

Amendment 80
Council Motion as Approved
October 8, 2005

Key to Text

Regular text – unchanged from June 2005 Council Adopted Version

Boldface/Italics – changes recommended by Council

~~Strikeout~~ – deletions recommended by the Council

* Options recommended by Council for inclusion in new strawman alternative

Issue 1: Sector Allocation of BSAI Non-Pollock Groundfish to the Non-AFA Trawl Catcher Processor Sector and CDQ Program

***Component 1** Allocate only the following primary target species to the Non-AFA Trawl CP sector: yellowfin sole, rock sole, flathead sole, Atka mackerel, and Aleutian Islands Pacific Ocean perch. Species could be added or deleted through an amendment process.

Component 2 CDQ allocations for each primary target (Component 1) species in the program shall be removed from the TACs prior to allocation to sectors at percentage amounts equal to one of the following.

Option 2.1 7.5%

*Option 2.2 10%

Option 2.3 15%

CDQ allocations for secondary groundfish species (except Pacific cod) taken incidental in the primary trawl target fisheries shall be removed from the TACs prior to allocation to sectors at percentage amounts equal to one of the following:

 Suboption 2.1 7.5%

 *Suboption 2.2 10%

 Suboption 2.3 15%

 Suboption 2.4 At species specific percentages that reflect historical incidental catch rates in the directed fisheries for the primary species by the Non-AFA Trawl Catcher Processor sector during 1998-2003.

 Suboption 2.5 The Council can select percentages for each of the secondary species allocated to the CDQ Program

Component 3 Identifies the sector allocation calculation (after deductions for CDQs).

For purpose of allocation to the Non-AFA Trawl CP sector, each primary species allocation would be based upon the years and percentage of average catch history selected in Component 5 using one of the following:

*Option 3.1 Total legal catch of the sector over total legal catch by all sectors

*Option 3.2 Retained legal catch of the sector over retained legal catch by all sectors

Suboption: Allocations would be managed as a hard cap for the H&G sector, and for the Non H&G sector, an ICA would be taken off the top to accommodate incidental bycatch by the non-H&G sector. Staff should include tables that show anticipated ICA amounts in the non-H&G fisheries and actual catch of non-Amendment 80 sector be added to table 3.2, including display of discards.

Option 3.3 Retained legal catch of the sector over total catch by all sectors

Legal landing means, for the purpose of initial allocation of QS, fish harvested during the qualifying years specified and landed in compliance with state and federal permitting, landing, and reporting regulations in effect at the time of the landing. Legal landings exclude any test fishing, fishing conducted under an experimental, exploratory, or scientific activity permit or the fishery conducted under the Western Alaska CDQ program.

Suboption 1 Allocations would be managed as a hard cap. When the allocation is reached, further fishing would be prohibited.

Suboption 2 Allocations would be managed as a soft cap. When the allocation is reached, species would be prohibited status.

The remaining portion of primary species included in this program would be allocated to the BSAI limited access trawl fishery. LLP permits associated with trawl catcher vessels with (retained) catch history of at least:

(a) 1 landing

* (b) 150 mt or

(c) 1,000 mt from 1995-2004 and with appropriate LLP endorsements may fish in the BSAI limited access trawl fishery. LLP permits associated with trawl catcher vessels who do not meet this threshold cannot participate in a directed fishery for the five allocated species.

****General Limited Access Fishery***

Referencing Table 3-29, a catcher vessel must have landed at least 150 mt of any groundfish species during the qualifying years to be eligible to participate in any Bering Sea trawl catcher vessel fisheries covered by this Amendment. Qualifying requirement is license-based (not steel based).

*Suboption Target Species ***and PSC*** Rollover: Any unharvested portion of the Amendment 80 target species ***or unharvested portion of PSC*** in the limited access fishery that is projected to remain unused, shall be rolled over to the Amendment 80 sector.

Component 4 Catch history years used to determine the allocation to the Non-AFA Trawl CP sector in Component 3.

