

Environmental Assessment/ Regulatory Impact Review/ Initial Regulatory Flexibility Analysis for
a Regulatory Amendment

**Remove the Groundfish Retention Standard for the Non-
AFA Trawl Catcher Processors in the Bering Sea and
Aleutian Islands**

February 2011

Public Review

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EXECUTIVE SUMMARY

This Regulatory Impact Review/Environmental Assessment/Initial Regulatory Flexibility Analysis (RIR/EA/IRFA) evaluates the costs and benefits, environmental impacts, and small entity impacts of a proposed regulatory amendment. The proposed amendment would revise the current GRS program to remove the minimum groundfish retention standards. The proposed action would also require the Amendment 80 sector to report to the Council the sector's groundfish retention performance for the year. This action is needed to mitigate management and enforcement costs that were not foreseen when the regulation was promulgated. In addition, this action is needed to mitigate higher than expected compliance costs of the groundfish retention standard borne by the non-AFA trawl catcher processors.

The Council identified two reasons for removing the groundfish retention standards. First, the Council stated that the removal of the groundfish retention standards is necessary due to the difficulty of monitoring performance and the potential high costs of prosecuting violations of the requirement, particularly at the cooperative level. These difficulties and potential costs arise from the need to verify estimates of retention and substantiate records for each vessel in a cooperative. In addition, the Council noted that estimates of groundfish retention used to establish the groundfish retention standards in Amendment 79 differ substantially from measures employed in the implementation of Amendment 79. These differences may result in substantially greater compliance costs than anticipated at the time of Council action.

This analysis considers two alternatives. Under Alternative 1 (no action), the GRS program would remain unchanged which requires non-AFA trawl catcher processors of all sizes, including those catcher processors less than 125 ft. LOA to retain and utilize a minimum percentage of groundfish caught during fishing operations, or groundfish retention standard, which was scheduled to be 85 percent in 2011 and each year after. The GRS may be applied to a cooperative by aggregating the retention rate of all vessels assigned to a cooperative. Alternative 2 (preliminary preferred alternative) would remove groundfish retention requirements included in the GRS program. The alternative also includes a requirement that the Amendment 80 sector would report to the Council, on annual basis, the sector's groundfish retention performance

Regulatory Effect of the Alternatives

Under Alternative 1, the GRS program would remain unchanged. GRS requires non-AFA trawl catcher processors of all sizes, including those catcher processors less than 125 ft. LOA to retain and utilize a minimum percentage of groundfish caught during fishing operations.

As the GRS increases to 85 percent in 2011, vessels that met the GRS regulatory requirement in 2010 will face additional challenges meeting this standard. Many participants in this sector have expressed strong reservations as to whether it will be possible to achieve the 2011 GRS percentages under existing regulatory provisions. The likelihood that additional vessels may be unable to meet the GRS in coming year may unnecessarily increase compliance and enforcement costs.

In addition, provisions of Amendment 80, which promote cooperative formation and are intended to increase retention and utilization of groundfish in the non-AFA trawl catcher processor sector, will be undermined as more vessels are unable to meet the regulatory standard. There is little incentive under this alternative for an Amendment 80 cooperative to include underperforming vessels, due to the potential for reduced retention rates at the cooperative level. Therefore, the GRS may unduly disadvantage some

participants, or force vessel operators to consolidate their catch or retire vessels that may be unable to meet the 2011 retention standard, without the benefits of the Amendment 80 catch share program.

As noted in Section 2.2.6, monitoring and enforcement of violations of the retention standard is complex, challenging, and potentially very costly. Since the sufficiency of data sets for prosecution purposes must be evaluated for each alleged GRS violation, the difficulty of prosecution increases greatly with a violation involving a cooperative of multiple vessels (or multiple cooperatives), because reliable data must be available for each vessel. OLE experiences with investigations of GRS compliance of a single vessel's potential violation suggest that the GRS cannot be practicably monitored and enforced.

Alternative 2 would remove the required minimum groundfish retention standard for the Amendment 80 sector. The Amendment 80 sector would instead be required to internally monitor the groundfish retention rates and provide an annual report on groundfish retention rates for the sector. The retention performance report could be submitted in conjunction with the Amendment 80 cooperative report, which is due annually on March 1st.

In removing the required minimum groundfish retention standards for the Amendment 80 sector, the groundfish retention rate could continue rising, stay the same, or decrease. It is difficult to predict how retention rates might change with the removal of the standards, but the sector has indicated that higher rates than those currently (80%) are not likely to be attainable in the future, which reduces an argument for increasing retention rates under this alternative. Much of the recent increase in the retention rate of the Amendment 80 sector can be attributed to the sector's adjustment to the GRS program during the 2008 through 2010 period and adjustments to rules for 100 percent retention of pollock and Pacific cod. In fact, improvements in the sector's retention rates through 2009 would appear to have met Council objectives of significantly higher retention of groundfish and better utilization. In addition, the Amendment 80 sector has operated under a cooperative system for nearly three years in a manner that seems to facilitate compliance with the existing GRS. However, with the removal of the groundfish retention standard for the Amendment 80 sector, there is no direct regulatory incentive for the sector to further improve its retention. Although non-regulatory incentives (such as the sector's stated commitment to enter a civil contract that would hold each entity accountable to an internal retention standard similar to current retention rate, public pressure, and the knowledge that the Council could take future action should retention rates decrease) may lead the Amendment 80 sector to maintain (or even improve on) current retention rates.

The recently released draft 2010 Steller Sea Lion Biological Opinion could also impact the proposed action. The biological opinion includes a proposed Reasonable and Prudent Alternative (RPA) that would modify groundfish management in the Aleutian Islands to limit competition between commercial fishing for groundfish and the Steller sea lions. One of the likely impacts from the proposed RPA is an increased difficulty for the Amendment 80 sector to achieve continued high retention rates. Historically, the Atka mackerel fishery has had relatively high retention rates. The loss of Atka mackerel harvests from areas 543, 542, and 541 could put downward pressure on the overall groundfish rate for the sector as retention in the Atka mackerel fisheries will not be able to compensate for lower retention rates in other groundfish fisheries.

Although the removal of GRS from federal regulations will not reduce the observer requirements for the Amendment 80 sector or eliminate the need for weighing all groundfish on a certified flow scale, the removal of the standard would eliminate the need for NOAA OLE to enforce and prosecute a GRS violation, thereby reducing the financial burden for the agency. Although the total cost saving for NOAA OLE is not known, the agency's recently gained experience with enforcing the GRS compliance, as noted in Section 2.2.6, shows that enforcement costs associated with GRS would be extremely high and would

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only increase under a multi-cooperative GRS compliance standard under proposed Amendment 93. As a result, the costs saving from the elimination of compliance monitoring could be substantial.

Environmental Effects of the Alternatives

This action would likely have no impacts on non-specified species, forage species, seabirds, habitat, or the ecosystem previously considered in the harvest specification EIS (NMFS 2007a). Therefore, this analysis will focus on the environmental components that could potentially be affected by this action, namely groundfish stocks, prohibited species, benthic habitat, and Steller sea lions.

Effects on groundfish stocks from the proposed action should not be significant. Discarded catch by the Amendment 80 sector would not affect the condition of groundfish stocks more than any other removal (retained catch). As indicated in the PSEIS, management of these stocks does not allow the fishing mortality rate to exceed the overfishing level.

The effects of the groundfish fisheries in the BSAI on prohibited species are primarily managed by conservation measures developed and recommended by the NPFMC cover the entire history of the FMPs for the BSAI and implemented by federal regulation. These measures include prohibited species catch (PSC) limits on a year round and seasonal basis, year round and seasonal area closures, and gear restrictions. As a result of these management measures, changes in the retention rates by the Amendment 80 sector are likely not to impact prohibited species.

As the Amendment 80 sector operates trawl gear in benthic habitat areas, it is possible that these operations could contribute to impacts on the habitat and mortality. It is not possible to determine the extent of these fisheries contributions to changes in benthic habitat areas, or mortality, or how Alternative 2 may impact benthic habitat areas, compared with Alternative 1 (no action). However, all nonpelagic trawl vessels targeting flatfish in the Bering Sea, including the Amendment 80 sector, are required to use elevated devices on trawl sweeps to raise them off the seafloor. Studies have shown that these devices are effective in reducing trawl sweep impact effect to sea whips and reduced mortality to *C. bairdi* and *C. opilio* crabs. Based on the evaluation criteria used in previous analyses and the likelihood the sector will continue to fish in a similar manner, there is likely no effects to the benthic habitat as result of this action.

With regards to SSLs, this proposed action would likely not result in changes in the fisheries that could increase the potential for incidental takes or disturbance of SSLs. Although future fishing behavior cannot be determined with any certainty, the Amendment 80 sector will likely continue to fish a manner that maintains the sector's current retention of groundfish in the BSAI area, given the sector will utilize a civil contract to meet an internal sector groundfish retention standard of 75 percent (using round weight equivalent calculation). As such, the proposed alternative would likely not result in changes to the location or timing of the groundfish fisheries or the gear type that would be used in these fisheries in a manner that would increase interactions with SSLs.

1 Introduction

This document analyzes proposed changes to the Groundfish Retention Standard (GRS) program. In June 2010, the Council recommended an emergency action to temporarily exempt trawl catcher processors vessels (CPs) that are not specified in regulation as American Fisheries Act (AFA), referred to throughout this proposed action as non-AFA trawl CPs, and Amendment 80 cooperatives from the GRS in the Bering Sea and Aleutian Islands management area. Additionally, the Council initiated a regulatory amendment to remove the GRS for the non-AFA Trawl CPs and Amendment 80 cooperatives. The proposed action also includes a requirement for the Amendment 80 sector to report to the Council on an annual basis the sector's minimum groundfish retention performance for the year. In December 2010, the Council completed an initial review of this analysis and released it for public review.

This document is an Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA). An EA/RIR/IRFA provides assessments of the environmental impacts of an action and its alternatives (the EA), the economic benefits and costs of the action alternatives, as well as their distribution (the RIR), and the impacts of the action on directly regulated small entities (the IRFA). This EA/RIR/IRFA addresses the statutory requirements of the MSA, the National Environmental Policy Act (NEPA), Presidential Executive Order 12866, and Regulatory Flexibility Act (RFA). An EA/RIR/IRFA is a standard document produced by the Council and the NMFS Alaska Region to provide the analytical background for decision-making.

1.1 Background

The Council has long recognized the need to reduce bycatch, minimize waste, and improve the utilization of fish resources to the extent practicable in order to achieve optimal yield, prevent overfishing, and to provide the maximum benefits to the Nation. Over the past 12 years, the Council has recommended, and NMFS has approved and implemented, several amendments to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and regulatory actions to reduce discards and bycatch of groundfish species.

The Council recommended and NMFS approved and implemented management measures to establish retention and utilizations (IR/IU) standards for pollock, Pacific cod, rock sole and yellowfin sole under Amendment 49 to the FMP (62 FR 63880, December 3, 1997). The Council recommended Amendment 75 to the FMP following Council recognition that the costs, including market and logistical constraints prevented compliance with the IR/IU standards for flatfish. The Council adopted Amendment 75 in June 2002, and this action was partially approved by NMFS on September 2, 2003 (68 FR 52142). This action indefinitely delayed the effective date of flatfish retention and utilization regulations initially implemented under Amendment 49. The Council then began to develop bycatch reduction measures that could be more practically and effectively applied to the trawl CPs not specifically listed as eligible to participate in the directed pollock fishery under section 208(e) of the AFA¹.

