached. Any unused halibut PSC sideboard limit in one season may be rolled to the next season. In addition, because a substantial number of AFA vessels receive allocations under the rockfish program (and an associated halibut PSC allowance), the limited access deep-water complex fisheries are closed to AFA vessels in the third season.

Table 1-3 2011 listed GOA AFA catcher vessel groundfish sideboard limits (mt)

Species	Apportions by season	Area/component	Ratio of 1995-1997	Final 2011 TACs	Final 2011 non-exempt AFA CV sideboard limit (mt)	2011 AFA CV sideboard usage (mt)	
			non-exempt AFA CV catch to 1995-1997 TAC				
Pollock	A Season Jan 20 - Mar 10	Shumagin (610)	0.6047	4,787	2,895	79	
		Chirikof (620)	0.1167	11,896	1,388	390	
		Kodiak (630)	0.2028	4,475	908	0	
	B Season Mar 10 - May 31	Shumagin (610)	0.6047	4,787	2,895	0	
		Chirikof (620)	0.1167	14,232	1,661	786	
		Kodiak (630)	0.2028	2,139	434	5	
	C Season Aug 25 - Oct 1	Shumagin (610)	0.6047	8,729	5,278	1282	
		Chirikof (620)	0.1167	5,618	656	274	
		Kodiak (630)	0.2028	6,811	1,381	488	
	D Season Oct 1 - Nov 1	Shumagin (610)	0.6047	8,729	5,278	188	
		Chirikof (620)	0.1167	5,618	656	402	
		Kodiak (630)	0.2028	6,811	1,381	402	
Annual	WYK (640)	0.3495	2,239	783	129		
	SEO (650)	0.3495	9,245	3,231	0		
Pacific cod	A season Jan 10 - Jun 10	W inshore	0.1365	12,303	1,679	484	
		W offshore	0.1026	1,367	140	0	
		C inshore	0.0689	21,795	1,502	349	
		C offshore	0.0721	2,422	175	0	
	B Season Sept 1 - Dec 31	W inshore	0.1365	8,202	1,120	17	
		W offshore	0.1026	911	93	0	
		C inshore	0.0689	14,530	1,001	435	
		C offshore	0.0721	1,614	116	0	
	Annual	E inshore	0.0079	1,758	14	Closed to directed fishing	
		E offshore	0.0078	195	2	Closed to directed fishing	
	Sablefish	Annual, trawl gear	W	0	334	0	Closed to directed fishing
			C	0.0642	948	61	Closed to directed fishing
E			0.0433	247	11	Closed to directed fishing	
Flatfish shallow-water	Annual	W	0.0156	4,500	70	5	
		C	0.0587	13,000	763	82	
		E	0.0126	1,228	15	Closed to directed fishing	
Flatfish deep-water	Annual	W	0	529	0	Closed to directed fishing	
		C	0.0647	2,919	189	13	
		E	0.0128	2,083	27	0	
Rex sole	Annual	W	0.0007	1,517	1	Closed to directed fishing	
		C	0.0384	6,294	242	87	
		E	0.0029	868	3	Closed to directed fishing	
Arrowtooth flounder	Annual	W	0.0021	8,000	17	Closed to directed fishing	
		C	0.028	30,000	840	676	
		E	0.0002	2,500	1	Closed to directed fishing	
Flathead sole	Annual	W	0.0036	2,000	7	Closed to directed fishing	
		C	0.0213	5,000	107	63	
		E	0.0009	2,064	2	Closed to directed fishing	
Pacific ocean perch	Annual	W	0.0023	2,798	6	Closed to directed fishing	
		C	0.0748	10,379	776	429	
		E	0.0466	1,937	90	0	
Northern rockfish	Annual	W	0.0003	2,573	1	Closed to directed fishing	
		C	0.0277	2,281	63	53	
		E	0	134	0	Closed to directed fishing	
Shortraker rockfish	Annual	C	0.0218	325	7	Closed to directed fishing	
		E	0.011	455	5	Closed to directed fishing	
		W	0.0034	212	1	Closed to directed fishing	
Other rockfish	Annual	C	0.01699	507	9	Closed to directed fishing	
		E	0	276	0	Closed to directed fishing	
		W	0.0001	611	0	Closed to directed fishing	
Pelagic shelf rockfish	Annual	C	0	3,052	0	Closed to directed fishing	
		E	0.0067	407	3	Closed to directed fishing	
		W	0	81	0	Closed to directed fishing	
Rougheye rockfish	Annual	C	0.0237	868	21	Closed to directed fishing	
		E	0.0124	363	5	Closed to directed fishing	
		SEO	0.002	300	1	Closed to directed fishing	
Demersal shelf rockfish	Annual	W	0.028	425	12	Closed to directed fishing	
		C	0.028	637	18	Closed to directed fishing	
		E	0.028	708	20	Closed to directed fishing	
Atka mackerel	Annual	Gulfw ide	0.0309	2,000	62	Closed to directed fishing	
		W	0.0063	598	4	Closed to directed fishing	
		C	0.0063	2,049	13	Closed to directed fishing	
Big skates	Annual	E	0.0063	681	4	Closed to directed fishing	
		W	0.0063	81	1	Closed to directed fishing	
		C	0.0063	2,009	13	Closed to directed fishing	
Longnose skates	Annual	E	0.0063	762	5	Closed to directed fishing	
		Gulfw ide	0.0063	2,093	13	Closed to directed fishing	
		Other skates	Annual	Gulfw ide	0.0063	1,148	7
Squids	Annual	Gulfw ide	0.0063	6,197	39	Closed to directed fishing	
Sharks	Annual	Gulfw ide	0.0063	954	6	Closed to directed fishing	
Octopuses	Annual	Gulfw ide	0.0063	5,496	35	Closed to directed fishing	
Sculpins	Annual	Gulfw ide	0.0063				

¹ The Pacific cod A season for trawl gear does not open until Jan 20.

² The Pacific cod B season for trawl gear closes Nov 1.

Table 1-4 AFA catcher vessel halibut PSC sideboard limits

Trawl Season	Halibut PSC complex	Ratio of 1995-1997 retained catch in the PSC target category relative to total retained catch in target category	2011 halibut PSC (mt)	2011 total halibut PSC sideboard limit (mt)	2011 halibut PSC sideboard usage (mt)
First seasonal allowance (Jan 20 - Apr 1)	Shallow-water	0.34	450	153	16
	Deep-water	0.07	100	7	0
Second seasonal allowance (Apr 1 - Jul 1)	Shallow-water	0.34	100	34	1
	Deep-water	0.07	300	21	11
Third seasonal allowance (Jul 1 - Sep 1)	Shallow-water	0.34	200	68	0
	Deep-water	0.07	400	28	0
Fourth seasonal allowance (Sep 1 - Oct 1)	Shallow-water	0.34	150	51	0
	Deep-water	0.7	0	0	17
Fifth seasonal allowance (Oct 1 - Dec 31)	All targets	0.205	300	62	7

AFA sideboard exempt catcher vessels that participate in the Central GOA Rockfish Program are restricted by Central GOA Rockfish Program sideboard limits. Originally implemented in 2006, the Central GOA Rockfish Program includes a suite of GOA groundfish sideboard limits for catcher vessels. These sideboard limits are in effect only during the month of July. They are designed to restrict fishing during the historical month of the rockfish fishery, but allow eligible rockfish harvesters to participate in fisheries before and after that time period. Sideboard limits apply to harvest in other GOA rockfish fisheries (pelagic shelf rockfish, Pacific ocean perch, and northern rockfish) fisheries and halibut PSC (which limits participation in GOA flatfish fisheries). In 2011, 13 AFA catcher vessels participated in the Central GOA Rockfish Program, of which 11 were limited by the Central GOA Rockfish Program sideboards, and two were not limited by Rockfish Program sideboards.

In addition to the AFA sideboards in the GOA, there are stand down requirements for trawl catcher vessels that fish in both the BSAI and GOA (§ 679.23(h)) that impact AFA catcher vessels. These measures were implemented in 1998, and are intended to prevent unexpected shifts of fishing effort between BSAI and GOA fisheries that can lead to overharvests of total allowable catch in the Western and Central regulatory areas of the GOA. There are three standdown requirements:

- (1) Trawl catcher vessels operating in the BSAI while the pollock or Pacific cod fisheries are open for directed fishing are prohibited from deploying trawl gear in the Western and Central GOA for three days after landing or transferring all BSAI groundfish. An exception applies to trawl catcher vessels that participate in the directed Pacific cod fisheries in the GOA and deliver to processors operating in the offshore sector.
- (2) Trawl catcher vessels operating in the Western GOA area while pollock or inshore Pacific cod are open for directed fishing are restricted from using trawl gear in the BSAI for three days after landing or transferring all Western GOA groundfish.
- (3) Trawl catcher vessels operating in the Central GOA area will pollock or inshore Pacific cod are open to directed fishing are restricted from using trawl gear in the BSAI for two days after landing or transferring all Central GOA groundfish.

In addition to standdown requirements, there is exclusive fishing seasons for trawl catcher vessels that participate in the directed pollock fisheries in both the BSAI and GOA that impact AFA catcher vessels. These measures were implemented by emergency interim rule on January 25, 2000 (65 FR 3892) to address competitive interactions between the groundfish fisheries and Steller sea lions. As shown in Table 1-5, catcher vessels fishing in one season in the GOA or BSAI are prohibited from fishing in the alternative management area until the following season. This prohibition limits the concentration of

fishing effort in one area and reduces the potential for localized depletion of Steller sea lion prey. Vessels less than 125 ft. LOA are exempt from this restriction when fishing east of 157° 00' W longitude.

Table 1-5 Exclusive fishing seasons for trawl catcher vessels operating in the BSAI and GOA directed pollock fisheries

If you own or operate a catcher vessel and engage in directed fishing for pollock in the...	During the...	Then you are prohibited from subsequently engaging in directed fishing for pollock with that catcher vessel in the...
BSAI	A season	GOA until the following C season
	B season	GOA until the A season of the next year
GOA	A season	BSAI until the following B season
	B season	BSAI until the following B season
	C season	BSAI until the A season of the following year
	D season	BSAI of the A season the following year

Finally, AFA catcher vessels are subject to trip limits for pollock that were implemented as part of the package of Steller sea lion mitigation measures adopted in 1999 (64 FR 3441). Catcher vessels are prohibited from retaining on board more than 300,000 lbs. (136 mt) of unprocessed pollock harvested in the GOA at any time during a trip (§ 679.7(b)(2)). This trip limit does not exempt vessels from regulations that require 100 percent retention of pollock when directed fishing for pollock is open. In addition, vessels in the GOA pollock fisheries are limited to landing no more than 300,000 lbs. through any delivery means, during a calendar day. A calendar day is defined as 12 AM to 12 AM (or 0001 hrs. to 2400 hrs.). The cumulative amount of pollock harvest from any GOA reporting area by an individual trawl catcher vessel is 300,000 lbs. times the number of calendar days the fishery is open in the respective reporting area. Finally, trawl catcher vessels are prohibited from operating as pollock tenders and retaining on board more than 600,000 lbs. (272 mt) of unprocessed pollock in the GOA east of 157° 00' W longitude (§679.7(b)(3)). This regulation is intended to preclude the large scale use of tender vessels to circumvent the trip limit restriction. Tendering west of 157° 00' W longitude is allowed because smaller vessels delivering to Sand Point and King Cove are more dependent to tenders than the larger vessels that operate east of 157° 00' W longitude and deliver primarily to Kodiak.

AFA Catcher Vessel Participation and Catch

In 2011, 92 AFA trawl catcher vessels made at least one delivery of groundfish (Table 1-6). Over the years, the number of active vessels in this sector has declined as a result of the removal of less efficient vessels. In general, the vessels in this sector were built in 1970 and 1980 (Table 1-7). Some of the oldest AFA catcher vessels are active in the GOA groundfish fisheries and are exemption from AFA GOA groundfish sideboard limits. AFA catcher vessels range in length from 73 feet to 189 feet. Of the 92 active vessels, 28 vessels are less than 100 feet in length, 15 vessels are between 100 feet and 120 feet in length, 24 vessels are between 120 feet and 129 feet, and the remaining 25 vessels are greater than 129 feet. Of the 92 active catcher vessels in 2011, 57 vessels have a BSAI only endorsement, while 35 vessels also have GOA endorsements.

Table 1-6 Number of AFA catcher vessels (inshore and mothership eligible) active in 2011 by vessel length with sideboard exempts and GOA area endorsements

Vessel length (feet)	Number of active AFA eligible CVs	Number of active AFA eligible CVs with GOA sideboard exemption	Number of active AFA eligible CVs with BSAI Pcod exemption	Number of active AFA eligible CVs with CGOA endorsement	Number of active AFA eligible CVs with WGOA endorsement
<100	28	14	9	19	12
100-109	8	1	0	3	2
110-119	7	0	0	2	1
120-129	24	0	0	4	5
130-139	6	0	0	1	0
140-149	5	0	0	0	0
150-159	3	0	0	0	0
160-169	4	0	0	1	0
170-179	3	0	0	0	0
180-189	4	0	0	0	0
Total	92	15	9	30	20

Source: RAMLLP file, AK Vessel file, AK Region Sources, and Blend data

Table 1-7 Number of AFA catcher vessels (inshore and mothership) active in 2011 by year vessel was built

Year vessel was built	Number of active AFA eligible CVs	Number of active AFA eligible CVs with GOA sideboard exemption	Number of active AFA eligible CVs with BSAI Pcod exemption	Number of active AFA eligible CVs with CGOA endorsement	Number of active AFA eligible CVs with WGOA endorsement
1949	1	1	0	1	1
1966	1	1	1	1	1
1967	1	0	0	0	0
1968	1	1	1	1	1
1969	3	1	0	2	2
1970	1	1	0	1	1
1971	1	0	1	0	0
1972	1	0	0	0	0
1973	3	0	1	0	0
1974	8	0	0	0	0
1975	3	0	0	0	1
1976	2	1	0	1	1
1977	4	2	0	2	2
1978	10	4	1	3	5
1979	20	1	0	3	6
1980	8	0	0	2	2
1981	5	1	0	1	1
1982	3	1	1	0	2
1983	2	0	0	0	0
1984	2	0	0	0	0
1986	1	0	0	0	0
1987	3	0	1	1	1
1988	4	0	1	0	2
1990	2	0	0	1	1
1991	2	0	1	0	0
Total	92	15	9	30	20

Source: RAMLLP file, AK Vessel file, AK Region Sources, and Blend data

AFA catcher vessels target primarily pollock in the BS. Several vessels also participate in other groundfish fisheries to the extent they are authorized to do so under the AFA provisions and sideboards. Table 1-8 provides the number of AFA catcher vessels with retained catch amongst the different BSAI groundfish species, and Table 1-9 shows the associated retained catch for those BSAI groundfish species. As indicated in the tables, nearly all the active AFA catcher vessels retained pollock, Pacific cod, and flatfish. However, as shown in Table 1-9, most of the AFA catcher vessels focus on the pollock fishery.

For example, in 2011, AFA catcher vessels retained 626,703 mt of pollock, while the next highest retained species, Pacific cod, came in at 30,359 mt. As for the other groundfish species in the BSAI, retained catch was significantly less than pollock and even Pacific cod.

