

# Work-plan for the 5-Year Review of Amendment 80

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## 1 Organization and Overview of the Work-Plan

This document is a draft work-plan for a 5-year review of Amendment 80 (AM80) to the Bering Sea/Aleutian Islands (BSAI) groundfish Fishery Management Plan (FMP).

AM80 was approved by the North Pacific Fishery Management Council (Council or NPFMC) in June of 2006, and enabled the formation of fishery cooperatives for trawl catcher/processors (CPs) that are not eligible under the American Fisheries Act (AFA) to participate in directed pollock fisheries. This group of Trawl CPs is hereafter referred to as the AM80 CPs or the AM80 Sector.

This work-plan is organized into several sections.

- Section 2 summarizes the requirements that a 5-year review of AM80 be developed. The conclusion from Section 2 is that AM80 is a Limited Access Privilege Program (LAPP) and that a 5-year review must be developed. The issues that need to be included in the 5-year review should be drawn from the goals and objectives of AM80 along with the goals, objectives and National Standards of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).
- Section 3 contains four subsections which provide for the basis for inclusion of particular issues within the 5-year review:
  - Section 3.1 examines the stated goals of AM80.
  - Section 3.2 reviews the goals and requirements of LAPPs as stated in the MSA as amended by Congress on January 12, 2007.
  - Section 3.3 examines the MSA National Standards for 5-year review issues.
  - Section 3.4 looks at the Council's June 10, 2006 motion approving AM80 for any additional elements that are candidates for inclusion in the 5-year review.
- Section 4 contains an annotated table of contents that is proposed for the 5-year review based on the elements discussed in Section 3.

The work-plan also has two attachments:

- Attachment 1 is the Council June 10, 2006 motion approving AM80.
- Attachment 2 contains Section 303A of the MSA.

## 2 Requirements for a 5-year Review

The Council's AM80 motion provides the first reference to a 5-year review of AM80. (The Council motion from June 10, 2006 is included as Attachment 1.) Component 6 of the Council motion established PSC allowances of halibut and crab. The language in Component 6 further states that "the halibut and crab PSC levels shall be reviewed by the Council during the fifth year of the program (implemented in 2008) and adjusted as necessary (through the normal amendment process)".

Additional guidance for development of 5-year reviews comes from the MSA. The MSA defines LAPPs in Section 303A. (Attachment 2 contains the full text of Section 303A—elements of the text in the attachment that are particularly relevant to the 5-year review are highlighted.) The requirements for LAPPs are listed in § 303A(c)(1) and include a requirement to ...

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

While the Council did not specifically use the term “LAPP” in their motion approving AM80,<sup>1</sup> it is clear that the Council was creating a program that conveyed harvesting privileges to an exclusive set of vessels, i.e. a LAPP. Further, when the National Marine Fisheries Service (NMFS) developed and approved the regulations implementing AM80 in September 2007, it makes the assertion that the AM80 has the effect of creating a Limited Access Privilege Program (LAPP).

The MSA does contain language at § 303A(i) exempting existing programs from certain LAPP Requirements if the action was approved by the Council no later than 6 months after the enactment date of the amended MSA. While the Council took its final action nearly seven months prior to enactment of the MSA, the MSA requires that LAPPs that are otherwise exempt from LAPP rules, **are not exempt** from the requirement to develop a 5-year review. Specifically, §303A(i)(1)(B) indicates that even though AM80 is exempt from other MSA requirements for LAPPs ...

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation

**For the reasons described above therefore, it is presumed that the MSA guidelines regarding 5-year reviews of LAPPs apply to the AM80 fishery—specifically that a “formal and detailed review” to determine “progress in meeting the goals of the program and this Act” (the MSA) will be required.**

### 3 Issues to Study in the 5-Year Review

In the following sections we examine the stated goals of AM80, language regarding LAPPs in the MSA, the 10 National Standards of the MSA, and finally specific AM80 program components, in order to develop comprehensive list of issues that could be included in the 5-Year review of AM80. The discussion of particular 5-year review issues in this section will be relatively general. Additional details on the assessment of particular issues will be provided in Section 4.

