

# **Initial Public Review**

## **DRAFT**

**REGULATORY IMPACT REVIEW/INITIAL REGULATORY  
FLEXIBILITY ANALYSIS**

**Western Gulf of Alaska Pollock Trip Limit**

**September 24, 2007**



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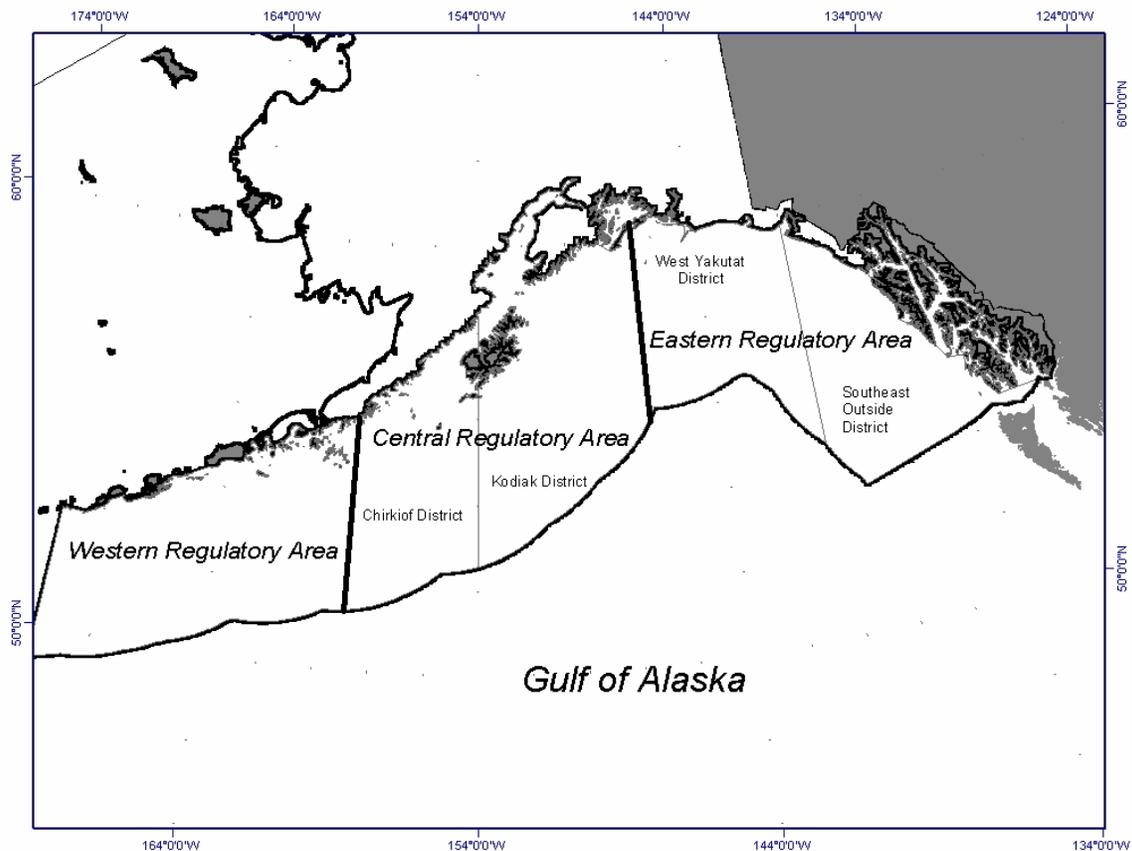
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## 1.0 INTRODUCTION

This action has been before the Council a number of times, dating back to the late 1990s. The initial Council action was in 1999, with a corresponding action for state waters from the Alaska Board of Fisheries the same year. The Council has been advised through public testimony that a problem exists with the trip limit as written into the existing regulation. This report evaluates the existing situation and analyzes two potential alternatives to resolve the problem.

Figure 1 below shows the boundaries of the proposed action, within management area 610, which includes the entire Western Regulatory Area in the map, and management area 620, which is comprised of the western half—the Chirikof District—of the Central Regulatory area marked on the map.



**Figure 1. Management areas in the Gulf of Alaska**

The trip limit was part of a package of sea lion mitigation measures adopted in 1999 to allow the fishery to continue. Alternative 4 of the Steller Sea Lion Protection Measures Final Supplemental Environmental Impact Statement (November 2001), established in the NEPA and ESA process of developing protections for Steller sea lions, was determined to be the preferred alternative. When it was selected as the preferred alternative, an ESA Section 7 Consultation was reinitiated for the fisheries management measures embodied in Alternative 4 (including the GOA pollock trip limit) resulting in the 2001 Biological Opinion and Incidental Take Statement. The 2001 Biological Opinion concludes that this suite of management measures would not likely jeopardize the continued existence of the western or eastern populations of Steller sea lions.

The language in the Steller sea lion regulations describing the effects of the trip limit measure are shown below:

*The 300,000 lb (136 mt) trip limit for catcher vessels harvesting pollock in the directed pollock fisheries of the GOA at § 679.7 supports temporal distribution objectives and is maintained by this rule. A catcher vessel fishing for groundfish in the GOA will be prohibited from retaining on board more than 300,000 lb (136 mt) of pollock harvested in the GOA any time during a trip. This trip limit will not exempt vessels from existing regulations that require 100 percent retention of pollock when directed fishing for pollock is open. A vessel would have to stop fishing for pollock during a fishing trip before the 300,000 lb (136 mt) trip limit is reached to avoid a violation of either the 300,000 lb (136 mt) trip limit or the 100 percent retention requirement for pollock.*

*In addition, § 679.7 continues to prohibit vessels from operating as pollock tenders in the GOA east of 157°00' W long. to prevent the large scale use of tender vessels to avoid the trip limit restriction. Vessels operating as tenders in the GOA west of 157° 00' W long. will be prohibited from retaining on board more than 600,000 lb (272 mt) of unprocessed pollock or the equivalent of two fishing trips. Tendering west of 157° 00' W long. is allowed because smaller vessels delivering to Sand Point and King Cove are more dependent on tenders than the larger vessels that operate east of 157° 00' W long. and deliver primarily to Kodiak<sup>1</sup>*

At present, the existing Western GOA trip limit measure, together with the other Steller sea lion protection measures, is believed to be an appropriate mitigation measure to avoid jeopardy to the western Steller sea lion population. Since the proposed alternative is more restrictive than the existing trip limit measure, any effect on the temporal distribution of catch of this action would be beneficial.

## 1.1 Background for Initial Action in 1999

In December 1998, the Council took emergency actions to implement measures consistent with NMFS' proposed Reasonable and Prudent Alternatives (RPAs) to reduce impacts to Steller sea lions. For the Gulf of Alaska, the Council's action included: creating four seasons with limits on the percentage of the TAC which could be taken from any one season, expanding the closure areas around rookery and haul-out sites, **and establishing a 300,000 pound trip limit for pollock in the western and central Gulf areas<sup>2</sup>**. As noted in the text box below, the regulation implemented by NMFS translated the Council's recommended trip limit of 300,000 pounds to the nearest whole metric equivalent, which is 136 metric tons. Throughout the report, the limit is referred to as the 300,000 pound limit, since that was the management action, but the regulation is set at 136 metric tons, which is slightly less than 300,000 pounds (299,829 pounds).

The staff received information from participants in the 1999 Council deliberations that the 300,000 pound trip limit was a compromise limit. The smaller trawler operations in the region were requesting a trip limit of 150,000 pounds per day. Larger trawler operations were requested a limit of 500,000 pounds per day or greater. The Council apparently arrived at the 300,000 pound limit as a compromise figure.

In response to the Council recommendation, on January 22, 1999, NMFS implemented an emergency action to apply Steller sea lion protection measures, including the action described above, to the 1999 fishing season<sup>3</sup>. The wording for the emergency rule, as it relates to the Gulf of Alaska trip limits is as follows:

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<sup>1</sup> Federal Register/Vol 67, No. 5, Tuesday, January 8, 2002/Rules and Regulations, page 964.

<sup>2</sup> North Pacific Fishery Management Council newsletter, December 1998 (emphasis added).

<sup>3</sup> Federal Register/Volume 64, No. 14/Friday, January 22/Rules and Regulations – page 3441.

