

Secretarial Review

Regulatory Impact Review / Environmental Assessment / 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**

Prepared by staff of the

North Pacific Fishery Management Council
605 West 4th Avenue, #306
Anchorage, Alaska 99501-2252
Ph. (907) 271-2809

And

National Marine Fisheries Service
Alaska Region
P.O. Box 21688
Juneau, Alaska 99802-1168
Ph. (907) 586-7228

September 2012

Table of Contents

| | | |
|-------|---|----|
| 1 | Introduction..... | 1 |
| 1.1 | Background..... | 1 |
| 1.2 | Purpose and need..... | 3 |
| 1.3 | Description of alternatives..... | 4 |
| 1.4 | Additional changes necessary to remove the GRS..... | 5 |
| 1.5 | Alternatives considered but not advanced for analysis..... | 5 |
| 2 | Regulatory Impact Review..... | 5 |
| 2.1 | What is a Regulatory Impact Review..... | 5 |
| 2.2 | Existing Conditions..... | 6 |
| 2.2.1 | Description of Groundfish Retention Standard Program..... | 6 |
| 2.2.2 | U.S. Court of Appeals for the District of Columbia Circuit..... | 7 |
| 2.2.3 | Council’s Rationale for the GRS Program..... | 7 |
| 2.2.4 | Summary of Amendment 80..... | 8 |
| 2.2.5 | Current composition of the Amendment 80 sector..... | 10 |
| 2.2.6 | Fishing practices of the Amendment 80 sector..... | 14 |
| 2.2.7 | Enforcement and Prosecution Considerations..... | 21 |
| 2.3 | Expected Effects of the Alternatives..... | 22 |
| 2.3.1 | Alternative 1: No Action..... | 22 |
| 2.3.2 | Alternative 2 (preferred alternative): Remove GRS and Require Annual Retention Report 23 | |
| 2.3.3 | Effects on Net Benefits to the Nation..... | 25 |
| 3 | Environmental Assessment..... | 25 |
| 3.1 | Purpose and Need..... | 25 |
| 3.2 | Description of Alternatives..... | 26 |
| 3.2.1 | Additional changes necessary to remove the GRS..... | 27 |
| 3.3 | Alternatives considered but not advanced for analysis..... | 28 |
| 3.4 | Affected Environment..... | 28 |
| 3.4.1 | Bering Sea and Aleutian Islands Environment..... | 29 |
| 3.4.2 | Effects on Groundfish Stocks in the BSAI..... | 30 |
| 3.4.3 | Effects on Prohibited Species..... | 30 |
| 3.4.4 | Effects on Benthic Habitat and Essential Fish Habitat..... | 30 |
| 3.4.5 | Effects on Steller Sea Lions..... | 31 |
| 3.4.6 | Cumulative Impacts..... | 32 |
| 3.4.7 | Past and Present Actions..... | 33 |
| 3.4.8 | Reasonably Foreseeable Future Actions..... | 33 |
| 3.4.9 | Summary of Cumulative Effects..... | 34 |
| 4 | Initial Regulatory Flexibility Analysis (IRFA)..... | 34 |
| 4.1 | Introduction..... | 34 |
| 4.2 | Definition of a Small Entity..... | 35 |
| 4.3 | Reason for considering the proposed action..... | 36 |

| | | |
|-----|--|----|
| 4.4 | Objectives of, and the legal basis for, the proposed rule | 37 |
| 4.5 | Number and Description of Small Entities Regulated by the Proposed Action..... | 38 |
| 4.6 | Recordkeeping and Reporting Requirements..... | 38 |
| 4.7 | Description of Significant Alternatives..... | 38 |
| 5 | Consistency with Applicable Law and Policy | 38 |
| 5.1 | National Standards | 39 |
| 5.2 | Section 303(a)(9) – Fisheries Impact Statement | 39 |
| 6 | References..... | 40 |
| 7 | List of Prepares and Persons Consulted..... | 41 |

List of Tables

| | | |
|------------|--|----|
| Table 1-1. | Schedule for increasing the groundfish retention standard. | 2 |
| Table 2-1. | Active Amendment 80 vessels and LLP licenses..... | 11 |
| 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..... | 13 |
| Table 2-3. | Total catch by BSAI target fishery for the Amendment 80 sector, 2003 through 2009..... | 15 |
| Table 2-4. | Percent of target by Amendment 80 sector, 2003 through 2009..... | 16 |
| Table 2-5. | Retained catch by BSAI target fishery for the Amendment 80 sector, 2003 through 2009. ... | 16 |
| Table 2-6. | Wholesale gross product value by target fishery in BSAI for Amendment 80 sector, 2003 through 2009..... | 17 |
| Table 2-7. | Retention rates by target for the Amendment 80 sector, 2003 through 2009..... | 18 |
| Table 2-8. | BSAI groundfish retention rate for the Amendment 80 sector..... | 19 |
| Table 2-9. | Total BSAI groundfish catch by all vessels and Amendment 80 vessels, 2008 and 2009..... | 21 |

EXECUTIVE SUMMARY

This Regulatory Impact Review/Environmental Assessment/Initial Regulatory Flexibility Analysis evaluates the costs and benefits, environmental impacts, and small entity impacts of a proposed regulatory amendment. The proposed amendment would modify the groundfish retention standard program by removing certain regulatory requirements mandating minimum levels of groundfish retention. The proposed action would also require the trawl catcher/processor vessels (C/Ps) that are not listed in the regulations implementing the American Fisheries Act (AFA) and cooperatives established under provisions of Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) to report to the North Pacific Fishery Management Council (Council) each vessel or cooperative'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 minimum groundfish retention standards borne by the non-AFA trawl C/Ps.

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 verifying compliance with the program and the potential high costs of prosecuting violations of the requirement, particularly at the cooperative level. These difficulties arise because the groundfish retention estimates used to establish the groundfish retention standard (GRS) differ substantially from measures employed in the regulations implementing the GRS. These differences may result in substantially greater compliance costs than anticipated at the time of Council action. In addition, the Council noted that the cost of enforcing and prosecuting the GRS could increase if a case required the retention records for each vessel in a cooperative to be verified.

This analysis considers two alternatives. Under Alternative 1 (no action), the GRS program would remain unchanged which requires non-AFA trawl C/Ps of all sizes, including those C/Ps less than 125 feet length overall (LOA) to retain and utilize a minimum percentage of groundfish caught during fishing operations, or GRS, which is 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, the Council's preferred alternative, would remove groundfish retention requirements included in the GRS program. The alternative also would add regulatory requirements that the non-AFA trawl C/Ps and cooperatives established under Amendment 80 to the FMP report groundfish retention performance to the Council on an annual basis. The Council also clarified that a third party audit of the sector's annual groundfish retention performance will be included in the annual Council report.

Regulatory Effect of the Alternatives

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

Effective during the 2012 fishing season, the minimum retention standard would remain at 85 percent annually. Under Alternative 1, vessels that met the lower GRS regulatory requirement in 2008 and 2009 (vessels were exempt from the GRS in 2010 and are exempt in 2011) would face additional challenges meeting the higher standard. Many participants in this sector have expressed strong reservations as to whether it will be possible to achieve the 85 percentage standard under existing regulatory provisions. The likelihood is that increasing numbers of vessels may be unable to meet the GRS in coming years, which may result in unnecessary 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 C/P 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 85 percent minimum retention standard, without the benefits of the Amendment 80 catch share program.