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<sup>1</sup> The term “Limited Access Privilege Program” is not found in any of the draft versions of the EA/RIR/IRFAs developed for Amendment,80, nor was the term contained in Final Secretarial Review version of the EA/RIR/FRFA published on September 7, 2007.

### 3.1 5-Year Review Issues from the Goals of Amendment 80

This section will summarize both stated and implicit goals of AM80 as determined from the September 2007 EA/RIR/FRFA for the Amendment. It is presumed that issues arising from these goals will be addressed in the 5-year review.

In December 2004, the Council approved the following Problem Statement for AM80:

*The Council's primary concern is to maintain a healthy marine ecosystem to ensure the long-term conservation and abundance of the groundfish and crab resources. To this end, the Council is committed to reducing bycatch, minimizing waste, and improving utilization of fish resources to the extent practicable in order to provide the maximum benefit to present generations of fishermen, associated fishing industry sectors, including the CDQ sector, communities, and the nation as a whole, while at the same time continuing to look for ways to further rationalize the fisheries. Focusing on reduction of bycatch and the attendant benefits of cooperatives and CDQ allocations in meeting bycatch reduction objectives are initial steps towards rationalization of the BSAI groundfish fisheries. Bycatch reduction measures for the Non-AFA trawl Catcher Processor sector is a priority focus in this step toward rationalization given this sector's historical difficulty in achieving acceptable bycatch levels. Allocations to this sector associated with cooperative management of catch and bycatch provide the opportunity for participants in this sector to mitigate the cost, to some degree, associated with bycatch reduction. In addition to reducing bycatch in one sector, assurance should be provided to minimize negative impacts on others.*

Six specific goals are articulated in the AM80 Problem Statement. Below we summarize the goal, and indicate briefly whether and how the attainment of goal could be addressed in the 5-year review.

**Goal 1:** To maintain a healthy marine ecosystem to ensure the long-term conservation and abundance of the groundfish and crab resources

*Discussion:* AM80 has led to the near elimination of the race for fish in the BSAI non-pelagic trawl fisheries. No longer forced by the race for fish to maximize catch and revenue per unit of time, participants in these fisheries have been much more amenable to gear changes and other behavioral changes that have reduced negative impacts of non-pelagic trawling on the ecosystem. Examples include the use of modified trawl doors and sweeps, and ongoing experiments with gears modifications and excluders and to reduce bycatch. The 5-year review will review these issues in qualitative manner.

**Goal 2:** To reduce bycatch—this a priority focus of AM80.

*Discussion:* AM80 subdivided the halibut PSC allocation to the trawl sectors; 875 mt are allocated to the BSAI Trawl Limited Access (TLA) sector with the remainder assigned AM80 Sector. AM80 also reduced the total PSC allocated to the trawl sector in general and the AM80 sector in particular. The AM80 Sector was allocated 2,525 mt in 2008, and the amount was reduced 50 mt each year through 2012. In years 2012 and beyond the AM80 PSC allocation of halibut PSC would be 2,325. AM80 also establishes a halibut prohibited species quota (PSQ) for CDQ harvests. The 5-year review will summarize halibut PSC in both the BSAI TLA and AM80 Sectors and in CDQ fisheries for AM80 species.

AM80 also sets an initial AM80 Crab PSQ percentage based on historical usage from 1995 – 2002 in all groundfish fisheries. The crab PSQs have been reduced 5 percent per year from 2009 – 2012, such that by 2012 PSQs for crab species are set at 80 percent of historical

usage. The 5-year review will summarize crab PSC in the BSAI TLA and AM80 Sectors, and in CDQ fisheries for AM80 species. The Crab PSQs under AM80 are abundance based limits. The 5-year review will document Crab PSC limits and use in both the AM80 and BSAI TLA sectors and in CDQ fisheries for AM80 species.