Table 1-8 Number of AFA catcher vessels operating in the BSAI with retained catch by species from 2003 through 2011

Year	Pollock	Pacific cod	Atka mackeral	Flatfish	Rockfish	Sablefish
2003	96	97	70	92	81	57
2004	97	96	75	92	78	36
2005	96	96	73	94	73	48
2006	93	93	78	91	75	48
2007	93	94	75	90	79	52
2008	92	93	70	91	72	21
2009	93	94	66	88	74	12
2010	91	91	63	90	68	9
2011	92	92	82	91	86	14

Source: RAM LLP file, AK Vessel file, AK Region Sources, and Blend data

Table 1-9 Retained catch (mt) by AFA catcher vessels by BSAI species from 2003 through 2011

Year	Pollock	Pacific cod	Atka mackeral	Flatfish	Rockfish	Sablefish
2003	763,500	34,850	423	1,452	160	9
2004	771,224	35,916	722	1,409	323	14
2005	783,815	32,936	536	1,790	385	9
2006	785,638	33,095	555	3,384	510	5
2007	705,004	29,437	179	4,439	235	4
2008	514,178	26,955	16	3,607	190	2
2009	426,887	23,992	24	7,345	104	1
2010	421,515	23,099	54	3,137	129	1
2011	626,703	30,359	935	4,029	194	0

Source: RAM LLP file, AK Vessel file, AK Region Sources, and Blend data

Table 1-10, Table 1-11, Table 1-12, and Table 1-13 show vessel count and catch in the GOA groundfish fisheries. Of the many groundfish species in the GOA that are retained by AFA catcher vessels operating in the GOA, Pacific and pollock in the Central GOA are the primary fisheries. In 2011, 20 AFA catcher vessels retained 25,030 mt pollock and 21 AFA catcher vessels retained 30,359 mt of Pacific cod. In that year, AFA catcher vessels were also active in the flatfish fisheries with a retained catch of 4,029 mt by 21 vessels and in the rockfish fisheries with retained catch 194 mt by 19 vessels. In the Western GOA, fishing activity by AFA catcher vessels is significantly less than the Central GOA. For example, in 2011, only two AFA catcher vessels participated in the Western GOA groundfish fisheries. Since 2003, only eight AFA catcher vessels have been active in the Western GOA in the same year. Similar to the Central GOA, pollock and Pacific cod were the primary species for these vessels in the Western GOA.

Table 1-10 Number of AFA catcher vessels operating in the Central GOA with retained catch by species from 2003 through 2011

Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
2003	23	19	5	23	21	16
2004	23	22	5	23	18	17
2005	21	20	6	20	21	17
2006	20	20	7	20	20	19
2007	20	18	11	19	19	15
2008	21	19	8	19	19	16
2009	20	20	10	20	18	15
2010	19	19	13	19	18	16
2011	20	21	10	21	19	13

Source: RAM LLP file, AK Vessel file, AK Region Sources, and Blend data

Table 1-11 Retained catch (mt) by AFA catcher vessels by Central GOA species from 2003 through 2011

Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
2003	14,574	34,850	423	1,452	160	9
2004	16,286	35,916	722	1,409	323	14
2005	17,885	32,936	536	1,790	385	9
2006	19,224	33,095	555	3,384	510	5
2007	17,645	29,437	179	4,439	235	4
2008	17,917	26,955	16	3,607	190	2
2009	9,776	23,992	24	7,345	104	1
2010	21,953	23,099	54	3,137	129	1
2011	25,030	30,359	935	4,029	194	0

Source: RAM LLP file, AK Vessel file, AK Region Sources, and Blend data

Table 1-12 Number of AFA catcher vessels operating in the Western GOA with retained catch by species from 2003 through 2011

Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
2003	7	8	2	7	6	0
2004	7	7	3	5	2	0
2005	8	8	2	6	5	0
2006	6	6	3	6	4	2
2007	7	6	2	6	4	1
2008	3	3	2	3	3	1
2009	4	4	1	4	1	1
2010	5	5	3	5	3	2
2011	2	2	2	2	2	1

Source: RAM LLP file, AK Vessel file, AK Region Sources, and Blend data

Table 1-13 Retained catch (mt) by AFA catcher vessels by Western GOA species from 2003 through 2011

Year	Pollock	Pacific cod	Atka mackeral	Flatfish	Rockfish	Sablefish
2003	3,936	172	*	15	9	
2004	5,618	88	0	8	*	
2005	6,426	358	*	26	1	
2006	5,551	20	8	64	12	*
2007	1,933	171	*	8	8	*
2008	610	10	*	23	1	*
2009	929	17	*	20	*	*
2010	3,887	337	0	302	0	*
2011	*	*	*	48	*	*

Source: RAM LLP file, AK Vessel file, AK Region Sources, and Blend data

* Withheld for confidentiality

Table 1-14 provides PSC for crab, halibut, and salmon in the BSAI, Central GOA, and Western GOA for the AFA catcher vessels from 2003 through 2011. Note, PSC of Chinook salmon and chum salmon has been a major issue for the sector, and numerous regulations and voluntary measures have been implemented over the years to minimize salmon PSC in pollock fisheries.

Table 1-14 AFA catcher vessel crab, halibut, and salmon PSC in the BSAI, Central GOA, and Western GOA from 2003 through 2011

Year	BSAI			Central GOA			Western GOA		
	Crab ¹	Halibut ²	Salmon ³	Crab ¹	Halibut ²	Salmon ³	Crab ¹	Halibut ²	Salmon ³
2003	829,761	642	182,635	237,453	315	5,506	628	5	780
2004	981,199	415	389,595	137,147	479	5,610	1,608	3	535
2005	616,420	611	681,773	18,958	422	10,842	250	2	1,125
2006	484,362	589	353,930	38,604	437	6,571	*	0	1,730
2007	358,663	523	151,410	54,633	352	6,852	125	2	481
2008	113,811	365	30,706	22,297	468	6,288	*	0	55
2009	85,098	307	51,224	25,762	382	2,872	*	0	87
2010	44,948	312	17,657	24,692	363	7,927	70	1	3,359
2011	260,244	291	164,695	27,450	516	6,381	*	*	*

* Withheld for confidentiality

¹Number of animals

²Metric tons

³Number of animals

For the sector's primary target, BS pollock, the estimated gross exvessel value in 2011 was \$168.8 million (Table 1-15). This was a decrease of \$23.1 million from 2010, and below the five year high in 2008 of \$220.8 million. The gross exvessel value of the BSAI Pacific cod fishery in 2011 was \$15.8 million. In the Central GOA, the estimated gross exvessel value for pollock in 2011 was \$8.4 million, while exvessel value for the Pacific cod fishery \$3.7 million (Table 1-16). In the Western GOA, the gross exvessel value for the 2011 pollock fishery was confidential, but the 2010 exvessel value was \$1.3 million (Table 1-17).

AFA catcher vessels deliver whole fish to the processing plants, who then convert the landings to a range of product that typically includes fillets, surimi, roe, minced fish, and fish meal. The sector delivered 90% of its primary target to Dutch Harbor and Akutan. These vessels delivering to the inshore sector have traditionally fished the area north of Unimak Island during the A-season, venturing further north along the shelf break during the B-season.

Table 1-15 Exvessel revenue by species in the BSAI for the AFA catcher vessels from 2003 through 2011 (\$thousand)

Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
2003	176,248	21,952	15	46	6	33
2004	171,102	16,977	26	162	9	213
2005	207,309	16,410	23	96	29	111
2006	213,428	25,211	22	158	58	379
2007	192,643	26,024	6	267	44	405
2008	220,813	30,967	0	122	19	575
2009	168,448	11,234	1	214	4	208
2010	145,762	10,827	2	108	4	0
2011	168,825	15,882	85	185	17	0

Source: ADF&G Fish tickets

Table 1-16 Exvessel revenue by species in the Central GOA for the AFA catcher vessels from 2003 through 2011 (\$thousand)

Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
2003	2,977	3,455	0	262	521	835
2004	3,813	2,884	0	207	491	643
2005	5,333	2,048	0	574	711	611
2006	5,760	1,912	1	1,561	1,096	679
2007	4,260	1,748	0	1,474	1,555	981
2008	6,584	4,344	0	1,995	1,482	970
2009	3,528	1,557	0	1,426	639	955
2010	8,493	3,363	0	1,018	1,158	1,309
2011	8,406	3,681	0	1,412	1,261	1,979

Source: ADF&G Fish tickets

Table 1-17 Exvessel revenue by species in the Western GOA for the AFA catcher vessels from 2003 through 2011 (\$thousand)

Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
2003	1,036	77	*	1	0	
2004	1,224	21	0	0	*	
2005	1,685	244	*	1	0	
2006	1,533	51	0	2	1	*
2007	518	172	*	0	1	*
2008	221	4	*	2	0	*
2009	364	1	*	1	*	*
2010	1,292	107	0	15	0	*
2011	*	*	*	*	*	*

Source: ADF&G Fish tickets
* Withheld for confidentiality

The next set of tables provide vessel activity and retained catch of BSAI and GOA groundfish for GOA active AFA sideboard exempt catcher vessels and AFA non-exempt catcher vessels. Table 1-18 and Table 1-19 provide vessel activity and catch in the BSAI for this group of vessels. In 2011, 15 AFA sideboard exempt catcher vessels and 20 GOA active non-exempt sideboard catcher vessels were active in the BSAI pollock and Pacific cod fisheries. The sideboard exempt AFA catcher vessels retained 22,523 metric tons of BSAI pollock and 1,738 metric tons of BSAI Pacific cod, while the GOA active non-exempt AFA catcher vessels reported 114,658 metric tons of BSAI pollock and 12,428 metric tons of BSAI Pacific cod.

Table 1-18 Count of sideboard exempt and non-exempt AFA GOA endorsed catcher vessels active in the BSAI by species from 2003 through 2011

AFA CV type	Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish	Other
Sideboard exempt	2003	14	14	9	11	11	8	11
	2004	14	14	8	11	9	5	9
	2005	14	14	11	14	9	3	14
	2006	11	11	8	11	10	1	11
	2007	12	12	10	12	9	4	12
	2008	12	12	9	12	11	1	12
	2009	13	13	9	13	10	0	13
	2010	14	14	8	13	8	0	13
Non-exempt vessels	2003	21	22	17	20	15	15	18
	2004	21	21	20	21	18	7	20
	2005	22	22	18	21	14	11	21
	2006	22	22	19	20	17	12	18
	2007	21	22	18	20	18	16	18
	2008	21	22	13	21	14	4	19
	2009	21	22	14	20	16	2	18
	2010	21	21	14	21	17	3	17
2011	20	20	15	20	18	5	20	

Source: RAMLLP file, AK vessel fine, AK Region Sources, and Blend data

Table 1-19 Catch (mt) of sideboard exempt and non-exempt AFA GOA endorsed catcher vessels in the BSAI by species from 2003 through 2011

AFA CV type	Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish	Other
Sideboard exempt	2003	31,267	1,305	8	23	5	0	25
	2004	28,625	520	34	29	126	6	4
	2005	26,344	766	34	41	9	*	8
	2006	16,129	640	28	42	3	*	16
	2007	22,725	1,153	1	342	3	0	12
	2008	15,424	1,280	2	38	4	*	9
	2009	14,965	804	1	250	4	0	42
	2010	13,578	1,087	3	125	13	0	53
Non-exempt vessels	2003	109,167	16,014	118	173	54	2	139
	2004	118,760	17,194	84	190	27	1	71
	2005	131,584	14,784	96	236	81	3	122
	2006	131,329	15,215	82	526	120	2	123
	2007	121,893	13,713	29	754	60	1	129
	2008	83,151	11,869	4	658	51	0	348
	2009	70,576	12,792	5	1,206	44	*	160
	2010	73,674	9,496	39	535	42	*	162
2011	114,658	12,428	197	782	54	0	92	

Source: RAMLLP file, AK vessel fine, AK Region Sources, and Blend data

*Withheld for confidentiality

In the Central GOA, the pollock fishery was also the primary fishery with 14 GOA sideboard exempt vessels retaining 22,312 metric tons in 2011 (Table 1-20 and Table 1-21). However, in the GOA unlike the BSAI, these GOA sideboard exempt vessels are much more active in other fisheries like Pacific cod, flatfish and rockfish fisheries. For example, 15 GOA sideboard exempt vessels retained 4,583 metric tons of Pacific cod and 5,917 metric tons of flatfish, while 14 vessels retained 3,318 metric tons of rockfish.

As for the Western GOA, very few GOA sideboard exempt vessels participate in this areas groundfish fisheries. For example, only two GOA sideboard exempt vessels participated in the pollock fishery, the Pacific cod fishery, and the flatfish fishery in 2011. Due to the limited number of GOA sideboard vessels participating in the Western GOA groundfish fisheries, all of the retained catch data is confidential, so the data is not provided in the analysis.

Table 1-20 Number of AFA catcher vessels that are exempt from GOA sideboards active in the Central GOA by species from 2003 through 2011

Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
2003	15	14	5	15	15	12
2004	15	15	5	15	13	13
2005	15	15	6	15	15	15
2006	14	14	7	14	14	14
2007	14	14	10	14	14	13
2008	14	14	6	14	14	13
2009	14	14	8	14	13	13
2010	14	14	12	14	14	14
2011	14	15	9	15	14	11

Source: RAM LLP file, AK Vessel file, AK Region Sources, and Blend data

Table 1-21 Retained catch (mt) for AFA catcher vessels that are exempt from GOA groundfish sideboard limit by Central GOA species from 2003 through 2011

Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
2003	12,294	4,767	4	1,547	3,463	201
2004	14,198	4,896	1	1,709	3,156	181
2005	15,792	3,115	1	3,230	2,809	170
2006	16,744	1,977	14	5,882	2,702	148
2007	14,736	1,548	4	4,636	3,716	218
2008	15,339	3,627	0	7,376	3,298	182
2009	8,782	2,323	2	5,181	3,045	171
2010	18,584	5,830	1	4,377	3,760	175
2011	22,312	4,583	1	5,917	3,318	191

Source: RAM LLP file, AK Vessel file, AK Region Sources, and Blend data

Table 1-22 Number of AFA catcher vessels that are exempt from GOA sideboards active in the Western GOA by species from 2003 through 2011

Year	Pollock	Pacific cod	Flatfish	Rockfish
2003	1	1	1	1
2004	1	1	1	0
2005	1	1	1	1
2006	2	2	2	1
2007	2	2	2	1

Source: RAM LLP file, AK Vessel file, AK Region Sources, and Blend data

The final set of tables provides gross exvessel value of the 2011 BSAI and Central GOA catch for the AFA GOA sideboard exempt vessels (Table 1-23 and Table 1-24). Note that the gross exvessel value for the Western GOA is not provided due to the limited number of GOA sideboard exempt vessels that participated in that fishery. From the perspective of gross exvessel value, the pollock fisheries in both BSAI and Central GOA are the primary fisheries for the GOA sideboard exempt vessels. In the BSAI, the gross exvessel value of the pollock fishery was \$6.1 million in 2011 and the value in the Central GOA during the same period was \$7.5 million. Other fisheries with significant value during 2011 were the Central GOA Pacific cod fishery at \$3.1, sablefish at \$1.6 million, flatfish at \$1.2 million, and rockfish at \$1.1 million.

Table 1-23 Exvessel revenue by species in the BSAI for the AFA GOA sideboard exempt vessels from 2003 through 2011 (\$thousand)

Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
2003	7,363	738	1	1	0	1
2004	6,757	214	2	1	0	3
2005	6,485	346	1	2	1	0
2006	4,468	1,064	1	1	0	*
2007	6,120	1,261	0	102	0	0
2008	6,552	1,573	0	1	0	*
2009	5,967	376	0	8	0	0
2010	4,835	506	0	5	0	0
2011	6,076	979	50	3	1	*

Source: ADF&G Fish Tickets

* Withheld for confidentiality

Table 1-24 Exvessel revenue by species in the Central GOA for the AFA GOA sideboard exempt vessels from 2003 through 2011 (\$thousand)

Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
2003	2,464	3,298	0	254	445	738
2004	3,343	2,746	0	204	425	563
2005	4,674	1,959	0	539	640	545
2006	5,006	1,755	1	1,501	932	577
2007	3,522	1,600	0	1,378	1,303	827
2008	5,600	4,066	0	1,850	1,222	801
2009	3,155	1,392	0	1,240	556	777
2010	7,201	3,081	0	883	987	1,097
2011	7,503	3,117	0	1,243	1,091	1,631

Source: ADF&G Fish Tickets

1.8.2 AFA Catcher Processor Sector

AFA specifically lists 20 catcher processors eligible to participate in the offshore fisheries as well as 7 catcher vessels eligible to fish and deliver a suballocation to 7 eligible catcher processors. In addition, one additional “head-and-gut” catcher processor met the requirements in the AFA that allows it to harvest and process up to 0.5% of the directed BSAI pollock allocation to catcher processors. Of the 21 AFA qualified catcher processors, 17 vessels actively fished in 2011, as determined by landing targeted and processed pollock by a vessel holding an AFA permit (Table 1-25). The 20 AFA listed catcher processors are restricted from harvesting any GOA groundfish. However, the one catcher processor that met the requirements in the AFA but was not listed in the AFA is eligible to participate in the GOA and has a Western GOA endorsement. The owner of that vessel would be restricted to the MLOA of the LLP license that authorizes fishing in the GOA if the owner wants to replace or rebuild the vessel and continue to fish in the GOA. As noted in Table 1-25, the vessels in this sector range in length from 190 feet to 379 feet. LOA. Table 1-26 shows the age of vessels in the AFA catcher processor fleet. Most of the vessels were built in the 1970s and 1980s, but three were built in the 1960s and one was built in 1942.