As noted in Section 2.2.7, 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. NMFS Office of Law Enforcement (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, the Council's preferred alternative, would remove the required minimum GRS for the non-AFA trawl C/Ps and Amendment 80 cooperatives using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI), referred to in this document as 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 would be submitted in conjunction with the Amendment 80 cooperative report, which is due annually on March 1st. Vessels participating in the open access fishery would also be required to submit an annual retention report.

In removing the required minimum GRS 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 mandated standards, but the sector has indicated that retention rates higher than those implemented in 2010 (80%) are not likely to be attainable in the future. 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 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 three years in a manner that seems to facilitate compliance with the existing GRS. However, if implemented, Alternative 2 would remove the GRS and the direct regulatory requirements for the Amendment 80 sector to further improve its retention. It is anticipated that 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, would lead the Amendment 80 sector to maintain (or even improve on) current retention rates.

A Biological Opinion was released in November 2010, and concludes that the status quo BSAI and GOA groundfish fisheries jeopardize the continued existence of the endangered western Distinct Population Segment (DPS) of Steller sea lions and adversely modify its designated critical habitat (NMFS 2010b). The BiOp included new management measures that close the Atka mackerel and Pacific cod fisheries in the Western Aleutian Islands (Area 543), restrict the Atka mackerel and Pacific cod fisheries in the

Central Aleutian Islands (Area 542), and restrict the Pacific cod fishery in the Eastern Aleutian Islands (Area 541).

In addition to the Steller sea lion area closures, bottom trawling has been prohibited in state waters (0 to 3 nm) since 2000 (with the exception of some areas in the South Alaska Peninsula management area) and in Cook Inlet since 2001.

The Steller Sea Lion Biological Opinion could impact the proposed action and result in a decrease in annual retention rates in the Amendment 80 sector. 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.

Removal of the GRS from federal regulations is not intended to reduce the observer requirements for the Amendment 80 sector or eliminate the need for weighing all groundfish on a certified flow scale. The Council noted that the objectives of the GRS program appear to have been met and the removal of the mandated retention rates 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 2.2.7, 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 could be substantial.

Environmental Effects of the Alternatives

This proposed alternative, Alternative 2, would implement the status quo alternative previously analyzed with Amendment 79. In addition, this alternative would likely have no impacts on non-specified species, forage species, seabirds, habitat, or the ecosystem that were not previously considered in the harvest specification EIS (NMFS 2007). 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.

Prior National Environmental Protection Act (NEPA) analyses for Amendment 79 and Amendment 80 demonstrate that the proposed alternative will have only minimal impact on target and not-target groundfish stocks. 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 Alaska Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement (PSEIS) (NMFS 2004), 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 Council and implemented by federal regulation. These measures include prohibited species catch 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.

The Amendment 80 sector operates trawl gear on benthic habitat. Thus, it is possible that these operations could contribute to impacts on the habitat. 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 non-pelagic 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 impacts on sea whips and in reducing 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 are likely no effects to the benthic habitat as result of this action.

With regards to Steller sea lions, this proposed action would likely not result in changes in the fisheries that could increase the potential for incidental takes or disturbance of Steller sea lions. Although future fishing behavior cannot be determined with any certainty, the Amendment 80 sector will likely continue to fish in 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 Steller sea lions.

1 Introduction

This document analyzes the proposed removal of the groundfish retention standard (GRS) regulations implemented in accordance with Amendment 79 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). In June 2010, the Council recommended an emergency action to temporarily exempt the non-American Fisheries Act (non-AFA) trawl catcher/processors (C/Ps) using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI), referred to in this document as the Amendment 80 sector, from the GRS for the 2010 and 2011 fishing years. Additionally, the North Pacific Fishery Management Council (Council) initiated a regulatory amendment to remove the GRS. The proposed action also includes the addition of a requirement for the Amendment 80 sector to report to the Council on an annual basis the sector's 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 a Regulatory Impact Review/Environmental Assessment/Initial Regulatory Flexibility Analysis (RIR/EA/IRFA). An RIR/EA/IRFA provides assessments of the economic benefits and costs of the action alternatives, as well as their distribution (the RIR), the environmental impacts of an action and its alternatives (the EA), and the impacts of the action on directly regulated small entities (the IRFA). This RIR/EA/IRFA addresses the statutory requirements of the Magnuson-Stevens Fishery Conservation and Management Act, Presidential Executive Order 12866, the National Environmental Policy Act, and the Regulatory Flexibility Act. An RIR/EA/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 15 years, the Council has recommended, and NMFS has approved and implemented, several amendments to the FMP and regulatory actions to reduce discards and bycatch of groundfish species.

The Council recommended and NMFS implemented management measures to establish retention and utilization (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 C/Ps not specifically listed as eligible to participate in the directed pollock fishery under section 208(e) of the AFA.¹

The Council initiated several actions including Amendment 79, the GRS program, and Amendment 80 to further decrease regulatory and economic discards in the BSAI groundfish fisheries. In June 2003 the

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.”

Council recommended Amendment 79 to the FMP to further improve the retention of groundfish where practicable through the establishment of minimum groundfish retention standards. At the same time, the Council developed a GRS program for non-AFA trawl C/Ps by establishing a minimum groundfish retention schedule for this sector. The owners or operators of these vessels were required to meet or exceed these standards that were calculated annually. The Council recommended the GRS be annually calculated as the round-weight equivalent of retained groundfish as a percent of total groundfish weight. The GRS was phased in over time to allow the affected vessels to adjust to the incrementally increasing retention requirements. The schedule for increasing groundfish retention standards established by the GRS program can be found at 50 CFR 679.27(j)(4) 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% |

The Council selected the annual GRS schedule after reviewing historic retention rates for the BSAI fisheries for 1995 through 2002. Historic retention rates were estimated by dividing retained catch weight by the estimated weight of total groundfish catch derived from NMFS blend data. Blend data were derived from a combination of Weekly Production Reports and NMFS observer data. Observers on C/P vessels reported groundfish species composition, total catch, and estimate 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.

Following Council final action on the GRS program, NMFS adjusted the methodologies used to determine catch estimates from the NMFS Blend Database (1995 through 2002) to the Catch Accounting Database (2003 through present). 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 information 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). As a result of these modifications to the way catch and retention are estimated, NMFS is unable to recreate Blend Database estimates after 2002.

After the Council adopted the GRS program, NMFS proceeded to develop implementing regulations (April 6, 2006; 71 FR 17362) that established a regulatory methodology to annually determine compliance with the minimum retention rates. The Council recommended and NMFS implemented an approach for calculating compliance with the minimum GRS such that annual retained catch is calculated using NMFS standard product recovery rates (PRR). For each product/species combination, retained tonnage is equal to the product tonnage divided by the PRR (see 50 CFR 679.27(j)(2) and the EA/RIR/IRFA for Amendment 79 to the BSAI FMP [NPFMC 2005]). This approach for calculating vessel specific GRS percentages consistently results in lower estimates of groundfish retention percentages than the method used to calculate historic retention rates using blend data. The reason for this difference is not clear. However, given the number of calculations involved and the complexity of the calculations, these differences likely reflect a mixture of factors that include the GRS program's use

of flow scale weights in measurement of total catch, reliance on observer sampling to develop estimates of total groundfish catch, and use of standard product recovery rates that may differ from vessel specific recovery rates.