*Option 4.1 1995-2003

Option 4.2 1997-2002

Option 4.3 1998-2002

*Option 4.4 1998-2004

Option 4.5 1999-2003

*Option 4.6 2000-2004

- *Option 4.7 The Council can select percentages for each of the species allocated to the Non-AFA Trawl CP sector.

Issue 2: PSC Allowance for the Non-AFA Trawl Catcher Processor Sector and the CDQ Program

Component 5 Increase PSQ reserves allocated to the CDQ program (except herring and Chinook salmon) to levels proportional to the CDQ allocation of primary species under Component 2.

Component 6 PSC allowance for the Non-AFA Trawl CP Sector.

Option 6.1 Apportion PSC to Non-AFA Trawl CP sector:

- *Suboption 6.1.1 Allocation based on historical usage of PSC by the Non-AFA Trawl Catcher Processor sector *rather than the sector's allocation, with the remainder available to the other sectors.*

- Suboption 6.1.2 Allocation based on the PSC taken in the Non-AFA Trawl Catcher Processor sector directed fishery for allocated primary species plus Pacific cod.

- Suboption 6.1.3 Percentage allocations (estimates for PSC associated with Pacific cod catch would be based on the process laid out in Component 3) selected in Component 3 multiplied by the relevant total PSC catch by all trawl vessels in each PSC fishery group for allocated primary species plus Pacific cod.

Option 6.2 Select a Non-AFA Trawl CP sector PSC reduction option from the following that would apply to any PSC apportionment suboption selected in 6.1. PSC reduction options can vary species by species.

- Suboption 6.2.1 Reduce apportionments to 60% of calculated level.

- *Suboption 6.2.2 Reduce apportionments to 75% of calculated level.

- Suboption 6.2.3 Reduce apportionments to 90% of calculated level.

- *Suboption 6.2.4 Reduce apportionments to 95% of calculated level

- ***Suboption 6.2.4.1 Start the reduction in the third year of the program.**

- Suboption 6.2.5 Do not reduce apportionments from calculated level.

- *Suboption 6.2.6 Phase in PSC reductions 5% per year for Suboptions 6.2.1–6.2.4.

- Suboption 6.2.7 Reductions under Suboptions 6.2.1–6.2.4 apply only to vessels that participate in the Non-AFA Trawl CP sector's limited access fishery.

- *Option 6.3 The Council can select percentages and/or amounts for PSC allocated to the Non-AFA Trawl CP sector.

Issue 3: Cooperative Development for the Non-AFA Trawl Catcher Processor Sector

Basis for the distribution to the LLP license holder is the catch history of the vessel on which the LLP license is based and shall be on a fishery-by-fishery basis. The underlying principle of this program is one history per license. In cases where the fishing privileges (i.e., moratorium qualification or LLP license) of an LLP qualifying vessel have been transferred, the distribution of catch history to the LLP shall be based on the aggregate catch histories of (1) the vessel on which LLP license was based up to the date of transfer, and (2) the vessel owned or

controlled by the LLP license holder and identified by the license holder as having been operated under the fishing privileges of the LLP qualifying vessel after the date of transfer. (Only one catch history per LLP license.)

***Component 7** The BSAI non-pollock groundfish CP buyback legislation establishes the vessels eligible to participate as a catcher processor in the BSAI non-pollock groundfish fisheries. The members of the Non-AFA Trawl Catcher Processor subsector are defined as the owner of each trawl CP:

- a.) that is not an AFA Trawl CP
- b.) to whom a valid LLP license that is endorsed for BSAI Trawl CP fishing activity has been issued; and
- c.) that the Secretary determines who has harvested with trawl gear and processed not less than a total of 150 mt of non-pollock groundfish during the period January 1, 1997 –through December 31, 2002.

This definition establishes the vessels that can participate in the Amendment 80 program.