The Council initiated several actions including Amendment 79 and Amendment 80. In June 2003 the Council recommended Amendment 79 to the FMP to further improve the retention of groundfish species by the trawl C/Ps by establishing minimum groundfish retention standards (GRS) to decrease regulatory

¹ Section 219 of the Consolidated Appropriations Act of 2005 (*Pub. L. 108-447*; December 8, 2004), defined *Non-AFA Trawl Catcher Processor Subsector* as “the owner of each trawl catcher processor—(A) that is not an AFA trawl catcher processor; (B) to whom a valid LLP license that is endorsed for Bering Sea or Aleutian Islands trawl catcher processor fishing activity has been issued; and (C) that the Secretary determines has harvested with trawl gear and processed not less than a total of 150 metric tons of non-pollock groundfish during the period January 1, 1997 through December 31, 2002.”

and economic discards in the BSAI groundfish fisheries. Regulations implementing Amendment 79 were published on April 6, 2006 (71 FR 17362).

The GRS program initially implemented minimum retention standards for non-AFA trawl CPs that were equal to or greater than 125 ft (38.1 m) length overall (LOA). The owners or operators of these vessels are required to meet this standard on an annual basis. The GRS program was phased in over time to allow the affected vessels to adjust to the retention requirements. The schedule for increasing groundfish retention standards established by Amendment 79 is in regulations at 50 CFR 679.27(j) and listed below in Table 1-1.

Table 1-1. Schedule for increasing the groundfish retention standard.

GRS Schedule	Annual GRS
2008	65%
2009	75%
2010	80%
2011 and each year after	85%

After the Council adopted the GRS program, NMFS proceeded to develop implementing regulations, including the development of a regulatory methodology for determining annual groundfish retention standards as a basis for monitoring and enforcing the GRS program that was verifiable and enforceable at the individual vessel basis. Specifically, NMFS Office of Law Enforcement (OLE) expressed concern that some of the calculation periods for the GRS recommended by the Council were infeasible, because recordkeeping and report processes do not allow NMFS to match catch and production estimates over the recommended time periods. As a result, the methodology implemented by NMFS for determining individual vessels' specific annual retention differs from the computation of retention percentages used by the Council in its analysis for Amendment 79 (NPFMC 2005) and upon which the Council based its selected groundfish retention standards.

In June 2006, the Council adopted Amendment 80 to the FMP, which was implemented under a final rule in 2007 and was fully effective starting with the 2008 fishing year (72 FR 52668, September 14, 2007). Among other measures, Amendment 80 extended the application of the GRS program to non-AFA trawl CPs of all sizes, referred to in this document as the Amendment 80 sector, by including CP vessels less than 125 ft (38.1 m) LOA. In addition, Amendment 80 allocates specific target species and prohibited species (PSC) limits to non-AFA trawl CPs, and allows the Amendment 80 sector (i.e., non-AFA trawl C/Ps) to form one or more fishery cooperatives. The Council included all Amendment 80 sector vessels under the GRS program in recognition that some of the compliance costs associated with the GRS program, particularly for non-AFA trawl CPs less than 125 ft (38.1 m) LOA, could be reduced under the Amendment 80 catch share program.

A detailed description of the current management measures established under Amendment 79 and Amendment 80 can be found in sections 2.2.1 and 2.2.3.

1.2 Purpose and need

The purpose of this action is to remove the groundfish retention standard for non-AFA trawl catcher processor vessels. This action is needed to mitigate management and enforcement costs that were not foreseen when the regulation was promulgated. In addition, this action is needed to mitigate higher than

expected compliance costs of the groundfish retention standard borne by the non-AFA trawl catcher processors.

The Council identified two reasons for removing the groundfish retention standards. First, the Council stated that the removal of the GRS is necessary due to the difficulty of monitoring retention standard requirements and the potential high costs of prosecuting violations of the requirement, particularly at the cooperative level. These difficulties and potential costs arise from the need to verify estimates of retention and substantiate records for each vessel in a cooperative. In addition, the Council noted that estimates of groundfish retention used to establish the groundfish retention standards in Amendment 79 differ substantially from measures employed in the implementation of Amendment 79. These differences may result in substantially greater compliance costs than anticipated at the time of Council action.

Although monitoring and enforcement complications may prevent retention of the Amendment 79 regulatory standard, the Council is considering a provision requiring participants in the Amendment 80 sector to report retention performance to aid the Council in assessing the sector's groundfish retention performance annually.

In December 2010, the Council adopted the following purpose and need statement:

NMFS has identified two issues with the current GRS program. First, the GRS calculation as implemented does not correlate with historic groundfish retention rates in front of the Council at the time of Amendment 79 final action, and requires groundfish retention well beyond what was considered by the Council. The current GRS calculation schedule may impose economic hardships to the Amendment 80 fleet well beyond those considered in the Amendment 79 analysis. Second, NMFS enforcement has significant concerns with the cost of enforcing a GRS violation, which may hinder their ability to enforce the current GRS program. For these reasons, the GRS should be revised or reconsidered to allow industry to implement an internal retention monitoring program that ensures continued high groundfish retention.

1.3 Description of alternatives

The alternatives evaluated in this analysis were adopted by the Council in June 2010. In December 2010, the Council selected Alternative 2 as the preferred preliminary alternative.

Alternative 1: No Action

This is the no action alternative. Under this alternative, the groundfish retention standard would in the Federal regulation which requires non-AFA trawl catcher processors of all sizes, including those catcher processors less than 125 ft. LOA to retain and utilize a minimum percentage of groundfish caught during fishing operations, (i.e., groundfish retention standard) which is scheduled to be 85 percent in 2011 and each year after. The GRS may be applied to a cooperative by aggregating the retention rate of all vessels assigned to a cooperative.

Alternative 2: Remove groundfish retention standard requirements from the Federal regulations. In addition, include a requirement that the Amendment 80 sector would report to the Council, on an annual basis, the sector's groundfish retention performance (preliminary preferred alternative)

This alternative would remove the minimum groundfish retention standards from the GRS program for the Amendment 80 sector. Specifically, this alternative would remove from 50 CFR 679.27(j) sections (1)

through (4) only. The alternative would also require the Amendment 80 sector, on an annual basis, to report to the Council its groundfish retention performance.

The proposed alternative would not change observer requirements for the Amendment 80 sector or eliminate the requirement to weigh all groundfish on a certified flow scale; these and other requirements were established under the final rule to implement Amendment 80 and must remain in effect to ensure proper catch accounting under the quota-based catch share program.

1.4 Alternatives considered but not advanced for analysis

The Council, at the June 2010 meeting, proposed an alternative that would revise the current GRS schedule. The Council proposing replacing the current GRS schedule, established in regulation at 50 CFR 679.27(j)(4), with a revised GRS schedule that would require groundfish retention at rates similar to the estimates presented during the development of the GRS program. This alternative was intended to impose retention requirements similar to those considered in the original analysis of Amendment 79.

While the Council noted that the establishment of a “recalibrated” GRS would address some issues described in the purpose and need for this action, it is recognized that the “recalibration” would not address the monitoring, enforcement, and prosecution issues that arise from the methodology used to annually determine vessel compliance with the GRS program. For these reasons, this suggested alternative is not analyzed here.

2 Regulatory Impact Review

This Regulatory Impact Review (RIR) evaluates the costs and benefits of removing retention standards created by Amendment 79 to mitigate the unattended consequences to the non-AFA trawl catcher processor sector in meeting these standards and the unattended costs associated with enforcing these retention standards.

2.1 What is a Regulatory Impact Review

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

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

EO 12866 further requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A significant regulatory action is one that is likely to—

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;

- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

2.2 Existing Conditions

2.2.1 Description of Groundfish Retention Standard Program

The GRS was approved by the Council under Amendment 79 in June 2003, published as a final rule on April 6, 2007 (71 FR 17362), and became effective in 2008. The purpose of the GRS program, as envisioned by the Council, was to improve retention of groundfish by non-American Fisheries Act (AFA) trawl catcher processors that were equal to or greater than 125 feet length overall (LOA). In adopting this action, the Council focused on these catcher processors, because as a group, they had "the lowest retained catch rates of any groundfish trawl fishery in the Bering Sea and Aleutian Islands Area (BSAI)." Between 1999 and 2002, the retention rate for this sector ranged between 65 and 73 percent and the sector accounted for the majority of total discards in the BSAI groundfish fisheries. The Council's stated policy objective for developing the GRS program was based on the Council's commitment to "reducing bycatch, minimizing waste, and improving utilization of fish resources to the extent practicable....[and acknowledged] the fact that any solution to the problem of reducing discards must take into account the ability of NOAA Fisheries to monitor discards and adequately enforce any regulations that are promulgated."

The GRS requires a minimum retention of all Federal groundfish in the BSAI for non-AFA trawl catcher processors. Groundfish are defined in regulations at 50 CFR 679.2. The GRS requirement began at 65 percent of all groundfish caught in 2008, rising to 75 percent in 2009, 80 percent in 2010, and peaking at 85 percent in 2011 and all future years. As recommended by the Council, the GRS originally applied only to vessels greater than or equal to 125 feet LOA. The Council recommended not applying the GRS to vessels less than 125 feet LOA, due to the potential costs of enforcement relative to revenue for these vessels, and the proportionally smaller amount of total catch of vessels less than 125 feet LOA relative to larger vessels. A more extensive discussion of the rationale for the Council's application of a length standard to the GRS is found in the response to comment section of the final rule for Amendment 79 which was published in the Federal Register (April 6, 2006; 71 FR 17362).

Regulations prohibit the owner or operator of a non-AFA trawl catcher processor greater than or equal to 125 ft LOA from retaining an amount of groundfish during a fishing year that is less than the amounts noted above and established the equation used for the annual GRS calculation. This equation divides a vessel's total round weight equivalent retained catch, based on primary groundfish production and NMFS product recovery rates, by total catch of groundfish as weighed on a certified flow scale. Although compliance with the GRS is calculated on an annual basis, the GRS is obtained from data collected throughout the year and from each haul by a vessel. This methodology for determining individual vessels' specific annual retention differs from the computation of retention percentages used by the Council in its analysis for Amendment 79 and upon which the Council based its selected groundfish retention standards. The regulatory equation for determining annual groundfish retention standards was implemented to achieve a basis for monitoring and enforcing the GRS program that was verifiable and enforceable at the individual vessel basis. In addition, the use of total groundfish catch in the denominator of the calculation, instead of total catch, was implemented by NMFS to avoid a potential incentive to target on non-groundfish species and to recognize that the retention of non-groundfish that are required to be treated as

prohibited species are removed from the GRS calculation. By removing groundfish that are in prohibited species status, vessel operators would not be held accountable for retaining catch that they are required to discard.

2.2.2 Council's Rationale for Amendment 79 Action

This section documents the Council's intent and justification for taking their preferred action under Amendment 79. The language in this section is paraphrased and excerpted from transcripts for the Council's deliberations on the GRS at their June 2003 meeting and deliberations on IR/IU at their September 1996 meeting.

The Council has recognized the costs of the IR/IU program for some time (NEI 2003). In 1996, the Council adopted an IR/IU program requiring 100 percent retention (Amendment 49) for yellowfin sole and rock sole with a delayed starting date of 2003, which the Secretary approved. The delayed starting date was recognition by the Council that the program was costly to the industry. The delay also intended to allow ample time for the industry to develop new fishing techniques and technology to avoid or minimize unwanted fish in addition to developing new product forms and markets (NPFMC 1996). However, prior to the flatfish IR/IU regulations commencing in 2003, the Council again proposed to delay implementation of flatfish IR/IU until June 2004, to allow additional time for the affected fleet to adjust to these requirements. That proposed delay resulted in a partial approval of Amendment 75 in 2003. At the same time, the Council initiated additional amendments to examine alternative approaches to flatfish IR/IU (Amendment 79) and to develop fishing cooperatives to allow the affected sectors to better comply with IR/IU retention standards (Amendment 80).