Table 1-25 Number of active AFA catcher processors by vessel length with GOA area endorsements

Vessel length (feet)	Number of active CP eligible vessels	Number of active CP eligible vessels with WGOA endorsement
190-199	1	1
200-209	1	0
240-249	1	0
250-259	1	0
260-269	1	0
270-279	4	0
280-289	1	0
290-299	1	0
300-309	1	0
330-339	2	0
340-349	2	0
370-379	1	0
Grand Total	17	1

Source: RAM LLP file, AK Vessel file, AK Region Sources, and Blend data

Table 1-26 Number of active AFA catcher processors by year vessel was built

Year	Number of active CPs eligible vesels by year vessel was built
1942	1
1961	1
1966	1
1969	2
1973	2
1974	3
1977	1
1979	1
1981	2
1983	1
1984	1
1989	1
Grand Total	17

Source: RAM LLP file, AK Vessel file, AK Region Sources, and Blend data

Separate allocations of the Bering Sea pollock TAC are made annually to the offshore catcher processor sector. These sector allocations of pollock are not further subdivided by NMFS among the vessels or companies participating in this sector. However, through formation of cooperatives and under private contractual arrangement, participants in the offshore catcher processor sector further subdivide their respective pollock allocations among the participants in their sector. The purpose of these cooperatives is to manage the allocations made under the cooperative agreements to ensure that individual vessels and companies do not harvest more than their agreed upon share. The cooperatives also facilitate transfers of pollock among the cooperative members, enforcement of contract provisions, and participate in the voluntary rolling hotspot system intercooperative agreement.

Two fishery cooperatives are authorized by the AFA to form in the offshore catcher processor sector and the offshore catcher vessels sector. A single cooperative may form that includes both catcher processors and named offshore catcher vessels delivering to catcher processors, or the catcher processor and catcher

vessel may form separate cooperatives and enter into an intercooperative agreement to govern fishing for pollock in the offshore catcher processor sector. The offshore catcher processor sector elected to form two cooperatives. The Pollock Conservation Cooperative (PCC) was formed in 1999 and is made up of nineteen catcher processors that divide the sector's overall pollock allocation.

The High Seas Catcher Cooperative (HSCC) consists of seven catcher vessels that formerly delivered pollock to catcher processors. These catcher vessels must either deliver to the PCC or lease their allocation to the PCC. The HSCC has elected to lease its pollock allocation to the PCC.

All vessels in this sector use pelagic trawls, with the catcher processors general using larger gear than many catcher vessels. Fishing operations are the same as for the catcher vessels, with the catch loaded into bins below deck. On catcher processors, the fish are then put through various processing lines (depending on product choices), frozen, boxed, and stored in the freezer compartment until the vessel is offloaded days or weeks later. Catcher processors generally fish in the area north of Unimak Island during the A-season and from areas south of St. George Island northward during the B-season.

BSAI sideboards

As a noted in Section 0, the Council developed a variety of sideboards to prevent AFA vessels from increasing their catch in other fisheries. Sideboard limits do not guarantee the AFA catcher processor sector any amount of groundfish TAC. If other sectors take the available TAC before the sideboard limit is taken, both the sideboard fishery and the directed fishery will be closed to directed fishing. If the AFA catcher processors reach their sideboard limit before the TAC is taken, the sideboard fishery would be closed to directed fishing, but the remainder of the fleet may continue to fish under the remaining TAC. See Section 0 for more information concerning AFA sideboards.

AFA catcher processors are prohibited from operating in the GOA, so there only BSAI sideboards for this fleet.¹² Of the BSAI groundfish fisheries, only pollock and Pacific cod are not restricted by sideboard limits. Table 1-27 shows the sideboard limits in 2011. Only the Atka mackerel sideboard fishery was open during that year, but no catch was reported. For yellowfin sole in 2011, there was no sideboard limit. The yellowfin sole sideboard limit is based on the aggregate ITAC assigned to Amendment 80 sector and BSAI trawl limited access sector. If the aggregate ITAC is greater than or equal to 125,000 mt, there is no sideboard limit for that year. Table 1-28 **Error! Reference source not found.** provides the 2011 BSAI PSC sideboard limits for the AFA listed catcher processors.

¹² One catcher processor met the requirements of the AFA but was not listed in the AFA is eligible to participate in the GOA, but is not restricted by GOA sideboards.

Table 1-27 2011 listed BSAI AFA catcher processor groundfish sideboard limits (mt)

Target Species	Area/season	2011 ITAC available to trawl C/Ps ¹ (mt)	2011 AFA C/P sideboard limit (mt)	2011 AFA C/P Sideboard usage (mt)
Sablefish trawl	BS	1,211	19	Closed to directed fishing
	AI	404	0	Closed to directed fishing
Atka mackerel	Central AI A season ²	5,037	579	0
	Central AI B season ²	5,037	579	0
	Western AI A season ²	670	134	0
	Western AI B season ²	670	134	0
Rock sole	BSAI	75,905	2,808	Closed to directed fishing
Greenland turbot	BS	2,975	21	Closed to directed fishing
	AI	1,318	7	Closed to directed fishing
Arrowtooth flounder	BSAI	22,015	44	Closed to directed fishing
Kamchatka flounder	BSAI	15,045	30	Closed to directed fishing
Flathead sole	BSAI	37,102	1,336	Closed to directed fishing
Alaska plaice	BSAI	13,600	14	Closed to directed fishing
Other flatfish	BSAI	2,550	148	Closed to directed fishing
Pacific ocean perch	BS	4,854	10	Closed to directed fishing
	Eastern AI	5,054	101	Closed to directed fishing
	Central AI	4,429	4	Closed to directed fishing
	Western AI	7,474	30	Closed to directed fishing
Northern rockfish	BSAI	4,000	28	Closed to directed fishing
Shortraker rockfish	BSAI	393	7	Closed to directed fishing
Rougheye rockfish	EBS/EAI	234	4	Closed to directed fishing
	CAI/WAI	220	4	Closed to directed fishing
Other rockfish	BS	500	15	Closed to directed fishing
	AI	425	11	Closed to directed fishing
Squids	BSAI	361	8	Closed to directed fishing
Skates	BSAI	14,025	112	Closed to directed fishing
Sharks	BSAI	43	0	Closed to directed fishing
Octopuses	BSAI	128	1	Closed to directed fishing
Sculpins	BSAI	4,420	35	Closed to directed fishing

¹Aleutian Islands Pacific ocean perch, and BSAI Atka mackerel, flathead sole, rock sole, yellow fin sole are multiplied by the remainder of the TAC after the subtraction of the CDQ reserve.

²The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual ITAC specified for the Western Aleutian District, and 11.5 percent of the annual ITAC specified for the Central Aleutian District.

Note: AFA catcher processors are not subject to a sideboard limit for yellow fin sole in the BSAI during the year if the aggregate ITAC of yellow fin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than or equal to 125,000 mt.

Table 1-28 2011 BSAI AFA listed catcher processor prohibited species sideboard limits¹

PSC species and area ¹	2011 PSC available to trawl vessels after subtraction of PSQ ²	2011 catcher/processor sideboard limit ²
Halibut mortality BSAI	n/a	286
Red king crab Zone 1	175,921	1,231
<i>C. opilio</i> (COBLZ)	7,421,259	1,135,453
<i>C. bairdi</i> Zone 1	741,190	103,767
<i>C. bairdi</i> Zone 2	2,250,360	112,518

¹ Refer to § 679.2 for definitions of areas.

² Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

AFA catcher processor participation and catch

Table 1-29 and Table 1-30 show vessel count and retained catch in the BSAI groundfish fisheries for the AFA catcher processor sector. Of the many groundfish species, the pollock fishery was the primary fishery for the catcher processor fleet. In 2011, 17 catcher processors retained 542,835 mt of pollock. After the pollock fishery, the flatfish fishery, specifically the yellowfin sole fishery, and the Pacific cod

fishery are the next significant fisheries for the AFA catcher processor fleet. In 2011, 17 catcher processors retained 52,683 mt of flatfish, while 17 catcher processors retained 8,909 mt of Pacific cod. Other than pollock, Pacific cod, yellowfin sole, and Atka mackerel all other groundfish fisheries are closed to directed fishing for nearly all AFA catcher processors due to insufficient sideboard limits, so any reported retained catch is from CDQ fisheries. One AFA catcher processor is exempt from BSAI sideboard limits, so that vessels catch could also be included in the reported retained catch.

Table 1-29 Number of AFA catcher processors operating in the BSAI with retained catch by species from 2003 through 2011

Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
2003	18	18	15	18	17	11
2004	18	18	13	17	15	10
2005	18	18	13	17	15	5
2006	18	18	9	16	13	11
2007	18	18	13	16	16	12
2008	17	18	10	16	17	8
2009	16	16	10	14	12	3
2010	16	16	10	16	14	1
2011	17	17	12	17	15	2

Source: RAM LLP file, AK Vessel file, AK Region Sources, and Blend data

Table 1-30 Retained catch (mt) by AFA catcher processors by BSAI species from 2003 through 2011

Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
2003	651,452	5,806	3,511	12,204	1,909	19
2004	648,831	5,858	3,453	13,030	1,696	5
2005	652,861	7,213	3,789	18,839	1,593	34
2006	664,414	8,421	3,508	23,067	1,805	22
2007	609,998	7,249	1,353	31,954	2,444	14
2008	441,492	6,108	5,114	28,461	2,334	5
2009	353,387	6,368	5,586	24,943	1,898	4
2010	365,397	5,694	6,670	37,243	2,689	*
2011	542,835	8,909	3,388	52,683	2,648	*

Source: RAM LLP file, AK Vessel file, AK Region Sources, and Blend data

* Withheld for confidentiality

The AFA catcher processor fleet is also sideboarded by prohibited species catch (PSC) limited amounts, based on the percentage of PSC limits used from 1995 through 1997. Specifically, AFA catcher processors are capped at 8.4% of the halibut PSC, 15.3% of the *opilio* PSC, 14% of the *bairdi* in Zone 1, and 5% of the Zone 2 *bairdi* crab PSC each year. Table 1-31 provides annual PSC usage for halibut, crab, and salmon in the BSAI from 2003 through 2011. Western GOA PSC usage for the one authorized AFA catcher processor is not reported since its confidential. Note, like the AFA catcher vessels, the PSC of Chinook salmon and chum salmon has been a major issue for the sector, and numerous regulations and voluntary measures have been implemented over the years to minimize salmon PSC in pollock fisheries.

Table 1-31 AFA catcher processor crab, halibut, and salmon PSC in the BSAI GOA from 2003 through 2011

Year	BSAI		
	Crab ¹	Halibut ²	Salmon ³
2003	216,859	154	39,900
2004	292,398	156	98,945
2005	445,461	182	82,762
2006	268,493	289	39,520
2007	700,125	399	65,691
2008	288,791	405	7,511
2009	214,450	487	7,692
2010	1,810,278	249	6,388
2011	431,808	451	52,644
¹ Number of animals			
² Metric tons			
³ Number of animals			

The first wholesale value of the sector’s primary target, pollock in the BSAI was \$494.9 million in 2011, which was the highest over the past five years. This was an increase of \$106 million from 2010. Next was the flatfish fishery, which was valued at \$38 million in 2011. This was followed by Pacific cod at \$5.8 million and rockfish at \$5.4 million.

Fillets were the primary product, accounting for 43% of these revenues. Surimi was the second most valuable product, followed by roe. Roe was valued at \$52 million in 2010 for the sector

Table 1-32 First wholesale gross value by species in the BSAI for the AFA catcher processors from 2003 through 2011 (\$thousand)

Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
2003	298,716	2,287	2,365	5,401	1,047	37
2004	315,167	3,601	1,989	7,456	1,391	75
2005	391,381	4,990	3,154	16,445	1,789	120
2006	422,124	7,260	2,327	17,695	2,834	52
2007	429,252	6,928	870	22,401	1,682	33
2008	464,117	5,092	5,716	18,866	2,298	12
2009	344,938	3,830	6,636	14,409	2,143	23
2010	388,524	2,823	7,884	21,751	2,953	4
2011	494,892	5,800	5,165	38,046	5,415	12

Source: Weekly processor reports

1.9 Description of Community Conditions

Any effects of this action will be most apparent in three communities: Kodiak, Sand Point, and King Cove. Seattle is also an important community since AFA catcher processors generally homeport there, but the economic importance and associated effects of these fisheries are largely overshadowed by both the large fishing and processing industry in Seattle, and the N.W. Washington regional economy, as a whole. Distilling effects of AFA vessel replacement on the greater Seattle metropolitan economy is impractical. Therefore, the dependent community information will focus on Unalaska, Kodiak, Sand Point, and King Cove. The following profiles are generally summarized from previously published profiles prepared by EDAW with Northern Economics in March, 2005, titled “Comprehensive Baseline Commercial Fishing Community Profiles: Unalaska, Akutan, King Cove, and Kodiak Alaska”.

Kodiak is a first class city in the Kodiak Island Borough. Although Kodiak has a diversified economy, its identity is that of a fishing community. Its vessels and processing plants are diversified, participating in a variety of GOA and Bering Sea fisheries. Kodiak is the dominant port for landings from the Central GOA groundfish fisheries. In 2011, nine AFA catcher vessels hail from Kodiak, with the large number of other AFA catcher vessels spending substantial time in the community during the pollock, Pacific cod, and other Central GOA groundfish trawl fisheries. Approximately 6 or 7 Kodiak processors compete for and process the large majority of the landings from the fishery. Kodiak is also home to the largest and most diverse fishery support sector in Alaska. These businesses serve all of the fleets home ported in Kodiak and that deliver to Kodiak processors.

Processors are among the largest employers in Kodiak and are known to support a year-round resident workforce. This workforce is supplemented in peak seasons with labor from outside the community. Although the AFA groundfish fisheries is a secondary importance in value to species such as salmon and halibut, it is among the largest in volume species processed in the community. Similarly, the AFA catcher vessel fleet has relatively few vessels when compared to the larger Kodiak fleets that participate in the halibut, salmon, and cod fisheries. The AFA groundfish fisheries, however, are an important component of the annual operations of both its fleets and processors. The A and C seasons occur during busy periods of groundfish and salmon processing, respectively. The B and D seasons, however, fall during slower periods and fill gaps in activities at the plants.

Unalaska was incorporated as a First Class City in 1942. Uniquely positioned with respect to the BSAI fisheries, it is the site of both the most intense direct and indirect fishing economic sector activity among all the communities in the region. More BSAI crab and groundfish are processed in Unalaska than in other ports, and the support service sector is developed to a greater degree in Unalaska than in any other community on the Bering Sea. As a result, Unalaska is a community whose economy is strongly tied to Bering Sea commercial fisheries in general, as well as to several individual fisheries.

The commercial fishery provides a very large component of the employment base in Unalaska. About half of the Unalaska labor force is employed by the seafood industry, and 90 percent of the workers consider themselves dependent on the seafood industry. The vast majority of the fish landed in Unalaska both in terms of volume and value are landed by vessels from outside the community. Unalaska is at once both an industrial-scale fishing community and a small boat fleet town. It is home to a greater concentration of processing and catcher vessel activity than other Alaska communities, but its residential fleet is much smaller than the fleets of some other fishing communities with much smaller populations within the same region (e.g., King Cove and Sand Point). Local vessels do not participate in the pollock fishery, but they do participate in the local cod, halibut, and crab fisheries on a small scale.

Ownership patterns of the large catcher vessels have been changing over the years. Within the pollock fishery, one trend has been the increase in ownership and/or control of pollock harvest vessels by the shoreplants in Unalaska. Prior to this trend, it was accurate to say that no permanent residents of Unalaska were involved in the pollock fishery as vessel owners, nor were any vessels based out of Unalaska in the sense of being the community of residence of the skipper and crew. While it is still true to say that no independent fishermen who are permanent residents of the community own pollock harvesting vessels, some pollock harvesting vessels are now owned (partially or wholly) by economic entities based in the community (or, given the complex nature of corporate relationships and/or restrictions on foreign ownership of the fleet, by entities with close relationships with entities based in the community). This continuing trend in ownership patterns, while it may have shifted where vessels are based or, perhaps more importantly from an economic perspective, spend more of the year, it is still the case that very few, if any, permanent residents of the community work on pollock harvesting vessels.

