

**Environmental Assessment,
Regulatory Impact Review,
and Final Regulatory Flexibility Analysis
for a Fishing Capacity Reduction Program
in the Longline Catcher Processor Subsector
of the Bering Sea and Aleutian Islands
Non-Pollock Groundfish Fishery**

Abstract: This is an analysis of the environmental, economic, and social effects of a fishing capacity reduction program for the longline catcher processor subsector of the non-pollock groundfish fishery occurring in waters of the Bering Sea and the Aleutian Islands off the State of Alaska. The capacity reduction program will be implemented pursuant to applicable provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b-e)).

Two alternatives have been considered: (1) no buyback program and (2) an industry funded buyback program. The environmental issues associated include: the biological environment including the water column and substrate; amount of fish removed, gear used to fish, and any incidental taking of a marine mammal, seabird, or prohibited species by the longline fishery.

Under the buyback program the biological environment would not be differentially impacted because the amount of fish harvested and gear used to harvest fish would not be affected. Fewer total vessels would be harvesting fish, each vessel participating would be using the same gear and would be spending more time at sea.

The economic impact to communities where non-pollock groundfish are landed and processed would be minimal because the harvest quotas and allocations would not be altered. Fewer vessels in the catcher processor fleet may mean that fewer on-shore fleet support services would be required in Seattle and in Dutch Harbor. The communities would see little change because total landings of non-pollock groundfish would remain at current levels. Some beneficial impacts may occur because this program would provide up to \$36 million to successful bidders. Much of this could be reinvested in the various communities which serve as home ports to the vessels and a portion would be recovered through income taxes. Crew employment opportunities will be reduced when vessels are removed from the fishery. However, those vessels remaining in the fishery will likely experience increased fishing opportunities and higher per capita incomes.

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1.0 Introduction

The National Marine Fisheries Service (NMFS) has been directed by Congress to implement a fishing capacity reduction program for the non-pollock groundfish fishery in the Bering Sea and Aleutian Islands. Congress has provided funding and guidance under the Consolidated Appropriations Act of 2005 (Public Law 108-447) and Consolidated Appropriations Act of 2004 (Public Law 108-199). NMFS will implement this program pursuant to the applicable provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b-e)).

Provisions of the National Environmental Policy Act (NEPA) require the agency to examine the impacts of the proposed action and its alternatives on the human environment and make that information available to public officials and citizens before decisions are made and before actions are taken. For actions not otherwise excluded, the agency generally prepares an Environmental Assessment (EA) to assess whether the proposed action will have significant impacts on the human environment, and if not, uses a finding of no significant impact to conclude the analysis. If significant impacts are present, the agency prepares an Environmental Impact Statement (EIS).

The other planning and environmental review procedures required by law or by agency practice including a Regulatory Impact Review (RIR) to assess the economic and socioeconomic impacts of the proposed action, and its alternatives, on all those with an interest in the resource, including the fishing industry, fishery dependent communities, consumers, and the American public at large. Likewise a Final Regulatory Flexibility Analysis (FRFA) to assess the impacts of the proposed action, and its alternatives, on small entities, including small businesses, non-profit organizations, and/or government jurisdictions has been prepared, as required by the Regulatory Flexibility Act, and integrated with the requirements of NEPA so that other required planning and environmental review procedures can run concurrently.

This EA/RIR/FRFA therefore contains analysis of the environmental, economic, and social effects of the proposed action and its alternatives. This integrated document provides information about the economic impacts of the proposed action and its alternatives by identifying those affected by the action, the nature and distribution of the effects, a discussion of the benefits and costs of each alternative, and an assessment of the „net benefit to the Nation%attributable to each. It also serves to meet the applicable analytical requirements of other statutes and Executive Orders (E.O.), including, but not limited to, E.O. 12866.

The purpose and need, and general background information are included in Section 1 of this document. Section 2 describes alternative actions that may be taken including the requisite „no action%alternative, as well as the preferred alternative. In accordance with NEPA requirements, Section 3 contains a description of the physical, biological, and socio-economic characteristics of the affected environment. Section 4 examines the physical, biological, and socio-economic impacts of the alternatives including the preferred alternative. The RIR analysis associated with E.O. 12866 is found in Section 5. Section 6 includes the FRFA as required by the Regulatory Flexibility Act. Section 7 addresses the consistency of the proposed action with other regulatory considerations such as the Endangered Species Act (ESA), the Marine Mammal Protection Act

(MMPA), Coastal Zone Management Act (CZMA), Paperwork Reduction Act (PRA), E.O. 12898, E.O. 13132, and E.O. 13175. A list of agencies contacted and a list of preparers is found in Section 8. Section 9 provides a list of references and Section 10 a list of acronyms used in this document. A Finding of No Significant Impact (FONSI) has been prepared as a separate memorandum upon completion of the analysis because it was determined the proposed action will not have a significant effect on the human environment.

1.1 Proposed Action

Section 219 of Public Law 108-447 (Section 219) directs the Secretary of Commerce (the Secretary) to implement the fishing capacity reduction program. Public Law 108-199 provided the initial \$500,000 Federal Credit Reform Act (FCRA) subsidy cost to fund a \$50 million loan and Section 219 provided an additional \$250,000 subsidy cost to fund \$25 million more (in addition to providing for the buyback program itself). The legislation authorized a capacity reduction loan (Reduction Loan) of up to \$75 million and authorizes specific amounts for four subsectors in the fishery. The loan authorities include up to: \$36 million for the longline catcher processor subsector, \$6 million for the American Fisheries Act (AFA) trawl catcher processor subsector, \$31 million for the non-AFA trawl catcher processor subsector, and \$2 million for the pot catcher processor subsector. These amounts have been reduced due to across the board rescissions in later appropriations bills. The funds now available for each subsector are: \$35,570,616 for longline catcher processors, \$5,928,436 for AFA trawl catcher processors, \$30,630,253 for non-AFA trawl catcher processors, and \$1,976,145 for pot catcher processors. A separate capacity reduction plan will be developed for each subsector, if and when the members of each industry subsector approach NMFS with a proposal. This analysis responds to a fishing capacity reduction plan submitted by the longline catcher processor subsector.

The objectives of this program are to achieve a permanent reduction of capacity in the longline catcher processor subsector of the non-pollock groundfish fishery (reduction fishery). This should increase post-reduction harvesters' per vessel productivity and by default increase gross revenues for the remaining vessels. Although cost data are not readily available for this fleet, increased gross revenues without consequent increases in expenses (e.g. fewer vessels catching the same amount of fish) should financially stabilize the fishery. Fewer (and more financially stable) vessels could enable fishery managers to better conserve and manage the fishery. The longline catcher processor subsector fishing capacity reduction program (program) is designed to reduce the fishing capacity in the longline catcher processor subsector of the non-pollock groundfish fishery by permanently reducing the number of permits issued pursuant to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea/Aleutian Islands (BSAI) Management Area. Removal of these permits makes the associated vessels named on the permits permanently ineligible to fish in the United States or participate in any fishery worldwide.

This program will be implemented under Public Law 108-447 and section 312 (b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). 50 CFR Part 600 Subpart L, which became effective June 18, 2000, contains the framework

regulations for fishing capacity reduction programs. Section 312 and 50 CFR Part 600 Subpart L apply only to the extent they are consistent with the specific provisions of Public Law 108-447.

A proposed rule for this action was published in the Federal Register on August 11, 2006 (71 FR 46364). Public comment period closed at midnight on September 11, 2006. NMFS received comments from three commenters, none of which specifically addressed the EA/RIR/FRFA.

1.2 Background

The non-pollock groundfish fisheries are managed by NMFS, pursuant to provisions of the FMP in the Exclusive Economic Zone (EEZ) (3 to 200 miles off shore) off the Alaska coast. The FMP and later amendments were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act. The FMP was approved by the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA) and became effective in 1982.