The rationale expressed in the administrative record of the Council discussion concerning Amendment 79 state that "Fishery management is about achieving conservation objectives, achieving social and economic objectives, and meeting the letter of the law and the intent and spirit of the law...Our intention, and our purpose and our need here, is to address the multiple requirements of the Magnuson Act to balance conservation goals and reduce bycatch, and still maintain the opportunity to go out and meet other considerations such as having an economic fishery" (NPFMC 2005).

In their deliberations on Amendment 79, the Council expressed that the GRS program balances conservation through reductions in discards (National Standard 9) and minimizes costs when practicable (National Standard 7) by enforcing higher retention rates only on the specific section of the fleet with the largest problem. The Council cited reasons why the alternative would reduce costs to the fishing industry relative to 100% retention under Amendment 49, including the exclusion of vessels under 125 feet LOA, and the inability of some vessels to retain all flatfish species. "The costs are far less than what were originally...considered, and we've tried to adjust the program to minimize those costs." As a result, the Council crafted the GRS program to minimize costs, as much as possible, by targeting higher retention standards on the non-AFA trawl CP sector. At the same time, the preferred alternative also mitigates the cost of the program on the industry and sector it most directly impacts. For example, the preferred alternative mitigates the costs of the program by excluding non-AFA trawl CP less than 125 feet LOA.² These vessels have "specific and particular operational concerns" associated with the enforcement and monitoring requirements (NPFMC 2005). This action also gradually phases in the GRS program over time, which allows the affected vessels to adjust to the program requirements. This allows the portion of the industry most impacted by the standards the opportunity to continue targeting rock sole and yellowfin sole, while also reducing discards in these fisheries.

² Amendment 80 later included non-AFA trawl catcher processors less than 125 feet LOA in the GRS program.

2.2.3 Summary of Amendment 80

The Amendment 80 program, implemented in 2008, allocates several BSAI non-pollock trawl groundfish species among trawl fishery sectors and facilitates the formation of harvesting cooperatives in the non-AFA trawl catcher processor sector. The Amendment 80 program was designed to meet the broad goals of (1) improving retention and utilization of fishery resources by the non-AFA trawl catcher processor fleet by extending the GRS to all non-AFA trawl catcher processors; (2) allocating fishery resources among BSAI trawl harvesters in consideration of historic and present harvest patterns and future harvest needs; (3) establishing a limited access privilege program (LAPP) for the non-AFA trawl catcher processors and authorizing the allocation of groundfish species to harvesting cooperatives to encourage fishing practices with lower discard rates and to improve the opportunity for increasing the value of harvest species while lowering costs; and (4) limiting the ability of non-AFA trawl catcher processors to expand their harvest capacity into other fisheries not managed under a limited access privilege program.

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

The amount of ITAC assigned to the Amendment 80 and the BSAI trawl limited access sectors was based on a review of historical catch patterns during 1998 through 2004, with consideration given to various socioeconomic factors. As an example, a greater proportion of the Atka mackerel and Aleutian Islands Pacific ocean perch (AI POP) was assigned to the BSAI trawl limited access sector than is reflected in historical catch by that sector from 1998 through 2004. One exception to this rule applies to Pacific cod. Pacific cod ITAC is allocated to the Amendment 80 sector under the criteria that the Council adopted for Amendment 85 in April 2006. NMFS published a final rule implementing Amendment 85 in September 2007 (72 FR 50788) and Amendment 85 and Amendment 80 were fully implemented in 2008. The rationale for Pacific cod allocation to the Amendment 80 sector is described under the analysis prepared for Amendment 85 and is not repeated here.³

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

³ See Final EA/RIR/IRFA for Amendment 85: www.fakr.noaa.gov/analyses/amd85/bsa85final.pdf

to the Amendment 80 sector are lowered in a stepwise fashion over a period of years to provide additional reductions in PSC use over time.⁴

The Amendment 80 fleet is constrained by harvest limits in the GOA, commonly known as sideboards, that limit the catch of pollock, Pacific cod, northern rockfish, Pacific ocean perch, and pelagic shelf rockfish, as well as halibut PSC based on harvest patterns during 1998 through 2004.⁵ In addition, a number of the Amendment 80 vessels are participants in the Central GOA Rockfish program LAPP and participate in either a cooperative or limited access fishery under that program.

Finally, implementation of Amendment 80 modified the GRS program in two critical ways. First, the GRS was extended to apply to all non-AFA trawl catcher processors operating in the BSAI without an exemption for vessels under 125 feet LOA. Therefore, all Amendment 80 vessels, regardless of size, would be required to comply with GRS. Second, Amendment 80 modified the method of calculating the total retention of catch that applies to cooperatives. Under the GRS as modified by Amendment 80, each vessel participating in the limited access fishery must ensure that it meets the GRS requirements based on the amount of catch retained by that vessel. Vessels participating in a cooperative can aggregate the total catch by all vessels in the cooperative and the total retained catch by all vessels in the cooperative. The Council recognized that if harvesters could apply the GRS to a cooperative by aggregating the retention rate of all vessels assigned to a cooperative, an owner of non-AFA catcher processors less than 125 ft LOA could choose to join a cooperative, assign their harvest privilege to the cooperative, and allow other larger vessels to harvest the cooperative's exclusive allocation of fish without incurring the compliance costs associated with monitoring the GRS. Additionally, for those non-AFA trawl catcher processors that do fish under a cooperative's exclusive harvest privilege, the costs associated with retaining less valuable fish under the GRS may be offset by increased profitability from those vessels because they are no longer operating in a race for fish.

2.2.4 Current composition of the Amendment 80 sector

While the Council was in the early stages of developing Amendment 80, the Consolidated Appropriates Act of 2005 was signed into law which contained the Capacity Reduction Program. This program is intended to remove "excess harvest capacity" from the catcher processor sector of the non-pollock groundfish fishery and authorizes funding for a vessel buyback program that is to be funded through a capacity reduction loan. Under the criteria established under the capacity reduction program, and the recommendations developed by the Council, NMFS could issue up to 28 quota share permits for the originally qualifying vessels. Table 2-1 lists the vessels that are eligible to generate quota share, the owners of those vessels, and the length overall of the LLP licenses that were issued for those vessels.

Table 2-2 shows whether those owners assigned their vessels and associated quota share permits to either a cooperative, limited access fishery, or chose not to apply for quota share for 2010. In that year, nine quota share permits have been assigned to the limited access fishery, 18 to a single cooperative, and one potential quota share permit has not been allocated quota share. Vessels that are no longer active in the Amendment 80 sector due to an actual total loss, constructive total loss, or permanent ineligibility to receive a U.S. Fishery Endorsement under 46 USC 12108 are noted in italics.

Table 2-1 indicates vessels that may be considered smaller in bold. Generally, smaller vessels have less sophisticated processing operations and may be not be able to retain as many different products, or retain products as effectively or economically as larger vessels with more expansive processing operations, and

⁴ See Tables 35 and 36 to part 679 at: www.fakr.noaa.gov/regs/default.htm

⁵ See Tables 37 and 38 to part 679 at: www.fakr.noaa.gov/regs/default.htm

greater hold capacity. There is not a clear distinction between large and small vessels in the Amendment 80 fleet. However, during development of Amendment 79, the Council determined that vessels less than 125 feet LOA may be less capable of meeting the GRS on an individual basis. The Council's decision was based on input from the Council's technical committee during the development of Amendment 79. The Council was advised by the technical committee, as well as other public input, that vessels less than 125 feet LOA typically had smaller hold capacity, the costs of GRS compliance may be higher relative to their net revenue when compared to larger vessels, and vessel less than 125 feet LOA caught a much smaller proportion of the total catch by non-AFA trawl catcher processors (i.e., Amendment 80 vessels) than vessels 125 feet or greater LOA.

Similarly, the Amendment 80 analysis indicated that vessels of smaller sizes typically had a lower retention rate than larger vessels. The Amendment 80 analysis examined various size classes of Amendment 80 vessels as a means to assess the relative retention rate of vessels. The analysis noted that vessels with an average length overall of less than 144 feet, retained an average of 63 percent of their total catch during 1995 through 2003. This is slightly less than the initial GRS of 65 percent, providing some indication of the relative size of vessels that may have a difficult time meeting higher GRS requirements.

Table 2-1. Active Amendment 80 vessels and LLP licenses

Owner₁	Amendment 80 Vessel(s) with length overall (LOA) as reported on Federal Fisheries Permit₂	LLP license currently assigned to vessel and MLOA₂
Fishing Company of Alaska (FCA), Inc. (Management entity for owner)	Alaska Juris (238 ft)	LLG 2082 (238 ft)
	<i>Alaska Ranger</i> ₃ (203 ft)	LLG 2118 (203 ft)
	Alaska Spirit (221 ft)	LLG 3043 (221 ft)
	Alaska Victory (227 ft)	LLG 2080 (227 ft)
	Alaska Voyager (203 ft)	LLG 2084 (228 ft)
	Alaska Warrior (215 ft)	LLG 2083 (215 ft)
United States Seafoods, LLC (Management entity for owners)	Ocean Alaska ₄ (107 ft)	LLG 4360 (124 ft)
	Alliance (107 ft)	LLG 2905 (124 ft)
	Legacy (132 ft)	LLG 3714 (132 ft)
	Prosperity (138 ft - QS assigned to LLP license derived from vessel)	LLG 1802 (138 ft) derived from vessel
	Seafreeze Alaska (295 ft)	LLG 4692 (296 ft)
Iquiqui U.S., LLC	Arica (186 ft)	LLG 2429 (186 ft)
	Cape Horn (158 ft)	LLG 2432 (158 ft)
	Rebecca Irene (140 ft)	LLG 3958 (140 ft)
	Tremont (124 ft)	LLG 2785 (131 ft)
	Unimak (185 ft)	LLG 3957 (185 ft)
O'Hara Corporation	<i>Bering Enterprise</i> ₅ (183 ft - QS assigned to LLP derived from vessel)	LLG 3744 (183 ft) derived from vessel
	Constellation (150 ft)	LLG 1147 (150 ft)
	Defender (124 ft)	LLG 3217 (124 ft)
	Enterprise (120 ft)	LLG 4231 (132 ft)
	Harvester Enterprise (181 ft)	LLG 3744 (183 ft)
Fishermen's Finest (Management Entity for owners)	American No. 1 (160 ft)	LLG 2028 (160 ft)
	US Intrepid (185 ft)	LLG 3662 (185 ft)
Cascade Fishing, Inc. (Management Entity for owners)	Seafisher (230 ft)	LLG 2104 (230 ft)
Ocean Peace	Ocean Peace (219 ft)	LLG 2138 (219 ft)
Jubilee Fisheries	Vaerdal (124 ft)	LLG 1402 (124 ft)
Arctic Sole Seafoods	Ocean Cape (99 ft QS assigned to LLP derived from originally qualifying vessel <i>Arctic Rose</i>)	LLG 3895 (122 ft)
Golden Fleece	Golden Fleece (104 ft)	LLG 2524 (124 ft)

¹ Ownership data are derived from multiple sources including information provided on Amendment 80 QS applications, Restricted Access Management (RAM) LLP database (<http://www.fakr.noaa.gov/ram/llp.htm#list>), Groundfish Forum (<http://www.groundfishforum.org>), and personal communications with Dave Benson (Trident), Bill Orr (Iquiqui U.S.,

LLC), Susan Robinson (Fishermen's Finest), Mike Szymanski (FCA), and Dave Wood (U.S. Seafood). Most owners designate subsidiary corporations to own the vessels. In turn, those subsidiary corporations are wholly owned by the owner.