*“The emergency rule prohibits the operator of a catcher vessel fishing for groundfish in the W/C GOA from retaining on board more than 136 mt of pollock harvested in the W/C GOA. In addition, to prevent the large scale use of tender vessels to avoid the trip limit restriction, this rule also prohibits vessels operating as tenders from retaining on board more than 272 mt (the equivalent of 2 fishing trips) of unprocessed pollock that was harvested in the W/C GOA. This 136 mt trip limit does not exempt vessels from existing regulations that require 100 percent retention of pollock when directed fishing for pollock is open. A vessel operator must cease fishing for pollock during a fishing trip before the 136 mt limit is reached in order to avoid a violation of either the 136 mt trip limit or the 100 percent retention requirement for pollock.”*

The reason for the emergency trip limit action was clearly spelled out in the Federal Register notice to temporally or spatially disperse pollock harvests in the GOA. The rule was implemented as of January 22, 1999 and has been in effect since then. The NMFS intent from the wording of the supporting text for the emergency regulation specifically uses the phrase “trip limit” and the intent is clear<sup>4</sup>. However, the language in regulation is less clear<sup>5</sup>. The language in the regulation prohibits retaining on board a catcher vessel at any one time during a trip more than 300,000 pounds of pollock. However, the regulation does not define ‘trip’ in a manner that prevents daily landings above the 300,000 pound limit, potentially bypassing the intent of the regulation through actions such as multiple deliveries per day to a tender or transferring cod ends to the tender or processor, thereby not taking the pollock on board or partially offloading the fish in the hold, thus extending the trip. The existing regulation allows vessels to land well in excess of 300,000 pounds per day, without incurring a fisheries violation.

The second part of the regulation 679.7 (b) (3) stipulated that tenders cannot retain on board at any one time more than 600,000 pounds of pollock. However, since deliveries to tenders are not identified as such on fish tickets, it is not possible to track the amount of pollock delivered to tenders to see if companies utilizing tenders in the western Gulf pollock fishery are abiding by the regulation. Enforcement of the tender regulation appears dependent upon on-grounds enforcement. Based on this review, it appears that 679.7(b)(3) is a particularly difficult regulation to enforce.

The Alaska Board of Fisheries, following the action of the Council, implemented similar regulations within State waters on July 27, 1999. The State trip limit regulation is worded similarly to the NMFS regulation above (see 5 AAC 28.073). The area incorporated into the State trip limit regulation includes State waters adjacent to the Federal management areas 610 and 620, between 147 and 170 degrees west longitude.

## **1.2 Council/NMFS Action in 2000**

On January 25, 2000, NMFS, implementing recommendations from the Council, published an emergency interim rule to continue protection measures for Steller sea lions. The pollock trip limit was included in the package, continuing the rule in regulation.

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<sup>4</sup> Federal Register/Volume 64, No. 14/Friday January 22, 1999.

<sup>5</sup> 50 CFR 679.7 (b) & (c)

### **1.3 Council/NMFS Action in 2002**

On January 8, 2002, NMFS published the final rules and regulations to implement the Steller sea lion protection measures, including in final action the pollock trip limits in the GOA. This regulation is still in effect as passed in 2002.

### **1.4 Council Action in 2004/2005**

In December 2004, the Council requested staff to prepare a discussion paper for the 300,000 pound trip limit, prompted by a proposed motion submitted by western Alaska groundfish fishermen. The Council record shows a motion submitted to the Council for consideration (copy attached as Appendix 1) recommending an action to resolve the landing pattern that the proponents of the motion believed to be a 'loophole' to ignore Council intent with the 300,000 pound trip limit. The discussion paper was prepared and presented to the Council at the February 2005 meeting.

The notes from the meeting indicate the following action by the Council:

In December 2004, the Council requested that staff develop a discussion paper of recommended changes to the 300,000 lb pollock trip for catcher vessels. Multiple trips and offloading to tenders have allowed a faster catch rate by catcher vessels than if they were delivering to plants on shore or if only one trip was allowed per day. The faster paced fishery led to a 2,000 mt overage of the 5,000 mt seasonal pollock quota in the 2005 'A' season in Area 610. The Council expressed concern, but tabled further action indefinitely after receiving assurances from industry representatives that the pace of future fishing would be slower, and from NMFS that the 2006 'A' season would be more closely managed. If the problem is not addressed voluntarily, the Council may reschedule further discussion and possible regulatory action in the future.

The link between the Council action initial action in 1999 and the Council discussion and proposed motion in December 2004 is the common theme to slow down the fishery.

### **1.5 Council Action in 2007**

At the April 2007 meeting, the Council directed the staff to initiate the process for an amendment to resolve this issue. This report is the result of that request.

## **2.0 REGULATORY IMPACT REVIEW**

### **2.1 Introduction**

This chapter provides information on the economic and socioeconomic impacts of the alternatives, as required under Executive Order 12866 (E.O. 12866). This chapter includes a description of the purpose and need for the action and the management objectives, a description of the alternatives proposed to meet those objectives, identification of the individuals or groups that may be affected by the action, the nature of those impacts (quantifying the economic impacts where possible), and discussion of the tradeoffs. The economic impacts of the alternatives under consideration, including the Council's preferred alternative, are summarized in Section 2.2.8.

The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

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

This section addresses the requirements of E.O. 12866 to provide adequate information to determine whether an action is “significant” under E.O. 12866. The order 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:

- (1) 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, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

As will be presented in the following sections, it is not anticipated that selection of any alternative under consideration for this amendment would trigger any of the above considerations to be a “significant regulatory action”.

## **2.2 Purpose and Need for the Action**

### **2.2.1 Draft Problem Statement**

This regulation was implemented with other Steller sea lion pollock fishery mitigation measures in 1999. The trip limit of 136 mt. (300,000 pounds) was established to provide temporal dispersion in pollock fishing, through slowing the fishery. As shown by the analyses presented in this report, the measure has not been fully effective in limiting daily landings of a vessel to 300,000 pounds in the fishery. It cannot be determined from the available data whether the avoidance has been a result of the use of tenders, vessels making multiple landings per day, or through some other method, but the effect is the same. The issue addressed by this proposed amendment is not one of enforcement. Rather, it is whether or not the existing regulation meets the initial goal of limiting each vessel to landing no more than 300,000 pounds pollock per day in the GOA. The Council may decide whether or not the existing regulation reflects their intent for regulation of the GOA pollock fishery, but the relevant comparison is whether they agree with the problem statement, and agree on an appropriate action to change the existing situation.

The April 2007 staff discussion paper presents a draft problems statement, which has been slightly rewritten in the interest of clarification.

The revised problem statement is as follows:

*Section 679.7(b) (2) placed a 136 mt. (300,000 lb) limit for the amount of pollock that can be aboard a catcher vessels in the Gulf of Alaska, but places no limit on the number of trips per day, and does not place a limit on the total amount of pollock that can be harvested and landed by a catcher vessel in a day. The trip limit was intended to slow down the race for fish in the pollock fishery by limiting harvests on catcher vessels to 300,000 lb of unprocessed pollock per fishing trip.*

*Catcher trawl vessels may be circumventing the intent of the trip limit by making multiple 300,000 deliveries in a day to tenders in the western GOA, which have a 600,000 lb limit [§679.7(b)(3)(ii)]. It was generally believed that only one trip per vessel would occur per day when the Council made its recommendation, but the regulation, as written, does not impose a daily limit. The higher tender trip limit would allow one vessel to offload 300,000 pound harvests twice in the same day and still land its own third trip limit and still operate within the regulation. Multiple trips and offloading to tenders allow a faster catch rate by those vessels than if they were delivering to plants on shore or if only one trip was allowed per day.*

Clearly, the regulation may not be having the full effect because of fishermen's ability to land greater than 300,000 pounds per day without incurring a violation under the existing regulation. The most straightforward way to fix this situation would be to adjust the regulation, so that an effective and enforceable trip limit would be in place.

While the genesis of the trip limit regulation resulted from the need to implement Steller sea lion protection measures, the need for the current alternative is due to problems with the current regulation that have exacerbated conflicts between small trawl pollock vessels and larger trawl pollock vessels operating in the GOA. The trip limit issue, as noted in the discussion below, has served to promote continuing conflict between the larger trawl vessels fishing pollock and the smaller trawl vessels fishing pollock. The Council has heard testimony by pollock fishermen in the region, primarily residing in King Cove and Sand Point, that their fishing opportunities to fish in the pollock fishery in management areas 610 and 620 are truncated to some extent, by avoidance of the 300,000 pound trip limit. The extent of the 'overage' problem is described in the following sections. Taking action to correct the trip limit regulation would have the effect of extending the number of days the pollock fisheries was open in management areas 620 and 610 by reducing the daily harvest per vessel to 300,000 pounds per day or less.