The BSAI Pacific cod resource is targeted commercially by multiple gear types, primarily trawl gear and hook-and-line catcher processors, and to a lesser degree by hook-and-line catcher vessels, jig vessels, and pot gear. This is a fully subscribed fishery, with a 2006 Total Allowable Catch (TAC) of 194,000 metric tons. Excluding the 7.5 percent allocated to the Community Development Quota (CDQ) program reserve, the 2006 non-CDQ TAC (or Initial TAC) was 179,450 metric tons. The BSAI Pacific cod TAC has been apportioned among the different gear sectors since 1994 and the CDQ program has received a BSAI Pacific cod allocation since 1998.

A series of amendments have modified or continued the allocation system, and the current BSAI Pacific cod allocations were established using a step-wise approach. Currently, Federal regulations at 50 CFR 679.20(a)(7) authorize distinct BSAI Pacific cod allocations by gear and operation type. Those receiving allocations hold License Limitation Permits (LLP) with Pacific Cod endorsements. This buyback concerns those LLP holders further designated as longline catcher processors.

1.3 Purpose and Need for Action

Under the Magnuson-Stevens Act, the Secretary may conduct a fishery capacity reduction program if, among other things, the Secretary finds that the program „is necessary to prevent or end overfishing, rebuild stocks, or achieve measurable and significant improvements in the conservation and management of the fishery.%Reducing capacity has been a major desire of both the industry and fishery managers.

From a narrow perspective, the purpose and need for action is to implement a fishing capacity reduction program according to Congressional intent. From a broader perspective, the purpose and need for this action is to reduce excess capacity in one of the major non-pollock groundfish subsectors and help achieve the conservation and economic objectives of the FMP.

2.0 Description of Alternatives

Two alternatives have been considered: (1) no buyback program and (2) an industry funded buyback program. Section 219 prescribes that each catcher processor subsector develops an appropriate buyback program that would later be approved by NMFS.

2.1 No Buyback Program (Alternative 1 – the ‘No Action’ Alternative)

Under this alternative there will be no buyback program undertaken for the longline catcher processor fishery. The longline catcher processor subsector of the non-pollock groundfish fishery will remain overcapitalized. Although too many vessels compete to catch the current subsector TAC allocation, fishermen remain in the fishery because they have no other means to recover their significant capital investment. Overcapitalization reduces the potential net value that could be derived from the non-pollock groundfish resource, by dissipating rents, driving variable operating costs up, and imposing economic externalities. At the same time, excess capacity and effort diminish the effectiveness of current management measures (e.g. landing limits and seasons, bycatch reduction measures). Overcapitalization has diminished the economic viability of members of the fleet and increased the economic and social burden on fishery dependent communities. This alternative does not meet the legal mandates discussed under Alternative 2.

2.2 Industry Funded Buyback Program (Alternative 2 - Proposed Action)

Under this alternative, a fishing capacity reduction program will be implemented by the industry through the Freezer Longline Conservation Cooperative (FLCC). The program will be financed through a 30-year reduction loan made under sections 1111 and 1112 of Title XI of the Merchant Marine Act of 1936. A recent assessment indicates that the industry can afford to repay a \$35.6 million loan (Muse, 2005). This loan is authorized by Section 214 of Public Law 108-199 which provided a \$500,000 appropriation to fund the Federal Credit Reform Act cost of a reduction loan which will partially finance the program's cost. Section 221 of Public Law 108-447 provided an additional \$250,000 appropriation to fund the Federal Credit Reform Act cost of a reduction loan.

This program seeks to obtain the maximum sustained reduction in fishing capacity at the least cost, by giving limited LLP license holders and vessel owners the opportunity to relinquish their LLP licenses for a price they specify, subject to the subsector's review and approval and subsequently to the Secretary's review and approval.

Each program bidder must offer to relinquish an LLP license and all Federal permits associated with the reduction vessel. Additionally, each bidder must offer to relinquish the reduction vessel's legal authority to participate in any fishery, by offering to permanently:

- (a) revoke any fishery endorsement issued to the vessel;

(b) relinquish eligibility for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement of the reduction vessel under foreign registry or operation under the authority of a foreign country; and

(c) require that the vessel operate under the U.S. flag and remain under Federal documentation; or

(d) require that the vessel be scrapped as a reduction vessel under CFR 50 Section 600.1011(c).

Following the legislation authorizing the establishment of the catcher processor capacity reduction program under Section 219, the members of the longline catcher processor subsector, in conjunction with the FLCC resolved to develop a fishing capacity reduction plan.

The FLCC was charged with establishing a viable plan. The plan that evolved was an offering process whereby individual subsector members could make an offer to sell their permit and vessel fishing rights. A law firm was hired to participate in the drafting of the plan, as well as provide legal assistance and problem resolution. An accounting firm was engaged to run the actual process.

Two documents were developed:

- (1) The Capacity Reduction Agreement · This document presents the offering process to the individual subsector members for consideration and adoption. The Agreement is between the FLCC and each subsector member.
- (2) The Capacity Reduction Contract - This document forms the contractual agreement between the subsector member whose offer was accepted and the U.S. Government.

Collectively the two documents (plus an Executive Summary) comprise the parts of the Plan prepared and agreed upon by more than 70 percent of the subsector members needed to begin the offering process. These documents, the results of the consequent offering process and a rationale proving compliance with the provisions of the Statute constitute a Final Plan for the Secretary's consideration.

The longline catcher processor subsector has developed a detailed process for implementing the program. The process includes independent verifications at appropriate points by an outside auditor. The reduction plan's express objective is to permanently reduce harvesting capacity in the longline catcher processor subsector of the BSAI non-pollock groundfish fishery (reduction fishery) by removal of Reduction Fishing Interests, including groundfish LLP licenses, crab LLP licenses linked to groundfish LLP licenses, state fishing rights appurtenant to Reduction Fishing Vessels, and all associated fishing history. No right, title and/or interest to harvest, process or otherwise utilize individual fishing quota (IFQ) share in the halibut, sablefish and/or crab fisheries shall be included as Reduction Fishing Interests pursuant to 50 CFR §§ 679 and 680.

The initial enrollment and qualification phase will be followed by a selection process which will alternate on a weekly basis between: (1) Submitting Periods, during which individual Subsector Members may submit Offers of fishing capacity they wish to include in the Reduction Plan; and (2) Ranking Periods, during which Nonoffering Subsector Members will rank the submitted Offers. The binding offers (Offer) shall include the following information: LLP License number; LLP license number(s) of any linked crab LLP licenses; license MLOA; the license area, gear and species endorsements; a summary of the Pacific cod catch history for the calendar years 1995 - 2004 of the vessel to be retired from the fisheries; and the offered price. The Offer shall also state whether a vessel is currently designated on the LLP License and as such will be withdrawn from the fisheries if the Offer is selected for reduction in the Reduction Plan. If so, the Offer shall identify such vessel by name, official number, and current owner.

The Reduction Loan shall be repaid by fees collected from the longline catcher processor subsector. The fee amount will be based upon the following formula:

- (a) the principal and interest due over the next twelve months;
- (b) divided by the product of the longline catcher processor portion of the Bering Sea/Aleutian Islands Pacific cod ITAC (in metric tons) recommended by the Council in December of each year and multiplied by 2205.

In the event that the Council has not yet proposed the longline catcher processor subsector portion of the ITAC for the ensuing year (or for any other reason that forecast is not available) the longline catcher processor subsector portion forecast from the preceding year will be used to calculate the fee. The fee will be expressed in cents per pound round weight (rounded up to the next cent). For example, if the principal and interest due equal \$2,900,000 and the longline catcher processor subsector portion equal 100,000 metric tons, then the fee per round weight pound of Pacific cod will equal 1.4 cents per pound. $[2,900,000 / (100,000 * 2205) = 0.01315]$.

Although there are other species within the longline catcher processor subsector non-pollock groundfish fishery, the Pacific cod ITAC was chosen as the basis for fee calculation because Pacific cod is the only directed fishery with a TAC set in advance of the fishing season. This methodology allows for a straightforward calculation of the fee due and simplifies future accounting. The fee will be assessed and collected on Pacific cod to the extent possible and if not, will be assessed and collected as provided below.