2 LOA data for a vessel is derived from RAM FFP license database (). MLOA for the LLP licenses is derived from the RAM LLP database (see URL above). Vessel lengths listed in the RAM database may differ from vessel lengths listed in USCG Vessel Documentation files.

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

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

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

Table 2-2. Owners of Amendment 80 vessels, quota share permits, LLP licenses and quota share holders derived from Amendment 80 vessels, and participation in 2010 cooperative and limited access fishery

Participant Data		Percentage of Initial QS pool held by owner		
<i>Participants in 2010 Amendment 80 Limited Access Fishery</i>				
Owner ₁	Amendment 80 Vessel(s)/LLPs	Species	Percentage by species	Percentage of aggregate pool of QS
Fishing Company of Alaska (FCA), Inc. (Management entity for owner)	Alaska Juris <i>Alaska Ranger</i> Alaska Spirit Alaska Victory Alaska Voyager Alaska Warrior	Flathead Sole (FSOL)	10.7	35.9
		Pacific cod (PCOD)	16.0	
		Rock sole (ROCK)	23.5	
		Yellowfin sole (YFIN)	38.3	
		AI POP (POP)	53.0	
		Atka mackerel (AMCK)	58.2	
Arctic Sole Seafoods	Ocean Cape	FSOL	0.8	0.3
		PCOD	0.4	
		RSOL	0.6	
		YFIN	0.2	
		POP	0	
		AMCK	0	
Trident Seafoods	<i>Bering Enterprise</i>	FSOL	0.5	0.2
		RSOL	0.2	
		YFIN	0.5	
United States Seafoods, LLC (Management entity for owners)	Ocean Alaska	FSOL	1.6	See aggregate total listed under Amendment 80 cooperative below
		PCOD	0.6	
		RSOL	0.6	
		YFIN	0.7	
		POP	0	
		AMCK	0	
<i>Participants in 2010 Amendment 80 Cooperative (Best Use Cooperative)</i>				
United States Seafoods, LLC (Cont.)	Alliance Legacy Prosperity Seafreeze Alaska	FSOL	6.5	9.6 (Includes Ocean Alaska)
		PCOD	11.8	
		RSOL	8.9	
		YFIN	7.0	
		POP	14.3	
		AMCK	9.8	
Iquiqui U.S., LLC	Arica Cape Horn Rebecca Irene Tremont	FSOL	35.5	16.9
		PCOD	23.4	
		RSOL	26.6	
		YFIN	20.6	

	Unimak	POP	0	
		AMCK	0.3	
O'Hara Corporation	Constellation Defender Enterprise Harvester Enterprise	FSOL	33.0	12.6
		PCOD	19.3	
		RSOL	17.2	
		YFIN	13.7	
		POP	0	
		AMCK	0.7	
Fishermen's Finest (Management Entity for owners)	American No. 1 U.S. Intrepid	FSOL	5.4	8.1
		PCOD	14.8	
		RSOL	14.6	
		YFIN	8.2	
		POP	0.4	
		AMCK	2.2	
Cascade Fishing, Inc. (Management Entity for owners)	Seafisher	FSOL	1.1	8.1
		PCOD	5.2	
		RSOL	1.9	
		YFIN	4.8	
		POP	18.6	
		AMCK	18.6	
Ocean Peace	Ocean Peace	FSOL	5.3	6.0
		PCOD	5.2	
		RSOL	4.2	
		YFIN	4.0	
		POP	13.6	
		AMCK	9.2	
Jubilee Fisheries	Vaerdal	FSOL	1.5	1.9
		PCOD	3.5	
		RSOL	3.5	
		YFIN	1.7	
		POP	0	
		AMCK	0.7	
Owner who did not apply for Amendment 80 QS and is not participating in 2010				
Golden Fleece	Golden Fleece	FSOL	0.2	0.1
		PCOD	0.5	
		RSOL	0.3	
		YFIN	0	
		POP	0	
		AMCK	0	

2.2.5 Fishing practices of the Amendment 80 sector

The analysis provides a comparison between performance of the cooperative and limited access fishery in 2008 and 2009, compared to eligible Amendment 80 vessels from 2003 through 2007. This time period was selected as most representative of current fishing practices. The analysis relies on 2008 and 2009 data from Amendment 97 analysis (Amendment 80 vessel replacement action) since NMFS received waivers from Amendment 80 sector to release aggregate BSAI limited access fishery and cooperative fishery data.

The Amendment 80 sector is the most diverse of the processing sectors in the BSAI and the only sector that consistently targets a significant amount of flatfish. As shown in Table 2-3 and Table 2-4, the Amendment 80 sector focuses their fishing effort on Atka mackerel, flathead sole, yellowfin sole, rock

sole, rockfish (AI Pacific ocean perch), Pacific cod in years prior to 2008⁶, and in recent year's arrowtooth flounder and Greenland turbot. In many of the noted targets, the Amendment 80 sector harvests over 90 percent of the target fishery. Table 2-5 provides retained catch of BSAI target fisheries for the Amendment 80 sector during the 2003 through 2009 period.

Table 2-3. Total catch by BSAI target fishery for the Amendment 80 sector, 2003 through 2009

	2003	2004	2005	2006	2007	2008	2009
Alaska Plaice				380	34	112	8
Arrowtooth Flounder	2,732	3,566	5,639	4,505	1,841	16,079	23,998
Atka Mackerel	62,438	64,872	69,673	69,814	67,186	63,595	77,451
Flathead Sole	18,883	28,269	23,384	18,885	21,732	27,993	17,604
Greenland Turbot - BSAI	708	285	81		5	602	2,587
Other Flatfish - BSAI	1,692	2,640	1,963	494	3,065	188	469
Other Species	764	148	10	118	267		12
Pacific Cod	38,903	62,674	40,229	42,859	49,059	5,705	6,729
Pollock - bottom	163	32	392	175	395	2,295	3,771
Pollock - midwater	1		27		16	664	808
Rock Sole - BSAI	37,240	47,023	41,191	48,511	40,697	63,845	48,843
Rockfish	13,497	10,167	8,298	10,207	14,950	15,342	12,897
Sablefish - BSAI		124	31		6	57	4
Yellowfin Sole - BSAI	104,062	94,132	109,873	99,074	118,286	156,220	130,074
Total (Amendment 80)	281,083	313,942	300,814	295,028	317,540	352,698	325,252
Total (all other sectors)	1,692,448	1,665,208	1,680,299	1,687,086	1,542,976	1,192,868	1,012,008
Grand Total	1,973,531	1,979,151	1,981,113	1,982,115	1,860,516	1,545,566	1,337,260

Source: NMFS Catch Accounting

Table 2-4. Percent of target by Amendment 80 sector, 2003 through 2009

Target	2003	2004	2005	2006	2007	2008	2009
Alaska Plaice				100.0%	17.4%	100.0%	18.9%
Arrowtooth Flounder	99.9%	100.0%	100.0%	82.3%	94.2%	100.0%	99.5%
Atka Mackerel	99.8%	100.0%	100.0%	100.0%	97.3%	98.1%	95.3%
Flathead Sole	100.0%	100.0%	100.0%	92.5%	100.0%	100.0%	90.2%
Greenland Turbot - BSAI	24.2%	14.5%	3.8%	0.0%	0.2%	39.2%	59.9%
Other Flatfish - BSAI	61.4%	78.1%	72.0%	47.7%	95.0%	8.4%	60.1%
Other Species	92.5%	31.4%	15.5%	48.6%	81.7%	0.0%	25.6%
Pacific Cod	15.5%	23.6%	16.5%	18.9%	23.2%	3.1%	3.8%
Pollock - bottom	1.0%	0.2%	1.2%	0.6%	1.3%	3.6%	2.5%
Pollock - midwater	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.1%
Rock Sole - BSAI	99.9%	100.0%	99.5%	99.1%	95.3%	98.2%	92.1%
Rockfish	99.9%	98.6%	99.8%	99.7%	96.4%	93.4%	90.4%
Sablefish - BSAI	0.0%	6.7%	1.4%	0.0%	0.2%	3.0%	0.2%
Yellowfin Sole - BSAI	95.4%	95.0%	91.5%	82.6%	79.8%	85.2%	89.1%
Total percent of Amendment 80	14.2%	15.9%	15.2%	14.9%	17.1%	22.8%	24.3%

Source: NMFS Catch Accounting

⁶ Starting in 2008, the Amendment 80 sector was allocated 13.4% Pacific cod ITAC.

Table 2-5. Retained catch by BSAI target fishery for the Amendment 80 sector, 2003 through 2009

	2003	2004	2005	2006	2007	2008	2009
Alaska Plaice				220	24	101	5
Arrowtooth Flounder	2,022	1,916	3,815	2,335	1,316	14,100	22,409
Atka Mackerel	46,497	51,166	61,927	62,433	59,569	59,951	72,572
Flathead Sole	13,113	18,277	16,581	14,184	14,122	24,066	15,853
Greenland Turbot - BSAI	508	118	69		4	592	2,493
Other Flatfish - BSAI	834	1,037	956	245	1,480	112	377
Other Species	461	27	9	32	202		9
Pacific Cod	24,554	34,547	26,484	28,073	34,336	5,436	6,019
Pollock - bottom	54	5	169	92	218	2,024	3,382
Pollock - midwater	0		23		5	663	726
Rock Sole - BSAI	24,334	28,606	30,220	38,147	32,474	57,007	42,532
Rockfish	12,636	9,116	7,843	9,688	13,830	15,052	11,913
Sablefish - BSAI		74	26		3	53	3
Yellowfin Sole - BSAI	75,616	70,015	87,499	77,526	88,615	136,298	114,122
Total (Amendment 80)	200,631	214,904	235,627	232,973	246,199	315,453	292,416
Total (all other sectors)	1,662,463	1,631,392	1,647,079	1,656,086	1,511,918	1,160,914	983,735
Grand Total	2,063,724	2,061,200	2,118,334	2,122,032	2,004,317	1,791,820	1,568,567

Source: NMFS Catch Accounting

As shown in Table 2-6, the gross wholesale value of the Amendment 80 fishery in 2009 was \$248 million. Of the many Amendment 80 fisheries, yellowfin sole and Atka mackerel had the highest gross wholesale value for the sector at \$89 million and \$70 million, respectively.