## **2.2.2 Draft Alternatives**

In the April 2007 staff discussion paper, two draft alternatives were presented for the Council's consideration. The alternatives are:

### **2.2.2.1 Alternative 1: No Action.**

If this alternative were selected, the status quo would not change. The pattern of practices that allow greater than 300,000 pounds of pollock to be landed per day without incurring a fisheries violation would not change.

**2.2.2.2 Alternative 2: Limit trawl catcher vessels in the combined area 610 and 620 pollock fishery to a harvest of no more than 136 metric tons (the metric equivalent of 300,000 pounds) during a calendar day (12 AM to 12 PM). Vessels are also limited to landing no more than 136 metric tons, through any delivery means, in a calendar day (12 AM to 12 PM).**

This alternative has been slightly edited from the one the Council reviewed in April 2007. The change is to make the 24 hour trip limit period coincide with a calendar day, i.e. from 12 AM to 12 PM. This would clarify the rule for participants in the fishery, and would simplify enforcement of the limit. In the draft alternative in the April 2007 paper (appended to this report), the period for the trip limit was noon to noon. Staff is suggesting the calendar day (midnight to midnight) for consistency with recent Council actions on other management issues, for example the BSAI/GOA license limitation analysis, where a landing was defined to be the harvest made within one calendar day. More importantly, if the time interval was set noon to noon, as in the previous discussion paper, the limit would be effective over two calendar days (since fish tickets do not include the time of landing), complicating monitoring and enforcement.

**2.2.3 Description of the Pollock Trawl Fishery in 610 and 620.**

Table 1 below shows the recent history of the pollock harvests in areas 610 and 620 from 1999 through 2006. The most noticeable feature of this table is the radical decrease in the quota in area 620 for the years 2000 and 2001 and the return in 2002 to previous levels. Staff discussed the data with a member of the GOA groundfish plan team to get information on the reason for this radical drop and recovery. Apparently, the TAC was based on trawl surveys for those years and generally reflected an estimated change in abundance<sup>6</sup>.

**Table 1. Basic Information on the GOA Pollock Fishery: TACs & landings 1995-2006**

<b>Pollock Harvest and Quotas in Management Areas 610 &amp; 620: 1999-2006</b>						
	<b>Management Area 610-Shumagin</b>			<b>Management Area 620-Chirikof</b>		
<b>year</b>	<b>total catch (mt)</b>	<b>quota</b>	<b>% taken</b>	<b>total catch (mt)</b>	<b>quota</b>	<b>% taken</b>
1999	23,384	23,120	101.1%	38,142	38,840	98.2%
2000	22,074	26,378	83.7%	699	7,815	8.9%
2001	30,471	31,056	98.1%	1,742	8,059	21.6%
2002	17,455	17,840	97.8%	20,535	25,233	81.4%
2003	16,510	16,788	98.3%	19,642	19,685	99.8%
2004	23,455	22,930	102.3%	24,661	26,490	93.1%
2005	30,973	30,380	102.0%	27,904	34,404	81.1%
2006	24,738	28,918	85.5%	27,156	30,492	89.1%

Source: NMFS data file based upon ADF&G fish ticket files, July 2007.

An important aspect of the pollock fishery in areas 610 and 620 is that they occur partially within state waters (0 to 3 miles) and partially within federal waters (3-200 miles). With the fishery split between the state and federal waters, management problems cannot be resolved in one jurisdiction without also addressing the problem in the other. In 1999, following the NMFS implementation of the 136 mt. limit, the State of Alaska, through action by the Alaska Board of Fisheries, implemented a similar regulation to mirror the federal regulations in state waters.

Table 2 shown below shows the respective split of pollock harvests between state and federal waters. The far right hand side of the table shows the respective proportion, by year and in total over the period from

<sup>6</sup> Personal communication, Tom Pearson, NMFS, August 2007.

1999-2006, that was harvested in state waters and in federal waters. The respective proportions shift from year to year, particularly within management area 620. Based on the data in Table 2, it appears as if fishermen shifting effort from year to year in response to changes in resource abundance. The total at the bottom of Table 2 shows the overall proportions harvested over the 8 year period (1999-2006) from each of the two areas. The proportions for area 610 are 60.8 percent of the harvest from state waters and 39.2 percent from federal waters. For area 620, the proportions are 17 percent in state waters and 83 percent in federal waters. The conclusion to be drawn from Table 2 is that action in both state and federal waters is important if the trip limit is to be successfully enforced. If the regulation were just to be administered only in federal waters, for example, the unintended result could be a shift in effort to state waters by those wishing to make larger landings.

**Table 2. Proportional Harvests of Pollock in State and Federal Waters, 1995–2006**

Year	Zone	Inside/Outside	Proportion	Year	Zone	Inside/Outside	Proportion
1999	610	I	52.6%	2004	610	I	61.1%
		O	47.4%			O	38.9%
		Total	100.0%			Total	100.0%
	620	I	24.8%		620	I	20.6%
		O	75.2%			O	79.4%
		Total	100.0%			Total	100.0%
	Total	I	35.5%		Total	I	42.7%
		O	64.5%			O	57.3%
		Total	100.0%			Total	100.0%
2000	610	I	79.0%	2005	610	I	49.8%
		O	21.0%			O	50.2%
		Total	100.0%			Total	100.0%
	620	I	7.3%		620	I	4.7%
		O	92.7%			O	95.3%
		Total	100.0%			Total	100.0%
	Total	I	54.1%		Total	I	28.8%
		O	45.9%			O	71.2%
		Total	100.0%			Total	100.0%
2001	610	I	74.2%	2006	610	I	61.8%
		O	25.8%			O	38.2%
		Total	100.0%			Total	100.0%
	620	I	16.9%		620	I	9.0%
		O	83.1%			O	91.0%
		Total	100.0%			Total	100.0%
	Total	I	52.8%		Total	I	35.4%
		O	47.2%			O	64.6%
		Total	100.0%			Total	100.0%
2002	610	I	49.1%	Total	610	I	60.8%
		O	50.9%			O	39.2%
		Total	100.0%			Total	100.0%
	620	I	31.9%		620	I	17.0%
		O	68.1%			O	83.0%
		Total	100.0%			Total	100.0%
	Total	I	39.6%		Total	I	39.4%
		O	60.4%			O	60.6%
		Total	100.0%			Total	100.0%
2003	610	I	55.5%	key: I equals inside (state) waters O equals outside (federal) waters Source: NPFMC data file based on ADF&G fish tickets, July 2007.			
		O	44.5%				
		Total	100.0%				
	620	I	14.8%				
		O	85.2%				
		Total	100.0%				
	Total	I	33.3%				
		O	66.7%				
		Total	100.0%				

In understanding the patterns of the fishery, it seems important to look at the change in fishing effort by vessels of different sizes, to see if there has been a recognizable trend over the period since the trip limit regulation has been implemented. Table 3 shows the pattern of days with landings (defined as a vessel landing pollock in either 610 or 620 during one calendar day) for the years 1999–2006. The days with landings are divided by vessel length category: those vessels less than 60 feet compared with those vessels 60 feet or greater. These data represent an admittedly gross measure of effort, since there is no measure of catch associated with the days with landings. Nevertheless, this table does allow perspective on the participation trends for smaller and larger vessels in the trawl pollock fishery in areas 610 and 620. While there is some variation in the number of landing days for the groupings in Table 3, there is not a remarkable trend to indicate that vessels less than 60 feet or 60 feet and over had had a steady increase or decrease in the number of days where landings have been made in the trawl pollock fishery.

**Table 3. Vessel Landing Days for Pollock in Areas 610 and 620, 1999–2006**

year	Area 610		Area 620	
	landing days for vessels < 60 ft.	landing days for vessels ≥ 60 ft.	landing days for vessels < 60 ft.	landing days for vessels ≥ 60 ft.
	1999	233	177	64
2000	256	141	4	169
2001	369	146	41	267
2002	193	100	32	302
2003	170	62	6	267
2004	218	67	8	244
2005	352	101	20	294
2006	300	136	11	320

note: landing days are defined as a calendar day that an individual vessel made at least one landing.  
 Source: NPFMC data file based upon ADF&G fish tickets, July 2007.