The regulations implementing the GRS program established a basis for monitoring and enforcing the GRS that was verifiable and enforceable at the individual vessel level. Specifically, NMFS Office of Law Enforcement expressed concern that some of the calculation periods for the GRS recommended by the Council were infeasible, because recordkeeping and reporting 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 historic retention percentages used by the Council in its analysis for Amendment 79 and the GRS program (NPFMC 2005) and upon which the Council based its selected schedule for increasing the 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). Although regulations initially implementing the GRS program only required non-AFA trawl C/Ps that were equal to or greater than 125 ft (38.1 m) length overall (LOA) to meet minimum retention standards for groundfish, Amendment 80 expanded the application of the GRS program to non-AFA trawl C/Ps of all sizes and Amendment 80 cooperatives, referred to in this document as the Amendment 80 sector. In addition, Amendment 80 allocates specific target species and prohibited species limits to non-AFA trawl C/Ps, and allows 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 C/Ps 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 the GRS program 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 the Amendment 80 sector. 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 Amendment 80 sector. 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 for the GRS program differ substantially from measures employed in the implementation of the GRS program. These differences have resulted in substantially greater compliance costs than anticipated at the time of Council action.

Although monitoring and enforcement complications may prevent retention of the GRS, the Council recommended a modification to the GRS program that would require 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.

When originally considered, the purpose of the action was to revise or reconsider the groundfish retention standard. However, after further consideration, the Council determined that a revised groundfish retention standard would not address the challenging and costly monitoring, enforcement, and prosecution issues raised by National Marine Fisheries Service and NOAA Office of Law Enforcement (OLE). As a result, the Council did not advance for analysis an alternative to revise the groundfish retention standard (see Section 1.5 of this analysis).

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 GRS would be retained in the federal regulations. The owners and operators of vessels in the Amendment 80 sector would be required to retain and utilize a minimum percentage of groundfish caught during fishing operations (i.e., GRS). However, under the cooperative provisions of Amendment 80, the minimum retention requirements under the GRS may be applied to multiple vessels in a cooperative by aggregating the retention rate of all member vessels. The minimum retention standard would remain at 85 percent annually.

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 (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), which require the owners and operators of Amendment 80 vessels and any other C/P not listed in 50 CFR 679.4(1)(i) and Amendment 80 cooperatives using trawl gear in the BSAI to comply with the annual minimum groundfish retention standards.

The alternative would also require each non-AFA trawl C/P using trawl gear in the BSAI and Amendment 80 cooperative to annually report to the Council its groundfish retention performance using the method developed to implement the GRS program and Amendment 80, i.e. the method currently set forth in regulation. The Council also required the fleet to annually report groundfish retention using observer, scale, and product data that can be verified by NMFS. In addition, while selecting a preferred alternative, the Council clarified that a third party audit of the sector's annual groundfish retention performance should be included in the annual Council report. The Council noted that in addition to the annual retention calculation, a third party audit could be included amongst the other information included in the annual

groundfish retention performance report or the annual Amendment 80 cooperative report required at 50 CFR 679.5(s)(6)(iii).

The proposed alternative is not intended to 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 Additional changes necessary to remove the GRS

NMFS proposes to remove additional regulations directly related to the GRS, but not specified in the Council's preferred alternative. To meet the Council's intent to remove the GRS, NMFS would need to eliminate regulations at 50 CFR 679.7(m) and 50 CFR 679.27(j)(5) through (7). As mentioned above, Amendment 80 expanded the scope of GRS program to include C/Ps of all sizes. Amendment 80 also included monitoring and enforcement provisions to meet the increased catch accounting requirements that are necessary to manage the quota-based catch share program. Therefore, removing regulations at 50 CFR 679.7(m) and 50 CFR 679.27(j) should not change status quo management of the Amendment 80 sector. NMFS notes that current regulatory requirements, including provisions at 50 CFR 679.93(c) and prohibitions at 50 CFR 679.7(g), would ensure that monitoring requirements for the Amendment 80 fleet would not be affected under the preferred alternative.

1.5 Alternatives considered but not advanced for analysis

The North Pacific Fishery Management Council (Council), at the June 2010 meeting, considered an alternative that would revise the current GRS schedule. The Council considered 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 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, the Council decided not to include the approach as an alternative in this analysis and this suggested alternative is not analyzed here.

2 Regulatory Impact Review

This Regulatory Impact Review (RIR) evaluates the costs and benefits of removing groundfish retention standards to mitigate the unattended consequences to the non-American Fisheries Act (AFA) trawl catcher/processor (C/P) 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 (EO) 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 groundfish retention standard (GRS) was approved by the Council in conjunction with 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-AFA trawl C/Ps that were equal to or greater than 125 feet length overall (LOA). In adopting this action, the Council focused on these C/Ps, because as a group, they had “the lowest retained catch rates of any groundfish trawl fishery in the Bering Sea and Aleutian Islands Management Area (BSAI)” (NMFS 2005). Between 1999 and 2002, the retention rate for this sector ranged between 65 percent 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 program requires non-AFA trawl C/Ps to retain a minimum percentage of all BSAI groundfish caught during a fishing year. Groundfish are defined in regulations at 50 CFR 679.2. The GRS 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 the GRS program which was published in the *Federal Register* (April 6, 2006; 71 FR 17362).

Regulations prohibit the owner or operator of a non-AFA trawl C/P 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. Using data from the catch accounting system, 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.

The catch accounting data and methodology used by NMFS to determine an individual vessels' specific annual retention differs from the computation of historic retention rate used by the Council in its analysis for Amendment 79 and the GRS program and upon which the Council based its selected groundfish retention standards, as described in section 1.1 of this analysis. The regulatory process for determining annual groundfish retention performance 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 U.S. Court of Appeals for the District of Columbia Circuit

On December 18, 2007, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision invalidating three monitoring and enforcement requirements associated with the BSAI GRS program that would have been effective on January 20, 2008. In accordance with the court's ruling, NMFS released information bulletins 08-4 and 08-7 to inform the public that the regulation at 50 CFR 679.7(m)(5) is invalid and void and will not be enforced by NMFS. Also included in that announcement was that the phrase, "at a single location" contained in the first sentence of 50 CFR 679.27(j)(5)(ii), and that the last sentence of 50 CFR 679.27(j)(5)(iii) are invalid and void and will not be enforced by NMFS. Other regulations pertaining to the BSAI GRS program were unaffected by the court's decision including the requirement at 50 CFR 679.27(j)(5)(ii) that explicitly prohibits the sorting of catch prior to weighing.

2.2.3 Council's Rationale for the GRS Program

This section documents the Council's intent and justification for recommending the GRS program. 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 improved retention and improved utilization (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 of Commerce approved. The delayed starting date was recognition by the Council as necessary, to avoid imposing excessive costs on the industry. The delay was also intended to allow ample time for the industry to develop new fishing techniques and technology to avoid or minimize the catch of unwanted fish, in addition to developing new product forms and markets (NPFMC 1997). 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 the GRS program)

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 the GRS program states 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 the GRS program, 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 percent 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 C/P 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 C/Ps 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 overtime, 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.