**Goal 3:** Minimize waste and improve utilization to the extent practical.

*Discussion:* Improving retention and utilization of the flatfish species was a major driver of AM80 and will be assessed in the 5-year review. A more detailed discussion of the issue follows the discussion of Goal #6 below.

**Goal 4:** To provide maximum benefit to present generations of fishermen, including CDQ groups, communities, and the nation as a whole.

*Discussion:* The primary benefits of the AM80 fisheries include:

- 1) incomes and employment to vessel owners, operators, crew-members, and CDQ groups;
- 2) income and employment to community members in related industries;
- 3) tax revenues to local and state governments; and
- 4) consumer benefits resulting from the production and supply of seafood products.

The 5-year review will document these benefits to the extent that they can be assessed using existing data, and secondary sources.

**Goal 5:** To further rationalize the fishery as a means to mitigate costs of achieving the goals of bycatch reduction and other program objectives.

*Discussion:* Reducing or eliminating the “race for fish” and its deleterious effects on the AM80 fisheries can be accomplished by rationalizing the fishery. The 5-year review will summarize the extent to which rationalization of AM80 fisheries has occurred. The review will also summarize (at least qualitatively) the benefits (and mitigation of costs) that can be attributed in whole or in part to the rationalization of the fishery.

**Goal 6:** To minimize negative impacts on other fisheries.

*Discussion:* The Council AM80 action included provisions that limit via sideboards the activities of AM80 vessels in the Gulf of Alaska. The 5-year review will include a summary of AM80 vessel activities in the GOA relative to their sideboards.

### **Improved Retention/Improved Utilization in AM80**

Section 1.2 of the EA/RIR/FRFA for AM80 provides a summary of actions leading up to AM80 with an emphasis on the Council’s objectives to improve retention and improve utilization (IR/IU) of the groundfish resources in the BSAI and GOA. In January 1998 NMFS implemented Amendment 49 to the BSAI Groundfish FMP (approved by the Council in September 1996). IR/IU required 100 percent retention of pollock and Pacific cod by all vessels fishing in the BSAI. IR/IU also required retention of all rock sole and yellowfin sole beginning January 1, 2003.

The Council recognized in 2000 that the Non-AFA Trawl CP sector would not be able meet the IR/IU standards for flatfish in the BSAI by 2003. In October 2002, the Council approved Amendment 75 which would delay the implementation of flatfish retention rules until June 2004. NMFS approved the delay, but disapproved of the date, and implemented regulations that removed references regarding rock sole and yellowfin sole with respect to IR/IU. This had the effect of creating an indefinite delay of the IR/IU program for flatfish. In June 2003, the Council approved Amendment 79—Groundfish Retention Standards (GRS)—as a replacement for the

IR/IU program for flatfish. GRS would require individual Non-AFA Trawl CPs, if they were > 125', to meet standards for retention of BSAI groundfish each year. The GRS for 2008 was set at 65 percent and by 2010 it would increase to 80 percent. In 2011 and each subsequent year, the GRS would be set at 85 percent.

In February 2013, NMFS implemented a regulatory amendment that removed the GRS in the BSAI. As part of the regulatory amendment, each AM80 cooperative is required to calculate and relate in its annual cooperative report its annual aggregate groundfish retention rate using the methodology initially established in regulation at § 679.27(j)(3). The additional reporting requirement was intended to provide information on the GRS rates achieved by the AM80 fleet. In addition, each AM80 cooperative must have a third party audit of the cooperatives GRS calculations.

A major goal of AM80 is facilitating bycatch reductions and retention improvements in the H&G trawl CP sector. To this end, it was presumed that multispecies cooperatives could lead to greater retention improvements, and could provide cost effective means for the sector the means to meet the GRS. The regulations implementing AM80 have the effect of superseding regulations proposed for implementation of The GRS. Under AM80 regulations the retention standards set by GRS will still apply to any AM80 cooperative as an aggregate. Vessels that do not join a cooperative must comply with GRS percentages on an individual basis.