### 2.2.4 Enforcement of the Existing Regulation

NMFS Enforcement has the responsibility to enforce the existing regulation for the western Gulf trip limits. For landings of pollock greater than 136 mt., the enforcement practice is as follows.<sup>7</sup> For the first instance during a calendar year, the penalty is abandonment of the amount in excess of 136 mt. For each subsequent violation during the same calendar, penalties include abandonment of the excess pollock and penalty (fine). It is important to note that, due to the structure of the existing regulation, not all instances where a vessels lands greater than 300,000 pounds represent a violation of the existing trip limit regulation. Operators in the fishery have utilized fishing methods involving deliveries to tenders, vessel loads and delivery of towed cod ends on the same trip to maximize their catch, and still remain within the existing regulation.

### 2.2.5 Identification of the problem to be solved

The genesis of the GOA pollock trip limits were sideboard allocations discussions that occurred during implementation of the American Fisheries Act. The Final EIS for the American Fisheries Act, contains the following statement:

*Both AFA and non-AFA catcher vessel owners expressed concern that rationalization of the BSAI pollock fishery could lead to an intensification of the race for fish in other groundfish fisheries if a race for sideboard fishing developed within the AFA fleet. This could occur because under AFA cooperatives, numerous AFA catcher vessels would no longer need to participate in the BSAI pollock fishery and would be free to expand their effort into other groundfish fisheries. Absent some mechanism to allocate sideboard amounts among individual cooperatives and vessels, an intense race for sideboard fishing could ensue as each AFA vessel race to capture its share of the sideboard<sup>8</sup>.*

During the development of the Steller sea lion protection measures, a trip limit for pollock in the Gulf of Alaska was included in the measures considered in a couple of the alternatives. As noted in this report,

<sup>7</sup> Ken Hansen, Alaska Enforcement Division, personal communication, September 2007.

<sup>8</sup> Final Environmental Impact Statement for American Fisheries Act Amendments 61/61/13/8, United States Department of Commerce, National Oceanographic and Atmospheric Administration, National Marine Fisheries Service, Alaska Region, February 2002, chapter 4, page 4-83.

NMFS enacted regulations to set a trip limit of 136 metric tons in the trawl pollock fishery in areas 610 and 620. The limit was established through emergency action in 1999 and through final action in 2002. Problems with the regulation as it currently exists and is administered have been brought to the attention of the Council in recent years. In testimony to the Council, fishermen from these areas have complained that the trip limit regulation has been circumvented by the use of tenders in the fishery to make multiple landings per day, which they believe is not consistent with the Council's initial intent for this regulation.

To evaluate the situation on landings in the fishery, the staff developed a data base comprised of fish ticket files and analyzed the data for the fishery from the time of implementation of the trip limit (January 22, 1999) through the 2006 season. Over this time period, there were a total of 5,988 fish tickets for trawl pollock landings, 3,280 fish tickets issued for landings in area 610 and 2,708 fish tickets for landings in area 620. When we look at the number of fish tickets for amounts of pollock greater than 300,000 pounds, there are a total of 129 instances where this occurred between 1999 and 2006, 77 instances in area 610 and 53 instances in area 620 (one fish ticket was split between both areas). The mean fish ticket amount, for the 129 instances over 300,000 pounds was 340,796 pounds.

As discussed above, landings greater than 300,000 pounds may or may not be a violation, since the existing regulation allows vessels to employ a number of practices (i.e. deliveries to tenders, transfer of cod ends, and not fully offloading fish from the hold to prevent the and of a 'trip').

#### **2.2.6 Analysis of the 'Overages' (daily landings by a vessel in excess of 300,000 pounds)**

The staff further considered the data on landings, since there is considerable latitude on practices for fish tickets. For example, a vessel owner has the potential opportunity to receive more than one fish ticket for a given trip from more than one processor, or even from the same processor. To compare the current management of the regulation with what would be the case with a 300,000 daily trip limit, we completed a second analysis, aggregating all landings made by a specific vessel over a calendar day.

This analysis showed a total of 5,553 landings by individual vessels during a calendar day for the trawl pollock fisheries in areas 610 and 620 from the implementation date of January 22, 1999 through 2006. Of this total, there were 187 instances between 1999 and 2006 where more than 300,000 pounds was landed by an individual vessel during a calendar day. This analysis demonstrates the difference between the current situation and what would be the case with full compliance with a daily trip limit of 300,000 pounds (per the problem statement for this proposed amendment). There is not sufficient information in the fish ticket records to be able to discern the reasons for the additional 58 instances where vessels landed more than 300,000 pounds in a calendar, above and beyond the 129 instances where the fish tickets were for amounts greater than 300,000 pounds. The 58 instances could represent multiple landings to a tender for example, or they could represent situations where landings were 'split' into more than one fish ticket record. We have no way to know what the exact reasons were for these additional daily landings in excess of 300,000 pounds, but it is enough for the purposes of this analysis to recognize them as an indication that the trip limit is not functioning as a 300,000 daily landing limit.

Table 4 below provides additional information on this analysis, aggregated by year. It also shows the proportion of total pollock landings comprised by the 'overage' amounts. The overage amounts are the poundage amounts in excess of 300,000 pounds landed by vessels that exceeded 300,000 pounds per vessel per day. The right hand column of Table 4 shows the proportion of total pollock landings compared with the 'overage' pounds. As can be noted in the table, the overall proportion for 'overage' pounds varies by year from a low of 0.3 percent in 2000 to a high of 4.3 percent in 2002.

**Table 4. Gulf of Alaska Pollock Harvest Statistics, 1999–2006:  
Annual Harvest Compared with ‘Overage’ Amount > 300,000 Pounds**

<b>year</b>	<b>total for 610 &amp; 620</b>	<b>'overage'</b>	<b>proportion - overage of total</b>
1999	134,696,965	2,675,464	2.0%
2000	72,299,957	252,858	0.3%
2001	106,007,366	1,216,773	1.1%
2002	85,188,592	1,415,971	1.7%
2003	79,809,905	525,580	0.7%
2004	94,094,596	4,048,830	4.3%
2005	127,977,913	2,907,955	2.3%
2006	107,531,159	1,864,959	1.7%
<b>totals</b>	<b>807,606,453</b>	<b>14,908,390</b>	<b>1.8%</b>

Source: NMFS annual harvest summary and NPFMC data files, July 2007. Landings in 1999 are from the date of implementation of the trip limit regulation on January 22, 1999.

Note: ‘Overage’ is the sum of pounds in excess of 300,000 pounds landed by vessels that exceeded 300,000 pounds per vessel per day.

Again, we need to emphasize that the 187 instances noted above may or may not constitute a regulation violation. The existing regulation limits a vessel to 136 mt. on board at any one time, so it is possible for vessels to make daily landings well in excess of 136 mt. without incurring a violation.

### **2.2.7 Further Investigating the ‘Overage’ Amounts**

Looking further, we can look at the pattern of the ‘overage’ amounts, i.e. the amount of pollock landed that was above 300,000 pounds. Figure 2 below shows the distribution of the amounts by which vessels daily landings in excess of 300,000 pounds exceeded that amount. Please note that the intervals in the graph are not equal. They were selected to allow the reader to get an understanding of the distribution of the overages, without being overly complex. As noted in the figure, the 187 ‘overages’ range from 282 pounds to over a million pounds, with a mean of 79,724. These data show that in general, the ‘overages’ are not a huge proportion of the total harvest, but are a significant amount.

Another comparison was made to evaluate whether the extent to which landings were made in excess of 300,000 were made during the A season. Since the A (January) season, with the extra value of roe in the pollock harvested, might be assumed to represent the greatest incentive for GOA pollock fishermen to increase harvests. As shown in Table 5 below, for the years 2003 to 2006, the average proportion of ‘overage’ harvests in the A season compared with the total 610 and 620 harvest only accounts for 1.6 percent. This compares with 1.8 percent overall, for the entire year, as shown in Table 4. As shown in Table 5, the ‘overage’ amounts in the A pollock season are very small, with the exception of 2005.