Table 2-6. Wholesale gross product value by target fishery in BSAI for Amendment 80 sector, 2003 through 2009

Target	2003	2004	2005	2006	2007	2008	2009
Alaska Plaice				223,388	23,445	87,923	3,989
Arrowtooth Flounder	1,683,069	1,942,016	4,227,665	2,772,023	1,317,996	12,712,288	16,774,240
Atka Mackerel	26,512,813	32,623,488	42,451,828	44,971,993	51,417,899	52,869,245	69,607,123
Flathead Sole	9,992,491	16,012,569	17,028,751	14,907,698	15,035,539	23,437,219	13,471,589
Greenland Turbot - BSAI	467,076	146,923	135,444		8,665	564,601	1,900,302
Other Flatfish - BSAI	741,565	1,001,322	1,054,362	271,960	1,571,973	129,377	295,428
Other Species	338,559	17,701	7,658	32,609	192,367		5,380
Pacific Cod	25,104,412	36,414,086	32,749,705	41,445,116	59,810,989	9,485,097	6,747,619
Pollock - bottom	40,962	4,624	180,860	98,149	278,138	2,744,977	3,979,533
Pollock - midwater	28		22,532		5,554	1,009,966	963,782
Rock Sole - BSAI	18,477,251	25,828,750	31,659,526	40,619,146	32,837,898	53,065,988	34,194,653
Rockfish	8,974,907	7,357,909	9,588,067	14,151,099	16,326,420	14,874,630	11,739,498
Sablefish - BSAI		185,163	59,734		11,718	156,197	12,195
Yellowfin Sole - BSAI	55,013,324	60,043,596	87,247,970	77,239,321	82,406,174	119,231,204	88,527,671
A80 Trawl CP	147,346,456	181,578,148	226,418,745	236,732,502	261,244,774	290,368,712	248,223,001
Other	1,190,331,355	1,265,346,709	1,483,932,135	1,533,602,273	1,489,597,312	1,666,204,721	1,223,758,453
Grand Total	1,337,677,811	1,446,924,857	1,710,350,880	1,770,334,775	1,750,842,085	1,956,573,432	1,471,981,455

Source: NMFS Catch Accounting

Table 2-7 shows retention rates by target for the Amendment 80 sector from 2003 through 2009. Unlike retention rates calculated using round weight equivalent of reported production used to determine the GRS compliance, these retention rates rely on Catch Accounting data from NMFS. Using these retention rates, it is apparent in the table that the sector has made large improvement in their retention rates during the 2003 to 2009 period. The aggregate retention rate for 2003 was 71 percent, with most of the retention rates for the different target fisheries ranging between 60 percent to 70 percent, while just six years later, in 2009, the aggregate retention rate for the sector was 90 percent with most retention rates for the different target fisheries above 85 percent. In fact, only two target fisheries had retention rates below 80 percent, Alaska plaice at 70 percent, and other species at 72 percent.

Table 2-7. Retention rates by target for the Amendment 80 sector, 2003 through 2009

Target	2003	2004	2005	2006	2007	2008	2009
Alaska Plaice				58%	72%	90%	70%
Arrowtooth Flounder	74%	54%	68%	52%	71%	88%	93%
Atka Mackerel	74%	79%	89%	89%	89%	94%	94%
Flathead Sole	69%	65%	71%	75%	65%	86%	90%
Greenland Turbot - BSAI	72%	41%	85%		81%	98%	96%
Other Flatfish - BSAI	49%	39%	49%	50%	48%	60%	80%
Other Species	60%	18%	86%	27%	75%		72%
Pacific Cod	63%	55%	66%	66%	70%	95%	89%
Pollock - bottom	33%	16%	43%	53%	55%	88%	90%
Pollock - midwater	4%		87%		33%	100%	90%
Rock Sole - BSAI	65%	61%	73%	79%	80%	89%	87%
Rockfish	94%	90%	95%	95%	93%	98%	92%
Sablefish - BSAI		59%	84%		54%	93%	95%
Yellowfin Sole - BSAI	73%	74%	80%	78%	75%	87%	88%
Aggregate Retention Rate	71%	68%	78%	79%	78%	89%	90%

Source: NMFS Catch Accounting

Table 2-8 provides retention rates for the Amendment 80 sector using round weight equivalent of reported production from 2003 through 2009. These retention rates are used to determine compliance with GRS. For 2008, the sector met the GRS with an annual retention rate 75 percent. On an individual vessel basis, four vessels had a retention rate less than 70 percent, seven vessels had a retention rate between 70 percent and 75 percent, and seven vessels had an annual retention rate greater than 80 percent. For 2009, the sector met the GRS with a retention rate of 83 percent. Individually, three vessels had a retention rate less than 76 percent, seven vessels had a retention rate between 76 percent and 80 percent, and the remaining ten vessels in the sector had a retention rate greater than 80 percent. Of the three vessels with retention rates below 76 percent, one vessel appears to be under the GRS and enforcement action is pending. The two other vessels are not subject to an enforcement action, because the vessels were members of an Amendment 80 cooperative, and the cooperative, as a whole, exceeded the GRS. As the GRS increases to 85 percent in 2011, it is possible that a number of vessels that met the GRS requirements in 2008 and 2009 may face additional challenges.

Table 2-8. BSAI groundfish retention rate for the Amendment 80 sector

Year	Regulatory GRS percentage	Total catch ¹ (A)	Retained catch ² (B)	Round weight equivalent of reported production ³ (D)	AM 79 approach for deriving % retained catch (B)/(A)	Regulatory approach for determining compliance with GRS (D)/(A)	Differences
2003		281,083	200,631	183,260	71%	65%	6%
2004		313,942	214,904	200,338	68%	64%	5%
2005		300,814	235,627	216,210	78%	72%	6%
2006		295,028	232,973	214,637	79%	73%	6%
2007		317,540	246,199	223,560	78%	70%	7%
2008	65	352,698	315,453	264,245	89%	75%	15%
2009	75	325,252	292,416	268,632	90%	83%	7%

¹Prior to 2008, total catch based on combination of observer data and weekly production reports. After 2008, based on scale weights of total groundfish catch from observer data.

²Prior to 2008, retained catch estimates are based on a combination of observer estimates of discards and data from weekly production reports. After 2008, retained catch is based on observer estimates of discard.

³ Retained catch for purposes of the GRS program is based on the round weight equivalent of reported production.

As indicated in Table 2-8, depending on which estimate of retained catch is utilized for calculating a retention rate, the result can be very different. Using retained catch from catch accounting system (CAS) data, relies on a mixture of production and observer data as the basis for calculations. The other approach for estimating retained catch, and the one that is used in the GRS program, relies on round weight equivalent of retained products and NMFS product recovery rates to estimate retention.

Among the Council's stated concerns is that the method used to monitor and enforce the GRS requires a level of retention much higher than that intended by the Council, when approving Amendment 79. As shown in Table 2-8, the regulatory calculation of groundfish retention standards results in a consistently lower percentage. In 2008, this difference was 15 percent, while the difference in 2009 was 7 percent.

One possible source of the variation in the retention estimates may stem from the data used in the analysis and NMFS current monitoring methodology. Total catch estimates in the groundfish fisheries off Alaska are generated by NMFS from information provided through a variety of required industry reports of harvest and at-sea discard, and data collected through an extensive fishery observer program. Following final action on Amendment 79, NMFS changed the methodologies used to determine catch estimates from the NMFS Blend Database (1995 through 2002) to the Catch Accounting database (2003 through present).

The data used for the Amendment 79 analysis are from NMFS blend data. Blend data were derived from a combination of Weekly Production Reports and NMFS observer data. Observers on CP vessels report groundfish species composition, total catch, and estimates of retention and discards on a weekly basis for each separate reporting area. Total catch was typically estimated using cod-end or bin volumetrics, scales or conversion from production data. Species composition of the catch was obtained by sampling the catch. The total catch is apportioned by species based on that sampling. The blend process combined data from the industry production reports and observer reports to make a comprehensive accounting of groundfish catch. In 2003, the catch accounting system was implemented to better meet the increasing information needs of fisheries scientists and managers. The 2003 modifications in catch estimation included providing more frequent data summaries at finer spatial and fleet resolution and the increased use of observer data. Redesigned observer program data collections were implemented in 2008, and include recording sample-specific in lieu of pooled information, increased use of systematic sampling

over simple random and opportunistic sampling, and decreased reliance on observer computations (NMFS-AFSC 2010).

Currently several calculations are necessary to determine total groundfish catch from total catch under the GRS program. To adequately monitor and enforce the GRS NMFS required all fish, including PSC, to pass a flow scale to determine the total catch. To obtain the estimated total weight of PSC in each haul, the weight of PSC is estimated by species composition basket sampling methods and extrapolated to the total catch. Additional sorting of items from the total catch is required, such as rocks, corals, derelict gear and other debris, offal, and benthic invertebrates (which are not defined as “GRS groundfish”). These values are then deducted from the weight of the total catch to determine total groundfish catch. Groundfish species closed to directed fishing are included in the calculation for total groundfish catch, because species taken incidental to target species may be retained up to the MRA. This constraint is intended to provide an incentive to reduce incidental catch, while providing flexibility to catch target species.

Table 2-9 identifies the TAC of BSAI groundfish species, total catch by all vessels, catch by Amendment 80 vessels, and the percentage of TAC and total catch attributed to Amendment 80 vessels. This table provides total catch in the cooperative and limited access fishery for 2008 and 2009. In years before implementation of Amendment 80, the sector often exceeded the TAC. However, since implementation of Amendment 80, the sector did not exceed TAC, even though a substantial portion of the total Amendment 80 ITAC was harvested by vessels under the limited access fishery. This suggests that the limited number of participants in the limited access fishery faced less competition. This may have reduced the incentive to race for fish to some degree and improved the ability of NMFS to maintain the fishery catch below TAC. As an example, NMFS inseason staff noted improved communication with the limited access fishery participants, when coordinating closures, which facilitated timelier fishery closures.⁷

Also noted in Table 2-9, the Amendment 80 sector harvested a substantially greater portion of the BSAI TAC and total catch in 2008 and 2009, than in any previous year. For example, in 2008, roughly 54,000 metric tons, or 19 percent more groundfish were harvested than the 2003 through 2007 average. Some of this increased catch is due to the sharp increases in yellowfin sole, rock sole, and flathead sole TAC in 2008 and 2009, relative to previous years, providing additional harvest opportunities to the fleet. The fleet also caught more of these species in 2008 and 2009, when compared to previous years. For example, the Amendment 80 sector caught 49 percent, 30 percent, and 62 percent more flathead sole, rock sole, and yellowfin sole, respectively, compared to average catch during 2003 through 2007. A cooperative representative noted that market conditions and other economic considerations made by individual companies in the cooperative and limited access fishery may have also affected decisions to harvest catch. Icing conditions during the period when flathead sole is traditionally harvested may have been a factor.

⁷ Steve Whitney, NMFS Inseason staff, Personal communication.

Table 2-9. Total BSAI groundfish catch by all vessels and Amendment 80 vessels for 2008 and 2009

Species	2008					2009				
	TAC	AM80 limited access	AM80 BUC	AM80 Total	Total catch	TAC	AM80 limited access	AM80 BUC	AM80 Total	Total catch
Arrowtooth Flounder	63,750	820	17,065	17,884	21,884	63,750	2,255	23,570	25,826	30,337
Atka Mackerel	54,205	29,471	27,280	56,751	58,088	54,205	36,363	32,987	69,350	72,807
Alaska Plaice	42,500	4,803	10,526	15,329	17,377	42,500	1,472	11,064	12,537	13,943
Rougheye Rockfish	172	64	63	126	213	172	91	66	158	209
Shorthead Rockfish	360	21	53	74	166	360	27	89	117	205
Squid	1,675	5	84	89	1,542	1,675	15	134	149	355
Flathead Sole	44,650	2,148	17,086	19,234	24,538	44,650	1,086	12,231	13,317	19,541
Greenland Turbot	2,159	58	1,788	1,845	2,751	2,159	283	2,736	3,019	4,497
Northern Rockfish	6,953	1,549	1,533	3,082	3,287	6,953	1,346	1,547	2,893	3,111
Other Flatfish	18,360	305	2,680	2,985	3,625	18,360	85	1,697	1,782	2,167
Other Rockfish	849	151	241	392	598	849	105	184	289	599
Other Species	42,500	1,853	5,851	7,703	29,377	42,500	1,463	6,459	7,922	27,795
Pacific Cod	152,453	2,287	14,291	16,578	170,639	152,453	1,834	20,187	22,021	175,742
Pacific Ocean Perch	15,628	7,796	8,273	16,068	17,436	15,628	6,633	7,412	14,044	15,347
Pollock	917,110	3,442	17,417	20,859	991,854	917,110	1,683	18,576	20,258	812,461
Rock Sole	66,975	9,639	36,446	46,085	51,278	66,975	3,472	34,284	37,756	48,648
Sablefish	4,213	20	236	256	2,018	4,213	16	150	166	1,983
Yellowfin Sole	200,925	35,794	91,561	127,355	148,894	200,925	22,377	71,271	93,648	107,511
Total	1,635,437	100,224	252,473	352,698	1,545,566	1,635,437	80,609	244,643	325,252	1,337,260

Despite the fact that the Amendment 80 sector was not under cooperative management, the fleet dramatically reduced its PSC use both in total amount and in terms of use rates, when compared to historical use. For example, the amount of halibut PSC used by the Amendment 80 sector in 2003 was 2,649 metric tons, while in 2009 the sector only used 2,047 metric tons. This provides evidence that LAPP management can quickly and dramatically change fishing behavior, potentially even among those participants in the smaller race for fish limited access fishery.