With respect to the 5-year review, it is clear an assessment should include an accounting of groundfish retention and utilization based on GRS accounting rules for the years before and after implementation of AM80.

### 3.2 5-Year Review Issues from General Goals for LAPPs as Stated in the MSA

In §303A(c)(1) of the MSA, as amended, establishes requirements for LAPPs including the requirement for a 5-year review for all LAPPs. While AM80 is exempt from all of these requirements, except for the requirement to conduct a 5-year review, it may be reasonable to include assessments of applicable MSA requirements for LAPPs. The full text of §303A of the MSA is found in Attachment 2. The following list of questions summarizes issues derived from language in §303A that appear relevant to a 5-year review.

*Has the LAPP ...*

- 1) promoted capacity reductions?*
- 2) promoted fishing safety?*
- 3) promoted fishery conservation and management?*
- 4) promoted social and economic benefits?*
- 5) precluded attainment of excessive shares*

**Capacity Reductions:** Section 303A(c)(1)(B) addresses the issue of LAPPs role in reducing excess capacity. The 5-year review will provide an assessment of capacity measures for the five years before and after implementation of AM80. Capacity measures will include summaries of the number of vessels operating in AM80 fisheries as well as measures of capacity utilization such as number of actual operating weeks as a percentage of potential operating weeks. The 5-year review will also assess consolidation of the AM80 Sector as well as expansion of operations in the BSAI TLA Sector. The review will examine the effects of consolidation on vessels and

operations that remain in the AM80 fishery and on vessels and operations that are no longer participating.

**Fishing Safety:** Section 303A(c)(1)(C) addresses the issue of LAPP's role in improving fishing safety. While measures of fishing safety are not part of NMFS primary data collection process, it may be possible to assess changes in fishing safety using incident report data from the U.S. Coast Guard. The issue can also be assessed qualitatively based on interviews with vessel owners and operators.

**Fishery Conservation and Management:** Section 303A(c)(1)(C) address the issue of LAPP's role in promoting fishery conservation and management. This goal is considered too broad-based to include as a separate item in the 5-year review. It is likely that this goal can be assessed as an aggregate of other more discrete issues.

**Social and Economic Benefits:** Section 303A(c)(1)(C) address the issue of LAPP's role in promoting social and economic benefits. As with the fishery conservation and management, this goal is considered too broad-based to include as a separate element of the 5-year review. It is likely that this general goal can be assessed as an aggregate of other issues.

**Excessive Shares:** In §303A(c)(5)(D) the MSA addresses the question of excessive shares. AM80 includes provisions to preclude attainment of excessive shares—no person can hold more than 30 percent of the overall allocation to the AM80 Sector, and no vessel may harvest more than 20 percent of the AM80 Sector's total allocation in a given year. Owners or vessels that exceeded these caps in the initial allocation are “grandfathered” at those levels. Because data regarding initial allocations and QS allocations are published by NMFS, and these data report ownership information it is possible to track and report the shares assigned to a single person and to determine whether an excessive ownership share has been attained. However, due to confidentiality restrictions, it appears that the 5-year report will not be able to report on excessive shares of harvest at the vessel level except in a qualitative manner.

### 3.3 5-Year Review Issues Derived From MSA's National Standards

In this section we list the ten National Standards contained in the MSA and discuss whether any add potential issues to the 5-year review that haven't already been addressed.

**National Standard 1** - Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

*Discussion:* Following implementation of AM80, the Council has taken several additional actions to improve management of the BSAI bottom trawl fisheries. One of these is a proposed Flatfish Flexibility amendment to the BSAI FMP. The amendment addresses concerns that the attainment of the OY for three species of flatfish—rock sole, yellowfin sole, and flathead—could be improved if NMFS implemented the proposed amendment. The fact that the flatfish flexibility issue has arisen provides sufficient reason to address the issues in the 5-year review. The 5-year review will include summaries of harvests of AM80 species relative to TACs as an indicator of progress toward achieving optimum yield.