The processing plants that operate in Unalaska can be grouped into four different categories: the three large multi-species plants, a relatively large crab-focused operation, a mobile processor operator, and two small specialty processors. All of the large multi-species plants are AFA-qualified groundfish plants, and all process a wide range of species.

King Cove is a first class city within the organized Aleutians East Borough. The city has a single processor (Peter Pan Seafoods). Although the community initially engaged primarily in local commercial salmon fisheries, over time activities have diversified into GOA and Bering Sea groundfish fisheries and Bering Sea crab fisheries.

The King Cove processor is known as a diversified plant that supports operations in all available fisheries. As a consequence of its diversity, the plant's dependence on the different species varies with performance of the fisheries in general. Although specific data cannot be released for the plant, Western GOA pollock is one of the many fisheries from which the plant draws landings. In the Western Gulf pollock fishery, the King Cove plant relies on tenders for deliveries from distant grounds. The use of tenders allows participants to make more deliveries and save on fuel costs that would be associated with steaming to and from fishing grounds. The processing window in the fishery is largely dictated by the scheduled seasonal openings, but in at least one recent season, participants agreed to delay fishing to allow some of the vessels to participate in the cod fishery. Employment at the plant is primarily transient workers who come to King Cove to work at the plant. A few of these workers have relocated their families to the community, but the large majority of plant employees are not King Cove residents.

The community has a variety of fisheries support services, some of which are connected with the processing plant to some degree. Almost all of the private businesses in the community are largely dependent on fisheries. Consequently, any changes in fisheries performance may be anticipated to be distributed throughout the community.

Sand Point is also a first class city located in Aleutians East Borough. Sand point's economy is almost exclusively dependent on fisheries, as the community is home to a fleet that participates in local fisheries. Almost all local vessels are less than 60 feet in length to allow their participation in state fisheries that limit entry based on vessel length. Local vessels provide benefits to communities, not only through their owners' revenues, but also through deliveries to the local processing plant, employment of local crews, and the use of local support services.

The local plant, operated by Trident Seafoods, processes primarily groundfish. The plant experiences peak production during the first few months of the year and again through the summer months. The plant uses a primarily transient labor force, employment few locals. The plant is the primary provider of fishery support services in the community and often provides fuel and basic support to vessels. Some local residents also provide some services.

1.10 Potential Effects of the Alternatives

1.10.1 Alternative 1: No action

Under Alternative 1 (no action), AFA vessels replacement would be based on the original AFA provisions only (prior to the signing of the Coast Guard Act), which is not compliant with the Coast Guard Act. At that time, an AFA vessel could only be replaced in the event of a total or constructive loss of such vessel. Replacement vessels under the no action alternative are also limited by the MLOA of the LLP license that is named on the vessel. In addition, the size of rebuilt or replaced AFA vessel under this alternative is also limited by the "large vessel" restrictions of the AFA. If a replaced AFA vessel is less

than 165 feet in registered length and fewer than 750 gross registered tons, and has engines incapable of producing more than 3,000 shaft horsepower, the replacement vessel cannot exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the original vessel. If the eligible AFA replaced vessel exceeds 165 feet registered length or 750 gross registered tons, or produces more than 3,000 shaft horsepower, the replacement vessel must be the same or lesser registered length, gross registered tons, and shaft horsepower. Vessels that are greater than these limitations are prohibited from obtaining a fishery endorsement unless the vessel carried a fishery endorsement prior to September 25, 1997.¹³ Any AFA vessel that does not already have a fishery endorsement, and is greater than 165 feet in length or that exceeds 750 tons, or 3,000 horsepower, cannot receive a fishery endorsement under the no action alternative.¹⁴

Both the LLP and the AFA restrictions were designed to stabilize capacity in fisheries. The MLOA was originally instituted in 1995, under the Council's groundfish vessel moratorium program. It was an initial step to contain the growth in capacity in the groundfish fisheries¹⁵, while the Council developed long-term, comprehensive management programs.

In general, the LLP and AFA restrictions prior to AFA revisions included in the Coast Guard Act impeded AFA vessel owners in rebuilding or replacing their AFA vessels for the purposes of operational efficiency thereby limiting the opportunity for AFA vessel owners to improve efficiency of their AFA vessels. One of the primary advantages of replacing a fishing vessel is to incorporate improved hull design, engine efficiency, hold design, processing plant efficiency, and other advancements in marine design that improve a vessel's overall efficiency. Many of the existing AFA vessels were not original constructed as fishing vessels but were converted to such use. Inherently, these vessels are less well designed for fishing than a newly constructed fishing vessel would be. Replacing or rebuilding vessels for efficiency reasons allows owners the potential to reduce costs of production. In addition, liberalized vessel replacement rules for vessel owners may also provide opportunities to increase revenue through better use of catch.

1.10.2 Alternative 2: Status quo

The status quo alternative is based on revisions to the original AFA and included as Section 602 of the Coast Guard Act, which was signed into law on October 15, 2010.¹⁶ The Coast Guard Act effectively nullifies Federal Regulation 679.4(l)(7), which implemented the original vessel replacement provisions of the AFA, replacing it with new vessel replacement and rebuilding provisions.

Under the status quo alternative, AFA catcher processor and catcher vessel owners are allowed to rebuild or replace their vessels for improved vessel safety and operational efficiencies, including fuel efficiency. AFA catcher vessel owners would assign the replaced vessel's entire directed pollock fishing allowance to its replacement vessel only. AFA catcher processors are not assigned pollock allocations under the

¹³ The Council can recommend (and the Secretary of Commerce has approved) a conservation and management measure to allow vessels greater than 165 feet or 750 gross tons or exceeds 3,000 shaft horsepower to be used in fisheries under its authority.

¹⁴ The vessel size restriction contained in the original AFA applies to all U.S. fisheries. The AFA does provide authority, however, to regional fishery management councils, to allow for vessels larger than the stated size limits to operate in fisheries under their authority. Size restrictions appear to have been included in the original AFA as a tool to address overcapacity in fisheries. In Alaska, the Council has already removed vessel size restrictions for trawl catcher processors in the Amendment 80 sector and is considering liberalizing the restriction for the BSAI freezer longline sector.

¹⁵ The Council analysis noted that restricting vessel length is not necessarily a guaranteed way to restrict vessel capacity, but that it was the best regulatory proxy at the time.

¹⁶ The full text of sector 602 of the Act is located in Appendix 1.

AFA, but would be permitted to participate in the AFA pollock fishery under the same terms as the vessel replaced.

The status quo alternative also eliminates size restrictions that had previously applied to the rebuilding or replacement of AFA catcher processors and catcher vessels. AFA catcher processors and catcher vessels can now be rebuilt or replaced by vessels without limits on the length, horsepower or weight of replacement vessels. This would enable an AFA replacement vessel to be longer than the maximum length overall specified on its BS trawl endorsed groundfish LLP, and existing regulations restricting vessel replacement will be modified to acknowledge that they do not apply to AFA replacement vessels.

The only limitation for AFA replacement and rebuilt vessels relate to their participation in the GOA. Under the status quo alternative, an AFA vessel that is rebuilt or replaced may participate in the BS regardless of whether the vessel length exceeds the MLOA. To participate in the GOA, however, the vessel must have a GOA endorsed LLP license with an MLOA that does not exceed the length of the replacement or rebuilt vessel. Replacement or rebuilt AFA vessels that exceed the MLOA any license assigned to the vessel at the time of replacement or rebuilding, may assign another GOA endorsed LLP license with an MLOA that does not exceed the vessel length to participate in the GOA.¹⁷

Fishing permits and licenses held by the owner of the original or replaced vessel are transferred to the rebuilt vessel or replacement vessel. Replacement and rebuilt AFA catcher vessels are also prohibited from harvesting fish in any federal fishery outside of the North Pacific, except the Pacific whiting fishery. As for replaced vessels, they are prohibited from fishing in any fishery (unless that vessel is used to replace another AFA vessel), so the replaced vessel loses its fishing privileges.

The replacement (or rebuilt) vessel is eligible in the same manner as the replaced (or original) vessel, and subject to the same restrictions as the replaced vessel. Certain limitations applied to transferring of LLP licenses would no longer apply to transfers to an AFA replacement vessel. For example, the limitation on transferring a groundfish LLP once per year would not apply, if the second transfer is to a replacement vessel. In addition, transfers of a LLP from a replaced vessel to a replacement vessel, at the time of the replacement, is permitted, regardless of whether the replacement vessel exceeds the MLOA of the LLP license.

This alternative would allow replacement AFA vessels to become eligible to join the same AFA cooperative, which the replaced vessel is eligible to join. In other words, for a replacement prior to a year, the replacement vessel would be permitted to join the cooperative associated with the processor that replaced vessel delivered the most pollock to the previous season. For a mid-year replacement, the replacement vessel would be permitted to join the replaced vessel's cooperative, with the aggregate catch of the replacement vessel and the replaced vessel determining cooperative eligibility for the replacement vessel that following year.

Under the existing regulations sideboard limits apply to AFA catcher vessels that participate in the GOA and BSAI groundfish fisheries (see Section 0). These regulations also exempt certain AFA catcher vessels from BSAI and GOA sideboard limits. Under status quo, the calculation of sideboards that currently apply to catcher vessels and the application of the sideboards to catcher vessels in the aggregate through directed fishery closure would be unaffected. In other words, a replacement vessel is subject to the same sideboards (and eligible for the same sideboard exemptions) as the vessel it is replacing.

¹⁷ AFA vessels that are not replacement or rebuilt vessels could continue to participate in the GOA groundfish fisheries as long as the vessel is named on a GOA endorsed LLP license with the correct gear and MLOA endorsements.

Under status quo, owners of AFA catcher vessels that participate in an inshore cooperative may also remove a vessel from the BS pollock fishery and assign the vessel's directed pollock fishing allowance to one or more vessels in its cooperative as selected by the owner. Recipient vessel must remain in the cooperative for at least one year after the vessel is removed from the fishery.¹⁸

A removed vessel is permanently ineligible for a fishery endorsement, and any claim (including relating to catch history) associated with the removed vessel that could qualify the owner of the removed vessel for any permit to participate in any fishery within the exclusive economic zone of the U.S. shall be extinguished. Therefore, the decision to remove a vessel is irreversible and that could not thereafter be replaced.

To comply with these removal provisions, NMFS will need to: 1) receive notice of an inshore catcher vessel's removal; 2) receive notice of an inshore catcher vessel's desired assignment of its directed pollock fishing allowance and transfer that allowance; and 3) track the recipient vessel to ensure that it remains in the cooperative for a least one year following receipt of the directed pollock fishing allowance.

Finally, there is one AFA catcher processor that is currently eligible for the Amendment 80 sector in the Bering Sea. That vessel is currently limited to 2,000 mt of pollock and is not subject to AFA sideboards. If that vessel is replaced, it would still be limited to those same provisions. In the final rule of Amendment 97, the owner would not be prohibited from replacing that vessel and continuing to also be active in the Amendment 80 and AFA fisheries. This vessel is the sole exception to the rule, which prohibits Amendment 80 vessels operating as AFA vessels.

Catcher Processor

Production Efficiency

Under the status quo, AFA catcher processors owners are able to replace or rebuild their vessels without limits to the length, horsepower, or weight restrictions. As noted in Table 1-26, all of AFA catcher processors were built before 1990. A few of these vessels are approaching 50 years in age. Given the age of some of the catcher processors in this fleet, there is the potential for improvement in operational efficiency amongst AFA catcher processors that are replaced or rebuilt. In addition, all of the catcher processors in the fleet were built during a period when the operation of the vessel emphasized the speed of harvesting and processing in order to compete in open access fisheries. Since implementation of AFA in 1999, which introduced sector allocations for BSAI pollock and cooperative formation, harvesting and processing efficiency are likely a primary objective of AFA catcher processor owners. The major advantage of the status quo alternative relative to the no action alternative is the potential for improved operational efficiency.

With the ability to replace AFA catcher processors with unlimited restrictions on vessel size or horsepower for purposes of safety and operational efficiencies, the AFA catcher processor fleet can take advantage of new hull designs and improved technology to increase the operational efficiency of the vessel. Examples of improved technology include hybrid diesel electric engines, which increase fuel efficiency and available power, energy efficient processing equipment, improved technology in freezing, and for smaller existing AFA catcher processors, a vessel expansion to allow for the installation of a fish meal plant.

¹⁸ Under existing regulations, a vessel may fish under contract for another cooperative, and the landings made during such contract fishing are not used to determine the vessel's eligibility to join a cooperative in the following fishing year. NMFS will continue to utilize this approach.

Given the current level of efficiency of most AFA catcher processors and high cost of replacing AFA catcher processors, most owners of large AFA catcher processors would likely not replace their vessels in the immediate future.¹⁹ Owners of smaller and older AFA catcher processors, lacking a fish meal plant, are potentially more inclined to replace or rebuild their vessels in the immediate future. Lacking the ability to produce fish meal and fish oil leaves these smaller vessels at a competitive disadvantage relative to larger AFA catcher processors. Being able to sell the fish meal and fish oil, the vessel owner would generate higher rates of return on their harvest. In addition, the production of fish oil can be utilized as fuel in hybrid diesel electric engines, thus reducing the variable costs associated with purchasing fuel.

Economic spillover and redistribution

There is likely limited opportunity for adverse effects in other BSAI fisheries from liberalizing vessel replacement for AFA catcher processors, as most other available target fisheries for this fleet are already constrained by sector allocations and sideboards. Other than pollock and Pacific cod, which are allocated via sector allocations, the remaining groundfish fisheries in the BSAI are restricted by sideboard limits and are generally closed to directed fishing because the sideboard is insufficient to support a directed fishery. The only sideboard fishery that was open to directed fishing in 2011 was Atka mackerel. The yellowfin sole sideboard limit is based on the aggregate ITAC assigned to the Amendment 80 sector and the BSAI trawl limited access sector. If the aggregate ITAC is greater than or equal to 125,000 mt, there is no sideboard limit for that year. Given the ITAC for yellowfin sole in 2011 was 175,028 mt, there was no sideboard limit for that year.

In addition to impacts in the BSAI groundfish fisheries, one AFA catcher processor is eligible to fish in the GOA and has a Western GOA endorsement on its LLP license. This vessel would be limited to the MLOA on the GOA LLP license named on the vessel. The current length overall is 199 feet. The MLOA on its LLP license is 219 feet. Although this vessel is not limited by AFA GOA groundfish sideboards, the vessel is limited by Amendment 80 and Rockfish Program GOA sideboards.

Safety

Although nearly all of the AFA catcher processors meet the highest safety standard for fish processing in the United States, the average age of the AFA catcher processor fleet is approximately 38 years. As these vessels continue to age, replacement of some of the older and smaller vessels in this fleet may be desirable. Since all replacement vessels will be classed and loadlined, the ability to replace vessels for the purposes of improving safety will likely continue to result in improved safety for the sector.

Community

Any impacts resulting from owners of AFA catcher processors replacing or rebuilding their vessels for purposes of vessel safety and operational efficiencies would likely be negligible. The current level of efficiency of AFA catcher processors and the cost of replacing or rebuilding these vessels likely precludes dramatic changes in the fleet that would have any measurable effect on home port communities or those communities that service these vessels.

Catcher Vessels

Production efficiency

Under the status quo, AFA catcher vessel owners are able to replace or rebuild their vessels without limits to the length, horsepower, or weight restrictions. As noted in Table 1-7, nearly all of the AFA catcher

¹⁹ The cost of replacing an AFA catcher processor will likely exceed \$100 million (C. Cross, personal communication on 8/29/2012).

vessels were built between 1970 and 1980. Many of these vessels were first used as oil field supply vessels that were later converted to pollock vessels. These vessels, relative to fishery specific vessels, are inefficient AFA catcher vessels. For example, vessels originally built as oil field supply vessels have shallow hulls and large inefficient engines that are not designed to pull large trawl nets at low speeds for long periods of time. In addition, many of the AFA catcher vessels were built in era of open access fisheries. In a race for fish, modifications to fishing vessels tended to be powerful engines and larger vessels. However, the implementation of AFA in 1999 introduced sector allocations for BSAI pollock and cooperative formation, which reduced significantly the race for fish in this fishery. In addition, BSAI and GOA Pacific cod allocations and the Central GOA Rockfish Program have further reduced the incentive to race for fish. Combined, the changing characteristics of the BSAI and GOA groundfish fisheries have changed the orientation of fishing operations from a race for fish to one of maximizing harvesting efficiency by reducing costs. Liberalized vessel replacement and rebuilding provisions in the status quo alternative provides a greater opportunity for improved production efficiency relative to the no action alternative.