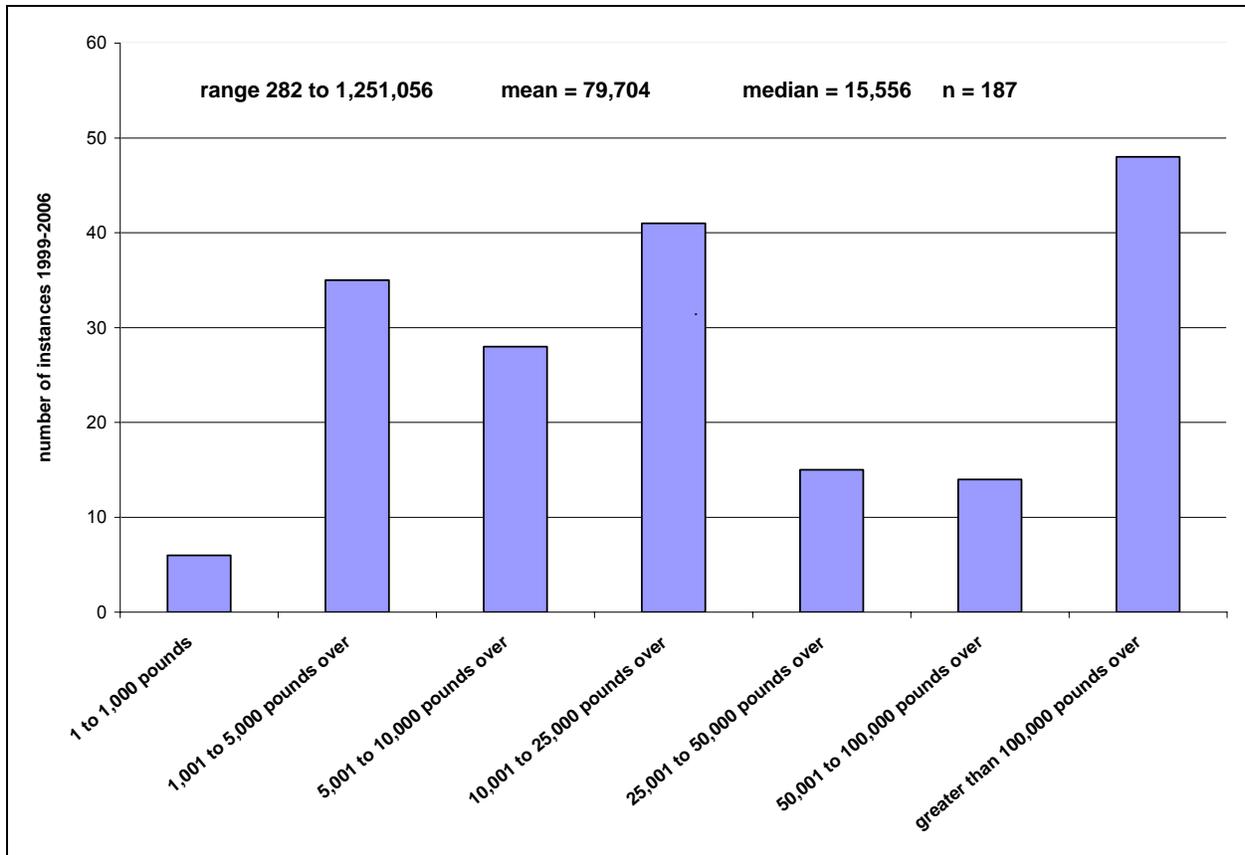


Figure 2. Pattern for pollock "overage" harvest greater than 300,000 pounds/day

Table 5. Gulf of Alaska pollock harvest statistics, 1999–2006:

A Season Harvest Compared with 'Overage Amount > 300,000 Pounds

year	total for 610 & 620	'overage'	proportion - overage of total
2003	19,580,499	6,144	0.0%
2004	18,550,373	118,473	0.6%
2005	44,752,881	1,521,253	3.4%
2006	23,405,871	22,565	0.1%
<b>totals</b>	<b>106,289,624</b>	<b>1,668,435</b>	<b>1.6%</b>

Source: NMFS annual harvest summary and NPFMC data files, July 2007. Landings in 1999 are from the date of implementation of the trip limit regulation on January 22, 1999.

### 2.2.8 Economic Effects of the Alternatives – A Summary of Costs and Benefits

The justification for this action in 1999 the Steller Sea lion action was to contribute one of the three measures intended to slow down the pollock fishery in the GOA and provide temporal dispersion in the harvest to minimize. Compared with the situation prior to 1999, the regulation has been effective in reducing the number of daily vessel landings in excess of 300,000 pounds and the amount of catch landed in excess of that daily threshold (see Table 6 below). Looking at the right hand column of Table 6, the data analyzed demonstrate that the current trip limit regulation has been effective in reducing the daily

vessel landings,<sup>9</sup> thus achieving temporal dispersion as intended. Prior to implementation of the trip limit, the proportion of landings greater than 300,000 pounds totaled 14.5 (annual average from 1995-1998). Following the implementation of the trip limit regulation, the proportion of landings greater than 300,000 pounds totaled 1.8 percent (annual average from 1999-2006).

The problem described in the problem statement for this amendment relates to a continuing problem with daily landings greater than 300,000 pounds for a relatively small proportion of total landings. Although the existing regulation has been partially effective in reducing the average size of pollock landings, participants in the fishery would like to see further reductions on ‘overage’ amounts—the landings that are over 300,000 pounds per day.

**Table 6. Western Alaska pollock landings prior to and following implementation of the trip limit on January 22, 1999**

Year	Vessel landing days	Total pounds	Number of daily vessel landings over 300,000 pounds	Number of daily vessel landings over 345,000 pounds	Amount of daily vessel landings in excess of 300,000 pounds		Amount of daily vessel landings in excess of 345,000 pounds	
					in pounds	as percent of total pounds	in pounds	as percent of total pounds
1995	494	89,436,987	80	65	17,016,417	19.0	13,797,516	15.4
1996	602	74,971,457	37	29	5,557,735	7.4	4,154,964	5.5
1997	821	121,231,386	79	71	18,746,194	15.5	15,372,385	12.7
1998	1,123	182,209,477	138	110	26,665,833	14.6	21,071,739	11.6
total (1995-1998)	3,040	467,849,307	334	275	67,986,179	14.5	54,396,604	11.6
1999	954	135,741,189	31**	4**	2,675,464**	2.0	2,112,441**	1.6
2000	571	72,460,592	8	*	252,858	0.3	*	*
2001	833	106,007,366	17	5	1,216,773	1.1	871,840	0.8
2002	627	85,188,592	18	6	1,415,971	1.7	1,032,131	1.2
2003	505	79,809,905	12	*	525,580	0.7	*	*
2004	537	94,094,596	40	22	4,048,830	4.3	2,847,208	3.0
2005	767	127,977,913	38	13	2,907,955	2.3	2,098,400	1.6
2006	767	107,531,159	23	10	1,864,959	1.7	1,269,203	1.2
total (1999-2006)	5,561	808,811,312	187**	65**	14,908,390**	1.8**	10,658,251**	1.3**

Source: ADFG fish tickets

\* withheld for confidentiality

\*\* excludes landings between January 20th and January 22nd, 1999, when the current rule was not in effect.

A "vessel landing day" is a day that an individual vessel made at least one landing. "Vessel landing days" is the sum of those amounts across all vessels.

"Daily vessel landings" are total landings by a vessel on a single day in the fishery.

"Amount of daily vessel landings in excess of \_\_\_\_\_ pounds" includes only the amounts by which a landings exceeded \_\_\_\_\_ pounds.

Note: Data in this table are aggregated across areas 610 and 620.

**Production efficiency.** Given potential fishing capacity and cost of production, it is possible that the least cost manner to harvest pollock in areas 610 and 620 would be to allow the larger vessel operators to harvest the allowable quota as quickly as they could. This action, however, is intended to address distributional effects arising from these differences in harvest capacity. As such, production efficiency of vessels participating in the pollock fishery is likely to be diminished under this action.

**The economic effect of the ‘overages’** The following analysis compares the existing situation with full compliance with a landing limit of 300,000 pounds per day during the period 1999-2006. During that period 187 of 5,553 daily vessel landings exceeded 300,000 pounds (with poundage over the 300,000 pound threshold accounting for 1.8 percent of the overall harvest (see ‘overage’ amount in Table 4)). If we look at the actual amount of the ‘overages’, they total 14.9 million pounds over the period from 1999-2006. The mean ‘overage’ was 79,724 pounds, with a median of 15,556.