Fees must be assessed and collected on all harvested Pacific cod, including that used for bait or discarded. Although the fee could be up to 5 percent of the ex-vessel production value of all post-reduction longline catcher processor subsector non-pollock groundfish landings, the fee will be less than 5 percent if NMFS projects that a lesser rate can amortize the fishery's reduction loan over the reduction loan's 30-year term.

The fee will be assessed and collected on Pacific cod to the extent possible and if not, will be assessed and collected as additional fees.

Additional fees:

In the event that the total principal and interest due exceeds five percent of the ex-vessel Pacific cod revenues, a penny per pound round weight fee will be calculated based on the latest available revenue records and NMFS conversion factors for pollock, arrowtooth flounder, Greenland turbot, skates, yellow-fin sole and rock sole.

The additional fee will be limited to the amount necessary to amortize the remaining twelve months principal and interest in addition to the five percent fee assessed against Pacific cod. The additional fee will be a minimum of one cent per pound. In the event that collections exceed the total principal and interest needed to amortize the payment due, the principal balance of the loan will be reduced. To verify that the fees collected do not exceed five percent of the fishery revenues, the annual total of principal and interest due will be compared with the latest available annual longline catcher processor subsector revenues to ensure it is equal to or less than five percent of the total ex-vessel production revenues. In all likelihood this will be based on State of Alaska's Commercial Operator Annual Report (COAR report) produced annually in the March following the close of the previous season. In the event that any of the components necessary to calculate the next year's fee are not available, or for any other reason NMFS believes the calculation must be postponed, the fee will remain at the previous year's amount until such time that new calculations are made and communicated to the post reduction fishery participants.

The Capacity Reduction Agreement shall automatically terminate if no vote of acceptance is completed by December 31, 2007. The Agreement may also be terminated at any time prior to approval of the Reduction Plan by the Secretary by written notice from fifty percent (50%) of the Longline Catcher Processor Subsector Members.

NMFS involvement in the industry funded program is described below.

NMFS will conduct a post-selection referendum to determine whether eligible voters authorize an industry fee system. The referendum is deemed successful if a two-thirds majority of the referendum ballots received is cast in favor of the industry fee system. NMFS will mail, by U.S. certified mail, return receipt requested, a ballot and voting instructions to each eligible voter. The ballot will contain a 5-digit number assigned to each voter, a summary of the referendum's purpose, a place for the voter to vote for or against the industry fee system, a place for the groundfish LLP permit holder's signature, and will specify the date NMFS must receive the ballot for it to be counted. A postage paid, addressed envelope will also be enclosed to return the ballot to NMFS.

Each person who is the holder of a groundfish LLP permit will be entitled to one vote for each such permit. NMFS will mail each person a separate referendum ballot for each permit.

NMFS will tally all responsive votes then notify, by U.S. mail, all eligible voters of: the number of potential voters; the number of actual voters; the number of qualified returned ballots; the number of votes for and the number of votes against the industry fee system; and whether the referendum passed or failed. The referendum is deemed to have passed if the total of votes approving the referendum is at least two-thirds of those voting. If the industry fee system is approved, NMFS will remind accepted bidders that they must perform in accordance with their reduction contracts.

The fee, which will be established by a separate rulemaking, may not exceed 5 percent of the delivery value. The initial fee rate would be that which produced the revenue necessary to amortize the reduction loan, projecting the annual delivery value, and expressed in cents per pound. NMFS will annually recalculate the fee rate required to ensure reduction loan repayment. The repayment period for the reduction loan will be 30 years.

Under the existing framework regulations, the fee is due and payable at the time of fish offload from the harvesting vessel. Each fish buyer shall collect the fee at the time of delivery by deducting the fee from delivery value before paying the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the buyer the net delivery value. NMFS will publish a Federal Register notice at least 30 days before the effective date of any fee or any fee rate change.

NMFS will also send notification, by U.S. mail, to each affected longline catcher processor. Late charges of 1.5 percent per month for the total amount of the fee not paid, collected, deposited, and/or disbursed would be assessed. NMFS may take appropriate action against each fish seller and/or buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement.

Each fish buyer required to collect a fee must maintain a separate account at a Federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing it to NMFS. No less frequently than at the end of each business week, each fish buyer shall deposit all fee revenue collected through a date not more than two days before the deposit date. On the last business day of the month, the fish buyer must disburse to NMFS the full amount of deposit principal then in the account, along with a settlement sheet.

When the reduction loan is repaid, NMFS would publish a Federal Register notice that the fee is no longer in effect and send notification by U.S. mail to each affected fish seller and buyer.

2.3 Alternatives Considered and Eliminated From Detailed Consideration

There are many possible ways to structure and implement a fishing capacity reduction program including different mechanisms for accepting, sorting and selecting among offers. However, Section 219 provides that each subsector develop a buyback program. NMFS involvement in the process begins when industry submits the plan as outlined in section 2.2 above. Thus the consideration of other alternatives is restricted by the authorizing legislation.

3.0 Affected Environment

The environment of the area(s) to be affected or created by the alternatives under consideration include the physical and biological environment of waters from three to two hundred miles off the coast of Alaska in the Bering Sea, and, social, and economic environments of fishing industry participants in the North Pacific Fishery Management Council BSAI Groundfish Fishery Management Plan. Extensive descriptions of the area are provided in the FMP, species profiles, and sector profiles on the Council's website (<http://www.fakr.noaa.gov/npfmc>) as well as in

numerous other NEPA documents produced on this fishery in the past (<http://www.fakr.noaa.gov/analyses>). The species of fish harvested by the longline catcher processor subsector include Pacific cod, sablefish, and Greenland turbot.

3.1 Description of the Harvesting and At-Sea Processing Gear Subsectors

Six harvesting and four processing subsectors participate in the non-CDQ BSAI Pacific cod fisheries.

Catcher vessels may be distinguished from one another by the type of fishing gear they use, operation type, and vessel length, although the AFA trawl catcher vessel subsector is also defined by statute. It is important to note that these subsectors are not necessarily exclusive, vessels may have made landings with more than one gear type and may therefore be counted in more than one subsector. The six catcher vessel subsectors are as follows:

1. AFA trawl catcher vessel
2. Non-AFA trawl catcher vessel
3. Longline catcher vessel ° 60Ê
4. Pot catcher vessel ° 60Ê
5. Longline/pot catcher vessel <60Ê
6. Jig catcher vessel

Catcher processors are distinguished from one another by the type of fishing gear used and specific processing capability. Each subsector is also defined by statute. It is important to note that these subsectors are not necessarily exclusive, vessels may have made landings with more than one gear type and may therefore be counted in more than one subsector. The four catcher processor subsectors are as follows:

1. AFA trawl catcher processor
2. Non-AFA trawl catcher processor
3. Pot catcher processor
4. Longline catcher processor

3.2 Longline Catcher Processor Subsector

The proposed action would establish a program that includes vessels operating as catcher processors using longline gear. As of January 1, 2003, longline catcher processors must have a Pacific cod longline catcher processor endorsement on their LLP license to target BSAI Pacific cod with longline gear and process it onboard. Section 219 recently defined eligibility in the longline catcher processor subsector as the holder of an LLP license that is transferable, or becomes transferable, and that is endorsed for BS or AI catcher processor fishing activity, C/P, Pacific cod, and longline gear. As of December 2005, 44 licensed vessels have this endorsement, 39 of which are transferable and 5 of which are interim. The proposed action will solely affect this subsector.

These vessels, also known as freezer longliners, use longline gear and focus their effort primarily on BSAI Pacific cod. Sablefish and Greenland turbot are secondary targets. Sablefish longlining requires IFQ for participation. Most longline catcher processors are limited to headed and gutted products. The vessels in this subsector generally begin fishing for Pacific cod on January 1 and continue until the allocation is fully harvested by February, March or April. They start fishing Pacific cod again on August 15 (when the halibut bycatch allowance becomes available) and fish through November or December. Most vessels in this subsector undergo maintenance and repair in the summer months, although several vessels process and custom freeze salmon during this period. The number of longline catcher processors has remained relatively stable, averaging about 40 vessels since 1995.