****Restrict LLPs that are used for eligibility in Amendment 80 (either to be included in the non-AFA CP sector or to be used in Amendment 80 co-op formation) from being used outside of the amendment 80 sector.***

Component 8 Establishes the licenses that would be authorized for participation in a cooperative and would receive a cooperative endorsement. Component 8 also establishes the number of licenses required before the cooperative is allowed to operate. No later than December 1 of each year, an application must be filed with NOAA fisheries by the cooperative with a membership list for the year.

In order to receive a cooperative endorsement:

***Option 8a.1** Qualified license holders must have caught 150 mt of groundfish with trawl gear on a vessel qualified as a non-AFA trawl CP, and processed that fish between 1997 – 2002.

***Option 8a.2** Qualified license holders must have caught 150 mt of groundfish with trawl gear on a vessel qualified as a non-AFA trawl CP, and processed that fish between 1997 – 2003.

***Option 8a.3** Qualified license holders must have caught 150 mt of groundfish with trawl gear on a vessel qualified as a non-AFA trawl CP, and processed that fish between 1997 – 2004.

In order to operate as a cooperative, membership must be comprised of at least two separate entities and must be:

***Option 8b.1** At least 15 % of the eligible licenses

Option 8b.2 At least 30% of the eligible licenses

Option 8b.3 At least 67% of the eligible licenses

Option 8b.4 At least 100% of the eligible licenses

Option 8b.5 All less one distinct and separate license holder using the 10% threshold rule

Option 8b.6 All less one eligible license

Component 9 Determines the method of allocation of PSC limits and groundfish between the cooperative and eligible Non-AFA Trawl CP participants who elect not to be in a cooperative.

***Option 9.1** Catch history is based on total catch

***Option 9.2** Catch history is based on total retained catch

Component 10 Determines which years of catch history are used for establishing cooperative allocations. The allocation of groundfish between the cooperative and those eligible participants who elect not to join a

cooperative is proportional to the catch history of groundfish of the eligible license holders included in each pool. Applicable PSC limits are allocated between the cooperative and non-cooperative pool in same proportions as those species that have associated PSC limits. The catch history as determined by the option selected under this component would be indicated on the Sector Eligibility Endorsement, which indicates the license holder's membership in the Non-AFA Trawl CP sector. The aggregate histories would then be applied to the cooperative and the non-cooperative pool.

Option 10.1 1995-2003, but each license holder drops its 3 lowest annual catches by species during this period

*Option 10.2 1997-2003, but each license holder drops its two lowest annual catches by species during this period

Option 10.3 1998-2002, but each license holder drops its lowest annual catch by species during this period

Suboption 10.3.1 Each license holder does not drop its lowest annual catch by species during this period

Option 10.4 1998-2003, but each license holder drops its lowest annual catch by species during this period

Suboption 10.4.1 Each license holder drops two years during this period

Option 10.5 1999-2003, but each license holder drops its lowest annual catch by species during this period

**Option 10.6 1997-2004, but each license holder drops its two lowest annual catch by species during this period*

**Option 10.7 1997 - 2004, but each license holder drops its three lowest annual catch by species during this period*

**Option 10.8 1998 - 2004, but each license holder drops its two lowest annual catch by species during this period*

Component 11 Determines if excessive share limits are established in the Non-AFA Trawl CP sector.

Option 11.1 There is no limit on the consolidation in the Non-AFA Trawl CP sector.

*Option 11.2 Consolidation in the Non-AFA Trawl Catcher Processor sector is limited such that no single person (using the individual and collective rule) can hold catch history more than a fixed percentage of the overall sector apportionment history. The cap would be applied on a species by species basis (options: 20%, 30%, 50% of the sector's allocation).

**Suboption: Cap would be applied on an aggregate basis.*

*Suboption 11.2 Persons (individuals or entities) that exceed the cap in the initial allocation would be grandfathered.

Component 12 Establishes measures to maintain relative amounts of non-allocated species until such time that fisheries for these species (including sector splits *with rollovers* of Pacific cod) are further rationalized in a manner that would supersede a need for these sideboard provisions. Sideboards shall apply to eligible licenses and associated vessels from which the catch history arose.