Replacement or rebuilt AFA catcher vessels could use new molded hull designs that are more fuel efficient than old chine hulls. These new hull designs allow vessels to travel faster and with less wave resistance in rough seas. Advances in propulsion systems when paired with improved hull forms, can result fuel efficiency gains of up to 25 percent or more per pound of fish products delivered (Hockema, 2012).

The limitation on vessel length for participation in the GOA could limit the gains in operational efficiency for AFA catcher vessels. Under the status quo alternative, AFA catcher vessels that are rebuilt or replaced that exceed the MLOA specified on the most restrictive LLP license are prohibited from participating in the GOA groundfish fisheries. When rebuilding or replacing their AFA catcher vessel, owners would likely take into consideration the costs and benefits of participating in both the BSAI and GOA groundfish fisheries while including the potential reduction in efficiency gains from a limitation in vessel length. In general, AFA vessels with extensive GOA groundfish history would likely be deterred from building beyond the MLOA. AFA vessels with little or no GOA groundfish history would likely discount the potential benefits of future GOA groundfish activity relative to the potential benefits gained from a more efficient operation in the BSAI from using a larger vessel.

The ability to remove inshore eligible AFA catcher vessels would likely improve operational efficiency of the fleet by eliminating unnecessary storage of inactive, obsolete vessels. With the introduction of cooperative fishing in 1999, some owners of inefficient inshore eligible AFA catcher vessels have leased the vessel's pollock quota to other more efficient inshore eligible AFA catcher vessels. Since AFA prevented owners from permanently transferring pollock quota, these inefficient inshore eligible AFA catcher vessels were then either placed into storage or where utilized in other maritime activities. However, since enactment of the Coast Guard Authorization Act of 2010, vessel owners of inshore eligible AFA catcher vessels can now permanently retire inshore eligible AFA catcher vessels from the fishery by transferring the vessel's pollock quota to other AFA catcher vessels in the inshore cooperative. This approach allows inshore eligible AFA catcher vessels to take advantage of the efficiency gains from stacking pollock quota from removed vessels on more efficient AFA catcher vessels. In addition, the ability to replace or rebuild vessels without limitations (except GOA vessels) may complement the efficiency gains from removing vessels by allowing the larger replacement vessels to be designed to accommodate the additional pollock quota.

Economic Spillover and Redistribution

The provisions of the Coast Guard Act enable an AFA catcher vessel owner to rebuild or replace his or her AFA catcher vessel with a vessel of any size, even if the replacement vessel's length exceeds the

MLOA specified on the assigned LLP license. The one limitation is the prohibition on GOA fishing by replacement or rebuilt vessels that exceed the MLOA on the GOA LLP license assigned to the vessel.

Table 1-33 shows the current number of active AFA catcher vessels with GOA endorsed LLP licenses aggregated by reported vessel length and the maximum vessel length based on the MLOA of the GOA endorsed LLP license. The difference between a vessel's length and the applicable MLOA shows the amount by which a vessel's length could be increased, while maintaining the vessel's ability to fish in the GOA. The table also shows the number of Central GOA and Western GOA endorsements for each vessel length category. As noted in Table 1-33, there were 15 active AFA catcher vessels that are exempt from the GOA groundfish sideboards and additional 20 active AFA catcher vessels that have GOA endorsed LLP license that are restricted by GOA groundfish sideboards. Of the 15 active AFA exempt vessels, 3 are within 10 feet of the MLOA on their GOA endorsed LLP license, so these 3 vessels could only increase their vessel length by at most 10 feet and maintain their ability to fish in the GOA. Of the remaining sideboard exempt AFA catcher vessels, 10 are between 10 feet and 20 feet shorter than the MLOAs on their GOA endorsed LLP license, and 2 are between 20 feet and 50 feet shorter than their GOA endorsed LLP license. Each of the 15 exempt vessels has a Central GOA endorsement and 11 have Western GOA endorsements. Looking at the remaining 20 AFA catcher vessels with GOA endorsed LLP licenses, 12 vessels are within 10 feet of their MLOA, 5 vessels are within 10 feet and 20 feet of their MLOA, and 4 vessels are within 20 feet and 50 feet of their MLOA. 15 non-exempt AFA catcher vessels has a Central GOA endorsement and 9 vessels have Western GOA endorsements.

Table 1-33 Number of AFA catcher vessels and the MLOA of their GOA endorsed LLP licenses

AFA catcher vessel category	Vessel length (feet)	Number of vessels with Central GOA endorsements	Number of vessels with Western GOA endorsements	Number of vessels within 10 feet of their MLOA	Number of vessels between 10 feet and 20 feet of their MLOA	Number of vessels between 20 feet and 50 feet of their MLOA
Exempt AFA catcher vessels	80-89	5	4	1	4	0
	90-99	9	6	1	6	2
	100-109	1	1	1	0	0
Total		15	11	3	10	2
Non-exempt AFA catcher vessels	80-89	1	0	0	0	1
	90-99	4	2	0	3	2
	100-109	2	1	1	1	0
	110-119	2	1	2	1	0
	120-129	4	5	8	0	0
	130-139	1	0	1	0	0
	160-169	1	0	0	0	1
Total		15	9	12	5	4

Source: RAM LLP file, AK vessel fine, AK Region Sources, and Blend data

There are a total of 57 active AFA catcher vessels with a BS only endorsed LLP. Of these 57 vessels, 25 vessels have a vessel length equal to their MLOA, 18 vessels are within 10 feet of their MLOA, and the remaining 14 vessels have a vessel length that is between 10 feet and 21 feet of their MLOA.

There are five AFA catcher vessels with multiple LLP licenses. Only two of these vessels have GOA endorsements. Each has only one license that has GOA endorsements; one with a Central GOA endorsement and one with both Central and Western GOA endorsement. Both vessels are between 20 feet and 50 feet shorter than the MLOA for the GOA endorsed LLP licenses. With the respect to their BS endorsed LLP licenses, one vessel is within 10 feet of the MLOA of that LLP license, while the other vessel is between 100 feet and 125 feet shorter than the MLOA of that LLP license.

Given that all of AFA catcher vessel owners with a LLP license can now replace or rebuild their vessels and even lengthen the vessels to some degree while still maintaining their ability to fish in the GOA, there is the potential these vessels could impact other GOA groundfish participants, particularly trawlers. Table 1-34 and Table 1-35 provide annual vessel activity and catch of non-AFA catcher vessels active in the

Central and Western GOA by species. As seen from these tables, there are a number of trawl vessels that are active in the pollock, Pacific cod, flatfish, and rockfish fisheries in the Central GOA and slightly fewer vessels in the Western GOA. Although GOA groundfish sideboards were designed to limit the impacts of AFA vessels on other GOA groundfish participants, there is still the potential for replaced or rebuilt AFA catcher vessels to impact non-AFA trawl vessels. The primary reason GOA sideboards are limited in protecting non-AFA vessels is because much of the sideboard limits went unharvested. In the absence of AFA sideboard activity, the non-AFA trawlers have increased their dependency on these GOA groundfish fisheries.

Table 1-34 Number of non-AFA catcher vessels active in the Central and Western GOA by species from 2003 through 2011

GOA subarea	Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish	Other
Central GOA	2003	36	38	8	37	26	24	32
	2004	34	34	7	34	31	25	28
	2005	28	30	9	29	27	23	28
	2006	26	27	7	27	27	21	23
	2007	21	21	13	21	21	19	21
	2008	25	25	8	25	23	20	24
	2009	20	20	12	20	19	18	20
	2010	24	24	8	23	21	17	22
Western GOA	2003	27	30	0	19	10	0	13
	2004	22	25	12	18	10	2	17
	2005	27	28	13	23	18	2	20
	2006	28	28	6	28	25	2	21
	2007	29	30	23	30	27	6	29
	2008	25	26	11	24	17	2	22
	2009	27	27	4	26	17	0	26
	2010	24	24	7	23	21	0	23
2011	23	24	7	22	21	1	21	

Source: RAMLLP file, AK vessel file, AK Region Sources, and Blend data

Table 1-35 Catch (mt) of non-AFA catcher vessels active in the Central and Western GOA by species from 2003 through 2011

GOA subarea	Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish	Other
Central GOA	2003	16,295	8,703	8	6,093	5,873	324	1,153
	2004	21,705	8,531	0	7,961	4,949	360	1,007
	2005	28,346	5,206	1	9,972	4,392	264	1,210
	2006	23,069	3,646	2	14,182	3,986	231	1,157
	2007	14,574	6,561	1	15,572	4,064	230	799
	2008	13,738	7,789	1	17,797	3,761	202	777
	2009	13,942	4,857	5	16,910	4,089	243	1,338
	2010	23,477	8,925	1	13,387	4,223	227	1,188
Western GOA	2003	12,071	1,250	0	128	0	0	5
	2004	17,311	1,610	0	129	0	*	4
	2005	24,210	4,029	3	298	2	*	6
	2006	18,802	4,793	7	362	14	*	4
	2007	15,369	4,108	2	424	88	0	11
	2008	14,245	4,603	0	411	230	*	4
	2009	12,860	2,082	0	310	0	0	2
	2010	21,902	2,578	0	1,229	2	0	16
2011	18,739	1,937	0	480	1	*	7	

Source: RAMLLP file, AK vessel file, AK Region Sources, and Blend data

*Withheld for confidentiality

As for impacts to the non-AFA vessels that operate in the BSAI, the impacts will likely be restricted to the Pacific cod fishery, particularly the winter cod fishery. The remaining groundfish fisheries are sideboarded and are typically closed to the AFA catcher vessels, as the available sideboard amounts are inadequate to support directed fishing. Over the years, the Council has requested two discussion papers on

the BS winter Pacific cod fishery to determine if participating AFA vessels are adversely impacting participating non-AFA trawl catcher vessels. In each case, the Council has determined that despite the increase in the number of AFA vessels on the winter cod grounds, evidence of economic harm to the non-AFA trawl catcher vessels has not risen to a level that suggests additional restrictions on AFA vessels are merited. To some extent, changes may be due to the dynamic nature of the fishery and the many variables influencing participation in the fishery, as opposed to increased AFA catcher vessel participation alone. However, the vessel replacement provisions in status quo could increase the potential for adverse impacts to non-AFA trawl catcher vessels through shortened season from increased harvest capacity on the winter cod grounds.

Potential implications to GOA groundfish fisheries also exist when an AFA catcher vessel owner wants to build a replacement or rebuilt vessel that is longer than vessel's MLOA. Under this option, the vessel owner could purchase an LLP license with a MLOA that can accommodate the new vessel length prior to entering the GOA groundfish fisheries. From the perspective of the GOA groundfish fisheries, allowing non-exempt AFA catcher vessels owners to purchase LLP licenses with a longer MLOA could impact other GOA trawl groundfish participants. The impact on other GOA groundfish participants from non-exempt AFA catcher vessels that entry the GOA fisheries using an LLP license that accommodates the vessel's expanded length are ultimately limited by GOA sideboard restrictions and the limited quantity of GOA endorsed LLPs that can accommodate these vessels. Table 1-36 provides the number of trawl catcher vessel LLP licenses by MLOA and GOA endorsement. As noted in the table, nearly all of the trawl catcher vessel LLP licenses with Central GOA and Western GOA endorsements have a MLOA less than 125 feet LOA. Since there is an absence of trawl catcher vessel LLP licenses with GOA endorsements that have an MLOA greater than 125 feet LOA, AFA exempt and non-exempt catcher vessels would likely expand vessel lengths using the MLOA of the LLP license currently named on the vessel thereby limiting the impact to non-AFA trawl GOA groundfish participants from a significant influx of new vessel capacity.

Table 1-36 Number of trawl catcher vessel LLP licenses by MLOA and GOA subarea endorsement

MLOA	CG endorsements	WG endorsements
50-74	33	40
75-99	20	12
100-124	43	26
125-149	1	0
Total	97	78

Finally, the ability to remove an inshore eligible AFA catcher vessel would not result in an increase AFA participation in other groundfish fisheries. When the AFA catcher vessel is removed from the pollock fishery, NMFS will assign the vessel's portion of the directed pollock fishing allowance to the vessel chosen by the owner(s) participating in the fishery cooperative. The removed vessel can be designated to replace another AFA vessel (in which case it would be characterized as a replacement vessel). Otherwise, the removed vessel is permanently ineligible for a fishery endorsement and cannot participate in any fishery within the exclusive economic zone of the U.S., and could not affect other fisheries.

Safety

Only four AFA catcher vessels are classed and loadlined certified. The remainder of the fleet is only required to meet the basic fishing vessel safety regulations found in 46 CFR Part 28. These regulations require the carriage of primary lifesaving equipment, fire-fighting equipment, training to use that equipment, and vessel stability.

Any newly-built AFA catcher vessels would have to meet the requirements for classification and loadline. Existing AFA catcher vessels (built before 1995) which are modified in a way that changes their dimensions (lengthening, sponsoning, changes in fish hold size) after July 1, 2012 would have to meet yet to be developed Alternate Safety Compliance program standards required by the Coast Guard Authorization Act of 2010 (46 USC 4503(d)(2)). An Alternate Safety Compliance program has not been developed at this time. When such a program is developed, it will be developed in cooperation with the commercial fishing industry and may be developed for a specific region and fishery (such as the AFA catcher vessel fleet).

Existing ACSA program for catcher processors have both a preventative safety regime, as well as a reactive one. Preventative safety components of an ACSA program would include maintaining full condition and watertight integrity, preventing down flooding, ensuring adequate vessel stability, requiring fire detection and suppression systems. ACSA also require regular maintenance for machinery and critical piping systems. Reactive safety components of ACSA include enhanced emergency training, improved lifesaving equipment and additional firefighting capabilities for the vessel and crew. These standards would be enforced through mandatory annual inspections and regular drydock examinations (twice in five years for example).

Since all replacement AFA catcher vessels will be classed and loadlined, and extensively modified AFA catcher vessels must meet the ACSA standards, the replacement and rebuilt AFA catcher vessels will likely improve the safety of the fleet.

Community

To the extent that replacement or rebuilt AFA catcher vessels with larger holds, there is little likelihood of vessels extending their fishing trips and making fewer port calls given vessels need to maintain a high degree of fish quality and processors desire a steady flow of fish through the plants. The overall level of effort in the fisheries will remain unchanged from the no action alternative, as this action has no effect on total allowable catch, or the sector's annual allocation. AFA catcher vessels travel to where the fish are, and this pattern is not likely to change, even with the potential advent of larger replacement or rebuilt vessels with an increased hold capacity.

1.10.3 Options for non-exempt vessels

Option 2.1

Option 2.1 would prohibit a replacement or rebuilt non-exempt AFA catcher vessel that exceeds the most restrictive MLOA on a GOA LLP license assigned to the vessel at the time of replacement or rebuilding from participating in the GOA groundfish fisheries. Vessels that do not have a GOA endorsed license at the time of the replacement or rebuilding would not be permitted to fish in the GOA fisheries. This option would allow an owner of a non-exempt AFA catcher vessel to assign a GOA endorsed LLP license up to the date of applying to NMFS for replacement or rebuilding, in order to participate in the GOA groundfish fisheries, provided the MLOA on that license is at least as large as the rebuilt or replacement vessel's length.

In assessing this option, the Council should consider an aspect of the provision that could be inequitable to some vessels, particularly those with current activity in the GOA fisheries. A vessel that has historically fished with a license endorsed for both the GOA and BS might later acquire a larger second GOA license to assign to the vessel to allow for replacement or rebuilding to a length greater than its BS/GOA license MLOA. This vessel would be precluded from fishing in the GOA under this option, despite its second GOA license because it is limited by the most restrictive MLOA of the GOA licenses. Compare this to a vessel that is replaced or rebuilt that has a BS only license with the same MLOA as the

other vessel's original license. This vessel could acquire the same larger MLOA GOA license prior to replacement or rebuilding and would be allowed to fish in the GOA fisheries because it did not have a GOA endorsement on its original BS license. A cleaner option would allow a vessel to participate in any GOA management area (CGOA or WGOA) provided the replacement or rebuilt vessel does not exceed the MLOA on the least restrictive license for that area at the time of replacement or rebuilding. This provision would allow vessel to continue any GOA fishing provided they meet the requirements of their LLPs for the respective areas at the time of vessel replacement or rebuilding. Any other option would create an environment in which vessels have an incentive to move licenses on and off vessels prior to replacement or rebuilding to maximize fishing opportunities in the GOA fisheries. Alternatively, the Council could choose a different option that more directly and clearly defines fishing opportunities.