3.2 Eligibility Requirements

This section provides a discussion of the participants and varying level of requirements currently in place to participate in the Federal directed BSAI Pacific cod fisheries. Note that no new eligibility requirements are proposed in this program, thus, the following requirements would not be modified by this action.

3.2.1 License Limitation Program Requirements

The LLP Program was implemented in 2000, and with few exceptions all sectors proposed to receive Pacific cod allocations under this amendment are subject to the LLP requirement when fishing BSAI Pacific cod in Federal waters. Those exceptions include: 1) vessels <32' length overall (LOA) in the BSAI, and 2) jig vessels <60' LOA in the BSAI (using no more than 5 jig machines, one line per machine, and 15 hooks per line). In addition to the general LLP license, all sectors subject to the LLP requirement must also have a BS and/or AI area endorsement and the proper operation and gear designations in order to fish BSAI Pacific cod with a particular gear and operation type.¹

Thus, in the current trawl Pacific cod fisheries, the only eligibility requirement is having the appropriate LLP license, including a BS and/or AI endorsement and trawl designation. Most jig

¹A vessel's groundfish license is assigned an operation type designation of catcher processor or catcher vessel, and a gear designation of trawl and/or non-trawl.

vessels actively fishing BSAI Pacific cod are <60ÊLOA, thus an LLP is not required. In the BSAI fixed gear (longline and pot) Pacific cod fisheries, however, additional LLP eligibility requirements were developed under Amendment 67. Under Amendment 67, vessels that are ° 60ÊLOA engaged in directed fishing for BSAI Pacific cod using fixed gear in the Federal fisheries using fixed gear must qualify for a Pacific cod endorsement in addition to their area endorsement, non-trawl endorsement, and general LLP license. This requirement was intended to provide a mechanism that would further limit entry into the fishery by fixed gear vessels that have not participated, or have not participated at a level that would constitute significant dependence on the fishery.

Given the fixed gear requirements for the Pacific cod endorsement and the general LLP license, there are a limited number of vessel licenses that are eligible to participate in the Federal BSAI Pacific cod fishery with fixed or trawl gear.

3.2.2 AFA Eligibility Requirements

Section 208(e) of the AFA establishes vessel and processor eligibility to harvest and process the BSAI pollock directed fishing allowance designated for each sector under the AFA. Section 208(e) lists the 20 fishing vessels that are eligible to participate as trawl catcher processors under the AFA, as well as the criteria used to qualify other catcher processors that are not listed (only one additional vessel qualifies under the criteria). Section 208(a)-(c) establishes the eligibility criteria and list for catcher vessels eligible under the AFA. As of December 2005, the NMFS database indicates that 111 catcher vessels were issued AFA permits.

In addition to determining eligibility for participation in the BSAI pollock fisheries, the implementing regulations for the AFA established „sideboards%(i.e., strict catch limits) on the participation by AFA-qualified vessels in the non-pollock BSAI groundfish fisheries and GOA groundfish fisheries, including Pacific cod. The 20 listed AFA catcher processors are currently subject to an annual Pacific cod sideboard limit. The one additional catcher processor that qualifies under 208(e)(21) of the AFA is limited to a small percentage of the AFA catcher processor allocation of pollock, and is not sideboarded in other fisheries.

3.2.3 Eligibility Requirements under Section 219

Section 219 establishes catcher processor subsector definitions for participation in the catcher processor subsectors of the BSAI non-pollock groundfish fisheries² and the fishing capacity reduction program authorized by Congress. The following subsectors are defined under Section 219(a): AFA trawl catcher processor, non-AFA trawl catcher processor, longline catcher processor, and pot catcher processor.

With the exception of the non-AFA catcher processor subsector, Section 219 does not establish new eligibility requirements for participating in the BSAI Pacific cod fishery as part of the

² The non-pollock groundfish fishery is defined as Åtarget species of Atka mackerel, flathead sole, Pacific cod, Pacific Ocean perch, rock sole, turbot, or yellowfin sole harvested in the BSAI.Ê

catcher processor subsectors. Section 219 defines the AFA trawl catcher processor subsector as the owners of each catcher processor listed in 208(e)(1)-(20) of the AFA. Under the Consolidated Appropriations Act, only the 20 listed AFA catcher processors are considered part of the AFA catcher processor subsector for continued participation in the BSAI non-pollock groundfish fisheries, which includes Pacific cod. The additional trawl catcher processor that qualifies under 208(e)(21) is thus considered part of the non-AFA trawl catcher processor subsector for purposes of this action.

Under the Act, the longline catcher processor and pot catcher processor subsectors are defined as the holders of an LLP license that is (or becomes) transferable, and that is endorsed for the BS and/or AI, catcher processor, Pacific cod, and the respective gear type (longline gear or pot gear).

The longline catcher processor subsector has 44 valid LLPs, of which 5 are interim, eligible for use on a vessel to harvest BSAI Pacific cod in the directed Federal fishery. Note that an LLP license is not necessary to fish BSAI Pacific cod in the parallel fishery that occurs in State waters (0 · 3 miles from shore). In addition, 32 of those LLPs also have a Gulf (Southeast, Central Gulf, or Western Gulf) endorsement and 7 are linked to a crab license.

3.3 Catch History and Participants in the BSAI Pacific Cod Fisheries

This section provides retained catch history information for the ten subsectors. As noted earlier, these subsectors are not necessarily exclusive, vessels can be eligible to participate in more than one subsector and may have made landings with more than one gear type, and may therefore be counted in more than one subsector. It is also important to note that no attempt has been made to distinguish between landings made in the directed Pacific cod fisheries and incidental catch of Pacific cod in other target fisheries.

During the period 1995 · 2003, the longline catcher processor subsector harvested the largest share (about 49%) of the BSAI Pacific cod TAC allocated to the non-CDQ fishery. The number of participating vessels averaged about 40 during this time period. The AFA trawl catcher vessel subsector harvested almost 22%, and the non-AFA trawl catcher vessel subsector harvested about 2% during the same time period. The AFA trawl catcher processor subsector harvested almost 2%, and the non-AFA trawl catcher processor subsector harvested about 13%. The ° 60Ê pot catcher vessel and catcher processor subsectors harvested almost 9% and over 2%, respectively. The <60Êfixed gear subsector, the jig catcher vessel subsector, and the longline catcher vessel subsector each harvested less than 1%.

Note that the overall allocations among the trawl, fixed, and jig gear subsectors were effective starting in 1994 and revised in 1997. A further split of the fixed gear allocations was established in September 2000 and revised in 2004. The pot catcher processor and pot catcher vessel subsectors did not receive separate allocations until 2004.

Note that the eligibility requirements for the subsectors have changed over the time period. Notably, the AFA was passed in 1999, and the LLP was implemented in 2000. The recent

variations in the $\geq 60'$ fixed gear catcher vessel subsectors are primarily due to the implementation of the BSAI Pacific cod LLP endorsement under Amendment 67 in 2003. Details on the relevant eligibility requirements are provided in Section 3.4.

The table below provides the most recent total catch data by subsector in 2004 and 2005, as reported from the NMFS catch accounting database, which utilizes observer data, shoreside processor landings data, and fishtickets. Note that these data are broken out by BS, AI, and BSAI areas, although Pacific cod is currently managed under one quota. Note also that confidential data for the $<60'$ fixed gear and jig gear subsectors are not provided in the table, thus, the totals for each year also do not include those confidential data.