*Option 12.1 Sideboards for the Non-AFA Trawl CP sector would be established by regulation using the same years used to calculate the apportionment of PSC and groundfish between the Non-AFA Trawl CP and limited access pool until such time as these other fisheries are rationalized, when the allocations are determined in these newly rationalized fisheries.

*Suboption 12.1.1 Sideboards would be allocated between cooperative and non-cooperative LLP holders, *based on the same formula as Component 10.*

*Option 12.2 Sideboards for the Non-AFA Trawl CP sector would be established by regulation by establishing percentages and/or amounts for the species/fisheries not included in this program. These measures maintain relative amounts of non-allocated species until such time that fisheries for these species are further rationalized in a manner that would supersede a need for these sideboard provisions.

*Suboption 12.2.1 Sideboards would be allocated between cooperative and non-cooperative LLP holders, *based on the same formula as Component 10.*

~~Sideboard caps for Amendment 80 qualified Non-AFA Trawl CP sector with valid transferable GOA LLP with appropriate area endorsements shall be established for halibut PSC usage in the GOA. Discussion of options shall include but not be limited to:~~

~~Option 12.3 Halibut PSC—For each target species in the Deep and Shallow water complexes:~~

~~Suboption 12.3.1 Actual halibut PSC usage by the Non-AFA Trawl Catcher Processor sector by quarter, by area, by the years defined in Component 4.~~

~~Suboption 12.3.2 GOA halibut PSC by fishery based on the percent of groundfish target catch by the Non-AFA Trawl Catcher Processor sector by quarter, by area, by the years defined in Component 4.~~

~~Option 12.4 Only vessels associated with LLPs that have Gulf wide weekly participation in the flatfish fisheries over the threshold during the qualifying period (number of weeks) would be eligible to participate in the GOA.~~

~~Option 12.5 Fisheries that close on TAC (POP, PSR, NR and Pacific cod): retained harvests by Gulf area for each of the qualifying years expressed as a percentage of both retained and total catch.~~

GOA sideboard provisions

Sideboard provisions for Amendment 80 qualified non-AFA trawl CP sector with valid transferable GOA LLP with appropriate area endorsements are as follows:

**1. Vessels associated with LLPs that have Gulf weekly participation of greater than X weeks in the flatfish fishery during the years defined in Component 4 or 10 will be eligible to participate in the GOA flatfish fisheries.*

**2. If the analysis shows that one non-AFA trawl CP vessel has significantly higher participation in the GOA flatfish fisheries relative to other non-AFA trawl CP vessels, that vessel may be considered for an exemption from Amendment 80 halibut sideboards in the GOA and may participate fully in the GOA open-access flatfish fisheries.*

**Suboption: If a vessel is given an exemption to Amendment 80 GOA sideboards, they may not lease their Bering Sea Amendment 80 history.*

**3. Gulf-wide halibut sideboards for the deep and shallow complex fisheries would be established by season calculated based on:*

**Option A: Bycatch rate approach for each of the target fisheries within each of the regulatory areas (610, 620, 630, 640) for the Amendment 80 qualified non-AFA trawl sector for the years defined in Component 4 or 10*

**Option B: Actual usage for the Amendment 80 qualified non-AFA trawl sector for the years defined in Component 4 or 10*

**Option C: The Council may select a percentage for halibut sideboards which is between options A and B.*

**4. GOA_Pollock, Pacific cod, and CGOA directed rockfish species (POP, NR and PSR) sideboards for the Amendment 80 qualified non-AFA trawl CP sector would be established using the years defined in Component 4 or 10, where catch is defined as retained catch by Gulf area as a percentage of total retained catch of all sectors in that area.*