2.2.4 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 C/P 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 C/P fleet by extending the GRS to all non-AFA trawl C/Ps; (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 C/Ps 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 C/Ps to expand their harvest capacity into other fisheries not managed under a LAPP.

Each year, NMFS allocates an amount of Amendment 80 species available for harvest, called the initial total allowable catch (ITAC), and crab and halibut prohibited species catch (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 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

² Amendment 80 required non-AFA trawl catcher processors less than 125 feet LOA to meet the regulatory minimum retention schedule under the GRS program.

Amendment 80 sector (i.e., AFA trawl C/Ps, 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 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 on September 4, 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 quota share (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 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 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 Gulf of Alaska (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 pilot 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 C/Ps 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 the GRS. Second, Amendment 80 modified the method of calculating the total retention of catch that applies to cooperatives. Under the GRS program as modified by Amendment 80, each vessel participating in the limited access fishery must ensure that it meets the GRS requirements based on catch accounting estimates of 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 a non-

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

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

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

AFA C/P less than 125 ft LOA could choose to join a cooperative, assign the owner's 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 C/Ps 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.

2.2.5 Current composition of the Amendment 80 sector

While the Council was in the early stages of developing Amendment 80, the Consolidated Appropriations Act of 2005 was signed into law which contained the Capacity Reduction Program. This program is intended to remove "excess harvest capacity" from the C/P 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 QS permits for the originally qualifying vessels. Table 2-1 lists the vessels that are eligible to generate QS, the owners of those vessels, and the maximum length overall on the License Limitation Program (LLP) licenses that were issued for those vessels.

Table 2-2 shows whether those owners assigned their vessels and associated QS permits to either a cooperative, limited access fishery, or chose not to apply for QS for 2010. In that year, nine QS permits were assigned to the limited access fishery, 18 to a single cooperative, and one potential QS permit has not been allocated QS. In 2011 and 2012 all Amendment QS permits were assigned to one of two cooperatives and no permits in the Amendment 80 limited access fishery. 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 greater hold capacity. There is not a clear distinction between large and small vessels in the Amendment 80 fleet. However, during development of the GRS program, 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 and the GRS program. 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 vessels less than 125 feet LOA caught a much smaller proportion of the total catch by non-AFA trawl C/Ps (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 LOA of less than 144 ft, 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.

| Owner ₁ | Amendment 80 Vessel(s) with length overall (LOA) as reported on Federal Fisheries Permit ₂ | LLP license currently assigned to vessel and MLOA ₂ |
|--|--|--|
| 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.alaskafisheries.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 at <http://alaskafisheries.noaa.gov/sustainablefisheries/amds/80/default.htm>. 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 QS pool |
| 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 Unimak | FSOL | 35.5 | 16.9 |
| | | PCOD | 23.4 | |
| | | RSOL | 26.6 | |
| | | YFIN | 20.6 | |
| | | 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 | American No. 1 U.S. Intrepid | FSOL | 5.4 | 8.1 |
| | | PCOD | 14.8 | |
| | | RSOL | 14.6 | |

| | | | | |
|--|----------------------|------|------|-----|
| (Management Entity for owners) | | 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 | |
| <i>Owner who did not apply for Amendment 80 QS and is not participating in 2010</i> | | | | |
| Golden Fleece | Golden Fleece | FSOL | 0.2 | 0.1 |
| | | PCOD | 0.5 | |
| | | RSOL | 0.3 | |
| | | YFIN | 0 | |
| | | POP | 0 | |
| | | AMCK | 0 | |

¹Ownership data are derived from multiple sources including information provided on Amendment 80 QS applications, Restricted Access Management (RAM) LLP database (<http://www.alaskafisheries.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.

²LOA data for a vessel is derived from NOAA 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.

³Vessels 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.

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

2.2.6 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 the Amendment 97 analysis (Amendment 80 vessel replacement action) since NMFS received waivers from the 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 (Aleutian Islands Pacific ocean perch), Pacific cod in years prior to 2008⁶, and in recent years (2008 and 2009) 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 2009.⁷

| | 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

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

⁷ Blank cells signify no data.

Table 2-4 Percent of target by Amendment 80 sector, 2003 through 2009.⁸

| 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

Table 2-5 Retained catch by BSAI target fishery for the Amendment 80 sector, 2003 through 2009.⁹

| | 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

⁸ Blank cells signify no data.⁹ Blank cells signify no data.

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 2009.¹⁰

| 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 a large improvement in their retention rates during the 2003 through 2009 period. The aggregate retention rate for 2003 was 71 percent, with most of the retention rates for the different target fisheries ranging from 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.

¹⁰Blank cells signify no data.

Table 2-7 Retention rates by target for the Amendment 80 sector, 2003 through 2009.¹¹

| 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 equivalents of reported production from 2003 through 2010. These retention rates are used to determine compliance with the GRS. For 2008, the sector met the GRS with an annual retention rate of 77 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.¹² For 2009, the sector met the GRS with a retention rate of 80 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.¹³ 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. The Amendment 80 sector and Amendment 80 cooperatives were exempt from the GRS minimum retention requirements in 2010 and are currently exempt from the GRS in the 2011 fishing year under an emergency rule (December 15, 2010; 75 FR 78172). With the emergency rule set to expire prior to the 2012 season, the non-AFA trawl C/Ps would be required to meet a minimum retention standard, which is scheduled to be 85 percent in 2012. At a GRS of 85 percent, it is possible that a number of vessels that met the GRS requirements in 2008 and 2009 may face additional challenges while trying to meet this 2012 minimum retention requirement.

¹¹ Blank cells signify no data.

¹² 2009 NMFS Inseason Management Report

¹³ 2010 NMFS Inseason Management Report

Table 2-8 BSAI groundfish retention rate for the Amendment 80 sector.¹⁴

| Year | Regulatory GRS percentage | Total catch ¹ (A) | Retained catch ² (B) | Round weight equivalent of reported production ³ (D) | Historic retention rates from AM 79 analysis (B)/(A) | Regulatory approach for determining compliance with GRS (D)/(A) | Differences |
|------|---------------------------|------------------------------|---------------------------------|---|--|---|-------------|
| 2003 | | 269,050 | 188,584 | 183,334 | 70% | 68% | 2% |
| 2004 | | 314,018 | 214,959 | 201,232 | 68% | 64% | 4% |
| 2005 | | 301,538 | 236,226 | 216,391 | 78% | 72% | 7% |
| 2006 | | 296,058 | 233,848 | 214,825 | 79% | 73% | 6% |
| 2007 | | 322,492 | 250,398 | 223,581 | 78% | 69% | 8% |
| 2008 | 65 | 359,756 | 323,008 | 275,450 | 90% | 77% | 13% |
| 2009 | 75 | 334,304 | 301,508 | 268,953 | 90% | 80% | 10% |
| 2010 | 80 | 360,864 | 327,883 | 303,555 | 91% | 84% | 7% |

Source: Catch Accounting, April 29, 2011

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 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 it adopted the GRS program. As shown in Table 2-8, the regulatory calculation of groundfish retention standards results in a consistently lower percentage. In 2008, this difference was 13 percent, in 2009 it was 10 percent, and in 2010 it 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 Council final action on the GRS program in June 2003, NMFS adjusted 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 and GRS program analysis are from NMFS blend data. Blend data were derived from a combination of Weekly Production Reports and NMFS observer data. Observers on C/P vessels report groundfish species composition, total catch, and estimate 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

¹⁴ Blank cells signify no data.