Table -1 Pacific cod total catch by subsector in the BS, AI, and BSAI areas

2004						
SECTOR	BS (mt)	BS (%)	AI (mt)	AI (%)	BSAI (mt)	% of total BSAI
Hook-and-line CP	93,866	97.0%	2,921	3.0%	96,786	48.9%
Hook-and-line CV	272	100.0%	-	0.0%	272	0.1%
Hook-and-line and Pot CVs < 60'	1,970	*	*	*	1,970*	1.0%*
Hook-and-line and Pot Gear ICA	346	69.8%	150	30.2%	496	0.3%
Jig Gear	231	100.0%	-	0.0%	231	0.1%
Pot CP	3,234	100.0%	-	0.0%	3,234	1.6%
Pot CV	12,364	100.0%	-	0.0%	12,364	6.3%
Trawl CP	29,352	71.0%	11,980	29.0%	41,332	20.9%
Trawl CV	27,576	67.1%	13,517	32.9%	41,093	20.8%
Total*	169,211	85.6%	28,567	14.4%	197,778	100.0%
2005						
SECTOR	BS (mt)	BS (%)	AI (mt)	AI (%)	BSAI (mt)	% of total BSAI
Hook-and-line CP	97,925	97.9%	2,128	2.1%	100,054	52.6%
Hook-and-line CV	235	100.0%	-	0.0%	235	0.1%
Hook-and-line and Pot CVs < 60'	2,234	*	*	*	2,234*	1.2%*
Hook-and-line and Pot Gear ICA	824	86.3%	131	13.7%	955	0.5%
Jig Gear	104	*	*	*	104*	0.1%*
Pot CP	3,339	100.0%	-	0.0%	3,339	1.8%
Pot CV	12,205	100.0%	-	0.0%	12,205	6.4%
Trawl CP	24,187	68.2%	11,281	31.8%	35,467	18.6%
Trawl CV	27,740	77.6%	8,007	22.4%	35,747	18.8%
Total*	168,792	88.7%	21,547	11.3%	190,339	100.0%

Source: NMFS catch accounting database, 2004 - 2005.

*Totals exclude confidential data.

3.4 Participation Patterns

In addition to the number of vessels and their aggregate retained catch by subsector, information on participation is important to consider.

Several important issues were being considered by the Council that would affect Pacific cod harvesting vessels during 1995- 2003.

The first was the LLP. Qualifying years for LLP area endorsements were January 1, 1992, through June 17, 1995.

The second issue was the BSAI Pacific cod TAC split among the fixed, trawl, and jig gear

subsectors, which was scheduled to sunset on December 31, 1996. The Council made its final recommendation on this amendment (Amendment 46) during the June 1996 meeting.

The third issue was the BSAI Pacific cod TAC split among the fixed gear subsectors, recommended by the Council in October 1999.

Finally, the Council recommended the Pacific cod endorsement for the ° 60Êfixed gear subsectors rule in April 2000. These actions may have provided incentive for vessels to fish in a manner that they would not have otherwise, though, it is not possible to determine exactly how or whether participation patterns were influenced by these amendments. It is clear that the first and last year for LLP endorsement qualification were years in which many vessels fishing in just one year participated. This trend is consistent across the fixed gear subsectors.

Each year during 1995 · 2003, the longline catcher processor subsector had a range of 37 to 43 vessels with retained BSAI Pacific cod harvests. Overall, 59 of the 66 unique vessels that participated during this nine-year period were associated with an LLP, comprising nearly 100% of the retained Pacific cod harvested by this subsector.

In the longline catcher processor subsector, there are currently an estimated 44 LLPs endorsed for the directed BSAI Pacific cod fishery. This is a result of the endorsement criteria implemented in 2003. During the most recent five years with available data (1999 · 2003), 49 unique vessels had retained Pacific cod harvests in this subsector. Of these 49 vessels: 6 vessels accounted for 25% of the catch, 13 vessels accounted for 50% of the catch, 23 vessels accounted for 75% of the catch, and 31 vessels accounted for just over 90% of the catch.

3.5 Ex-vessel prices and revenues

Ex-vessel BSAI Pacific cod prices in the non-CDQ fixed gear sector ranged from \$0.213 (2002) to \$0.303 (2000) per pound round weight during 2000· 2004. During this same time period, prices for the trawl sectors ranged from \$0.193 · \$0.291 per pound round weight. Prices paid to pot and longline vessels were similar; some years pot catcher vessels received slightly more per pound than longline vessels, and other years longline vessels were paid a slightly higher price. The 2004 ex-vessel price for fixed gear vessels was \$0.254 per round pound. The 2004 ex-vessel price for trawl-caught cod was \$0.219 per round pound. These ex-vessel prices were developed from gross earnings statements prepared by the Commercial Fisheries Entry Commission and are provided in the 2004 Economic Stock Assessment and Fisheries Evaluation Report for the Groundfish Fisheries off Alaska (Hiatt, 2005). Note, however, that public testimony suggests that the 2006 ex-vessel price per round pound of BSAI Pacific cod in the A season is upwards of \$0.40 per round pound.

The estimated average equivalent ex-vessel value of BSAI Pacific cod by longline catcher processors, during 2000· 2004 was \$63.2 million, with a low of \$54.4 million (2002) and a high of \$67.9 million (2003). Overall, the total ex-vessel value of BSAI Pacific cod caught by all gear types averaged \$107.5 million during 2000· 2004. Note that ex-vessel value is calculated using

the prices provided above, and the value added by at-sea processing is not included in these estimates of ex-vessel value (Hiatt, 2005).

It is possible that the fishery may not open during some years and thus no longline catcher processor subsector portion of the TAC will be granted. Consequently, the fishery will not produce fee revenue with which to service the reduction loan during those years. However, interest will continue to accrue on the principal balance. When this happens, if the fee rate is not already at the maximum 5 percent, NMFS will increase the fisheries' fee rate to the maximum 5 percent of the revenues for Pacific cod and the other species mentioned above, apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until all principal and interest payments become current. Once all principal and interest payments are current, NMFS will make a determination about adjusting the fee rate.

3.8 Products Produced from Pacific cod

The product mix information for 2000-2004 catcher processors for all gear types suggest that these operations produce mostly eastern and western cut headed and gutted (H&G) products and a few ancillary products. Shorebased processors produce fillets, salted and split, and H&G products, along with a wide variety of ancillary products. The following section provides the production and gross value of Pacific cod products in the BSAI by at-sea and shoreside processors for 2000-2004.

3.9 First Wholesale Prices and Revenues

The per unit amount paid to the initial processors of fish for the resulting product is first wholesale price. This analysis provides 2004 production patterns and prices, and gross value for at-sea processors and shoreside processors of BSAI Pacific cod products. Data from the 2004 COAR reports were used to estimate first wholesale price by product form for at-sea or shoreside processing sector.

The 2004 first wholesale prices are estimated in the 2005 SAFE report as follows: \$1,132 per round metric ton of retained BSAI Pacific cod for catcher processors and \$959 per round metric ton of retained BSAI Pacific cod for shoreside processors.³

The 2004 average price per pound for cod products follows in Table 2. For all BSAI cod products created by at-sea processors, prices average \$1.08 per pound. For all BSAI Pacific cod products from shoreside processors, prices average \$1.14 per pound. The 'all products' price estimate is a weighted average, indicating the total first wholesale value of all products taken together and divided by the total net weight of all products. Confidential data are excluded before calculating the totals. Table 3 indicates that higher priced products make up a relatively larger fraction of the product mix for shoreside processors than for at-sea processors. In all years, headed and gutted fish make up roughly 90% of all products for at-sea processors, while fillets make up a larger fraction of the product mix for shoreside processors.

³Table 27 of the 2005 Economic SAFE report, p. 58.

Table 2 - Price per pound of Pacific cod products in the fisheries of the BSAI of Alaska by processing sector, 2000-2004 (dollars)

		2000		2001		2002		2003		2004	
		At-sea	Shoreside	At-sea	Shoreside	At-sea	Shoreside	At-sea	Shoreside	At-sea	Shoreside
Pacific cod	Whole fish	\$.44	\$.43	\$.46	\$.31	\$.27	\$.37	\$.44	\$.52	\$.43	\$.44
	H&G	\$1.17	\$.89	\$1.09	\$.83	\$.96	\$.85	\$1.13	\$.98	\$1.09	\$1.08
	Salted/split	-	-	-	\$1.42	-	-	-	-	-	-
	Fillets	\$2.33	\$2.51	\$1.49	\$1.81	\$1.58	\$2.40	\$2.29	\$2.31	\$2.20	\$1.84
	Other products	\$1.29	\$.65	\$1.39	\$.80	\$1.01	\$.68	\$.89	\$.54	\$1.02	\$.74
	All products	\$1.22	\$1.55	\$1.11	\$1.16	\$.98	\$1.12	\$1.15	\$1.22	\$1.08	\$1.14

Note: Prices based on confidential data have been excluded.