**While the CGOA rockfish demonstration program is in place, the CGOA rockfish demonstration program takes precedence. The demonstration program would remove the need for catch sideboards for the CGOA directed rockfish species. The amendment 80 CPs deep halibut mortality sideboard cap for the 3rd seasonal allowance (in July) will be revised by the amount of the deep complex halibut mortality allocated to the rockfish demonstration program for the Amendment 80 qualified non-AFA trawl CP sector while the demonstration program is in effect.*

**Sideboards apply to vessels (actual boats) and LLPs used to generate harvest shares that resulted in allocating a percentage of the amendment 80 species TACs to the non-AFA trawl CP sector.*

**On completion of a comprehensive rationalization program in the GOA, any sideboards from the BSAI amendment 80 plan amendment will be superseded by the allocations in the GOA rationalization program.*

**Examine GOA weeks-fished data to determine whether there is an Amendment 80 vessel that fishes almost exclusively in the GOA and should receive an exemption from the Amendment 80 GOA sideboards.*

Issue 4: Development of a Yellowfin Sole Threshold Fishery

Component 13 A threshold level may be established for yellowfin sole. ITAC below the threshold level would be allocated to the Non-AFA Trawl Catch Processor sector based on the formula determined in Components 3 and 4. ITAC in excess of the threshold level would be available to other sectors as well as to the Non-AFA Trawl CP sector. Threshold levels for other species may be developed at a later date. AFA sideboards do not apply to the YFS threshold fishery.

Threshold Rollover Suboption

Suboption 1: No rollover provision

Suboption 2: Any unharvested portion of the threshold reserve allocated to the limited access fishery that is projected to remain unused by a specific date (August 1 or Sept 1) shall be reallocated to the Non-AFA Trawl CP sector. Any unharvested portion of the threshold reserve allocated to the Non-AFA Trawl CP sector that is projected to remain unused by a specific date (August 1 or September 1) shall be reallocated to the limited access fishery.

* Suboption 3: Allow rollovers of any portion of the yellowfin sole TAC that is projected by the NOAA Regional Administrator to go unused. The NOAA Regional Administrator would be responsible for determining both the amount and the timing of the rollover.

For yellowfin sole, the threshold would be:

Option 13.1 80,000 mt

Option 13.2 100,000 mt

*Option 13.3 125,000 mt, *Add a suboption that allocates the yellowfin sole threshold 60% to the Amendment 80 sector and 40% to the limited access fishery.*

Option 13.4 150,000 mt

Option 13.5 175,000 mt

Allocate the threshold reserve to the Non-AFA Trawl CP sector and the BSAI limited access fishery using one of following suboptions:

Suboption 1 30% Non-AFA Trawl CP sector and 70% limited access fishery

Suboption 2 50% Non-AFA Trawl CP sector and 50% limited access fishery

Suboption 3 70% Non-AFA Trawl CP sector and 30% limited access fishery

Other Elements of Amendment 80

This section provides additional specifics and elements for the Non-AFA Trawl CP cooperative program. These specifics and elements are common for any cooperative program that might be developed.

- The cooperative program developed in Amendment 80b would not supersede pollock and Pacific cod IR/IU programs.
- The Groundfish Retention Standards (GRS) (Amendment 79) would be applied to the cooperative as an aggregate on an annual basis and on those vessels who did not join a cooperative as individuals. All vessels in the sector, consistent with NMFS catch monitoring plan, would be required to have on board NOAA Fisheries approved scales to determine total catch and either maintain observer coverage of every haul for verification that all fish are being weighed or use an alternative scale-use verification plan approved by NOAA Fisheries.
- Non-AFA Trawl CP sector participants that did not elect to join a cooperative would be subject to all current regulations including all restrictions of the LLP and the GRS if approved.
- All qualified license holders participating in the fisheries of the Non-AFA Trawl CP sector *for Amendment 80 species* would need to have trawl and catcher processor endorsements with general licenses for BSAI and the additional sector eligibility endorsement. Length limits within the license would also be enforced such that any ~~new~~ *replacement* vessel entering the fishery would not exceed the Maximum Length Overall (MLOA) specified on the license.
- Permanent transfers of Sector Eligibility Endorsements would be allowed if transferred with the associated Groundfish LLP. Sector Eligibility Endorsement, the associated groundfish LLP license, and associated catch histories would not be separable or divisible. All transfers would need to be reported to NOAA Fisheries in order to track who owns the Sector Eligibility Endorsements. The purchaser would be eligible to own a fishing vessel under MarAd regulations or must be a person who is currently eligible to own a vessel.
- Annual allocations to the cooperative would be transferable among cooperative members. Such transfers would not need to be approved by NOAA Fisheries. Any member of the cooperative would be eligible to use the catch history of any other member regardless of vessel length limitations of the LLP that carries the catch history.
- Annual allocations to the cooperative would be transferable among cooperatives. Inter-cooperative transfers must be approved by NOAA Fisheries, *in the absence of a NOAA Fisheries approved inter-cooperative agreement*. **This addition does not replace the original single component, rather it creates an option within the single component.**