Production Efficiency

This option, similar to the status quo alternative, provides the opportunity for an owner of a non-exempt AFA catcher vessel to enter GOA fisheries after replacement or rebuilding the vessel. See Section 0 for an elaboration of these effects.

This option could reduce efficiency gains slightly from the status quo by limiting replacement and rebuilt non-exempt AFA catcher vessels to the most restrictive MLOA of the GOA endorsed LLP licenses, at the time of replacement. The ability to use a vessel in the GOA is curtailed to a large degree by the number of LLP licenses endorsed for the GOA that have an MLOA greater than 124 feet (see Table 1-36). Nevertheless, the ability to enter non-exempt AFA catcher vessels in the GOA could allow for greater gains in efficiency of replacement and rebuilt vessels less than 124 feet.

Similar to the status quo alternative, under this option, owners of AFA catcher vessels will likely take into consideration the costs and benefits of participating in both the BSAI and GOA groundfish fisheries while including the potential for lower efficiency gains from a limitation in vessel length. In general, non-exempt AFA catcher vessels with extensive GOA groundfish history would likely be deterred from building beyond any constraining GOA license MLOA. Non-exempt AFA catcher vessels with little or no GOA groundfish history would likely discount the potential benefits of future GOA groundfish active relative to the potential benefits gained from a more efficient operation in the BSAI potentially brought about by a larger vessel. However, it is possible that some vessels may coordinate their choices with other vessels. For example, it is possible that an older vessel with substantial GOA activity may be rebuilt or replaced by a vessel that disqualifies it from entering the GOA fisheries, but first exchanges its license with another (possibly newer) AFA vessel with little or no GOA history to allow that other vessel to fish in the GOA. By defining GOA eligibility on the license assigned to a vessel at the time of rebuilding or replacement, this option allows for greater coordination across AFA vessels, which could result in changes in participation patterns of AFA vessels in GOA fisheries. These changes in participation should maintain similar opportunities for efficiency improvements in the AFA catcher vessel fleet, as a whole, under this option, in comparison to the status quo.

Economic Spillover and Redistribution

Given that non-exempt AFA catcher vessels could be replaced or rebuilt under this option, while maintaining their eligibility to fish in the GOA, there is some potential these replacement or rebuilt vessels could impact other GOA groundfish vessels, particularly trawl vessels. As seen in Table 1-34 and Table 1-35, there are number of non-AFA trawl vessels that are active in the GOA pollock, Pacific cod, flatfish, and rockfish fisheries in the GOA. Although GOA groundfish sideboards provide an upper limit for non-exempt AFA catcher vessels, there still exists the potential for replacement or rebuilt non-exempt AFA catcher vessels to impact non-AFA trawl vessels.

Potential implications to GOA groundfish fisheries also exist when an AFA catcher vessel owner wants to build a replacement or rebuilt vessel that is longer than vessel's MLOA. Under this option, the vessel owner could purchase an LLP license with a MLOA that can accommodate the new vessel length prior to submitting an application to NMFS for replacement or rebuilding. Similar to potential effects under the status quo alternative, from the perspective of the GOA groundfish fisheries, allowing non-exempt AFA catcher vessels owners to purchase LLP licenses with a longer MLOA could impact other GOA trawl groundfish participants. For description of those effects, see the economic spillover and redistribution portions of Section 0.

The more likely effect, however, arises from the entry of vessels from the AFA that are not increased in size, which are freed up by other vessels in the AFA increasing their harvest capacity in the Bering Sea. For example, if a few vessels in a cooperative are replaced by vessels with substantially greater harvest capacity, it is possible that other vessels in that cooperative that have not been replaced or rebuilt may enter the GOA fisheries (with either their own GOA endorsed license or possibly with a transferred license from either another AFA vessel or a non-AFA vessel. The effects of this type of entry will be limited by sideboards, natural constraints on efficiency gains that might deter this practice, and by the availability of licenses needed to qualify the various vessels for the BS and GOA fisheries.

Option 2.2

Option 2.2 is the most restrictive option applicable to non-exempt AFA catcher vessels and the most directly interpretable and predictable. Under it, a replaced or rebuilt non-exempt AFA catcher vessel is prohibited from operating in the GOA if the vessel's LOA exceeds the most restrictive MLOA specified on any GOA LLP license assigned to the AFA vessel at the time the Coast Guard Act was approved (October 15, 2010). LLP licenses endorsed only for the BS are not considered in determining the constraining MLOA. By applying the license on a particular date, this option clearly defines vessels that are and are not eligible to continue in the GOA, if those vessels are replaced. Yet, in considering the effects of the action, it must be noted that vessels that are not replaced or rebuilt are free to enter the GOA fisheries, provided they carry the requisite LLP.

On October 15, 2010, there were a total of 20 non-exempt AFA catcher vessels that were active in the GOA groundfish fisheries (see Table 1-33 and Table 1-39). Of the 20 AFA non-exempt catcher vessels with GOA endorsed LLP licenses, 12 vessels are within 10 feet of their MLOA, 5 vessels are within 10 feet and 20 feet of their MLOA, and 4 vessels are within 20 feet and 50 feet of their MLOA. 15 of the non-exempt AFA catcher vessels have a Central GOA endorsement and 9 vessels have Western GOA endorsements.

This option, unlike status quo and Option 2.1, specifies the non-exempt AFA catcher vessels that, as of October 15, 2010, can be replaced or rebuilt and are thereafter participate in the GOA groundfish fisheries. In addition, this option specifies constraints on the vessel length for the rebuilt or replacement vessel.

Production Efficiency

This option reduces production efficiency gains slightly from the preceding option. Similar to the other options, owners of non-exempt AFA catcher vessels may replace or rebuild their vessels in order improved production efficiency through more efficient hull forms or more efficient propulsion systems. However, this option may deter some vessel replacement and rebuilding and consequent efficiency gains by prohibiting the replacement and rebuilt vessel from participating in the GOA if its length exceeds the most restrictive MLOA on a GOA endorsed LLP license assigned to the vessel on October 15, 2010. Relative to both of the preceding options, this alternative provides less flexibility since the owner of the

non-exempt AFA catcher vessel is constrained by the MLOA of GOA endorsed LLP licenses assigned to the vessel on October 15, 2010. In other words, reassignment of licenses that have a larger MLOA at the time of rebuilding or replacing the vessel will not allow the vessel to be extended beyond the MLOA of the most restrictive GOA endorsed LLP license on the vessel on the date specified in the Coast Guard Act. This limitation could deter some vessel owners from rebuilding or replacing a vessel (or limiting the size increase from the rebuilding or replacing), if that vessel historically participated in the GOA fisheries.

Economic Spillover and Redistribution

Option 2.2 is more protective of non AFA GOA groundfish participants than the status quo or Option 2.1. Given that all 20 non-exempt AFA catcher vessels with GOA endorsed LLP licenses can now be replaced or rebuilt to a larger length, to some degree, there is the potential for these replacement or rebuilt vessels to impact other GOA groundfish vessels, particularly trawl vessels. As seen in Table 1-34 and Table 1-35, there are number of trawl vessels that are active in the GOA pollock, Pacific cod, flatfish, and rockfish fisheries in the GOA. Although GOA groundfish sideboards provide an upper limit for non-exempt AFA catcher vessels, there still exists the potential for replaced or rebuilt AFA catcher vessels to impact non-AFA trawl vessels. However, unlike the status quo alternative and Option 2.1, this alternative specifies 20 GOA eligible non-exempt AFA catcher vessels that can be replaced or rebuilt and participate in the GOA. As shown in Table 1-37 and Table 1-38 these 20 non-exempt AFA catcher vessels that participated in the GOA retained significantly less GOA groundfish relative to the non-AFA catcher vessels. In considering the effects of the option, it should be noted that any vessel that is not replaced or rebuilt could still be entered into a GOA fishery, provided that vessel carries an LLP license that qualifies it for the fishery. As a result, vessel replacements and rebuilds could still impact GOA fisheries, by new participants entering with licenses from current participants who choose to exit after replacement or rebuilding. If AFA participants choose to take advantage of these opportunities to enter vessels that have not be rebuilt or replaced, the differences between this option and the other options for non-exempt vessels is limited.

Table 1-37 Number of AFA non-exempt catcher vessels that are active in the GOA subareas by species from 2003 through 2011

Area	Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
Central GOA	2003	8	5	0	8	6	4
	2004	8	7	0	8	5	4
	2005	6	5	0	5	6	2
	2006	6	6	0	6	6	5
	2007	6	4	1	5	5	2
	2008	7	5	2	5	5	3
	2009	6	6	2	6	5	2
	2010	5	5	1	5	4	2
Western GOA	2011	6	6	1	6	5	2
	2003	6	7	2	6	5	0
	2004	6	6	3	4	2	0
	2005	7	7	2	5	4	0
	2006	4	4	3	4	3	2
	2007	5	4	2	4	3	1
	2008	3	3	2	3	3	1
	2009	4	4	1	4	1	1
2010	5	5	3	5	3	2	
2011	2	2	2	2	2	1	

Source: RAMLLP file, AK Vessel file, AK Region Sources, and Blend data

Table 1-38 Retained catch (mt) for AFA non-exempt catcher vessels that are active in the GOA subareas by species from 2003 through 2011

Area	Year	Pollock	Pacific cod	Atka mackerel	Flatfish	Rockfish	Sablefish
Central GOA	2003	2,279	407	0	96	584	32
	2004	2,088	242	0	98	512	28
	2005	2,093	148	0	344	314	*
	2006	2,480	196	0	296	467	28
	2007	2,910	143	*	657	719	*
	2008	2,578	260	*	759	736	*
	2009	993	281	*	551	412	*
	2010	3,370	529	*	726	652	*
	2011	2,718	803	*	867	509	*
Western GOA	2003	3,187	88	*	9	9	0
	2004	4,684	87	*	6	*	0
	2005	4,836	90	*	17	1	0
	2006	4,425	6	*	11	*	*
	2007	1,875	171	*	7	*	*
	2008	*	*	*	*	*	*
	2009	929	17	*	20	*	*
	2010	3,887	337	*	302	*	*
	2011	*	*	*	*	*	*
Source: RAM LLP file, AK Vessel file, AK Region Sources, and Blend data							
* Withheld for confidentiality							

Option 2.3

Option 2.3, in contrast to the previous two options and status quo alternative, takes a different approach to limiting AFA replacement or rebuilt vessels operating in the GOA. Under this option, a replacement or rebuilt AFA vessel cannot exceed by more than 10 percent the original registered length (LOA), gross registered tons, or shaft horsepower of the replaced AFA catcher vessel active on October 15, 2010. Unlike the status quo and Options 2.1 and 2.2, which are based on the MLOA of the LLP, this alternative is a vessel replacement limitation based on the registered length, tons, and horsepower of the existing AFA catcher vessel. The replacement or rebuilt vessel would still require a LLP license with the appropriate GOA endorsement and MLOA.

On October 15, 2010, there were a total of 20 non-exempt AFA catcher vessels that were active in the GOA groundfish fisheries. Table 1-39 shows the vessel length (feet), MLOA of GOA endorsed LLP license named on the vessel, the gross tons, and the horsepower of these non-exempt AFA catcher vessels that were active in the GOA on October 15, 2010. In general, the gross tons of a vessel are directly relative to some degree to the vessel length. However, the horsepower of a vessel appears only weakly correlate to the vessel size. Those non-exempt AFA catcher vessels with significantly lower horsepower relative to their length will likely have less flexibility if the vessels are replaced or rebuilt.

Table 1-39 Vessel length, MLOA, gross tons, and horsepower of non-exempt AFA catcher vessels operating in the GOA on October 15, 2010

Vessel Length (feet)	MLOA (feet)	Gross tons	Horsepower
92	110	192	1,200
94	113	190	1,200
97	116	176	1,200
98	132	175	1,400
98	112	192	940
99	124	198	1,248
102	103	182	1,200
109	124	199	1,285
114	124	191	1,283
122	124	198	850
122	124	198	850
123	124	195	1,125
123	124	195	1,550
123	124	276	1,800
123	124	199	1,700
124	124	190	1,750
124	124	193	1,125
133	133	291	2,000
165	210	394	2,400
232	228	342	4,000

Source: Vessel length is from FFP, gross tons and horsepower from AKFIN

Production Efficiency

The restriction to not exceed 10 percent of the original vessel’s registered length, gross registered tons, and shaft horsepower will limit the scope of efficiency gains for replaced or rebuilt non-exempt AFA catcher vessels. However, unlike status quo and Options 2.1 and 2.2 under which the limit on vessel applies only to vessel length, this option limits the increase of vessel’s horsepower and gross tons. Restricting a replacement or rebuilt non-exempt AFA catcher vessel by its lengths, tons, and horsepower limits could limit the available choices on hull designs and propulsion systems thereby potentially reducing operational efficiency of replacement or rebuilt vessels.

When rebuilding or replacing their non-exempt AFA catcher vessel, an owner with a GOA endorsed LLP license would likely take into consideration the costs and benefits of participating in both the BSAI and GOA groundfish fisheries while abiding by the vessel length limitation relative to the cost and benefits of participating in only the BSAI groundfish fisheries with no limitation on vessel length. In general, the GOA groundfish history of these GOA active non-exempt AFA catcher vessels will deter owners from rebuilding or replacing their non-exempt AFA catcher vessels that exceed the 10 percent limitation on length, tons, and horsepower.

The production efficiency gains under this alternative are similar to those under the status quo and other options applicable to non-exempt AFA vessels. Although this alternative is more restrictive on entry to the GOA fisheries by rebuilt or replacement vessels, the ability of AFA vessels to move permits among vessels to facilitate entry to the GOA fisheries by vessels that have not been replaced or rebuilt should limit the effect of this option on efficiency, in comparison to the other options. As a consequence of this mobility of licenses, it is likely that vessels will continue to participate in the GOA fisheries through the strategic movement of licenses among vessels.

Economic Spillover and Redistribution

Similar to status quo alternative and Options 2.1 and 2.2, Option 2.3 has the potential to impact other GOA groundfish participants. Given that all 20 non-exempt AFA catcher vessels with GOA endorsed LLP licenses can now be replaced or rebuilt while still maintaining their ability to fish in the GOA, there is the potential these replacement or rebuilt vessels, through expanded harvest capacity, could impact other GOA groundfish vessels, particularly trawl vessels. As seen in Table 1-34 and Table 1-35, there are number of trawl vessels that are active in the GOA pollock, Pacific cod, flatfish, and rockfish fisheries in the GOA. Non-exempt AFA catcher vessels are limited by GOA groundfish sideboards, but even with the sideboard limits there still exist the potential for replacement or rebuilt AFA catcher vessels to impact non-AFA trawl vessels. In addition, if other AFA vessels increase their harvest capacity and catch portions of the quota available to GOA eligible non-exempt vessels, those non-exempt vessels may be able to increase their fishing effort in the GOA (even without being replaced). In addition, it is possible for other vessels that have not been replaced or rebuilt to enter the GOA fisheries, if those vessels are assigned GOA licenses with adequate MLOAs. However, this alternative is likely to have less potential effect relative to status quo alternative and Option 2.1 since this option specifies only 20 non-exempt AFA catcher vessels that can be replaced or rebuilt and participate in the GOA. In addition, these 20 non-exempt AFA catcher vessels that participated in the GOA retained significantly less GOA groundfish relative to the non-AFA catcher vessels (Table 1-37 and Table 1-38).