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 information 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). As a result of these modifications, NMFS is unable to recreate Blend Database estimates for catch and retained catch after 2002.

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 “GRS groundfish” as described at Table 2a to 50 CFR part 679 and 50 CFR 679.27(j)). 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 maximum retainable amount. 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.¹⁵

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.

¹⁵ Steve Whitney, NMFS Inseason staff, Personal communication.

Table 2-9 Total BSAI groundfish catch by all vessels and Amendment 80 vessels, 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 |
| Rougeye Rockfish | 172 | 64 | 63 | 126 | 213 | 172 | 91 | 66 | 158 | 209 |
| Shortraker 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 |

Following the establishment of cooperative management, the Amendment 80 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.

2.2.7 Enforcement and Prosecution Considerations

When the GRS program was approved by NMFS, 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 GRS 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 C/Ps of all sizes, including those C/Ps less than 125 feet LOA to retain and utilize a minimum percentage of groundfish caught during fishing operations (i.e., a GRS).

The Council, in their deliberations on the GRS program, expressed a desire to balance conservation through reductions in discards and minimizing costs when practicable. The Council struggled with some way to balance the conservation goal of raising retention rates with limiting the costs to the industry. For example, the GRS schedule was phased in gradually to allow the affected vessels to adjust to the program requirements. The Council also recognized that some vessels would have difficulty meeting the higher retention standards; however, the Council noted that the cooperative membership established by Amendment 80 could alleviate the burden on vessels with lower retention rates. Vessels with higher retention rates could harvest on behalf of cooperative participants with lower retention rates. Given the unforeseen management and enforcement costs and the higher than expected compliance costs for the current groundfish retention standard, the costs associated with GRS program are anticipated to exceed the benefit of program from the Council's perspective for this alternative.

Amendment 80 vessel operators that met the GRS regulatory requirement in 2009 have testified before the Council that they will face significant additional challenges meeting this standard, due in part to the differences in the Council's recommended minimum retention standard and NMFS methodology for calculating compliance with that standard. As described in Table 2-8, the method used to calculate compliance with the GRS schedule consistently under estimates retention rates when compared to the historical analysis of retention rates used by the Council to establish the GRS minimum retention schedule. Thus, many participants in the Amendment 80 sector have expressed strong doubt that it will be possible to achieve the 85 percent retention standard, as would be required under existing regulatory provisions. The likelihood that additional vessels may be unable to meet the GRS, as calculated by NMFS, in coming years may unnecessarily increase compliance and enforcement costs, considering that the Council's objectives for retention, as described in Table 2-8, 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 C/P 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 85% retention standard without the benefits of the Amendment 80 catch share program.

From the perspective of groundfish stock sustainability, requiring 85 percent retention would have no measurable effect on the health of the groundfish fishery resources. To the extent that these TACs are sustainable, extraction of the TACs will have the same stock effects regardless of whether the fish harvested are retained or discarded. However, the resource values associated with the non-consumptive, or non-use attributes of discards of these fish appear to imply some undetermined benefit for some unknown number of people to maintaining a required retention rate.

This action will also leave in place the regulation requiring non-AFA trawl C/Ps to meet a 15 percent utilization standard for all retained groundfish species listed 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 2.2.7, 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 (preferred alternative): Remove GRS and Require Annual Retention Report

This alternative would remove the required minimum GRS for the Amendment 80 sector. The Amendment 80 fleet would, instead, internally monitor the groundfish retention rates and provide an annual report on groundfish retention rates by vessel or cooperative. The alternative would require non-AFA trawl C/Ps using trawl gear in the BSAI and Amendment 80 cooperatives to annually report to the Council their groundfish retention performance using the method currently set forth in regulation. The Council also required the fleet to annually report groundfish retention using observer, scale, and product data that can be verified by NMFS. In addition, while selecting a preferred alternative, the Council made it clear that a third party audit of the sector's annual groundfish retention performance should be included in the annual Council report. The retention performance report could be submitted in conjunction with the Amendment 80 cooperative report, annually, or for vessels in the participating in the open access fishery, a retention report would be required March 1st annually. Information required in the cooperative report includes (1) the cooperative's actual retained and discarded catch in 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 GRS 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 retention rates higher than those experienced in 2010 (80%) are not likely to be attainable in the future. 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 three years in a manner that seems to facilitate compliance with the existing GRS. However, if implemented, Alternative 2 would remove the GRS and the direct regulatory requirement for the Amendment 80 sector to further improve its

retention. 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.

If retention rates were to decline, there would be no affect to groundfish stocks any more than other removals (retained catch), since discards are accounted for in Annual Catch Limits. In addition, discard quantities are relatively small compared to the biomass of species discarded. For example, in Section 3.1.1 of the analysis prepared for Amendment 79 and the GRS program, it was noted that discards are less than one percent of the yellowfin sole survey biomass, less than two percent of the rock sole survey biomass, and less than 0.1 percent of the shallow-water flatfish survey biomass. To the extent that these TACs are sustainable, extraction of the TACs will have the same stock effects regardless of whether the fish harvested are retained or discarded.

Lower groundfish retention rates have been identified by environmental organizations both in Alaska and in other locations as being objectionable. There is no evidence available demonstrating that discarded species, in the amount being removed, have a significant indirect value (e.g., providing prey for other living marine resources that do have use or non-use value). However, environmental interests suggest that lack of data on these difficult to measure ecosystem effects, does not justify that assumption of zero environmental impacts. As a result, the resource values associated with the non-consumptive, or non-use attributes of discards of these fish, in the amounts that could occur in the groundfish fisheries if retention rates decline are best described as indeterminate, though the level of interest in fishery bycatch reduction and discards, nationally and regionally, suggest that a reduction in the retention rate has some level of non-market or non-consumptive costs for some unknown number of people.

A Biological Opinion was released in November 2010, and concludes that the status quo BSAI and GOA groundfish fisheries jeopardize the continued existence of the endangered western Distinct Population Segment (DPS) of Steller sea lions and adversely modify its designated critical habitat (NMFS 2010b). The BiOp included new management measures that close the Atka mackerel and Pacific cod fisheries in the Western Aleutian Islands (Area 543), restrict the Atka mackerel and Pacific cod fisheries in the Central Aleutian Islands (Area 542), and restrict the Pacific cod fishery in the Eastern Aleutian Islands (Area 541). In addition to the Steller sea lion area closures, bottom trawling has been prohibited in state waters (0 to 3 nm) since 2000 (with the exception of some areas in the South Alaska Peninsula management area) and in Cook Inlet since 2001.

The Steller sea lion BiOp could impact the proposed action and result in a decrease in retention rates for the Amendment 80 sector. 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 to 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.

Removal of the GRS from federal regulations is not intended to 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 2.2.7, shows that enforcement costs associated with the GRS would be extremely high and would only increase under a multi-cooperative GRS compliance standard under proposed Amendment 93. As a result, the cost savings from the elimination of compliance monitoring could be substantial.

The preferred alternative would also leave in place the regulation requiring non-AFA trawl C/Ps to meet a 15 percent utilization standard for all retained groundfish species listed 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.

Finally, because this action is limited to removing the GRS for Amendment 80 catcher processors which would not directly or indirectly impact fishing communities, there are no effects on fishing communities.