Source: Weekly production reports and Commercial Operators Annual Reports (COAR), NOAA Fisheries.

Table 3 - Production and gross value of BSAI Pacific cod products by at-sea processors, 2000–2004 (1,000 metric tons product weight and million dollars)

		2000		2001		2002		2003		2004	
		Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value
Pacific cod	Whole fish	.26	\$.3	.24	\$.2	.83	\$.5	1.06	\$1.0	1.21	\$1.1
	Head & gut	57.22	\$148.0	60.83	\$146.3	59.70	\$126.7	62.98	\$156.8	70.92	\$170.2
	Fillets	2.36	\$12.2	1.43	\$4.7	2.35	\$8.2	2.56	\$12.9	.61	\$3.0
	Other products	2.96	\$8.4	3.46	\$10.6	4.54	\$10.1	4.63	\$9.1	3.40	\$7.6
	All products	62.80	\$168.8	65.95	\$161.8	67.42	\$145.6	71.22	\$179.9	76.14	\$182.0

Source: Weekly production report and commercial operators annual report, NOAA Fisheries. These estimates include all production from catch counted against Federal TACs.

Table 4 provides the relative distribution of total first wholesale revenues across three categories of groundfish fisheries in the catcher processor sectors during 1999 · 2003, in order to compare the percentage of estimated first wholesale revenues attributed to BSAI Pacific cod and all other *groundfish* fisheries. Thus, the data provide a general assessment of the relative dependence on BSAI Pacific cod as a part of total first wholesale revenues attributed to *groundfish* by sector, during 1999 · 2003. The table also provides the number of unique vessels that participated in BSAI Pacific cod, other BSAI groundfish, and Gulf groundfish, by sector, during this period. Data indicating the percentage of first wholesale revenues from BSAI Pacific cod compared to all other fisheries (including non-groundfish) are not available at this time.

Table 4- Estimated first wholesale value by catcher processor sector and groundfish fishery, 1999 – 2003

Sector	Total estimated first wholesale value, all species	Percent of total estimated first wholesale value			Number of unique vessels		
		% BSAI Pcod	% Other BSAI Groundfish	% Gulf Groundfish	BSAI Pcod	BSAI other groundfish	Gulf groundfish
AFA Trawl CP	\$586,518,030	1.7%	98.3%	0.0%	14	14	0
Hook-and-line CP	\$590,662,016	82.3%	7.0%	10.7%	45	44	34
Non-AFA trawl CP	\$747,719,860	21.2%	65.2%	13.6%	25	25	23
Pot CP	\$23,298,092	63.3%	0.1%	36.6%	13	6	10

Source: Weekly production reports and first wholesale product prices from Economic SAFE, 1999 - 2003.

The majority of estimated first wholesale revenue from groundfish products in the longline catcher processor subsector is from BSAI Pacific cod (82.3%), with much lower amounts from Gulf and other BSAI groundfish. There were 45 unique vessels in the longline catcher processor subsector during this time period, with 44 of those vessels also participating in BSAI other groundfish and the majority also participating in Gulf groundfish.

4.0 Environmental Consequences

Council on Environmental Quality regulations for implementing the procedural provisions of NEPA require the agency to examine the impacts of the proposed action (industry funded buyback) and its alternatives on the human environment. Accordingly this EA discusses this action and its alternatives by examining the factors contained in Section 6.01 of NOAA Administrative Order 216-6 and the environmental provisions of the ESA. If the action is determined not to have a significant impact on the human environment based on an analysis of relevant considerations, the EA and resulting FONSI are sufficient to meet NEPA requirements.

The environmental issues associated with this capacity reduction proposal include: the biological environment including the water column and substrate; amount of fish removed, gear used to fish, and any incidental taking of a marine mammal, seabird, or prohibited species by the longline fishery.

4.1 Alternative 1 Impacts

The longline catcher processor subsector of the non-pollock groundfish fishery will continue to fish in the BSAI fishery management area under defined quotas and seasons. The impacts to the biological environment include harvest of fish using gear that has some contact with the substrate and occasional incidental interaction with marine mammal, seabird, and prohibited species. These impacts have been disclosed in the recent Essential Fish Habitat EIS (NMFS 2005) and Alaska Groundfish Programmatic EIS (NMFS 2004). This alternative does not meet the legal mandates imposed by Section 219 and discussed under Alternative 2.

4.2 Alternative 2 Impacts

The proposed program, Alternative 2, is an industry funded buyback program.

The biological environment would not be differentially impacted because the amount of fish harvested and gear used to harvest fish would not be affected by this program. Although fewer total vessels would be harvesting fish, each vessel participating would be using the same gear and would be spending more time at sea, therefore, no differential impact to the physical environment is anticipated.

This program will not affect shoreside processors. Compared to the No action Alternative 1, total harvest and revenue will not decrease and total revenue may increase.

Vessel crew members will see a loss in job opportunities. Some crew positions will be eliminated on vessels that are removed as a result of this program. Although there may be a loss in the number of crew positions, those remaining may receive higher wages and income as average revenues per vessel are expected to increase and crew share increase proportionally. As a potential mitigating measure for those crew members who become unemployed, there are existing State and Federal programs where crew members can be retrained to enter other occupations.

The proposed action's impact would be positive for both those whose offers NMFS accepts and post-reduction catcher processors whose landing fees repay the reduction loan because the Offerors and catcher processors would have voluntarily assumed the impact:

1. Offerors would have volunteered to make offers at dollar amounts of their own choice. Presumably, no Offeror would volunteer to make an offer with an amount that is inconsistent with the Offeror's interest; and

2. Reduction loan repayment landing fees would be authorized, and NMFS could complete the Reduction Program, only if at least two-thirds of subsector members voting in a post-offer referendum voted in favor of the Reduction Plan. Presumably, subsector members who are not Selected Offerors would not vote in favor of the reduction plan unless they concluded that the program's prospective capacity reduction was sufficient to enable them to increase their post-reduction revenues enough to justify the fee.

NMFS believes that this proposed action would affect neither authorized BSAI Pacific cod ITAC and other non-pollock groundfish harvest levels nor harvesting practices.

4.3 Impacts Upon Communities

Fishing communities, as defined in the Magnuson-Stevens Act, include not only the people who actually catch the fish, but also those who share a common dependency on directly related

fisheries-dependent services and industries. Many of the coastal communities participate in the non-pollock groundfish fishery in one way or another, whether it be processing, support businesses, port facilities, or as home to fishermen and processing workers.

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

Overall, the economic impact to communities where non-pollock groundfish is landed and processed would be minimal because the harvest TACs and allocations would not be altered with the implementation of this program. Fewer vessels in the catcher processor fleet may mean that fewer on-shore support services for the fleet would be required in Seattle and in Dutch Harbor. The communities would most likely see very little change because total landings of non-pollock groundfish would remain at current levels. Some beneficial impacts may occur because this program would provide up to \$36 million to successful bidders. Much of this could be reinvested in the various communities which serve as home ports to the vessels and a portion would be recovered by the Government through income taxes. Employment opportunities for crew members will be reduced when vessels are removed from the fishery. However, those vessels remaining in the fishery will likely experience increased fishing opportunities and higher per capita incomes.

4.4 Essential Fish Habitat

None of these alternatives is expected to have an adverse impact on essential fish habitat (EFH) because the alternatives do not result in any change between fishing operations and the essential fish habitat for BSAI non-pollock groundfish. Specifically, none of the alternatives are expected to result in a change in amount of fish harvested, fishing methodology, gear usage, or fishing area. Consequently, neither EFH consultation nor further consideration of potential impacts on EFH is necessary.

4.5 Cumulative Effects

Cumulative effects must be considered when evaluating the alternatives. Cumulative impacts are those combined effects on the quality of the human environment that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what Federal or non-Federal agency or person undertakes such other actions.