1.10.4 Option for Sideboard Exempt Vessels

Option 2.4

This option applies specifically to GOA sideboard exempt AFA catcher vessels. Under Option 2.4, an AFA sideboard exempt catcher vessel may not exceed its length overall (LOA) specified on its Federal Fishing Permit (FFP) on the date the Coast Guard Act was approved (i.e., October 15, 2010) and continue to participate in the GOA fisheries.²⁰ Although this option allows an AFA sideboard exempt catcher vessels participating in the GOA groundfish fisheries to be replaced or rebuilt and continue to participate in the GOA fisheries, it is substantially more restrictive than the status quo. In any case, vessels subject to this provision would be permitted to replace or rebuild the vessel beyond the LOA on the FFP, but would then be prohibited from participating in GOA fisheries.

As noted in Table 1-33, there were 15 active AFA catcher vessels that are exempt from the GOA groundfish sideboards. Of the 15 active AFA exempt vessels, 3 are within 10 feet of the MLOA on their GOA endorsed LLP license, so these 3 vessels could only increase their vessel length by at most 10 feet and maintain their ability to fish in the GOA. Of the remaining sideboard exempt AFA catcher vessels, 10 are between 10 feet and 20 feet shorter than the MLOAs on their GOA endorsed LLP license, and 2 are between 20 feet and 50 feet shorter than their GOA endorsed LLP license. Each of the 15 exempt vessels has a Central GOA endorsement and 11 have Western GOA endorsements. Despite the flexibility provided by the LLP MLOAs, these vessels will be constrained by this option from increasing in length beyond their current length.

Production Efficiency

²⁰ The vessel length reported on the FFP is supplied by the applicant and is not verified, so vessel lengths for the same vessel can vary from year to year as the FFP application is renewed. Other potential sources of vessel length are those reported the U.S. Coast Guard and Commercial Fisheries Entry Commission (CFEC). The vessel length reported by the U.S. Coast Guard is measured at the water line, whereas the of the CFEC vessel length is also provided by the applicant but does not vary from to year since the application does not need renewing.

In general, this option provides the owners of AFA sideboard exempt catcher vessels with the ability to replace or rebuild their vessels, which could provide improved production efficiency relative to the current regulations. Examples of the types of changes that could increase potential operational efficiency might include a more efficient hull form or a more proficient propulsion system. Combined, these two changes alone could increase the fuel efficiency of a vessel.

However, this option would limit the potential greater efficiency gains relative to status quo alternative since the option prohibits replacement or rebuilt AFA sideboard exempt catcher vessels from participating in the GOA if the vessel length exceeds the reported length on the FFP. Vessel owners will weigh the costs and benefits of exceeding the FFP length on rebuilding or replacing the vessel and being prohibited from participating in the GOA groundfish fisheries against not exceeding the FFP length on rebuilding and replacing the vessel and being permitted to continue to operate in the GOA fisheries with the sideboard exemption. In general, given the importance of the GOA groundfish fisheries for these AFA sideboard exempt catcher vessels (Table 1-20 and Table 1-21), these vessels are not likely to replace or rebuild their vessels beyond the FFP vessel length.

Economic Spillover and Redistribution

Option 2.4 has the potential to impact other GOA groundfish participants, but likely to a much lesser degree than the status quo alternative. This option allows for AFA vessel owners to replace or rebuild their vessels for purposes of improving operational efficiency and safety, which could provide an increased opportunity for gains in harvest capacity that could be used in the GOA groundfish fisheries. There are 15 AFA sideboard exempt catcher vessels with lengths ranging from 77 feet to 107 feet. As noted in Table 1-20 and Table 1-21, AFA sideboard exempt catcher vessels activity in the Central GOA groundfish fisheries is extensive and is nearly equal to the history of the non-AFA trawl catcher vessels, as noted in Table 1-34 and Table 1-35. However, this option, relative to status quo, is not anticipated to have a substantial effect on non-AFA trawl vessels in the GOA groundfish fisheries since the proposed alternative prohibits replacement or rebuilt vessels that exceed the reported FFP from participating in these fisheries. Some efficiency gains could in replaced or rebuilt vessels could allow these vessels to be more competitive in the GOA fisheries, but non AFA vessels in those fisheries can maintain their competitiveness by similarly replacing or rebuilding their vessels (as is permitted by their LLPs). Owners of these non AFA vessels, in some cases, may have fewer resources, as the AFA allocations provide some financial security to their holders.

1.10.5 Vessel Removal Provisions

Finally, the Council has clarified that the sideboard exemption status will be extinguished upon removal of an exempt vessel. Specifically, the Coast Guard Act enables an owner of an AFA catcher vessel that delivers to a shoreside processor to remove the vessel from the Bering Sea pollock fishery and assign the vessel's directed pollock fishing allowance to other vessels in the cooperative, but the Coast Guard Act does not address the transfer of GOA sideboard exemption. The Council clarification makes it clear that that GOA sideboard exemption status will be extinguished when an AFA catcher vessel is removed and not replaced. This clarification is included in the status quo alternative (Section 1.8.1.2).

1.10.6 Potential Effects on Net Benefits to the Nation

Overall, this action is likely to have a positive, but limited, effect on net benefits realized by the Nation. Under the status quo alternative and the options AFA vessels can be replaced or rebuilt. Generally, status quo and all of the options would be expected to allow vessel replacement or rebuilding in cases where the efficiency gains realized by the vessel owner exceed the costs of rebuilding or replacing the vessel and therefore may encourage fishing practices that are more likely to result in fully harvesting of the pollock

and Pacific cod TAC that is assigned to the AFA sectors. To the extent that vessel replacement or rebuilding of vessels 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 action may increase the production 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. Status quo would provide AFA catcher processor and AFA catcher vessel owners with the greatest flexibility and opportunity to realize these benefits, while Option 2.1 provides non-exempt AFA catcher vessels with less flexibility and opportunity for realized benefits. Option 2.2 provides less opportunity for realized gains relative to status quo and Option 2.1, but more opportunity relative to Option 2.3. For AFA sideboard exempt catcher vessels active in the GOA, Option 2.4 provides diminished opportunity for realized production efficiency gains compared to status quo.

2.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 600–611, 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 impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either, (1) “certify” that the action will not have a significant adverse effect on a substantial number of small entities, and support such a certification declaration with a “factual basis,” demonstrating this outcome, or (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

Based upon a preliminary evaluation of the proposed alternatives, it appears that “certification” would not be appropriate. Therefore, this IRFA has been prepared. Analytical requirements for the IRFA are described below in more detail.

The IRFA must contain:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and the legal basis for, the proposed rule;
3. A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
4. 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;
5. An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule;

6. A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse 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:
 - a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
 - b. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
 - c. The use of performance rather than design standards;
 - d. An exemption from coverage of the rule, or any part thereof, for such small entities.

The “universe” of entities to be considered in an IRFA generally includes only those small 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 of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

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

2.1 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) and small government jurisdictions.

Small businesses: Section 601(3) of the RFA defines a “small business” as having the same meaning as a “small business concern,” which is defined under section 3 of the Small Business Act. A “small business” or “small business concern” includes any firm that is independently owned and operated and not dominate in its field of operation. The U.S. Small Business Administration (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 form 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. A business “involved in fish harvesting” is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates) 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. 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.

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 control 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 nonprofit 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.

2.2 Reason for Considering the Proposed Action

The purpose of the proposed action is twofold. First, the BSAI Groundfish FMP and groundfish regulations need to be brought into compliance with Section 602 of the Coast Guard Authorization Act of 2010, which was signed into law on October 15, 2010. Currently, the language in both the BSAI Groundfish FMP and groundfish regulations are not consistent with prevailing management rules established by the Act. To correct this inconsistency, NMFS has proposed a housekeeping action to bring the BSAI Groundfish FMP and groundfish regulations into compliance with existing current practices.

Secondly, the Council is considering options to prevent participating AFA vessels that are replaced from increasing their fishing effort beyond their historical catch in the GOA. The Coast Guard Act expressly

authorizes the Council to recommend for approval by the Secretary of Commerce conservation and management measures, including size limits and measures to control fishing capacity, to ensure that the Coast Guard Act does not diminish the effectiveness of the fishery management plan for the BSAI and the GOA.

The Council included the following problem statement for this action at the February 2012 meeting:

Groundfish sideboard protections are included in the AFA to prevent participating AFA vessels from increasing fishing effort beyond historical catch in the GOA. Ambiguities exist pertaining to groundfish sideboards in the AFA vessel replacement provisions of the Coast Guard Authorization Act of 2010 (Act). For vessels with multiple licenses, it is unclear whether the MLOA on the Bering Sea LLP or the GOA LLP applies to a replacement vessel when fishing in the GOA. Additionally, if an AFA vessel exempt from the GOA sideboards is removed from the fishery and assigns its pollock quota to another vessel, the Act is unclear whether the GOA exemption is transferable in addition to the pollock quota. Action is needed to clarify vessel replacement provisions of the Act and prevent increased capacity in the GOA groundfish fisheries by AFA vessels.

2.3 Objectives of, and the Legal Basis for, the Proposed Rule

The objective of the proposed action is to bring the BSAI Groundfish FMP and groundfish regulations into compliance with existing statutory law brought about by the Coast Guard Authorization Act of 2010, which was signed into law on October 15, 2010, and to prevent AFA vessel replacement provisions from increasing fishing effort beyond historical catch in the GOA. This objective is encompassed by authorities contained in the Magnuson-Stevens Act. Under the Magnuson-Stevens Act, the United States has exclusive management authority over all living marine resources found within the EEZ. The management of marine fishery resources is vested in the Secretary of Commerce, with advice from the Regional Fishery Management Councils. The groundfish fisheries in the EEZ off Alaska are managed under the FMP for Groundfish of the BSAI and the FMP for Groundfish of the GOA.

Statutory authority for measures designed to consider efficiency in the use of fishery resources is specifically addressed in Section 301 of the Magnuson-Stevens Act. That section establishes National Standard 5, which directs the Councils to “consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocations as its sole purpose.”

The Magnuson-Stevens Act is the legal umbrella under which the groundfish fisheries of the BSAI and GOA are managed. In the Alaska region, the Council is responsible for preparing management plans for marine fishery resources requiring conservation and management. NMFS, under the U.S. Department of Commerce, is charged with carrying out the federal mandates with regard to marine fish, once they are approved by the Secretary of Commerce. NMFS Alaska Regional Office reviews the management actions recommended by the Council.

2.4 Number and Description of Small Entities Regulated by the Proposed Action

This action would affect AFA catcher processors and catcher vessels. A total of 111 catcher vessels qualify for the shoreside fleet. In addition, the AFA specifically listed 19 catcher vessels that are eligible to deliver to these motherships. Combined, the catcher vessels from each of the two fleets, taking into account ‘dual qualified’ catcher vessels, consists of 117 unique catcher vessels that are issued an AFA permit making them eligible to participate in the directed BSAI pollock fishery. For AFA catcher processors, the AFA specifically lists 20 catcher processors eligible to participate in the offshore fisheries. In addition, one additional “head-and-gut” catcher processor met the requirements in the AFA that allows

it to harvest and process up to 0.5% of the directed BSAI pollock allocation to catcher processors. All combined there are 21 AFA catcher processors that are issued an AFA permit and are eligible to participate in the BSAI pollock fishery.

The RFA requires a consideration of affiliations between entities for the purpose of assessing if an entity is small. There is not a strict one-to-one correlation between vessels and entities; many persons and firms are known to have ownership interests in more than one vessel, and many of these vessels with different ownership, are otherwise affiliated with each other. All of the 117 AFA catcher vessels and 21 AFA catcher processors are categorized as “large entities” for the purpose of the RFA under the principles of affiliation, due to their being part of the AFA pollock cooperatives.

2.5 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.

2.6 An Identification, to the Extent Practicable, of all Relevant Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

No relevant federal rules were identified as duplicating, overlapping, or conflicting with the proposed action under consideration herein.

2.7 Description of Significant Alternatives

Upon final action, this section will be updated to discuss the Council’s preferred alternative.

3.0 CONSISTENCY WITH APPLICABLE LAW AND POLICY

This section examines vessel replacement for the AFA catcher processors and catcher vessels with the National Standards and Fishery Impact Statement requirements in the Magnuson-Stevens Act and Executive Order 12866.

3.1 National Standards

Below are the ten National Standards as contained in the Magnuson-Stevens Act, 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 the sustainability or catch levels of groundfish in the BSAI or GOA, since the action will continue to be managed under the current harvest specifications process. While the alternatives would also generally not affect the ability to achieve the optimum yield from each groundfish fishery, to the extent that the proposed alternatives provide an opportunity for increased utilization of existing catch, they could improve optimum yield.

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

This analysis is based on the most current, comprehensive data available, recognizing that some information (such as operating costs) is unavailable.

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.

This action makes no change to how groundfish stocks are assessed or managed in the BSAI and GOA.

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.

Nothing in the alternatives considers residency as a criterion for the Council's decision, therefore the proposed alternatives treat all vessel owners the same regardless of residency. The proposed alternatives would be implemented without discrimination among participants. To the extent that increased utilization of target and incidental catch promotes conservation, this action may be considered as promoting conservation of the groundfish resources in the BSAI and GOA; certainly, the action is not likely to negatively impact conservation. No fishing privileges are allocated under this action, and this action will not result in excessive shares.

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 increase inducements for vessel owners to replace vessels. To the extent that the vessel owners exercise the vessel replacement opportunity provided in this proposed action, this could allow more complete use of the fishery resources and improve efficiency in utilization of the BSAI pollock and other BSAI and GOA groundfish species harvested by AFA vessels.

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. All harvest will continue to be managed under and limited by the TACs for each species.

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

This action imposes no additional costs on industry, and minimal costs on management, 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. None of the action alternatives would extinguish harvest opportunities for vessels with a high degree of economic dependence upon the AFA groundfish fisheries. As discussed in Sections 1.9 and 1.10, this fleet does not have a large impact on coastal communities, and while replacement or rebuilt vessels may be able to reduce port calls during fishing trips, this level of impact is unlikely to result in adverse economic impacts.

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 action could help to minimize bycatch by removing disincentives for owners of AFA vessels to replace or rebuild their aging vessels. Replacement vessels with newer, more sophisticated technology could provide more opportunities for vessels to fully utilize target and incidental catch species and therefore minimize bycatch.

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

The alternatives proposed should promote safety at sea because it removes disincentives for vessel owners to replace or rebuild existing vessels with newer vessels that can accommodate improved safety and minimize the risks faced by vessels or crew.

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

Section 303(a)(9) of the Magnuson-Stevens Act 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 AFA groundfish fisheries in the BSAI and GOA, and participants in other fisheries, have been comprehensively evaluated in previous sections of this document (see Section 1.10).

3.3 BSAI Groundfish FMP Management Policy

The alternatives and options discussed in this action accord with the management policy of the BSAI Groundfish FMP. The Council's management policy (NPFMC 2011) includes the following objectives:

- Promote increased safety at sea.
- Continue program to reduce discards by developing management measures that encourage the use of gear and fishing techniques that reduce bycatch which includes economic discards.
- Reduce waste to biologically and socially acceptable levels.
- Develop management measures that, when practicable, consider the efficient use of fishery resources taking into account the interest of harvesters, processors, and communities.

By proposing to change criteria to allow owners of AFA catcher processors and catcher vessels that fish for pollock and other groundfish species to replace or rebuild their vessels with larger vessels, the Council is consistent with its management policy.

4.0 REFERENCES

Hockema, Hal. 2012. Large Fishing Vessel Design for Alaska Fisheries, Pacific Fisheries Review, Special Supplement to July 2012.

EDAW, Inc. with Northern Economics (2005). Comprehensive Baseline Commercial fishing Community Profiles: Unalaska, Akutan, King Cove, and Kodiak, Alaska.

NMFS. 2011. Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Amendment 93 to the Fishery Management Plan for Groundfish of the Gulf of Alaska Chinook Salmon Prohibited Species Catch in the Gulf of Alaska Pollock Fishery. September 2011.

NMFS, 2009. Final Regulatory Impact Review for Bering Sea Chinook Salmon Bycatch Management. December 2009.

NMFS, 2007. Alaska Groundfish Harvest Specifications Final Environmental Impact Statement

NPFMC, 2002. Report to Congress and the Secretary of Commerce on Impacts of the American Fisheries Act. April 2002.

NPFMC, 2010. Current Issues, March 2010

NPFMC, 2012. Fishing Fleet Profiles, April 2012.