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 lower discard rates by the non-AFA trawl C/P sector have accrued to the Nation. The combination of lower compliance costs and the benefits of higher retention rates by the non-AFA trawl C/Ps will result in greater net benefits to the Nation from the proposed action, assuming the present levels of retention do not deteriorate following the modifications to GRS program under the preferred alternative.

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 Management Area (BSAI). 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 EA are included below. These include a brief discussion of the purpose and need for the proposed action (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 Section 7 of this document.

3.1 Purpose and Need

The purpose of this action is to remove the GRS for non-American Fisheries Act (AFA) trawl catcher/processor vessels and Amendment 80 cooperatives. 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 GRS borne by the non-AFA trawl catcher/processors (C/Ps).

The North Pacific Fishery Management Council (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 the analysis prepared for Amendment 79 and the GRS program differ substantially from measures employed in the implementation of the GRS program. 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 GRS regulatory standard, the Council included a recommendation 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 GRS would be retained in the federal regulation that requires non-AFA trawl C/Ps of all sizes, including those C/Ps less than 125 feet LOA, to retain and utilize a minimum percentage of groundfish caught during fishing operations, (i.e., GRS), which is scheduled to be 85 percent in 2011 and each year after. The GRS may be applied to an Amendment 80 cooperative by aggregating the retention rate of all vessels assigned to the cooperative.

Alternative 2 (preferred alternative): 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), which require the owners and operators of Amendment 80 vessels and any other C/P not listed in 50 CFR 679.4(1)(i) and Amendment 80 cooperatives using trawl gear in the BSAI to comply with the annual minimum groundfish retention standards.

This non-controversial regulatory amendment would remove regulations at 50 CFR 679.27(j)(1) through (4) that implement the GRS program, established under Amendment 79 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

The Council determined that the regulations established to calculate compliance with annual GRS rates require a level of retention much higher than that intended by the Council. This discrepancy has only recently been identified and is aggravated by the scheduled increase in required retention rates. The regulatory GRS rates cannot be sustained by many non-AFA trawl C/Ps, create compliance costs beyond those anticipated when the GRS program was approved, and cannot be effectively enforced. Recent assessments of the GRS program indicate that regulatory provisions for the GRS present unintended and excessive compliance and enforcement costs beyond those necessary to decrease bycatch and waste in the non-AFA trawl C/P sector. Further, the improvements in retention rates by non-AFA trawl C/Ps though 2009 have met Council objectives; therefore, additional and potentially significant compliance costs associated with the GRS are unwarranted.

Since the Amendment 80 catch share program, non-AFA trawl C/Ps operate under a cooperative system that enables these vessels to more efficiently and effectively increase the retention and utilization of groundfish and reduce bycatch than under the GRS. Therefore, circumstances that justified the increasing constraint on fishing operations to increase groundfish retention have changed and the regulatory constraint and associated GRS are no longer necessary to achieve the goals that led to their establishment. Removing the GRS from regulations should relieve an unnecessary and unanticipated burden on these vessels, eliminate unwarranted compliance and enforcement costs, and enhance resource management and conservation through ongoing commitments by the Amendment 80 sector to continue to pursue cooperative agreements and civil contracts to maintain or potentially increase recent improvements in groundfish discard rates.

The alternative would also require non-AFA trawl C/Ps using trawl gear in the BSAI and Amendment 80 cooperatives to annually report to the Council their groundfish retention performance using the method currently set forth in regulations. The Council also required the fleet to annually report groundfish retention using observer, scale, and product data that can be verified by NMFS. In addition, while selecting a preferred alternative, the Council made it clear that a third party audit of the sector's annual groundfish retention performance should be included in the annual Council report. The Council noted that in addition to the annual retention calculation, a third party audit could be included amongst the other information included in the annual groundfish retention performance report or the annual Amendment 80 cooperative report required at 50 CFR 679.5(s)(6)(iii).

The proposed alternative is not intended to 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.

3.2.1 Additional changes necessary to remove the GRS

NMFS proposes to remove additional regulations directly related to the GRS but not specified in the Council's preferred alternative. To meet the Council's intent to remove the GRS, NMFS would need to eliminate regulations at 50 CFR 679.7(m) and 50 CFR 679.27(j)(5) through (7). As mentioned above, Amendment 80 expanded the scope of the GRS program to include C/Ps of all sizes. Amendment 80 also included monitoring and enforcement provisions to meet the increased catch accounting requirements that are necessary to manage the quota-based catch share program. Therefore, removing regulations at 50 CFR 679.7(m) and 50 CFR 679.27(j) should not change status quo management of the Amendment 80 sector. NMFS notes that current regulatory requirements, including provisions at 50 CFR 679.93(c) and prohibitions at 50 CFR 679.7(g), would ensure that monitoring requirements for of the Amendment 80 fleet would not be affected under the preferred alternative.

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 considered 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 for Amendment 79 and the GRS program.

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 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 was not advanced and is not analyzed here.

3.4 Affected Environment

An EA is prepared pursuant to National Environmental Policy Act (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 remove all regulatory incentives to improve groundfish retention in the Amendment 80 sector. 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 remove the minimum groundfish retention standards for the Amendment 80 sector for groundfish and instead establish reporting requirements for annual groundfish retention. The intensity of this action is believed to be low because it is not likely to change the harvest of groundfish or the discards currently required by regulation. The harvest of target and non-target groundfish would continue to be constrained by total allowable catch (TAC) and prohibited species catch (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 2007). Therefore, this analysis will focus on the environmental

components that could potentially be affected by this action: stocks of targeted groundfish, non-targeted groundfish, and prohibited species. The effects of the alternatives on social and economic conditions is analyzed in Chapters 2 and section 2.3.

3.4.1 Bering Sea and Aleutian Islands Environment

The action area includes the entire 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.alaskafisheries.noaa.gov/index/analyses/analyses.asp>.

Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (NMFS 2007). 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 (GOA) and the BSAI 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 TAC 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 (Groundfish PSEIS, NMFS 2004). This Groundfish PSEIS was prepared to evaluate the fishery management policies embedded in the BSAI and GOA groundfish fishery management plans against policy-level alternatives. NMFS issued a Record of Decision for the Groundfish 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 Groundfish 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 Groundfish PSEIS and related documents at <http://www.alaskafisheries.noaa.gov/sustainablefisheries/seis/default.htm>.

Environmental Assessment / Regulatory Impact Review / Initial Regulatory Flexibility Analysis for Proposed Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (EA/RIR/IRFA, NPFMC 2007). The effects of the Amendment 80 program were analyzed in this EA (<http://www.alaskafisheries.noaa.gov/analyses/amd80/amd80bsai.pdf>). The EA concluded that the Amendment 80 program, and its alternatives, would have insignificant impacts on the

human environment. Due to the nature of this action, temporarily relieving unnecessary and unenforceable regulations, this Regulatory Amendment is not expected to change the nature of the environmental impacts of fishing under the Amendment 80 catch shares program. This proposed rule would not suspend observer requirements or eliminate the requirement to weigh all groundfish on a certified flow scale; these and other requirements were established under Amendment 80 and must remain effective to ensure proper catch accounting under this quota-based catch share fishery.