The area that would be affected by implementing the industry sponsored buyback is the marine area associated with the non-pollock groundfish fisheries off the Alaska coast. The potential direct and indirect effects of Alternative 2 are discussed above.

Of the past, proposed, and foreseeable future actions that could affect these same waters and fishermen, the most notable action is the annual non-pollock groundfish specifications and management measures process. To support this process, related actions include observer and enforcement monitoring; the implementation of a vessel monitoring system (VMS); the development of rebuilding plans for overfished species; future plans to reduce bycatch, capacity, and negative effects on EFH; and changes in economic and socio-economic conditions.

Implementation of the industry funded buyback would not have a negative effect on the BSAI non-pollock groundfish specifications and management measures process and may have a positive effect. Reducing the number of vessels may allow for the adoption of less restrictive (i.e., less costly) management measures that yield equivalent or increased conservation benefits compared with the status quo.

Implementing the industry funded buyback would have potential long-term economic and socio-economic effects. Some harvesters would immediately leave the fishery, although with financial compensation. Those remaining in the BSAI non-pollock groundfish fishery would be responsible for repaying the industry loan over a 30-year period. However, those remaining in the fishery would directly benefit by being able to access a greater portion of the available quotas, at lower costs, and therefore may realize higher per capita incomes.

Compared to the status quo, total harvest and revenue will not decrease and revenue may increase. Therefore, the total amount of income that flows to Washington and Alaska fishing communities should not decrease and may increase. Some fishing communities may benefit from the sudden cash infusion to the local economy generated by the subsequent expenditures by the winning bidders in the program. Shore-based processors would not be affected because this program involves only longline catcher processors.

Implementation of the Proposed Action (industry funded buyback) would not have a negative effect on foreseeable State management actions and may, for many of the same reasons discussed immediately above, have a potential positive effect. Should states participate in the fee-collection aspects, the costs incurred would be minor and incremental to existing state fee collection activities.

5.0 Regulatory Impact Review

E. O. 12866, signed in October of 1993, requires Federal agencies, including NMFS, to assess all costs and benefits of available regulatory alternatives, including both quantitative and qualitative measures. Such economic and social impacts should include the identification of the individuals or groups that may be affected by the action, the nature of these impacts, quantification of the economic impacts if possible, and discussion of the trade-offs between qualitative and quantitative benefits and costs. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits, unless a statute requires another regulatory approach.

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

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

A regulatory program is „significant% if it is likely to result in any of the effects described above. The RIR is designed to provide information to determine whether the proposed action is likely to be „economically significant%. The Office of Management and Budget reviewed the proposed rule under E.O. 12866 and did not deem the rule „significant%.

This program will provide up to \$35.6 million to reduce fishing capacity in the longline catcher processor subsector of the BSAI non-pollock groundfish fishery. The discussion of the impacts in Section 4 serves as a qualitative review of the benefits and costs of the program.

6.0 Final Regulatory Flexibility Analysis

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

The RFA emphasizes predicting significant adverse 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 certify that the action will not have a significant adverse impact on a substantial number of small entities, and support that certification with the „factual basis% for the decision; or it must prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities. When an agency publishes a final rule, it must prepare a Final Regulatory Flexibility Analysis (FRFA). Analytical requirements for the FRFA are described below in more detail.

The IRFA must contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
 1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
 2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
 3. The use of performance rather than design standards;
 4. An exemption from coverage of the rule, or any part thereof, for such small entities.

In determining the scope, or "universe" of the entities to be considered in an RFA, NMFS includes only those entities, both large and small, that are directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis. NOAA currently interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are designed to address RFA compliance.

6.1 Definition of a small entity

Section 601(3) of the RFA defines a "small business" as having the same meaning as "small business concern" which is defined under Section 3 of the Small Business Act (SBA). "Small business" or "small business concern" includes any firm that is independently owned and operated and not dominant in its field of operation. The SBA has further defined a "small business concern" as one "organized for profit, with a place of business located in the U.S., and which operates primarily within the U.S. 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, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. Finally, a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. The SBA size standards applicable to RFA analyses increased from \$3.5 million to \$4.0 million on January 5, 2006, to adjust for inflation (70 FR 72577, 12/6/05).

6.2 Description of Reasons for Action and Statement of Objective and Legal Basis

A description of why the agency is considering this action as well as a statement of objectives and legal basis is included in section 1.1.

6.3 Number and description of affected small entities

For purposes of the FRFA, all small businesses with annual receipts of less than \$4.0 million can be considered small businesses. The FRFA uses the most recent year of data available to conduct this analysis (2003). Little is known about the ownership structure of the vessels in the fleet, so it is possible that the FRFA overestimates the number of small entities. In the longline catcher processor subsector, 24 of the 39 vessels meet the threshold for small entities. The additional 5 fishermen with permits but no vessels in longline catcher processor subsector would benefit if they later purchase vessels and participate in the post-reduction fishery because there will be less competition for the harvest. Also, they would benefit if they chose to be bought out. There would be no impact to them if they did not buy a vessel and were not selected for the

buyback.

6.4 Description of Small Entities to Which the Rule Applies

The Small Business Administration (SBA) has defined small entities as all fish harvesting businesses that are independently owned and operated, not dominant in its field of operation, and with annual receipts of \$4 million or less. In addition, processors with 500 or fewer employees for related industries involved in canned and cured fish and seafood, or preparing fresh fish and seafood, are also considered small entities. According to the SBA's definition of a small entity, an estimated 24 of the 39 active longline catcher processors would be considered small entities. However, there are no disproportionate impacts between large and small entities.

6.5 Description of Recordkeeping and Compliance Costs

Implementation of the buyback program would not change the overall reporting structure and recordkeeping requirements of the vessels in the BSAI Pacific cod fisheries. This action contains collection of information requirements subject to the Paperwork Reduction Act and which have been approved by OMB under control number 0648-0376.

6.6 Duplication or Conflict with Other Federal Rules

This rule does not duplicate or conflict with any Federal rules of which NMFS is aware.

6.7 Measures taken to reduce impacts on small entities

Most firms operating in the fishery regulated by the proposed action have expected annual gross revenues of less than \$4.0 million; this analysis estimates that 24 of 39 vessels that participated in 2003 are considered small entities. Moreover, participation in this program is voluntary. The ownership characteristics of vessels operating in the fishery are not available and therefore it is not possible to determine with certainty, if they are independently owned and operated, or affiliated in one way or another with a larger parent company. Furthermore, because analysts cannot quantify the exact number of small entities that may be directly regulated by this action, a definitive finding of non-significance for the proposed action under the RFA is not possible. However, because the proposed action would not result in changes to allocation percentages, net effects would be expected to be minimal relative to the status quo.

7.0 Consistency With Other Applicable Laws

7.1 Endangered Species Act Considerations

The ESA provides for the conservation of endangered and threatened species of fish, wildlife, and plants. Consultations under Section 7 of the ESA are administered by the NMFS for most marine mammal species, marine and anadromous fish species, and marine plant species and by the U.S. Fish & Wildlife Service (FWS) for bird species, and terrestrial and freshwater wildlife and plant species.

Endangered and threatened species present in the action area include Steller sea lion, listed great whales, and short-tailed albatross. Consultation on these listed species is conducted annually at the time of TAC setting and is summarized in the annual TAC-Setting Environmental Analysis (most recently NMFS 2005). This action will continue existing fishery management regulation of BSAI non-pollock groundfish to the various industry sectors, based on the historical harvest distribution among sectors. No adverse impacts on endangered or threatened species are anticipated as a result of implementing the alternatives under consideration.

7.2 Marine Mammal Protection Act Considerations

Fisheries that interact with species listed as depleted, threatened, or endangered may be subject to management restrictions under the MMPA and ESA. NMFS publishes an annual list of fisheries in the Federal Register separating commercial fisheries into one of three categories, based on the level of serious injury and mortality of marine mammals occurring incidentally in that fishery. The categorization of a fishery in the list of fisheries determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. This action will continue regulation of specific allocations of BSAI Pacific cod to the various industry sectors, based on the historical harvest distribution among sectors. No adverse impacts on marine mammals are anticipated as a result of implementing the alternatives under consideration.