5.0 LIST OF PREPARERS AND PERSONS CONSULTED

Prepared by

Jon McCracken, NPFMC
Dr. Mark Fina, NPFMC
Michael Fey, AKFIN
Diana Evans, NPFMC

Agencies Consulted

Mary Alice McKeen, NOAA GC
Clayton Jernigan, NOAA GC
CAPT Chris Woodley, U.S. Coast Guard

Persons Consulted

John Gruver, United Catcher Boats, Seattle, Washington
Brent Paine, United Catcher Boats, Seattle, Washington
Stephanie Madsen, At Sea Processors Association, Juneau, Alaska
Craig Cross, Aleutian Spray Fisheries, Seattle, Washington
Jim Gilmore, At Sea Processors Association, Washington, D.C.

APPENDIX A. COAST GUARD AUTHORIZATION ACT OF 2010

H. R. 3619—55

facts and circumstances involved in the appeal and make a judgment regarding the merits of the appeal; or

“(2) have a senior staff member who—

“(A) meets the requirements of paragraph (1);

“(B) actively advises the individual adjudicating the appeal; and

“(C) concurs in writing on the decision on appeal.”.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is further amended by adding at the end the following new item:

“102. Appeals and waivers.”.

SEC. 525. COAST GUARD ACADEMY.

(a) IN GENERAL.—Chapter 9 of title 14, United States Code, is further amended by adding at the end the following new section:

“§ 200. Marine safety curriculum

“The Commandant of the Coast Guard shall ensure that professional courses of study in marine safety are provided at the Coast Guard Academy, and during other officer accession programs, to give Coast Guard cadets and other officer candidates a background and understanding of the marine safety program. These courses may include such topics as program history, vessel design and construction, vessel inspection, casualty investigation, and administrative law and regulations.”.

(b) CLERICAL AMENDMENT.—The analysis for such chapter is further amended by adding at the end the following new item:

“200. Marine safety curriculum.”.

SEC. 526. REPORT REGARDING CIVILIAN MARINE INSPECTORS.

Not later than 1 year after the date of enactment of this Act, the Commandant of the Coast Guard shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on Coast Guard’s efforts to recruit and retain civilian marine inspectors and investigators and the impact of such recruitment and retention efforts on Coast Guard organizational performance.

TITLE VI—MARINE SAFETY

SEC. 601. SHORT TITLE.

This title may be cited as the “Maritime Safety Act of 2010”.

SEC. 602. VESSEL SIZE LIMITS.

(a) LENGTH, TONNAGE, AND HORSEPOWER.—Section 12113(d)(2) of title 46, United States Code, is amended—

(1) by inserting “and” after the semicolon at the end of subparagraph (A)(i);

(2) by striking “and” at the end of subparagraph (A)(ii);

(3) by striking subparagraph (A)(iii);

(4) by striking the period at the end of subparagraph (B) and inserting a semicolon; and

(5) by inserting at the end the following:

“(C) the vessel is either a rebuilt vessel or a replacement vessel under section 208(g) of the American Fisheries Act (title II of division C of Public Law 105–277; 112

Stat. 2681–627) and is eligible for a fishery endorsement under this section; or

“(D) the vessel is a fish tender vessel that is not engaged in the harvesting or processing of fish.”.

(b) CONFORMING AMENDMENTS.—

(1) VESSEL REBUILDING AND REPLACEMENT.—Section 208(g) of the American Fisheries Act (title II of division C of Public Law 105–277; 112 Stat. 2681–627) is amended to read as follows:

“(g) VESSEL REBUILDING AND REPLACEMENT.—

“(1) IN GENERAL.—

“(A) REBUILD OR REPLACE.—Notwithstanding any limitation to the contrary on replacing, rebuilding, or lengthening vessels or transferring permits or licenses to a replacement vessel contained in sections 679.2 and 679.4 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2010 and except as provided in paragraph (4), the owner of a vessel eligible under subsection (a), (b), (c), (d), or (e), in order to improve vessel safety and operational efficiencies (including fuel efficiency), may rebuild or replace that vessel (including fuel efficiency) with a vessel documented with a fishery endorsement under section 12113 of title 46, United States Code.

“(B) SAME REQUIREMENTS.—The rebuilt or replacement vessel shall be eligible in the same manner and subject to the same restrictions and limitations under such subsection as the vessel being rebuilt or replaced.

“(C) TRANSFER OF PERMITS AND LICENSES.—Each fishing permit and license held by the owner of a vessel or vessels to be rebuilt or replaced under subparagraph (A) shall be transferred to the rebuilt or replacement vessel or its owner, as necessary to permit such rebuilt or replacement vessel to operate in the same manner as the vessel prior to the rebuilding or the vessel it replaced, respectively.

“(2) RECOMMENDATIONS OF NORTH PACIFIC FISHERY MANAGEMENT COUNCIL.—The North Pacific Fishery Management Council may recommend for approval by the Secretary such conservation and management measures, including size limits and measures to control fishing capacity, in accordance with the Magnuson-Stevens Act as it considers necessary to ensure that this subsection does not diminish the effectiveness of fishery management plans of the Bering Sea and Aleutian Islands Management Area or the Gulf of Alaska.

“(3) SPECIAL RULE FOR REPLACEMENT OF CERTAIN VESSELS.—

“(A) IN GENERAL.—Notwithstanding the requirements of subsections (b)(2), (c)(1), and (c)(2) of section 12113 of title 46, United States Code, a vessel that is eligible under subsection (a), (b), (c), or (e) and that qualifies to be documented with a fishery endorsement pursuant to section 213(g) may be replaced with a replacement vessel under paragraph (1) if the vessel that is replaced is validly documented with a fishery endorsement pursuant to section 213(g) before the replacement vessel is documented with

a fishery endorsement under section 12113 of title 46, United States Code.

“(B) APPLICABILITY.—A replacement vessel under subparagraph (A) and its owner and mortgagee are subject to the same limitations under section 213(g) that are applicable to the vessel that has been replaced and its owner and mortgagee.

“(4) SPECIAL RULES FOR CERTAIN CATCHER VESSELS.—

“(A) IN GENERAL.—A replacement for a covered vessel described in subparagraph (B) is prohibited from harvesting fish in any fishery (except for the Pacific whiting fishery) managed under the authority of any Regional Fishery Management Council (other than the North Pacific Fishery Management Council) established under section 302(a) of the Magnuson-Stevens Act.

“(B) COVERED VESSELS.—A covered vessel referred to in subparagraph (A) is—

“(i) a vessel eligible under subsection (a), (b), or (c) that is replaced under paragraph (1); or

“(ii) a vessel eligible under subsection (a), (b), or (c) that is rebuilt to increase its registered length, gross tonnage, or shaft horsepower.

“(5) LIMITATION ON FISHERY ENDORSEMENTS.—Any vessel that is replaced under this subsection shall thereafter not be eligible for a fishery endorsement under section 12113 of title 46, United States Code, unless that vessel is also a replacement vessel described in paragraph (1).

“(6) GULF OF ALASKA LIMITATION.—Notwithstanding paragraph (1), the Secretary shall prohibit from participation in the groundfish fisheries of the Gulf of Alaska any vessel that is rebuilt or replaced under this subsection and that exceeds the maximum length overall specified on the license that authorizes fishing for groundfish pursuant to the license limitation program under part 679 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2010.

“(7) AUTHORITY OF PACIFIC COUNCIL.—Nothing in this section shall be construed to diminish or otherwise affect the authority of the Pacific Council to recommend to the Secretary conservation and management measures to protect fisheries under its jurisdiction (including the Pacific whiting fishery) and participants in such fisheries from adverse impacts caused by this Act.”

(2) REPEAL OF EXEMPTION OF CERTAIN VESSELS.—Section 203(g) of the American Fisheries Act (title II of division C of Public Law 105–277; 112 Stat. 2681–620) is repealed.

(3) FISHERY COOPERATIVE EXIT PROVISIONS.—Section 210(b) of the American Fisheries Act (title II of division C of Public Law 105–277; 112 Stat. 2681–629) is amended—

(A) by moving the matter beginning with “the Secretary shall” in paragraph (1) 2 ems to the right; and

(B) by adding at the end the following:

“(7) FISHERY COOPERATIVE EXIT PROVISIONS.—

“(A) FISHING ALLOWANCE DETERMINATION.—For purposes of determining the aggregate percentage of directed fishing allowances under paragraph (1), when a catcher

vessel is removed from the directed pollock fishery, the fishery allowance for pollock for the vessel being removed—

“(i) shall be based on the catch history determination for the vessel made pursuant to section 679.62 of title 50, Code of Federal Regulations, as in effect on the date of enactment of the Coast Guard Authorization Act of 2010; and

“(ii) shall be assigned, for all purposes under this title, in the manner specified by the owner of the vessel being removed to any other catcher vessel or among other catcher vessels participating in the fishery cooperative if such vessel or vessels remain in the fishery cooperative for at least one year after the date on which the vessel being removed leaves the directed pollock fishery.

“(B) ELIGIBILITY FOR FISHERY ENDORSEMENT.—Except as provided in subparagraph (C), a vessel that is removed pursuant to this paragraph shall be permanently ineligible for a fishery endorsement, and any claim (including relating to catch history) associated with such vessel that could qualify any owner of such vessel for any permit to participate in any fishery within the exclusive economic zone of the United States shall be extinguished, unless such removed vessel is thereafter designated to replace a vessel to be removed pursuant to this paragraph.

“(C) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this paragraph shall be construed—

“(i) to make the vessels AJ (United States official number 905625), DONA MARTITA (United States official number 651751), NORDIC EXPLORER (United States official number 678234), and PROVIDIAN (United States official number 1062183) ineligible for a fishery endorsement or any permit necessary to participate in any fishery under the authority of the New England Fishery Management Council or the Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Act; or

“(ii) to allow the vessels referred to in clause (i) to participate in any fishery under the authority of the Councils referred to in clause (i) in any manner that is not consistent with the fishery management plan for the fishery developed by the Councils under section 303 of the Magnuson-Stevens Act.”.

SEC. 603. COLD WEATHER SURVIVAL TRAINING.

The Commandant of the Coast Guard shall report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the efficacy of cold weather survival training conducted by the Coast Guard over the preceding 5 years. The report shall include plans for conducting such training in fiscal years 2010 through 2013.

SEC. 604. FISHING VESSEL SAFETY.

(a) SAFETY STANDARDS.—Section 4502 of title 46, United States Code, is amended—

(1) in subsection (a), by—

Preliminary Analysis of AFA Vessel Replacement & Removal Provisions in the Coast Guard Authorization Act of 2010

(Pub. L. 111-281, Title VI, Sec. 602)

Prepared by: NMFS Alaska Region Staff in consultation with NOAA GCAK

INTRODUCTION

On October 15, 2010, the President signed into law the Coast Guard Authorization Act of 2010, Pub. L. 111-281 (“The Act”). Section 602 of the Act addresses the replacement and removal of vessels eligible to participate in the Bering Sea pollock fishery under the American Fisheries Act (“AFA”).¹ The Act enables AFA vessels to be replaced for reasons other than total or constructive loss, eliminates the size and horsepower limitations that had applied to rebuilt AFA vessels or vessels that replace AFA vessels, and imposes various limitations on the use in other fisheries of such replacement vessels and the AFA vessels that have been replaced. The Act also enables a vessel owner to remove a vessel from an inshore cooperative and assign the vessel’s directed pollock fishing allowance (the basis for determining cooperative quota) to other vessels in the cooperative.

This paper discusses several provisions of the Act and identifies aspects of removal and replacement of AFA vessels under the Act that may necessitate agency rulemaking or that the Council and agency may wish to implement through rulemaking. The paper also provides general guidance regarding the types of vessel replacement or removal transactions that would be least likely to be affected by any subsequently issued regulations.

There are four provisions of the Act that may call for NMFS to engage in rulemaking. Involvement of the North Pacific Fishery Management Council (“Council”) in the rulemaking process may be appropriate under some, but not all, of these provisions.

One provision states that the owner of an AFA vessel may rebuild or replace that vessel “in order to improve vessel safety and operational efficiencies . . .” Amended AFA section 208(g)(1)(A). Such replacements may occur without limitations on the length, tonnage or horsepower of the replacement vessel. *Id.* This provision supplants previous replacement vessel provisions (former AFA section 208(g)) and eviscerates existing implementing regulations, which allowed for vessel replacement only in the event of actual total loss or constructive total loss of a vessel and imposed length, tonnage and horsepower limits on replacement vessels. *See* 50 C.F.R. § 679.4(l)(7); former AFA section 208(g). This provision creates an exception to several existing regulatory provisions by specifying that such replacement or rebuilding may occur “[n]otwithstanding any limitation to the contrary on replacing, rebuilding or lengthening vessels or transferring permits or licenses to a replacement vessel contained in sections 679.2 and 679.4 of title 50, Code of Federal Regulations” as of October 15, 2010. *Id.* The quoted language establishes an exception to existing regulations that otherwise prohibit the use of a groundfish license

¹ The full text of section 602 of the Act is appended to this paper.

limitation permit by a vessel that exceeds the the maximum length overall specified on the permit. *See* 50 C.F.R. §§ 679.4(k)(1)(i), (k)(3)(i), (k)(7)(ix). That is, the Act would allow a replacement vessel of any length to utilize a groundfish license limitation permit to fish for Bering Sea pollock under the AFA even if the vessel’s length exceeds the MLOA specified on the license. **To avoid confusion, the existing AFA regulations should be modified to reflect the expanded bases on which an owner may replace or rebuild an AFA vessel. Similarly, existing regulations addressing LLPs should be modified to reflect the exceptions that have been created by the statute.**

Another provision expressly directs the Secretary to act to “prohibit from participation in the groundfish fisheries of the Gulf of Alaska any vessel that exceeds the maximum length overall specified on the license that authorizes fishing for groundfish pursuant to the license limitation program,” as that program was in effect on October 15, 2010. Amended AFA section 208(g)(6). This mandate could be implemented through rulemaking. Rulemaking to implement this mandate could be initiated by the agency or by the Council, which is authorized to recommend “size limits and measures to control fishing capacity, in accordance with the [MSA] as it considers necessary to ensure that [AFA vessel replacement provisions do] not diminish the effectiveness of the [Groundfish FMPs].” Amended AFA section 208(g)(2).

A third provision prohibits a vessel that replaces an AFA catcher vessel from “harvesting fish” in any federal fishery outside of the North Pacific, managed by any other Regional Fishery Management Council, except for the Pacific whiting fishery. Amended AFA section 208(g)(4). NMFS could implement this prohibition through rulemaking. Because this prohibition relates to harvesting fish in fisheries under the authority of other Regional Fishery Management Councils, the North Pacific Council should have a limited role, if any, in the development of a rulemaking to implement this prohibition.

Finally, another provision enables owners of catcher vessels that participate in inshore cooperatives to remove a vessel from the Bering Sea pollock fishery and assign its directed pollock fishing allowance to one or more vessels in its cooperative. **The Act gives rise to a number of issues regarding the interplay between the replacement of a vessel and the removal of a vessel, as well as the application of sideboards and sideboard exemptions when a vessel is removed or replaced.**

SUMMARY GUIDANCE

What can vessel owners do without waiting for implementing regulations?

- 1) Replace or permanently remove a vessel that has no unique sideboard characteristics (or has unique sideboard characteristics that the vessel owner is willing to lose as a result of the removal) and permanently assign its directed pollock fishing allowance to one or more vessels in the cooperative. However, the vessel owner should be aware that NMFS has not set forth what will happen to the directed pollock fishing allowance in the event that a receiving vessel does not remain in the cooperative for at least one year.
- 2) Replace a vessel with another vessel that is not currently an AFA-eligible vessel and does not exceed the MLOA on its groundfish LLP license (or with a larger vessel that the owner does not intend to use to fish for groundfish in the Gulf of Alaska).

What potential issues may result in a vessel owner's preferring to await the regulatory process?

- Removal or replacement of a vessel with AFA sideboard exemptions which the owner wishes to preserve;
- Replacement of a vessel that exceeds the MLOA specified on a groundfish LLP license currently assigned to the vessel if the owner wishes to continue to use the vessel in the Gulf of Alaska;
- Replacement of an AFA catcher/processor with a catcher/processor that is currently eligible for, and wishes to remain eligible for, the Amendment 80 sector in the Bering Sea; and
- Removal of a catcher vessel and assignment of its directed pollock fishery allowance to other vessels if the owner wishes to do something other than permanently assign the directed pollock fishery allowance to other vessels that currently belong to the cooperative.