Environmental Assessment / Regulatory Impact Review / Initial Regulatory Flexibility Analysis for Amendment 79 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (NMFS 2005). The environmental impacts of groundfish bycatch by non-AFA trawl C/Ps and the GRS were described in the EA prepared for Amendment 79 (<http://www.alaskafisheries.noaa.gov/analyses/groundfish/amend79EARIRIRFA0505.pdf>). This analysis concluded that there is no indication that the stocks will be affected by the reduction in the proportion of discards to total catch projected for the alternatives. This is because discard quantities are minor compared to the estimated biomass and eliminating these discard amounts would have no measurable effects on the health of the flatfish resources. Moreover, the species TACs would remain the same under all of the alternatives considered. The extraction of the TACs will have the same stock effects regardless of whether the fish harvested are retained or discarded.

3.4.2 Effects on Groundfish Stocks in the BSAI

The proposed action implements the status quo alternative analyzed in the NEPA analysis prepared for Amendment 79 and the GRS program. The prior NEPA analyses for Amendment 79 and Amendment 80 demonstrate that the proposed action will have only minimal impact on target and non-target groundfish stocks. No new significant information exists to change these conclusions on the impacts. 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 2011 and 2012 harvest specifications for Alaska groundfish fisheries (March 1, 2011; 76 FR 11139). 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 and implemented by federal regulation. These measures include 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 BSAI comprise of habitat of groundfish. In addition, the adjacent marine waters seaward of the exclusive economic zone, 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 (e.g.,

salinity, temperature, nutrients, sediment load, color), 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 essential fish habitat 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 due to mortality of Bering Sea benthic organisms. The additional external impacts described in the PSEIS are described as adding to the lingering past mortality impacts and contribute to impacts that are already evident.

The proposed action implements the status quo alternative analyzed in the analysis prepared for Amendment 79. The prior NEPA analyses for Amendment 79 and Amendment 80 demonstrate that the proposed action will have only minimal impact on benthic and essential fish habitat. No new significant information exists to change these conclusions on the impacts. Based on the evaluation criteria used in previous analyses and the likelihood the sector will continue to fish in a similar manner, albeit continuing to maintain the sector's current level of groundfish retention or lower, this action is not likely to result in changes to the location, timing, or impacts to the benthic habitat.

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 2010 Steller Sea Lion Biological Opinion includes a proposed reasonable and prudent alternative (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 difficulty 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 acceptable biological catch. The average annual Atka mackerel harvest outside of critical habitat from 2003 through 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 the acceptable biological catch 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.

Under Amendment 80, 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 biological option (NMFS 2010b).

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.

3.4.6 Cumulative Impacts

Analysis of the potential cumulative effects of a proposed action and its alternatives is a requirement of NEPA. Cumulative effects are those combined effects on the quality of the human environment that result from the incremental impact of the proposed 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 (40 CFR 1508.7, 1508.25(a), and 1508.25(c)). Cumulative impacts can result from individually minor, but collectively significant, actions taking place over a period of time. The concept behind cumulative effects analysis is to capture the total effects of many actions over time that would be missed by only evaluating each action individually. At the same time, the Council on Environmental Quality guidelines recognize that it is not practical to analyze the cumulative effects of an action on the universe but to focus on those effects that are truly meaningful.

The 2004 Final Alaska Groundfish Fisheries Programmatic Supplemental Environmental Impact Statement (Groundfish PSEIS; NOAA 2004) assesses the potential direct and indirect effects of groundfish fishery management plan policy alternatives in combination with other factors that affect physical, biological, and socioeconomic resource components of the BSAI and GOA environment. To the extent practicable, this analysis incorporates by reference the cumulative effects analysis of the Groundfish PSEIS, including the persistent effects of past actions and the effects of reasonable foreseeable future actions. Beyond the cumulative impacts analysis documented in the Groundfish PSEIS, no additional past, present, or reasonably foreseeable cumulative negative impacts on the biological and physical environment (including fish stocks, essential fish habitat, ESA-listed species, marine mammals, seabirds, or marine ecosystems), fishing communities, fishing safety, or consumers have been identified that would accrue from the proposed action. Cumulatively significant negative impacts on these resources are not anticipated as a result of the proposed action because no negative direct or indirect effects on the resources have been identified.

While there are no expected cumulative adverse impacts on the biological and physical environment, fishing communities, fishing safety, or consumers, there may be economic effects on the groundfish fishery sectors as a result of the proposed action in combination with other actions. As discussed below,

participants in the groundfish fishery sectors, specifically the Amendment 80 sector, have experienced several regulatory changes in the past several years that have affected their economic performance. Moreover, a number of reasonably foreseeable future actions are expected to affect the socioeconomic condition of these sectors.

3.4.7 Past and Present Actions

The cumulative impacts from past management actions are one of the driving forces for support of the proposed amendment. Other fisheries in the region have been subject to increasingly restrictive management measures, with exclusive fishing privileges being the basis for most actions. Some of the management actions that have contributed to the existing conditions are listed below:

- The Individual Fishing Quota program for the halibut and sablefish fisheries;
- Implementation of the AFA, which allocates the BSAI pollock fishery among specified trawl vessels;
- The BSAI crab rationalization program;
- The Central GOA rockfish pilot program, initially approved for two years but extended under reauthorization of the Magnuson-Stevens Act;
- Adoption of Amendment 79 and the GRS program;
- Adoption of the BSAI Amendment 80 program, which allocates and facilitates the formation of harvesting cooperative in the non-AFA trawl CP sector;
- Adoption of Amendment 85 which allocated Pacific cod among fishery sectors in the BSAI;
- Adoption of Amendment 90 that would allow cooperatives to exchange catch after delivery;
- Adoption of Amendment 92/78 which would remove trawl endorsements from LLP licenses that have not met minimum recent landing standards;
- Implementation of 2011 Steller sea lion RPA; and
- Amendment 88, which is a replacement for the Central GOA rockfish pilot program.

3.4.8 Reasonably Foreseeable Future Actions

The Council is considering action to allow listed AFA trawl C/Ps to replace Amendment 80 vessels. NMFS published a proposed rule to to implement Amendment 97 in the Federal Register on April 4, 2012 (77 FR 20339). Amendment 97 would authorize the owners of trawl C/P vessels authorized to participate in the Amendment 80 catch share program to replace these vessels with vessels that meet certain requirements. The Secretary approved Amendment 97 on June 6, 2012. Amendment 97 includes management measures that establish requirements for replacement vessels, such as a limit on the overall length of replacement vessels, measures to prevent replaced vessels from participating in Federal groundfish fisheries off Alaska that are not Amendment 80 fisheries, and specific catch limits known as Amendment 80 sideboards for replacement vessels. This action is necessary to promote safety-at-sea, by allowing Amendment 80 vessel owners to replace their vessels for any reason at any time and by requiring replacement vessels to meet certain U.S. Coast Guard vessel safety standards, and to facilitate an increase in the processing capabilities of the fleet to improve the retention and utilization of groundfish catch by these vessels.

Although the Council is considering an action that would recommend that NMFS allow AFA vessels to participate in the Amendment 80 sector as replacement vessels, it is unlikely that vessel replacement would have immediate impacts on the conservation and management of the Amendment 80 fisheries because there are a the limited number of existing vessels able to meet the minimum requirements to be

approved by NMFS as an Amendment 80 vessel and because of the delays caused by the planning and building, or rebuilding, of replacement vessels.