**National Standard 2** - Conservation and management measures shall be based on the best scientific information available.

*Discussion:* The Council's action in approving AM80 has had meaningful impacts on the use of the best scientific information available.

AM80 expands the amount of “scientific information” collected with its provisions to collect operating cost data in the form of an annual Economic Data Report (EDR) from the operators of all vessels eligible to participate in cooperatives under AM80 (i.e. the AM80 CPs). The 5-year review will examine these data, summarize them to the extent reasonable, and describe the ways that these data have been used.

In addition, any cooperatives that form under AM80 must provide to Regional Administrator of NMFS an Annual AM80 Cooperative Report. The Annual AM80 Cooperative Reports submitted to NMFS are considered confidential by NMFS because among other elements, they include vessel-by-vessel catch and discard information. AM80 Cooperatives have also been providing the Council a “public” version of the Cooperative Reports on a voluntary basis. It is intended that the 5-year review will examine both versions of the cooperative reports and describe in a qualitative manner their contribution to conversation and management of the AM80 fisheries.

While AM80 has increased the amount of “scientific” data that is collected with EDRs and Cooperative Reports, the formation of AM80 cooperatives combined with NMFS standards regarding confidentiality appears to have the potential to compromise the use of the “best scientific information available” in the management of fisheries by the Council. The following bullets summarize the issue:

- 1) NMFS confidentiality and disclosure standards hold that a minimum of three reporting entities must be included in any data point, if it is to be disclosed to the public, e.g. in a Council analysis.
- 2) NMFS has determined that data **submitted by a cooperative** is to be treated as if it is a single entity with respect to confidentiality. (For this reason, vessel-by-vessel catch data reported in an Annual AM80 Cooperative Report is considered Confidential.)
- 3) For catcher processors and the AM80 fishery in general, NMFS treats catch data submitted to the catch accounting system (CAS) as being submitted by the vessel on which the harvest was made, with the exception that vessel level data in a mothership fishery **may** be considered as being submitted by the mothership and not by the harvesting vessels.
- 4) For purposes of disclosure, it appears that NMFS does not have a hard-and-fast rule regarding the interplay between data submitted in one data collection and data submitted in another.

The use of the best available scientific information could be compromised under AM80 if an analyst chooses not to disclose certain data because information submitted in publically available cooperative reports combined with data submitted by the analyst would allow computation of the harvest amount for a single company.

The following example demonstrates the issue.

Data in the Pollock Conservation Cooperative report lists vessel-by-vessel harvests and PSC bycatch of AFA-CPs in the target fishery for yellowfin sole. Since these data are submitted by the cooperative they are considered to be from a single reporting entity. However, it appears that all of the remaining harvests in the BSAI TLA target fishery for yellowfin sole have been submitted by a single mothership operation, a single reporting entity from the disclosure perspective. If the 5-year report provides the total harvest or total halibut bycatch in the BSAI TLA target fishery for yellowfin sole, then using the cooperative report, it may be possible to determine the precise amount that the mothership operation has harvested. On the other hand, if the total halibut bycatch or target fishery amounts in the yellowfin sole

fishery are not reported, then the best available scientific data could not be utilized by the Council in their decision-making process.

In general, the AM80 5-year review are intending to provide information if three or more distinct permit holders submit the information, regardless of the whether “insider” information or anecdotal information would indicate that the distinct permit holders are in fact the same person. Further the 5-year report will presume that cooperatives do not submit CAS system information, and that data in cooperative reports will not influence whether or not CAS data is disclosed in the 5-year report. The analysts are however seeking the advice of the Council and NMFS in this matter.

**National Standard 3:** To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

*Discussion:* Nothing in AM80 changes this aspect of fishery management and therefore nothing related to this standard will appear in the 5-year review.

**National Standard 4:** Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

*Discussion:* The initial allocation of catch history under AM80 was determined to comply with this standard, and therefore no additional review of the fairness and equity of the allocation would appear to be relevant to a 5-year review. As indicated in Section 3.2 an assessment of excessive shares will be included in the review.