Table 7 below summarizes the effects of the ‘overage’ amounts since implementation of the regulation on January 22, 1999. The average landing over the period was 145,465 pounds. The fourth column in Table

<sup>9</sup> ‘Daily vessel landings’ is defined as the sum of all landings by a vessel on a given day.

6 shows the daily vessel landings that occurred each year over 300,000 pounds. Column 7 of Table 6 shows the number of additional landings that would have occurred each year, had the 14.9 million pounds (the ‘overage’ harvest amount) been landed at the average harvest level of 145,465 pounds per landing. The number varies from an additional 2 landings (2000) to 23 landings (2004) with a total of 98 additional landings for the period 1999-2006, or an annual average of 14.6 additional landings. If, instead of the average landing in the fishery (145,465 pounds), we assume that the ‘overage’ amount would have been landed as 300,000 pound landings, there would have been an additional 50 landings for the period 1999-2006, or an annual average of 7.1 additional trips.

Table 8 shows an additional comparison to provide an understanding of the scale of the effects of the ‘overage’ amounts that have occurred in the fishery. With any landing limit, there is a chance of going over the limit by a small amount, without intent to circumvent the limit. Table 8 shows the effects of a revised daily landing limit of 300,000 pounds, assuming that any daily vessel landings of less than 345,000 pounds (or 15 percent of the limit) were unintended and would persist despite the limit. As noted in Table 8, both the number of additional trips in the two right side columns (at the average landing of 145,465 and the 300,000 pounds) decrease to 10.5 annually and 5.1 annually.

Based on the analysis, it appears that a revised daily landing limit of 300,000 pounds would result in additional trips in the fishery. The primary effect of these additional trips is likely to be distributional, as vessels making the large daily landings under the current rule lose the amount of those landings in excess of 300,000 pounds, which is redistributed among the fleet. The revised limit is likely to have a very minor effect on the rate of harvest of the fishery. It is possible that the change would have been too small to allow NMFS management to allow additional fishing time, since the average number of ‘additional trips’ is so small relative to the number of vessel landing days in the fishery (the largest estimate is less than one-tenth of one percent of the average annual vessel landing days in the fishery). Over the period 1999-2006, ex-vessel prices averaged \$0.0958 per pound, so the ‘overage amount of 14.9 million pounds represents an ex-vessel value of approximately \$1.4 million. This is the total amount that could potentially have been re-distributed over the period 1999-2006, with full compliance with a 300,000 pound daily landing limit, and also assuming that the additional trips had been possible, given in-season fisheries management limitations.

There is a differential pattern in the overage amounts, based on vessel size. Of the total 187 instances where a vessel landed more than 300,000 pounds in one calendar day, 34 of the instances came from vessels less than 60 feet in length (mean overage 70,223 pounds), and 153 instances came from vessels greater than 60 feet in length (mean overage 81,835).

**Table 7. Summary table of effects of a daily landings limit of 300,000 pounds (with full compliance)**

Year	Average daily vessel landing	Number of vessel landing days	Number of daily vessel landings over 300,000 pounds	Daily vessel landings in excess of 300,000 pounds as a percent of total daily landings	Amount of daily vessel landings in excess of 300,000 in pounds	Additional landings at average daily landing size if no daily vessel landings over 300,000 pounds	Additional landings of 300,000 pounds if no daily vessel landings over 300,000 pounds
1999	142,386	946	31	3.28	2,675,464	18.8	8.9
2000	126,901	570	8	1.40	252,858	2.0	0.8
2001	127,260	833	17	2.04	1,216,773	9.6	4.1
2002	135,867	627	18	2.87	1,415,971	10.4	4.7
2003	158,039	505	12	2.38	525,580	3.3	1.8
2004	175,223	537	40	7.45	4,048,830	23.1	13.5
2005	166,855	767	38	4.95	2,907,955	17.4	9.7
2006	140,197	767	23	3.00	1,864,959	13.3	6.2
Total (1999-2006)	145,465	5,552	187	3.37	14,908,390	14.6 (annually)	7.1 (annually)

Source: ADFG fish tickets

"Daily vessel landings" is the amount landed by a vessel on a given day.

A "vessel landing day" is a day that an individual vessel made at least one landing. "Vessel landing days" is the sum of those amounts across all vessels.

"Amount of daily vessel landings in excess of 300,000 pounds" includes only the amounts by which the vessel's landings on the day exceeded 300,000.

Note: data in this table are aggregated across areas 610 and 620.

**Table 8. Summary table of effects of a daily landings limit of 300,000 pounds (with persistent 'overages' of less than 345,000 pounds)**

Year	Average daily vessel landing	Number of vessel landing days	Number of daily vessel landings over 345,000 pounds	Daily vessel landings in excess of 345,000 pounds as a percent of total daily landings	Amount of daily vessel landings in excess of 345,000 in pounds	Additional landings at average daily landing size if no daily vessel landings over 345,000 pounds	Additional landings of 300,000 pounds if no daily vessel landings over 345,000 pounds
1999	142,386	946	4	0.42	2,112,441	14.8	7.0
2000	126,901	570	*	*	*	*	*
2001	127,260	833	5	0.60	871,840	6.9	2.9
2002	135,867	627	6	0.96	1,032,131	7.6	3.4
2003	158,039	505	*	*	*	*	*
2004	175,223	537	22	4.10	2,847,208	16.2	9.5
2005	166,855	767	13	1.69	2,098,400	12.6	7.0
2006	140,197	767	10	1.30	1,269,203	9.1	4.2
Total (1999-2006)	145,465	5,552	64	1.15	10,658,251	10.5 (annually)	5.1 (annually)

Source: ADFG fish tickets

"Daily vessel landings" is the amount landed by a vessel on a given day.

A "vessel landing day" is a day that an individual vessel made at least one landing. "Vessel landing days" is the sum of those amounts across all vessels.

"Amount of daily vessel landings in excess of 345,000 pounds" includes only the amounts by which the vessel's landings on the day exceeded 345,000.

Note: data in this table are aggregated across areas 610 and 620.

## 3.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

### 3.1 Introduction

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 pilot program 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; and
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.

### **3.2 Definition of a Small Entity**

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

Small businesses: Section 601(3) of the RFA defines a “small business” as having the same meaning as 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 U.S., 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 does not meet 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% 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 have the power to control less than 50% 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 ventures 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. Of particular note for this action are the communities of Sand Point (2006 population 890) and King Cove (2006 population 807).<sup>10</sup>

### **3.3 A description of the reasons why action by the agency is being considered**

The Council’s has not formally adopted a problem statement for this proposed amendment. The staff-recommended problem statement is as follows:

The staff-recommended problem statement is as follows:

*Section 679.7(b) (2) placed a 136 mt. (300,000 lb) limit for the amount of pollock that can be aboard a catcher vessels in the Gulf of Alaska, but places no limit on the number of trips per day, and does not place a limit on the total amount of pollock that can be harvested and landed by a catcher vessel in a day. The trip limit was intended to slow down the race for fish in the pollock fishery by limiting harvests on catcher vessels to 300,000 lb of unprocessed pollock per fishing trip.*

*Catcher trawl vessels may be circumventing the intent of the trip limit by making multiple 300,000 deliveries in a day to tenders in the western GOA, which have a 600,000 lb limit [§679.7(b)(3)(ii)]. It was generally believed that only one trip per vessel would occur per day when the Council made its recommendation, but the regulation, as written, does not impose a daily limit. The higher tender trip limit would allow one vessel to offload 300,000 pound harvests twice in the same day and still land its own third trip limit and still operate within the regulation.*

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<sup>10</sup>Alaska Department of Labor, 2006 estimated population at <http://www.labor.state.ak.us/research/pop/estimates/06t4-3.xls>

*Multiple trips and offloading to tenders allow a faster catch rate by those vessels than if they were delivering to plants on shore or if only one trip was allowed per day.*

The analyses in Section 2 demonstrate that the existing regulation has been successful in reducing the average landing size, and thus slowing the fishery and providing temporal dispersion as initially intended. However, there are still instances of vessel's daily landings greater than 300,000 pounds that are viewed as a problem by participants in the fishery, particularly the smaller vessels. Additionally, the existing regulation presents NMFS enforcement with a difficult situation in trying to ensure compliance with the existing regulation.