- Any non-trawl or non-BSAI catches by qualified license holders that are considered part of the Non-AFA Trawl CP sector would not be included in the defined cooperative program. In addition, these non-trawl or non-BSAI catches allocated to the Non-AFA Trawl CP sector would not necessarily be excluded from other rationalization programs.
- Catch history used for allocation and eligibility purposes would be legal and documented catch.
- Disposition of groundfish species not allocated to the Non-AFA Trawl CP sector would not change as a result of the cooperative program developed in Amendment 80 *and would continue to be managed as status quo*.
- The cooperative program would limit its scope to selected groundfish and prohibited species catches with trawl gear by qualified license holders in the Non-AFA Trawl CP sector in the BSAI. Groundfish species not included in the program as well as other non-specified fish species or marine resources *may be* ~~would not be explicitly~~ managed within the cooperative program, *but are not required*. The cooperative program would not supersede existing regulations regarding these other marine resources. *This addition does not replace the original single component, rather in creates an option within the single component.*
- PSC limits for the following species would be created and allocated between the Non-AFA Trawl CP cooperative(s) and those sector participants that did not elect to join a cooperative.
 - BSAI Non-AFA Trawl CP multi-species halibut cap consisting of an apportionment of species identified in Component 1.
 - BSAI Non-AFA Trawl CP multi-species red king crab cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries.
 - BSAI Non-AFA Trawl CP multi-species snow crab (*C. opilio*) cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries (includes apportionments of the trawl sablefish/turbot/arrowtooth limits).
 - BSAI Non-AFA Trawl CP multi-species Tanner crab (*C. bairdi*) Zone 1 cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries.
 - BSAI Non-AFA Trawl CP multi-species Tanner crab (*C. bairdi*) Zone 2 cap consisting of an apportionment of the current Pacific cod trawl cap and caps for the flatfish fisheries.
- Bycatch limits for non-specified species or marine resources specifically for this program would not be established. However, if the Council deems that bycatch is unreasonable, specific regulations to minimize impacts would be considered.
- The cooperative(s) would need to show evidence of binding private contracts and remedies for violations of contractual agreements would need to be provided to NOAA Fisheries. The cooperative would need to demonstrate adequate mechanism for monitoring and reporting prohibited species and groundfish catch. Participants in the cooperative would need to agree to abide by all cooperative rules and requirements.
- Specific requirements for reporting, monitoring and enforcement, and observer protocols would be developed in regulations for participants in the cooperative program and would not be the purview of the cooperative. The Council and the Non-AFA Trawl CP sector would need to specify their goals and objectives for in-season monitoring and program evaluation. Recordkeeping and reporting portions of the program would need to be developed to ensure that goals and objectives of the program are met in a cost effective manner.

Request the NOAA GC provide an opinion as to the legality of the Amendment 80 PSC elements considered, specifically in regards to section 313 (g) of the Magnuson Stevens Act, including any requirements to the program that would arise due to section 313 (g).