**National Standard 5:** Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

*Discussion:* The 5-year review will examine the question of efficient utilization of the fishery resources in many of the issues already described. For example, the relative efficiency of halibut PSC use would compare the groundfish value per unit of PSC. In addition, the EDR data can be used as an additional element in efficiency assessments. With the EDRs we can assess whether operating costs relative to revenues have changed during the years since implementation of AM80 (2008 – 2012). Since EDRs do not exist for years prior to implementation, alternative measure of operational efficiency will be utilized to compare pre-AM80 efficiency to post AM80 efficiency.

**National Standard 6:** Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

*Discussion:* AM80 contains provisions that allow unused allocations of Atka mackerel and Yellowfin sole to rollover from the BSAI TLA Sector to the AM80 Sector. There are also provisions approved under Amendment 85 to the BSAI FMP to rollover unused Pacific cod allocations among sectors. The 5-year review will summarize rollovers of applicable species.

**National Standard 7:** Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.



*Discussion:* This standard does not appear to generate issues relevant to the 5-year review. However, if the Council does wish to examine particular provisions with respect to this standard, the Council should specify the issue(s) of concern.

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

*Discussion:* This standard implies that a review of community impacts of AM80 should be included in the 5-year review. AM80 regulations (incorporating changes included in the MSA) increased the amount of CDQ allocations from 7.5 percent of the TAC to 10.7 percent of the TAC for the AM80 species (Atka mackerel, yellowfin sole, rock sole, flathead sole, and Pacific Ocean perch) and for arrowtooth flounder, Greenland turbot in the Bering Sea, and Pacific cod in the BSAI. CDQ allocations for sablefish and pollock are unchanged. AM80 also establishes and allocates a prohibited species quota (PSQ) to CDQs for halibut, crab and Chinook. The 5-year review will include a summary of CDQ harvests of AM80 species, plus arrowtooth and Greenland turbot.

In addition to an assessment of CDQ harvests, this standard implies that the 5-year review should summarize levels of involvement by particular communities important to the AM80 fisheries. For example, all of the AM80 vessels use Dutch Harbor as an operational base. The 5-year review will interview operators to verify this, and then at a minimum provide a qualitative assessment of the interactions between the AM80 fleet and this community. Similarly it appears most of the “headquarters offices” of the AM80 fleet are located in Seattle. This will be verified in the 5-year report and a summary of the types of activities and interactions that occur in Seattle will be summarized.

In addition it may be reasonable to utilize findings from an economic base analysis of the AM80 fleet that is nearing completion. The research is funded by NMFS Alaska Fisheries Science Center (AFSC), and investigators include Dr. Ed Waters an independent consultant from Beaverton OR, Dr. Chang K Seung (AFSC) and Marcus L. Hartley of Northern Economics. The paper uses available economic data from the 2008 – 2010 fisheries to assess direct and multiplier impacts of the AM80 fleet in Alaska, in the Pacific Northwest and in the rest of the US.

**National Standard 9:** Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

*Discussion:* An assessment of bycatch of prohibited species in the AM80 fisheries including harvests of the BSAI TLA sector will be included in the 5-year review. (See the discussion in Section 3.1 above for more details.) In addition to the incidental harvests of prohibited species, the 5-year review will summarize incidental harvest of groundfish species in each AM80 target fisheries.

**National Standard 10:** Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

*Discussion:* This issue can be included in the 5-year review and was addressed previously in Section 3.2 above.

### **3.4 5-Year Review Issues Drawn from the Council's AM80 Motion**

In this sub-section we describe one additional issue that should be included in the 5-year review derived from language in the Councils AM80 motion from June 2006.