### **3.4 The objectives of, and the legal basis for, the proposed rule**

The trawl pollock fishery in the GOA is managed by NOAA Fisheries and the State of Alaska. The management plan that is affected by the proposed amendment is the Gulf of Alaska Groundfish Fishery Management Plan. The proposed action is limited to activities within the FCZ waters administered under the two plans. The authority for the fishery management plans, and the actions in this amendment are contained in the Magnuson-Stevens Act, as amended by the Consolidated Appropriations Act of 2004. As discussed in Section 2 of this report, the pollock resource and the fishery within the Gulf of Alaska occur both within federal waters and state waters. Taking action in only one area (federal or state waters) would limit the effectiveness of the action, since pollock trawl fishery participants would be free to move to the area without the trip limits. Table 2 shows the respective proportions of the pollock harvested in federal waters (60.6 percent) and state waters (39.4 percent) over the period from 1999-2006. In 1999, the Alaska Board of Fisheries followed the January emergency rule implementing the trip limit with corresponding regulations for state waters in the GOA. Should the Council adopt this proposed amendment, similar corresponding action by the Alaska Board of Fisheries will be necessary to have a fully effective regulation.

### **3.5 A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply**

Information concerning linked ownership of many pollock vessels that operate in the Gulf of Alaska, which would be used to estimate the number of small entities that are regulated by this action, is somewhat limited. Using available information and data, however, estimates of the number of small entities regulated by the action will be provided in the future.

### **3.6 A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule**

Under the proposed alternatives, record keeping and other compliance requirements of the proposed rule will not change from the current situation. Therefore, the action under consideration requires no additional reporting, record keeping, or other compliance requirements.

Alternatives 2 should simplify the NOAA Fisheries enforcement of the daily landing limit by removing the ambiguity that has resulted by an incomplete definition of a trip in the regulation.

### **3.7 An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule**

The analysis did not identify any Federal rules that would duplicate, overlap, or conflict with the proposed rule.

### **3.8 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**

It is clear from public testimony received by the Council in 2004, 2004 and 2007 and by the analyses provided in this report that the 300,000 pound trip limit, as intended by the Council in their 1998 decision and as enacted into regulation by NMFS in 1999, is not fully effective, due to the use of tenders to increase the landing capacity of vessels participating in the fishery or other practices.

Recognizing that the 300,000 trip limit has not effectively prevented vessels from landing in excess of 300,000 pounds per day as intended, the Council could address this problem by a change in the regulation to more directly limit daily landings. This action is represented by Alternative 2 in the proposed amendment.

## **4.0 CONSISTENCY WITH APPLICABLE LAW AND POLICY**

This section of the analysis examines the Gulf of Alaska pollock trip limits with respect to the National Standards and Fishery Impact Statement requirements in the Magnuson-Stevens Act and Executive Order 12866.

### **4.1 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 have a detrimental effect on overfishing of groundfish in management areas 610 and 620 of the GOA and would have no effect, on a continuing basis, on achieving the optimum yield from each groundfish fishery. Alternative 2 could have the effect of slowing the pollock fishery to a very minor degree, but the TAC would likely be harvested with either alternative.

#### **National Standard 2**

*Conservation and management measures shall be based upon the best scientific information available.*

The analysis for this amendment is based upon the most accurate, up to date and best scientific information available. It was necessary for the Council staff to develop a new data bases to complete the analyses contained herein.

**National Standard 3**

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

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

**National Standard 4**

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

The proposed alternatives treat all license holders equally, i.e. the limit would be enforced for all vessels, regardless of vessel characteristic or ownership. Both alternatives promote conservation, to the extent that they contribute as a Steller sea lion protection measure. Both alternatives have similar effects in this regard.

**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.*

Both alternatives contribute to utilization of the trawl pollock resource in the GOA to the extent that they contribute to Steller sea lion protection, thus allowing the commercial pollock fishery to operate.

**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 changes in the availability and variability in the pollock resources in the GOA in future years. The harvest would be managed for and limited by the pollock TAC with or without this amendment.

**National Standard 7**

*Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.*

This action does not duplicate any other management action. It would clarify, and replace, the existing regulation described in Section 1.

**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 will not have adverse impacts on communities or affect community sustainability. As noted in Section 2, the largest share of the ‘overage’ instances has been landed by large (greater than 60 foot)

vessels. Many of the locally-owned vessels in Sand Point and King Cove are converted seine vessels, and are less than 60 feet.

#### **National Standard 9**

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

This proposed amendment will have no effect on bycatch.

#### *National Standard 10*

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

The alternatives proposed under this action should have no effect on safety at sea.

### **4.2 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 trawl pollock fisheries in management areas 610 and 620 have been discussed in previous sections of this document. The proposed alternatives will have no effect on participants in other fisheries.

## **5.0 CONSULTATION AND PREPARERS**

### **5.1 List of Persons and Agencies Consulted**

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## **6.0 REFERENCES**

(References to be added)



## APPENDIX 1 – Staff Discussion Paper, dated February 2005

AGENDA D-1(e)  
FEBRUARY 2005

### WESTERN GULF OF ALASKA 300,000 LB POLLOCK TRIP LIMIT DISCUSSION PAPER FEBRUARY 1, 2005

In December 2004, the Council requested that staff develop a discussion paper of a proposal submitted by a representative of Western Alaska groundfish fishermen during public testimony at that meeting. The proposal recommends implementing a 300,000 lb limit of unprocessed pollock during a 24 hour period in place of the current 300,000 lb trip limit. Some vessels are delivering multiple 300,000 lb trips daily to tenders, up to the 600,000 lb tender limit in the Western Gulf (Area 610). The proposers reported that some fishermen are using multiple tenders and have harvested and delivered as much as 1,500,000 lb in a single day. While the regulations do not prohibit this activity, the Council will consider whether this is consistent with its original intent to increase temporal dispersion of the fleet as part of the Steller sea lion mitigation measures, under which the trip limits were implemented in 1999. At its February 2005 meeting, the Council will review the paper and decide whether to initiate a regulatory amendment and set a timeline for action.

**PROPOSED ACTION:** Replace the 300,000 lb catcher vessel pollock trip limit with a 300,000 lb catcher vessel pollock daily limit in the western GOA (Area 610).

**PROBLEM STATEMENT/OBJECTIVE:** Section 679.7(b)(2) places a 300,000 lb trip limit for catcher vessels in the Gulf of Alaska, but places no limit on the amount of trips, or total amount of pollock, allowed on board a catcher vessel in a day. The trip limit was intended to slow down the race for fish in the pollock fishery by limiting harvests on catcher vessels to 300,000 lb of unprocessed pollock per fishing trip.

Non-resident catcher trawl vessels may be circumventing the intent of the trip limit by making multiple 300,000 deliveries in a day to tenders in the western GOA, which have a 600,000 lb limit [§679.7(b)(3)(ii)]. It was generally believed that only one trip per vessel would occur per day when the Council made its recommendation, but the regulations do not impose a daily limit. The higher tender trip limit would allow one vessel to offload twice and land its own trip limit or two vessels to offload once each and each land their trip limit. Multiple trips and offloading to tenders allow a faster catch rate by those vessels than if they were delivering to plants on shore or if only one trip was allowed per day.

**BACKGROUND:** The Council recommended and NMFS implemented a variety of measures to slow the pace of the pollock fishery under Steller sea lion mitigation measures. The 1999 emergency rule contained a trip limit of 300,000 lb (136 mt) for all vessels fishing for pollock in the western and central (Areas 620 and 630) GOA management areas. This limit accommodated larger non-resident vessels, which have hold capacities exceeding 1 million lb, and the smaller catcher vessel fleet based in Sand Point and King Cove, which have hold capacities of less than 150,000 lb. In the past, the entry of large numbers of Bering Sea -based catcher vessels has led to short-term pulse fisheries in the GOA with attendant concerns about localized depletion of pollock populations and quota overages. The trip limit significantly slowed the pace of fishing by the larger BS-based catcher vessel fleet that has traditionally fished in the GOA when BS fishing seasons were closed.

The Council also recommended regulations that prohibit catcher vessels from fishing in both the GOA and BS during the same fishing season and prohibit vessels from operating as pollock tenders in central

GOA to prevent the large scale use of tender vessels to avoid the trip limit restriction. Vessels operating as tenders in western GOA are prohibited from retaining on board more than 600,000 lb (272 mt) of unprocessed pollock. Tendering is allowed there, while prohibited from other Gulf management areas, because smaller vessels delivering to Sand Point and King Cove are more dependent on tenders than the larger vessels that operate in the central GOA and deliver primarily to Kodiak.