2.2.6 Enforcement and Prosecution Considerations

When the GRS program was approved by NMFS as Amendment 79, NOAA General Counsel raised concerns about the likely difficulty in prosecuting vessel specific violations of the program. These concerns primarily focused on the program's reliance on an annual groundfish retention percentage based in part on data collected on a single vessel over the course of a year to support the prosecution process. These concerns are aggravated under Amendments 80 and 93 due to the GRS being applied across multiple vessels in a cooperative and potentially multiple cooperatives, respectively.

In early 2010, the NOAA Office of Law Enforcement (OLE) was referred an alleged violation of the GRS Program for the 2009 fishing year. This alleged violation involves one vessel, not part of a cooperative, which fished for a reduced portion of the fishing year. This relatively simple case created an opportunity to evaluate the evidence collection processes necessary for prosecution of a GRS violation.

Investigation of a GRS violation relies upon a detailed examination of the underlying data and the data collection processes used to generate a retention rate. The numerator of the GRS equation is principally based upon vessel-derived and reported data and is the total primary groundfish product produced by the vessel during a year extrapolated to round weight equivalent using standard product recovery rates. The denominator of the GRS equation is derived principally from observer data using the scale weight of total catch as modified by haul-specific observer data on catch composition to generate total catch of groundfish.

Prior to considering an alleged GRS violation for prosecution, OLE investigators must perform a detailed analysis and verification of the sampling procedures and protocols employed by embarked observers, and find a high degree of reliability in the observer data. This task is both time and labor intensive.

Experience to date with the current one-vessel investigation provides valuable insights into the essential tasks for any future investigation and prosecution of a cooperative-level GRS rate violation. Because the sufficiency of data sets for prosecution purposes must be evaluated for each alleged GRS violation, the difficulty increases proportionally with a violation involving a cooperative of multiple vessels because this process must be completed for each vessel in a cooperative. Expansion of the groundfish retention standard to multiple cooperatives under proposed Amendment 93 would further compound this difficulty because the data of potentially every vessel in the Amendment 80 sector would be needed to support the investigation.

2.3 Expected Effects of the Alternatives

This section provides an analysis of two alternatives: (1) No Action, and (2) remove groundfish retention requirements included in the GRS program and require an annual report from the Amendment 80 sector to the Council on annual groundfish retention performance.

2.3.1 Alternative 1: No Action

Under Alternative 1, the GRS program would remain unchanged, requiring non-AFA trawl catcher processors of all sizes, including those catcher processors less than 125 ft. LOA to retain and utilize a minimum percentage of groundfish caught during fishing operations, (i.e., groundfish retention standard).

As the GRS increases to 85 percent in 2011, vessels that met the GRS regulatory requirement in 2010, will face additional challenges meeting this standard. Many participants in this sector have expressed strong reservations whether it will be possible to achieve the 2011 GRS percentages under existing regulatory provisions. The likelihood that additional vessels may be unable to meet the GRS in coming year may unnecessarily increase compliance and enforcement costs, considering that the Council's objectives of retention equal to 85%, as indicated in Amendment 79, appear to be met.

In addition, provisions of Amendment 80, which promote cooperative formation and are intended to increase retention and utilization of groundfish in the non-AFA trawl catcher processor sector, will be undermined as more vessels are unable to meet the regulatory standard. There is little incentive under this alternative for an Amendment 80 cooperative to include underperforming vessels, due to the potential for reduced retention rates at the cooperative level. Therefore, the GRS may unduly disadvantage some participants, or force vessel operators to consolidate their catch or retire vessels that may be unable to meet the 2011 retention standard without the benefits of the Amendment 80 catch share program.

This action will also leave in place the regulation requiring non-AFA trawl catcher processors to meet a 15 percent utilization standard for all retained groundfish species list in Table 2a to part 679 that are used in the calculation for percent of retained groundfish. For each groundfish species, the total weight of retained products must equal or exceed 15 percent of the round-weight catch of each species during a fishing trip.

As noted in Section 2.2.6, monitoring and enforcement of violations of the retention standard are complex, challenging, and potentially very costly. Since the sufficiency of data sets for prosecution purposes must be evaluated for each alleged GRS violation, the difficulty of prosecution increases greatly with a violation involving a cooperative of multiple vessels (or multiple cooperatives), because reliable data must be available for each vessel. OLE experiences with investigations of GRS compliance of a single vessel's potential violation suggest that the GRS cannot be practicably monitored and enforced.

2.3.2 Alternative 2: Remove GRS and Require Annual Retention Report

This alternative would remove the required minimum groundfish retention standard for the Amendment 80 sector. The Amendment 80 sector would, instead, internally monitor the groundfish retention rates and provide an annual report on groundfish retention rates for the sector. The retention performance report could be submitted in conjunction with the Amendment 80 cooperative report, which is due March 1st, annually. Information required in the cooperative report includes: (1) the cooperative's actual retained and discarded catch in Gulf of Alaska (GOA) sideboard limited fisheries (if applicable) by statistical area and on a vessel-by-vessel basis; (2) a description of the method used by the cooperative to monitor fisheries in which cooperative vessels participate; and (3) a description of any actions taken by the cooperative against members in response to a member that exceeded the amount of catch quota that the member was assigned by its Amendment 80 cooperative.

In removing the required minimum groundfish retention standards for the Amendment 80 sector, the groundfish retention rate could continue rising, stay the same, or decrease. It is difficult to predict how retention rates might change with the removal of the standards, but the sector has indicated that higher rates than those currently are not likely to be attainable in the future, which reduces an argument for increasing retention rates under this alternative. Much of the recent increase in the retention rate of the Amendment 80 sector can be attributed to the sector's adjustment to the GRS program during the 2008 through 2010 period and adjustments to rules for 100 percent retention of pollock and Pacific cod. In fact, improvements in the sector's retention rates through 2009 would appear to have met Council objectives of significantly higher retention of groundfish and better utilization. In addition, the Amendment 80 sector has operated under a cooperative system for nearly three years in a manner that seems to facilitate compliance with the existing GRS. However, with the removal of the groundfish retention standard for the Amendment 80 sector, there is no direct regulatory incentive for the sector to further improve its retention. Although non-regulatory incentives (such as the sector's stated commitment to enter a civil contract that would hold each entity accountable to an internal agreed upon retention standard, public pressure, and the knowledge that the Council could take future action should retention rates decrease) may lead the Amendment 80 sector to maintain (or even improve on) current retention rates.

The recently released draft 2010 Steller Sea Lion Biological Opinion (NMFS 2010) could also impact the proposed action. The biological opinion includes a proposed Reasonable and Prudent Alternative (RPA) that would modify groundfish management in the Aleutian Islands to limit competition between commercial fishing for groundfish and the Steller sea lions. The proposed RPA provides a proposed approach to avoid jeopardizing the western population of Steller sea lions and impacts to designated critical habitat (0-20 nautical miles from rookeries and haulouts). Because Atka mackerel and Pacific cod are the two most prominent species in the Steller sea lions diet in this region, the proposed RPA calls for the closure of the Atka mackerel and Pacific cod fisheries in area 543. Additional, but less restrictive measures are also needed in adjacent areas 541 and in area 542. One of the likely impacts from the RPA is an increased difficulty for the Amendment 80 sector to achieve continued high retention rates. Historically, the Atka mackerel fishery has had relatively high retention rates. The loss of Atka mackerel harvests from areas 543, 542, and 541 could put downward pressure on the overall groundfish rate for the sector as retention in the Atka mackerel fisheries, will not be able to compensate for lower retention rates in other groundfish fisheries.

Although the removal of GRS from federal regulations will not reduce the observer requirements for the Amendment 80 sector or the eliminate the need for weighing all groundfish on a certified flow scale, the removal of the standard would eliminate the need for NOAA OLE to enforce and prosecute a GRS violation, thereby reducing the financial burden for the agency. Although the total cost saving for NOAA OLE is not known, the agency's recently gained experience with enforcing the GRS compliance, as noted

in Section 2.2.6, shows that enforcement costs associated with GRS would be extremely high and would only increase under a multi cooperative GRS compliance standard under proposed Amendment 93. As a result, the costs saving from the elimination of compliance monitoring would be substantial.

2.3.3 Effects on Net Benefits to the Nation

Net benefits to the Nation would likely increase under Alternative 2 relative to Alternative 1. Removing the retention standards for the Amendment 80 sector will substantially reduce monitoring and compliance costs. In addition, given the increase in groundfish retention since 2003, it appears that the benefits of significantly higher discard rates by the non-AFA trawl catcher processor sector have accrued to the Nation. The combination of lower compliance costs and the benefits of higher retention rates by the non-AFA trawl catcher processors will result in greater net benefits to the Nation from the proposed action.

3 Environmental Assessment

The purpose of this section is to analyze the environmental impacts of the proposed Federal action to modify the groundfish retention standard (GRS) program for the Amendment 80 sector in the Bering Sea and Aleutian Islands. An environmental assessment (EA) is intended, in a concise manner, to provide sufficient evidence of whether or not the environmental impacts of the action is significant (40 CFR 1508.9).

Three of the four required components of an environmental assessment are included below. These include a brief discussion of: the purpose and need for the proposal (Section 3.1), the alternatives under consideration (Section 3.2), and the environmental impacts of the proposed action (Section 3.3). The fourth requirement, a list of agencies and persons consulted, is provided in Sections 6 and 7 of this document.

3.1 Purpose and Need

The purpose of this action is to remove the groundfish retention standard for non-AFA trawl catcher processor vessels. This action is needed to mitigate management and enforcement costs that were not foreseen when the regulation was promulgated. In addition, this action is needed to mitigate higher than expected compliance costs of the groundfish retention standard borne by the non-AFA trawl catcher processors.

The Council identified two reasons for removing the groundfish retention standards. First, the Council stated that the removal of the GRS is necessary due to the difficulty of monitoring retention standard requirements and the potential high costs of prosecuting violations of the requirement, particularly at the cooperative level. These difficulties and potential costs arise from the need to verify estimates of retention and substantiate records for each vessel in a cooperative. In addition, the Council noted that estimates of groundfish retention used to establish the groundfish retention standards in Amendment 79 differ substantially from measures employed in the implementation of Amendment 79. These differences may result in substantially greater compliance costs than anticipated at the time of Council action.