7.3 Coastal Zone Management Act Considerations

Implementation of any of the alternatives would be conducted in a manner consistent with the Alaska Coastal Zone Management Program in accordance with Section 307(c)(1) of the CZMA of 1972 and its implementing regulations. A letter to this effect was sent to the State of Alaska for comment.

7.4 Executive Order 13132 Federalism

Any Federalism implications arising from this notice are highly unlikely, however consultations with the State of Alaska is ongoing.

7.5 Executive Order 13175 Consultation and Coordination with Indian Tribal Governments

E.O. 13175 is intended to ensure regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the U.S. government to government relationships with Indian tribes, and to reduce the imposition of unfunded mandates on Indian tribes. This program will not have substantial direct effects on Indian tribes and is therefore not applicable.

7.6 Executive Order 12898

Executive Order (E.O.) 12898 focuses on environmental justice in relation to minority populations and low-income populations. The EPA defines environmental justice as the: "fair treatment for people of all races, cultures, and incomes, regarding the development of environmental laws, regulations, and policies." This executive order was spurred by the growing need to address the impacts of environmental pollution on particular segments of our society. The order (Environmental Justice, 59 Fed. Reg. 7629) requires each Federal agency to achieve environmental justice by addressing „disproportionately high and adverse human health and environmental effects on minority and low-income populations.“The EPA responded by developing an Environmental Justice Strategy which focuses the agency's efforts in addressing these concerns.

In order to determine whether environmental justice concerns exist, the demographics of the affected area should be examined to determine whether minority populations and low-income populations are present, and if so, a determination must be made as to whether implementation of the alternatives may cause disproportionately high and adverse human health or environmental effects on these populations. Environmental justice concerns typically embody pollution and other environmental health issues, but the EPA has stated that addressing environmental justice concerns is consistent with NEPA and thus all Federal agencies are required to identify and address these issues.

Overall, the population structures of these regions vary considerably, but in the Aleutian Islands and Kodiak regions there are areas with substantial Alaska Native and other minority populations. The city of Kodiak has about 6,334 persons (2000 U.S. Census) and about 46 percent of its population is white. The predominant minority in the city and its surrounding area is Asian/Pacific Islanders (33%), followed by American and Alaska Native (11%). The ethnic composition of the Kodiak Island Borough (population 13,913), which includes the city of Kodiak, Kodiak Station, the unincorporated population, and all named places on Kodiak Island, is similarly structured: 60% white; 17% Asian/Pacific Islander; and 15% Native American/Alaskan Native.

In King Cove (2000 pop. 792), Alaska Natives make up about 47% of the population, with Asian and Pacific Islanders the next largest minority population (27%). In Unalaska, the 2000 U.S. Census reports a population of 4,283 persons, the majority of which (44%) are white. The remaining composition is about 31% Asian/Pacific Islander; 13% Other; 8% Native

American/Alaskan; and 4% African American.⁴ Akutan's population (2000 pop. 713) is also dominated by minority populations: 39% Asian/Pacific Islander, 20% "Other," and 16% Alaska Native. About 24% of the Akutan population in 2000 was white.

While the relationship of Washington to the Alaska non-pollock groundfish fishery is more involved than some regions of Alaska (in terms of absolute number of jobs), it has been asserted that the fishery is generally less important to or vital for these states than for the Alaskan communities involved. For example, the size of Seattle dilutes the overall impact of the Alaska groundfish fishery jobs, whereas in Alaskan communities such jobs represent a much greater proportion of the total employment in the community (NMFS 2004a, Appendix F). Thus, while the majority of vessel owners that appear eligible to fish BSAI cod report residency in Washington, there are relatively more individual catcher vessels, specifically in the fixed gear fisheries, that are attributed to Alaskan communities than there are catcher processors. It is this distinction, and the minority populations associated with these communities, that would determine whether this action may have any environmental justice impacts.

The effects of the action under consideration are discussed in Section 5.0 (RIR) and Section 6.0 (FRFA). It is assumed that each sector would continue to harvest its relative historical share of the BSAI Pacific cod ITAC, meaning substantial reallocations of Pacific cod quota would continue to be necessary among gear sectors to ensure there is no foregone harvest. In addition, because the action would reflect historical harvests by sector, it is not expected that this action would significantly affect historical delivery patterns by vessels delivering to shoreside processing plants.

It has been determined that the proposed actions do not appear to have any significant individual or cumulative environmental or human health effects. Thus, no distinct population, minority or otherwise, should be affected in this regard.

8.0 List of Agencies Consulted in Formulating the Notice

Other agencies consulted in formulating the rule and this EA/RIR/FRFA include:

- Alaska Department of Fish and Game
- NMFS-Alaska Regional Office
- NMFS-Alaska Fishery Science Center
- NMFS- Office of Sustainable Fisheries, Domestic Fisheries Division and Regulatory Services Division
- NMFS-Management and Budget Financial Services Division
- NMFS-Northwest Regional Office
- NOAA-Office of General Counsel
- North Pacific Fishery Management Council
- Washington Department of Fish and Wildlife

⁴In the 2000 U.S. Census, the "Other" category represents "some other race" other than the four primary races listed and "two or more races."

8.1 List of Preparers

This EA/RIR/FRFA was prepared by staff from the National Marine Fisheries Service:

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9.0 References

Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act 40 CFR Parts 1500-1508.

Council on Environmental Quality, Washington, D.C. Environmental Justice, Guidance Under the National Environmental Policy Act. December 10, 1997.

NMFS, Office of Sustainable Fisheries, Silver Spring, MD. Guidelines for Economic Analysis of Fishery Management Actions. August 16, 2000.

NMFS, Final Programmatic Supplemental EIS for Alaska Groundfish Fisheries, June 2004

NMFS, Final EIS for Essential Fish Habitat Identification and Conservation in Alaska, April 29, 2005

NMFS, Office of Sustainable Fisheries, Ben Muse, Juneau, AK. Revenues Available to Repay a BSAI Non-AFA Catcher-Processor Buyback Loan, July 11, 2005.

NMFS [BSAI and GOA Harvest Specifications for 2006-2007](#) Environmental Assessment (EA) and Final Regulatory Flexibility Analysis (FRFA), January 2, 2006

NOAA, Silver Spring, MD. Environmental Review Procedures for Implementing the National Environmental Policy Act. (NOAA Administrative Order 216-6) May 20, 1999.

North Pacific Fishery Management Council, Anchorage, AK. Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Proposed Amendment 85 to the Fishery Management Plan for Groundfish of the Bering Sea/Aleutian Islands Management Area. March 12, 2006.

10.0 List of Abbreviations and Acronyms

ADFG - Alaska Department of Fish and Game
AFA - American Fisheries Act
BSAI - Bering Sea and Aleutian Islands
CDQ - Community Development Quota
CFR - Code of Federal Regulations
Council - North Pacific Fishery Management Council

CZMA - Coastal Zone Management Act
EA - Environmental Assessment
EEZ - Exclusive Economic Zone
EFH - Essential Fish Habitat
EIS - Environmental Impact Statement
E.O. - Executive Order
ESA - Endangered Species Act
FLCC · Freezer Longline Conservation Cooperative
FMP - Fishery Management Plan for Bering Sea and Aleutian Islands Groundfish
FONSI - Finding of No Significant Impact
FWS - U.S. Fish & Wildlife Service
IFQ - Individual Fishing Quota
FRFA · Final Regulatory Flexibility Analysis
LLP · License Limitation Program
LOA - Length Overall
Magnuson-Stevens Act · Magnuson-Stevens Fishery Conservation and Management Act
MMPA - Marine Mammal Protection Act
NEPA - National Environmental Policy Act
NMFS - National Marine Fisheries Service
NOAA - National Oceanic and Atmospheric Administration
OMB - Office of Management and Budget
RFA - Regulatory Flexibility Act
PRA · Paperwork Reduction Act
RIR - Regulatory Impact Review
Secretary · Secretary of Commerce
SBA - Small Business Administration
VMS · Vessel Monitoring System