3.4.9 Summary of Cumulative Effects

As noted above, the cumulative effects of past management decisions are the primary reason for the proposed amendment. The proposed amendment, in itself, is not expected to adversely affect the fisheries sectors (harvesting and processing), market conditions, or communities. In removing the required minimum GRS for the Amendment 80 sector, it is difficult to predict how retention rates might change, but the sector has indicated that retention rates higher than those implemented in 2010 (80%) are not likely to be attainable in the future. 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) are likely to lead the Amendment 80 sector to maintain (or even improve on) current retention rates.

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 Fishery Conservation and Management Act (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 ventures if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

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

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

4.3 Reason for considering the proposed action

The purpose of this action is to remove the groundfish retention standard (GRS) for non-American Fisheries Act (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 GRS borne by the non-AFA trawl catcher/processors.

The North Pacific Fishery Management Council (Council) identified two reasons for removing the groundfish retention standard. 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 the analysis prepared for Amendment 79 and the GRS program differ substantially from measures employed in the implementation of the GRS program. 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 GRS regulatory standard, the Council has included a requirement for 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 proposed action is to remove the GRS 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 exclusive economic zone (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 for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska.

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 Bering Sea and Aleutian Islands management area (BSAI) maximum retainable amounts, and how they are calculated, are found at 50 CFR 679.20 (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 Gulf of Alaska 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. NMFS, under the U.S. Department of Commerce, is charged with carrying out the federal mandates with regard to marine fish, once they are approved by the Secretary. NMFS 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.

Earnings from all Alaska fisheries for 2009 were matched with the vessels that are members of the Amendment 80 sector and participated in the BSAI groundfish fisheries for that year. There are a total of 28 Amendment 80 qualified C/Ps 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 Small Business Administration rules. Because of the lack of complete data on ownership and affiliation, it was determined that preparation of an IRFA, in lieu of ‘certification’ of this action under RFA, was appropriate, thereby allowing for public comment on this aspect of the RFA analysis.

4.6 Recordkeeping and Reporting Requirements

This action is projected to have *de minimis* 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.

Under this action, NMFS would not require the individual owners and operators of non-AFA trawl C/P vessels participating in the limited access fishery to annually report groundfish retention performance. Instead, NMFS would prepare retention estimates for each vessel in the limited access fishery and present these data to the Council annually as part of the inseason management report.

4.7 Description of Significant Alternatives

An IRFA requires a description of any significant alternatives to the preferred alternative that would minimize any significant adverse economic impact of the proposed rule on small entities. The suite of potential actions includes two alternatives.

The Council’s preferred alternative, Alternative 2, has been selected as the action alternative. It would remove the GRS from the GRS program for the Amendment 80 sector. Revocation of the GRS will result in significant operational benefits and cost savings to all directly regulated entities. The Amendment 80 sector would be permitted to internally monitor the groundfish retention rates to meet Council retention

goals described in the analysis prepared for Amendment 79 and the GRS program, but avoid mandatory compliance standards and their associated costs. The action would also include a requirement for the sector, as a whole, 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 conclude that it appears that there are no alternatives to the proposed action that have the potential to accomplish the stated objectives of the MSA 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 of the Magnuson-Stevens Act 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 Council identified two reasons for removing the groundfish retention standard. First, the Council stated that the removal of the groundfish retention standard 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 differ substantially from measures employed in the implementation of the GRS program. These differences may result in substantially greater compliance costs than anticipated at the time of Council action.

In removing the required minimum GRS for the Amendment 80 sector, it is difficult to predict how retention rates might change, but the sector has indicated that retention rates higher than those implemented in 2010 (80%) are not likely to be attainable in the future. 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) are likely to lead the Amendment 80 sector to maintain (or even improve on) current retention rates.

Although monitoring and enforcement complications may prevent retention of the GRS regulatory standard, the Council is proposing a requirement for 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 Fishery Conservation and Management 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; and (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 alternatives on participants in the fisheries are evaluated in the RIR (Chapter 2). In summary, since this action is limited to removing the GRS for Amendment 80 catcher processors, there are no effects on participants in adjacent fisheries or fishing communities.

6 References

- NMFS, 2010a. Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Amendment 94 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668. February 2010. URL: <http://www.alaskafisheries.noaa.gov/index/analyses/analyses.asp>.
- NMFS, 2010b. NMFS. Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Groundfish Fisheries Section 7 Consultation - Biological Opinion. December, 2010 NMFS, Alaska Region P.O. Box 21668, Juneau, AK 99801. December, 2010. . URL: <http://www.alaskafisheries.noaa.gov/index/analyses/analyses.asp>.
- NMFS, 2007. Alaska Groundfish Harvest Specifications Environmental Impact Statement. NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668. January 2006. URL: <http://www.alaskafisheries.noaa.gov/index/analyses/analyses.asp>.
- NMFS, 2004. Alaska Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement. DOC, NOAA, National Marine Fisheries Service, AK Region, P.O. Box 21668, Juneau, AK 99802-1668. June 2004. URL: <http://www.alaskafisheries.noaa.gov/index/analyses/analyses.asp>.
- NMFS-AFSC, 2010. NOAA Technical Memorandum NMFS-AFSC-205 Catch Sampling and Estimation in the Federal Groundfish Fisheries off Alaska. J. Cahalan, J. Mondragon, and J. Gasper. February, 2010.
- NPFMC, 2009. Stock Assessment and Fishery Evaluation Report (SAFE) for the Groundfish Resources of the Bering Sea and Aleutian Islands. NPFMC, 605 W. 4th Avenue, Suite 306, Anchorage, Alaska.
- NPFMC, 2007. Final Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Proposed Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. NPFMC, 605 W. 4th Avenue, Suite 306, Anchorage, Alaska.
- NPFMC, 2005. Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Amendment 79 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area Minimum Groundfish Retention Standard. NPFMC, 605 W. 4th Avenue, Suite 306, Anchorage, Alaska.
- NPFMC, 1997. Final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis for Amendment 49 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area to Implement an Improved Retention – Improved Utilization Groundfish Management Program. National Marine Fisheries Service, Alaska Fisheries Science Center, Alaska Region.
- Northern Economics, Inc. (NEI), 2003. Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Amendment 75 to the Fishery Management Plan for Groundfish in the

Bering Sea and Aleutian Islands: Changes in IR/IU Flatfish Requirements. Draft for Secretarial Review.
Report prepared for the North Pacific Fishery Management Council.

7 List of Prepares and Persons Consulted

Jon McCracken, North Pacific Fishery Management Council (NPFMC)
Seanbob Kelly, NMFS
Mark Fina, Ph.D., NPFMC
Scott Miller, NMFS
Michael Fey, Alaska Fisheries Information Network
Lewis Queirolo, Ph.D., NMFS
Sue Salveson, NMFS
Glenn Merrill, NMFS

Persons Consulted

Josh Keaton, NMFS
Jason Anderson, Best Use Cooperative

G:\FMGROUP\Amendment 79 (BSAI) GRS\GRS Reg Amend\Proposed Rule\GRS RIREAIRFA
Secretarial Review Draft 9-11-2012.docx

R:\region\archives\2012\Sep\GRS RIREAIRFA Secretarial Review Draft 9-11-2012.docx

Skelly 3/4/2011

Jmccracken 3/7/2011, 5/6/2011, 7/14/2011

Lqueirolo 5/4/2011

Gaberle 7/8/2011