Although monitoring and enforcement complications may prevent retention of the Amendment 79 regulatory standard, the Council is considering a provision requiring participants in the Amendment 80 sector to annually report retention performance to aid the Council in assessing the sector's retention.

In December 2010, the Council adopted the following purpose and need statement:

NMFS has identified two issues with the current GRS program. First, the GRS calculation as implemented does not correlate with historic groundfish retention rates in front of the Council at

the time of Amendment 79 final action, and requires groundfish retention well beyond what was considered by the Council. The current GRS calculation schedule may impose economic hardships to the Amendment 80 fleet well beyond those considered in the Amendment 79 analysis. Second, NMFS enforcement has significant concerns with the cost of enforcing a GRS violation, which may hinder their ability to enforce the current GRS program. For these reasons, the GRS should be revised or reconsidered to allow industry to implement an internal retention monitoring program that ensures continued high groundfish retention.

3.2 Description of Alternatives

Alternative 1: No Action

This is the no action alternative. Under this alternative, the groundfish retention standard would in the Federal regulation which requires non-AFA trawl catcher processors of all sizes, including those catcher processors less than 125 ft. LOA to retain and utilize a minimum percentage of groundfish caught during fishing operations, (i.e., groundfish retention standard), which is scheduled to be 85 percent in 2011 and each year after. The GRS may be applied to a cooperative by aggregating the retention rate of all vessels assigned to a cooperative.

Alternative 2: Remove groundfish retention standard requirements from the Federal regulations. In addition, include a requirement that the Amendment 80 sector would report to the Council, on an annual basis, the sector's groundfish retention performance

This alternative would remove the minimum groundfish retention standards from the GRS program for the Amendment 80 sector. Specifically, this alternative would remove from 50 CFR 679.27(j) sections (1) through (4) only. The alternative would also require the Amendment 80 sector, on an annual basis, to report to the Council its groundfish retention performance.

The proposed alternative would not change observer requirements for the Amendment 80 sector or eliminate the requirement to weigh all groundfish on a certified flow scale; these and other requirements were established under the final rule to implement Amendment 80 and must remain in effect to ensure proper catch accounting under the quota-based catch share program.

3.3 Alternatives considered but not advanced for analysis

The Council, at the June 2010 meeting, proposed an alternative that would revise the current GRS schedule. The Council proposing replacing the current GRS schedule, established in regulation at 50 CFR 679.27(j)(4), with a revised GRS schedule that would require groundfish retention at rates similar to the estimates presented during the development of the GRS program. This alternative was intended to impose retention requirements similar to those considered in the original analysis of Amendment 79.

While the Council noted that the establishment of a "recalibrated" GRS would address some issues described in the purpose and need for this action, it is recognized that the "recalibration" would not address the monitoring, enforcement, and prosecution issues that arise from the methodology used to annually determine vessel compliance with the GRS program. For these reasons, this suggested alternative is not analyzed here.

3.4 Affected Environment

An EA is prepared pursuant to NEPA to determine whether an action will result in significant effects on the human environment. An effect on a part of the environment may be either direct or indirect and beneficial or adverse. If the environmental effects of the action are determined not to be significant based on an analysis of relevant considerations, the EA and resulting finding of no significant impact are the

final environmental documents required by NEPA. If an analysis concludes that the action is a major Federal action that would significantly affect the human environment, an environmental impact statement (EIS) must be prepared.

NEPA significance is determined by considering both the context in which the action will occur and the intensity of the action. The context in which the action will occur includes the specific resources, ecosystem, and the human environment affected. The intensity of the action includes the type of impact (beneficial versus adverse), duration of impact, and other factors (see 40 CFR 1508.27(b)). NEPA regulations contain a listing of considerations to use to determine intensity, as does NOAA Administrative Order 216-6.

Context: The context for the proposed action is groundfish fishing in the BSAI and the effects of this action are directly limited to the BSAI. The proposed action would make various revisions to the MRAs for groundfish using arrowtooth flounder as a basis species in the BSAI. The effects on society within the BSAI are on individuals directly and indirectly participating in the groundfish fisheries.

Intensity: A listing of considerations to determine the intensity of the impacts can be found at 40 CFR 1508.27(b) and in NOAA Administrative Order 216-6. The proposed action would make various revisions to the MRAs for groundfish using arrowtooth flounder as a basis species in the BSAI. The intensity of this action is believed to be low because it is not likely to change the harvest of groundfish, but would reduce discards currently required by regulation. The harvest of groundfish would continue to be constrained by TAC and PSC limits.

The environmental impacts generally associated with fishery management actions are effects resulting from interactions with (1) targeted groundfish species, (2) non-specified species, (3) forage species, (4) prohibited species, (5) marine mammals, (6) seabirds, (7) benthic habitat and essential fish habitat, (8) the ecosystem, and (9) the economic and social conditions. This action would have no impacts on non-specified species, forage species, seabirds, habitat, or the ecosystem not previously considered in the harvest specification EIS (NMFS 2007a). Therefore, this analysis will focus on the environmental components that could potentially be affected by this action; stocks of targeted groundfish, and prohibited species. The effect of the alternatives on social and economic conditions is analyzed in Chapters 2.

3.4.1 Bering Sea and Aleutian Islands Environment

The action area includes the entire Bering Sea and Aleutian Islands (BSAI). The documents listed below contain extensive information about the fishery management areas, fisheries, marine resources, ecosystem, social, and economic elements of the BSAI groundfish fisheries. Rather than duplicate an affected environment description here, readers are referred to these documents. This list is a partial listing of NEPA documents that have been prepared for BSAI fishery management measures. Internet links to these documents, as well as a comprehensive list of NEPA documents that have been prepared by NMFS, Alaska Region and the Council are at <http://www.fakr.noaa.gov/index/analyses/analyses.asp>. Any additional information beyond what is included in the following references is included here.

Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (NMFS 2007a). This EIS provides decision makers and the public with an evaluation of the environmental, social, and economic effects of alternative harvest strategies for the federally managed groundfish fisheries in the Gulf of Alaska and the Bering Sea and Aleutian Islands management areas. The EIS examines alternative harvest strategies that comply with Federal regulations, the BSAI FMP, and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). These strategies are applied to the best available scientific information to derive the total allowable catch estimates for the groundfish

fisheries. The EIS evaluates the effects of different alternatives on target species, non-specified species, forage species, prohibited species, marine mammals, seabirds, essential fish habitat, ecosystem relationships, and economic aspects of the BSAI fisheries.

Stock Assessment and Fishery Evaluation (SAFE) Report for the Groundfish Resources of the Bering Sea and Aleutian Islands (NPFMC 2009). Annual SAFE reports contain a review of the latest scientific analyses and estimates of each BSAI species' biomass and other biological parameters. This includes the acceptable biological catch specifications used by NMFS in the annual harvest specifications. The SAFE report also includes summaries of the available information on the BSAI ecosystem and the economic condition of the groundfish fisheries off Alaska. This document is available from <http://www.afsc.noaa.gov/refm/stocks/assessments.htm>.

Alaska Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement (Final PSEIS, NMFS 2004). A Final PSEIS was prepared to evaluate the fishery management policies embedded in the BSAI and GOA groundfish FMPs against policy-level alternatives. NMFS issued a Record of Decision for the Final PSEIS on August 26, 2004, effectively implementing a new management policy that is ecosystem-based and more precautionary when faced with scientific uncertainty. The PSEIS serves as the primary environmental document for subsequent analyses of environmental impacts on the groundfish fisheries. Chapter 3 of the Final PSEIS provides a detailed description of the affected environment, including extensive information on fishery management areas, marine resources, and marine habitat in the North Pacific Ocean. For more information, see the Final PSEIS and related documents at <http://www.fakr.noaa.gov/sustainablefisheries/seis/default.htm>.

3.4.2 Effects on Groundfish Stocks in the BSAI

Complete descriptions of all groundfish stocks harvested in the BSAI are presented in Section 3.5.1 of the PSEIS (NMFS 2004). Additional information on the condition of these stocks is presented in the 2010 and 2011 harvest specifications for Alaska groundfish fisheries (NMFS, 2010). This report indicates that none of the groundfish stocks in the BSAI are depleted or currently overfished.

Changes in the groundfish retention rates would not affect the condition of groundfish stocks more than any other removal (retained catch). As indicated in the PSEIS, management of these stocks does not allow the fishing mortality rate to exceed the overfishing level.

3.4.3 Effects on Prohibited Species

Prohibited species in the groundfish fisheries include Pacific salmon (chinook, coho, sockeye, chum and pink) steelhead trout, Pacific halibut, Pacific herring and Alaska king, Tanner and snow crab. Detailed information on the status of prohibited species is presented in Section 3.5.2 of the PSEIS (NMFS 2004). The effects of the groundfish fisheries in the BSAI on prohibited species are primarily managed by conservation measures developed and recommended by the NPFMC cover the entire history of the FMPs for the BSAI and implemented by federal regulation. These measures include prohibited species catch (PSC) limits on a year round and seasonal basis, year round and seasonal area closures, and gear restrictions. As a result of these management measures, changes in the retention rates by the Amendment 80 sector are likely not to impact prohibited species.

3.4.4 Effects on Benthic Habitat and Essential Fish Habitat

All the marine waters and benthic substrates in the management areas comprise of habitat of groundfish. In addition, the adjacent marine waters seaward of the EEZ, adjacent State waters, shoreline, freshwater inflows and atmosphere above the waters constitute habitat for prey species, other life stages and species that move in and out of, or interact with, groundfish species. Distinctive aspects of the habitat include

water depth, substrate composition, substrate infauna, light penetration, water chemistry (salinity, temperature, nutrients, sediment load, color, etc.), currents, tidal action, phytoplankton, and zooplankton production, associated species, natural disturbance regimes and the seasonal variability of each aspect. Substrate types include bedrock, cobbles, sand, shale, mud, silt, and various combinations of organic material and invertebrates that may be termed biological substrate. Biological substrates present in management areas include corals, tunicates, mussel beds and tubeworms. Biological substrate has the aspect of ecological state (from pioneer to climax) in addition to the organic and inorganic components. Ecological state is related to natural and anthropogenic disturbance regimes. The BSAI groundfish FMP contains a description of habitat preferences of the target species, and projects are underway to systematically present biological requirements for each known life history stage. A detailed analysis of interactions between groundfish fisheries and benthic habitat and EFH is provided in Section 3.6 of the PSEIS (NMFS 2004). The PSEIS identifies that conditionally significant adverse cumulative effects may occur from groundfish fisheries under the preferred alternative due to mortality of Bering Sea benthic organisms. The additional external impacts described in the PSEIS preferred alternative are described as adding to the lingering past mortality impacts and contribute to impacts that are already evident.

As the Amendment 80 sector operates trawl gear in benthic habitat areas, it is possible that these operations contribute to this mortality. It is not possible to determine the extent of these fisheries contributions to changes in benthic habitat areas, or mortality, or how Alternative 2 may impact benthic habitat areas, compared with Alternative 1 (no action). However, Amendment 94, approved by the Secretary of Commerce on September 17, 2010, requires all nonpelagic trawl vessels targeting flatfish in the BS, including the Amendment 80 sector, to use elevating devices on trawl sweeps to raise them off the seafloor. The trawl sweep modifications to the non-AFA trawl CP sector may have beneficial effects on the amount of biological structure in the Bering Sea, due to the reduction in the amount of contact between the trawl sweeps and the sea bed.