The American Fisheries Act placed additional (sideboard) restrictions on BS-based catcher vessels when fishing in the GOA. The combined effects of all of these measures were expected to significantly slow the pace of the GOA pollock fisheries in a manner consistent with the principle of temporal dispersion, by discouraging or preventing all but a few BS-based catcher vessels from continuing to fish in the GOA. During 1995-1997, BS-based catcher vessels accounted for approximately 75 percent of the pollock landings in Areas 610 and 620, and more than 50 percent of pollock landings in Areas 630 and 640.

In-season management of 2005 fishery: NMFS staff reported that most catcher vessels do not exceed the trip limit. Twenty two catcher vessels participated in the 2005 “A” season. During the three day fishery, eight vessels made three deliveries, nine vessels made four deliveries and one vessel made eight deliveries. The remaining four vessels made two or fewer deliveries for a total of 76 deliveries for the fishery. Of those, eight (about 9 percent) exceeded the 300,000 lb trip limit, compared with one or two vessels in a typical season. While one vessel exceeded the limit by over 57,000 lb, the others exceeded the limit by 1,000-10,000 lb (the average of all eight was 14,396 lb). One vessel had overages on two deliveries in a row. The total of all catcher vessel trip limit overages was 115,170 lb or about 52 mt, which is approximately 1 percent of the TAC. The enforcement policy is to forfeit the value of an overage for the first infraction if the overage is small (approximately 10 percent). Subsequent violations carry a fine of up to \$5000. Fines are more substantial if there are more than three overages in a year.

Since there are no limits on the number of trips allowed each day for either catcher vessels or tenders in the WGOA, the pace of the fishery has accelerated in recent years. The pre-announced 2005 “A” season began on a Thursday and lasted three days. While overages of the catcher vessel trip limit were not significant and overages of the tender trip limit have not been determined at this time, the 5,000 mt “A” season pollock TAC was exceeded by 2,000 mt due to the fast pace of the fishery from the use of tenders. Season closures must be filed through NMFS headquarters, which is not possible on weekends. A pre-season announcement is a (not necessarily better) alternative to in-season management, in which NMFS announces the closing date of a fishery prior to its start. This may still result in either overages, as was the case in this most recent season, or underages based on the lack of precision by staff in projecting the daily harvest rate. Sufficient TAC must remain in an underage for a projected full day of fishing to allow for a reopening. Otherwise, the underage amount is rolled over to the next seasonal allocation. While pre-announced closures are sometimes necessary if the projected season length is too short to allow for inseason management, they eliminate the ability for inseason managers to react to unanticipated changes in weather conditions and or catch rates.

The four processing plants that traditionally participate in this fishery all have tender vessels operating on the grounds during the fishery. A few cod end transfers have occurred in the last few seasons, including the 2005 “A” season, but this has been more the exception than the rule (or just not documented by NMFS). There were nine tenders in the 2005 fishery, compared with four tenders in 2004. This year, one processor had two tenders operating on the grounds and an additional seven tenders tied to their dock to hold fish waiting for processing (or for transport to another processing facility). One plant is weighing the fish through their hopper scales and then pumping the fish onto the tender vessels for shipment to Akutan to get processed. In doing this, the tender is not really acting as a buying tender but more as a transporter of unprocessed fish that was already delivered and reported, and may not be subject to the tender trip limit. This allows the fleet to not be constrained by the processing capacity of the plant.

The use of tenders speed the pace of fishing, whether they shorten the run time from the fishing grounds to the point of offload, thereby allowing the fleet to spend more time fishing and less time running between the processor and the fishing grounds, or provide additional holding capacity for the processing plant. Tenders typically haul the cod end on board, dump the pollock into their recirculating seawater tanks, and then transport the harvest in to a shore plant for processing. The use of tenders in the WGOA pollock fishery has been an evolving phenomenon, allowing catcher vessels to make multiple deliveries in a shorter period of time and contributing to quota overages by complicating in-season tracking of harvests. Having fish going to both shore plants and tenders makes it more difficult to track the entire catch in a manner timely enough to be useful for in-season management. If the Council chooses to reexamine the tender allowance (rather than the current trip limit), more local vessels with a 300,000 lb hold capacity could enter the fishery (now about 8 of the 22 boats have that capacity).

**ANALYSIS:** RIR/IRFA for a regulatory amendment; a categorical exclusion for NEPA would be requested; however, an EA may be required.

**RANGE OF ALTERNATIVES:**

1. No action: Limit catcher vessels to no more than 300,000 lb of pollock on board the vessel at any time during a trip in the WGOA.
2. Limit catcher vessels to no more than 300,000 lb of pollock in a 24-hour period\* in the WGOA.

\*Staff recommends noon to noon to coincide with season openings

The Council may wish to consider whether to expand the proposed action to: (1) all or other areas of the GOA, and/or (2) 600,000 lb tender trip limit in the western GOA or (3) eliminate the use of tenders in the WGOA.

**ESTIMATE OF STAFF RESOURCES:** Likely no more than 4 weeks of total interagency staff time for analytical and regulatory writing and review, if limited to the proposed action in an RIR/IRFA.

**TIMELINE TO IMPLEMENTATION:** A regulatory amendments typically requires two Council meetings for initial review and final action, with an additional six months for rulemaking and implementation. If not controversial and the proposed action entails a clarification of Council intent to the original implementing regulations (Steller sea lion mitigation measures) without triggering re-initiation of Section 7 formal consultation, it may be possible to proceed straight to final action in one meeting. Rulemaking and implementation would still require at least six months. The Council would have to identify this as a high priority action and identify staff or contract resources to schedule action in 2005. Final action would be needed by June 2005, for the possibility of implementation in January 2006.

**OTHER APPLICABLE LAWS:** Endangered Species Act consultations may be necessary if the alternatives are expanded beyond those currently proposed.

Acknowledgements: Rance Morrison and Josh Keaton, NMFS SF

## APPENDIX 2 – Draft motion discussed by the Council in December 2004 (author unknown)

Motion to correct a loophole in the WGOA 300,000lb pollock trip regulation.

### **The Problem:**

Vessels are beginning to exploit a loophole in GOA fishing regs found at 50 CI 679.7(b)(2), which pertains to trip limits for pollock.

### **§ 679.7 Prohibitions**

*In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:*

#### **(b) Prohibitions specific to the GOA.**

*(2) Catcher vessel trip limit for pollock. Retain on board a catcher vessel at any time during a trip, more than 300,000 lb (136 mt) of unprocessed pollock.*

The regulation is intended to slow down the race for fish in the WGOA pollock by limiting harvesting vessels to 300,000 pounds of unprocessed pollock per trip. Until recently, it was understood that the regulation meant that a harvester could harvest no more than 300,000 pounds of pollock daily. Pollock tender vessels are allowed to harvest up to 600,000 pounds of pollock in the WGOA.

50 CFR 679.2 defines a fishing trip as follows:

### **§ 679.2 Definitions.**

Fishing trip means:

(A) The effective date of a notification prohibiting directed fishing in the same area under § 679.20 or § 679.21;

**(B) The offload or transfer of all fish or fish product from that vessel;**

(C) The vessel enters or leaves an area where a different directed fishing prohibition applies;

(D) The vessel begins fishing with different type of authorized fishing gear; or

(E) The end of a weekly reporting period, whichever comes first.

Some vessels are now delivering multiple 300,000lb trips daily to tenders, up to the 600,000 tender limit. In some cases they are reported to have employed multiple tenders and harvested and delivered as much as 1,500,000 in a single day.

The WGOA currently has 4 distinct seasons, all with low TACs. The practice of circumventing the original intent of the 300,000 pound trip limit will increase the pressure on the fishery and will increase the struggle for harvesters to remain competitive. This situation is significant, undesired, and unintended.

### **The Solution:**

Taken together 679.2(B) and 679.7(b)(2) creates a loophole in regulations which allows harvesting vessels to make multiple trips daily and to greatly exceed the intended 300,000 pound daily trip limit.

This loophole can be corrected by modifying 679.7(b)(2) with the following **Regulatory Amendment**.

**Move to modify § 679.7 Prohibitions as follows:**

### **§ 679.7 Prohibitions**

*In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:*

#### **(b) Prohibitions specific to the GOA.**

*(2) Catcher vessel trip limit for pollock. **For a catcher vessel to harvest more than 300,000 lb (136 mt) in aggregate, of unprocessed pollock during a 24 hour period.***