The trawl sweep modification has been tested to be effective in reducing trawl sweep impact effects to sea whips (a long-lived species of primary concern). Although tests for reduced impacts on basketstars, sponges, and polychaete siphons were non-significant, the demonstrated reductions in mortality to *C. bairdi* and *C. opilio* crabs likely indicate that any mortality of other, smaller epibenthos (such as other crab, sea stars, or shrimp) would also be reduced. The gear modification would reduce potential destruction of benthic species and potentially preserve benthic biodiversity and likely would provide some benefit to non-living substrates.

The extent of this protection is dependent on the sensitivity of the benthic fauna in the area and the intensity of fishing. The BS shelf consists primarily of sand and mud substrates, supporting low-profile living and non-living structures. These structures can be protected by relatively small increases in clearance between the gear and the seafloor, such as the trawl sweep modification. The effects of the sweep modification on habitat complexity are expected to be positive, as the modification will reduce damage and/or mortality to living and non-living habitat. Effects on benthic diversity and habitat suitability are also expected to be beneficial. Based on the evaluation criteria used in previous analyses and the likelihood the sector will continue to fish in similar manner, albeit continuing to maintain the sector's current level of groundfish retention or lower, there is likely no effects to the benthic habitat as result of this action.

3.4.5 Effects on Steller Sea Lions

The western distinct population segment (DPS) of Steller sea lions (SSLs) and their designated critical habitat occur in the BSAI. The western DPS is listed as endangered under the Endangered Species Act (ESA). NMFS has jurisdiction under the ESA over SSLs and is responsible for the conservation and

recovery of the species. To ensure the Alaska groundfish fisheries are not likely to result in jeopardy of extinction or adverse modification of critical habitat, SSL protection measures were implemented in 2003 and further revised in 2004 for the BSAI (68 FR 204, January 2, 2003 and 69 FR 75865, December 20, 2004). These protection measures control the overall harvest of principal prey species (pollock, Pacific cod, and Atka mackerel) and provide temporal and spatial dispersion of harvests to avoid competition for prey between SSLs and the groundfish fisheries.

Three types of effects on SSLs could occur from the groundfish fisheries. First, groundfish fisheries incidentally take SSLs during fishing operations. Second, groundfish fisheries also may disturb SSLs so that they are unable to perform behaviors necessary for survival such as foraging, resting and reproduction. The third potential effect of the groundfish fisheries on SSLs is the potential competition for the prey species pollock, Pacific cod, and Atka mackerel.

As described in Section 2.3.2 of this document, the recently released draft 2010 Steller Sea Lion Biological Opinion includes a proposed RPA to designated critical habitat (0 – 20 nautical miles from rookeries and haulouts). For Amendment 80 vessels targeting Atka mackerel, one of the likely impacts from the proposed RPA is an increased difficult achieving continued high retention rates.

The limit on harvest proposed by the RPA is based on the average amount of harvest that has occurred outside of critical habitat from 2003 – 2009 and applied to the current year ABC. The average annual Atka mackerel harvest outside of critical habitat from 2003-2009 was 47 percent of the total catch in Area 542 (the lowest and the highest years were eliminated in the calculation). The RPA proposes to set TAC at 47 percent of ABC to preserve historical access to Atka mackerel resources outside of critical habitat while preventing intensification of harvests by allowing harvest displaced from the 10 – 20 nm zone of critical habitat to be taken in the remaining open area of 542. This limitation on Atka mackerel harvest would be less stringent than the proposed complete prohibition against retention of Atka mackerel in Area 542.

The implementation of Amendment 80 could disperse Atka mackerel fishing as NMFS has the ability to align Atka mackerel seasons with Pacific cod and pollock A and B seasons in Area 542. In effect, the time periods of the seasons could be expanded from January 20 through April 15 and September 1 through November 1 to January 20 through June 10 and June 10 through November 1. This may further reduce the potential depletion of prey resources as described in the draft biological option (NMFS 2010a).

This proposed action would likely not result in changes in the fisheries that could increase the potential for incidental takes or disturbance of SSLs. Although future fishing behavior cannot be determined with any certainty, the Amendment 80 sector will likely continue to fish a manner that maintains the sector's current retention of groundfish in the BSAI area. As such, the proposed alternative would likely not result in changes to the location or timing of the groundfish fisheries or the gear type that would be used in these fisheries in a manner that would increase interactions with SSLs.

4 Initial Regulatory Flexibility Analysis (IRFA)

4.1 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 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;
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.

4.2 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) and small government jurisdictions.

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

The SBA has established size criteria for all major industry sectors in the 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 meets the \$4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

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

Affiliation may be based on stock ownership when: (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50% 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 venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations: The RFA defines “small organizations” as any nonprofit enterprise that is independently owned and operated and is not dominant in its field.

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

4.3 Reason for considering the proposed action

The purpose of this action is to remove the groundfish retention standard for non-AFA trawl catcher processor vessels. This action is needed to mitigate management and enforcement costs that were not foreseen when the regulation was promulgated. In addition, this action is needed to mitigate higher than expected compliance costs of the groundfish retention standard borne by the non-AFA trawl catcher processors.

The Council identified two reasons for removing the groundfish retention standards. First, the Council stated that the removal of the GRS is necessary due to the difficulty of monitoring retention standard requirements and the potential high costs of prosecuting violations of the requirement, particularly at the cooperative level. These difficulties and potential costs arise from the need to verify estimates of retention and substantiate records for each vessel in a cooperative. In addition, the Council noted that estimates of groundfish retention used to establish the groundfish retention standards in Amendment 79 differ substantially from measures employed in the implementation of Amendment 79. These differences may result in substantially greater compliance costs than anticipated at the time of Council action.

Although monitoring and enforcement complications may prevent retention of the Amendment 79 regulatory standard, the Council is considering a provision requiring participants in the Amendment 80 sector to annually report retention performance to aid the Council in assessing the sector’s retention.

In December 2010, the Council adopted the following purpose and need statement:

NMFS has identified two issues with the current GRS program. First, the GRS calculation as implemented does not correlate with historic groundfish retention rates in front of the Council at the time of Amendment 79 final action, and requires groundfish retention well beyond what was considered by the Council. The current GRS calculation schedule may impose economic hardships to the Amendment 80 fleet well beyond those considered in the Amendment 79 analysis. Second, NMFS enforcement has significant concerns with the cost of enforcing a GRS violation, which may hinder their ability to enforce the current GRS program. For these reasons, the GRS should be revised or reconsidered to allow industry to implement an internal retention monitoring program that ensures continued high groundfish retention.

4.4 Objectives of, and the legal basis for, the proposed rule

The objective for this proposal is to remove the groundfish retention standard for the Amendment 80 fleet and require the sector to report their groundfish retention performance to the Council annually.

This objective is encompassed by authorities contained in the Magnuson-Stevens Act. Under the Magnuson-Stevens Act, the United States has exclusive management authority over all living marine resources found within the EEZ. The management of marine fishery resources is vested in the Secretary of Commerce (Secretary), with advice from the Regional Fishery Management Councils. The groundfish fisheries in the EEZ off Alaska are managed under the Fishery Management Plan (FMP) for Groundfish of the BSAI and GOA.

Statutory authority for measures designed to reduce bycatch is specifically addressed in Sec. 600.350 of the Magnuson-Stevens Act. That section establishes National Standard 9 – Bycatch, which directs the Councils to minimize bycatch to the extent practicable or minimize mortality when bycatch cannot be avoided.

Regulations for the BSAI MRAs, and how they are calculated, are found at 50 CFR 679.20, parts (e) and (f), and in Table 11 to Part 679.

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

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

The entities directly regulated by this action are those catcher processors that are members of the Amendment 80 sector that target flatfish, Atka mackerel, Pacific cod, and Pacific ocean perch in the EEZ of the BSAI, using trawl gear.

Earnings from all Alaska fisheries for 2009 were matched with the vessels that are members of the Amendment 80 sector and participate in the BSAI groundfish fisheries for that year. There are a total of 28 Amendment 80 qualified catcher processors in the sector. Based on the known affiliations and joint ownership of the Amendment 80 vessels, all vessels in the sector would be categorized as a large entity for the purpose of the RFA. Due to their participation in a harvest cooperative or through known ownership of multiple vessels, co-ownerships and “shares” ownership arrangement among vessels, and other economic and operational affiliations, it is the aggregate annual gross receipts of all affiliated operations worldwide, which are relevant under the SBA rules.

4.6 Recordkeeping and Reporting Requirements

This action is not projected to have more than a *de minimus* adverse impact on the recordkeeping and reporting requirements of small entities participating in the BSAI groundfish fisheries. Some recordkeeping and reporting requirements may be needed by individual firms. Those firms that already record and report catch data will likely not be significantly impacted by this proposed action. It is not possible to determine which firms will be most impacted by the requirements, since the information each firm collects is based on what they need to operate their business and the current reporting requirements. The regulations proposed in this amendment are not expected to impact the recordkeeping and reporting requirements for any other entities in the fishery.

4.7 Description of Significant Alternatives

An IRFA requires a description of any significant alternatives to the preferred alternative that would minimize any significant economic impact of the proposed rule on small entities.

The suite of potential actions includes two alternatives. Under the first alternative, the no action alternative, the GRS program would remain unchanged which requires non-AFA trawl catcher processors of all sizes, including those catcher processors less than 125 ft. LOA to retain and utilize a minimum percentage of groundfish caught during fishing operations, or groundfish retention standard, which is scheduled to be 85 percent in 2001 and each year after. The GRS may be applied to a cooperative by aggregating the retention rate of all vessels assigned to a cooperative.

The second alternative would remove the minimum groundfish retention standards from the GRS program for the Amendment 80 sector. The Amendment 80 sector would instead internal monitor the groundfish retention rates to meet Council retention goals described in Amendment 79. The action would also include a requirement for the sector to report to the Council its annual groundfish retention performance.

Based upon the best available scientific data and information, and consideration of the objectives of this action, one may draw the following conclusion. It appears that there are no alternatives to the proposed action which have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the proposed rule on directly regulated small entities.

5 Consistency with Applicable Law and Policy

5.1 National Standards

The Council's overarching mandate to guide it in managing bycatch is National Standard 9 which states, "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 amendment is proposing to eliminate the groundfish retention standard for the Amendment 80 sector the removal of the groundfish retention standards from the GRS program is necessary due to the high costs of enforcement and monitoring those standards.

The Council identified two reasons for removing the groundfish retention standards. First, the Council stated that the removal of the groundfish retention standards is necessary due to the difficulty of monitoring performance and the potential high costs of prosecuting violations of the requirement, particularly at the cooperative level. These difficulties and potential costs arise from the need to verify estimates of retention and substantiate records for each vessel in a cooperative. In addition, the Council noted that estimates of groundfish retention used to establish the groundfish retention standards in Amendment 79 differ substantially from measures employed in the implementation of Amendment 79. These differences may result in substantially greater compliance costs than anticipated at the time of Council action.

Although monitoring and enforcement complications may prevent retention of the Amendment 79 regulatory standard, the Council is considering a provision requiring participants in the Amendment 80 sector to annually report retention performance to aid the Council in assessing the sector's retention.

As a result, the proposed action is consistent with National Standard 9.

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

Section 303(a)(9) of the Magnuson-Stevens Act requires that any plan or amendment include a fishery impact statement which shall assess and describe the likely effects, if any, of the conservation and management measures on a) participants in the fisheries and fishing communities affected by the plan or amendment; b) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants taking into account potential impacts on the participants in the fisheries, as well as participants in adjacent fisheries.

The alternative actions considered in this analysis are described in Chapter 2 of this document. The impacts of these actions on participants in the fisheries are evaluated in the RIR, Chapter 3.

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