#### **The Apportionment of Yellowfin Sole between the AM80 Sector and the BSAI TLA Sector**

Component 3 of the Council's AM80 motion provides a schedule for apportioning the ITAC of yellowfin sole between the AM80 and BSAI TLA Sectors. If the ITAC is greater than 125,000 mt then the AM80 Sector is allocated 60 percent and the BSAI TLA Sector is allocated 40 percent. At ITACs less than 125,000 mt the AM80 sector receives an increasing apportionment. If the ITAC is less than 87,500 mt, the AM80 Sector is allocated 93 percent of the ITAC.

The 5-year review will include an assessment of the effects of the apportionment of the yellowfin sole ITAC between the AM80 and BSAI TLA Sectors. In particular the 5-year review will discuss the re-entry of AFA-CPs into the yellowfin sole fishery, as well as the development of BSAI TLA mothership operations. It should be noted that because of confidentiality issues, the 5-year review will not be able to use data from NMFS Catch Accounting System (CAS) to disclose actual targeted yellowfin sole harvest amounts of the BSAI TLA Sector,<sup>2</sup> nor will it be able to report bycatch of halibut and crab in the fishery. As indicated earlier, NMFS treats vessels that are part of a cooperative as a single operator with respect to confidentiality. Therefore it appears that BSAI TLA harvests of yellowfin sole are made by only two operators: 1) members of the Pollock Conservation Cooperative (aka AFA-CPs); and 2) a single-owner mothership operation.

## **4 Proposed Table of Contents for the 5-Year Review of AM80**

In this section we take the issues raised in the previous section and develop a proposed table of contents for the 5-Year Review. The scope and the amount of detail that could be presented in a 5-year review has the potential to be extensive. The scope of work proposed here is quite broad, but is not exhaustive. It is intended that the review address the issues of concern in a relative straightforward manner, but given constraints on time and budget, the review will not be able to pursue all of the potential avenues from which any given issue could be approached. At this point it is anticipated that the main body of the 5-Year Review of AM80 will comprise approximately 100 pages.

### **o. Executive Summary**

The Executive Summary of the document will be developed so that it can be a "stand-alone" document. It will include summaries of the key finding of the 5-year review.

### **1. Introduction**

The introduction to the 5-year review would contain content similar to that provided in Section 2 and 3 of this work-plan. The introduction, as envisioned, would summarize the requirements to prepare the 5-year review and then step through the goals and objectives of Amendment 80, the

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<sup>2</sup> It may be possible using AFA and AM80 cooperative reports, and other secondary reports that have already been published to calculate and report these amounts.

MSA, and the National Standards to develop the set of issues that are included in the 5-year review.

The introduction would also include a road-map showing the organization of the remainder of the 5-year review. The order of items discussed in the 5-year review will be hierarchical in nature. For example, the Section 2 of the 5-year review will summarize the use and collection of scientific data in the AM80 fisheries. The information provided in this section has implications for almost all of the later sections. Section 3 will examine rationalization and the elimination of the race for fish. Rationalization has implications for discussions in later sections on fishing safety, and the goal to maintain a healthy ecosystem.

It should also be noted that the 5-year review will address the efficient utilization of fishery resources (National Standard 5) in many different sections. For example collection of EDRs, discussed in Section 2, allows the estimation of costs of AM80 harvests. Since harvest cost can be used to assess relative efficiency, Section 2 will contain a discussion related to efficient utilization of fishery resources. Similarly, Section 8 will contain a discussion and assessment of bycatch of halibut and crab in the AM80 fisheries. That section will summarize measures of the relatively efficiency of the use of halibut and crab resources within the AM80 harvest of groundfish.

## **2. The Use and Collection of Scientific Data in AM80 Fisheries**

This section will discuss new data collections under AM80, including economic data reports and Annual AM80 Cooperative reports. The section will also provide a review NMFS rules on the disclosure of scientific data, and the impact those rules may have on the ability of the Council to use the best scientific information available in their management decisions.

### **2.1. A review of disclosure rules and AM80 Cooperative data**

This issue is addressed before any of the others because, as indicated in the discussion of National Standard 2 in Section 3.2 above, disclosure rules have the potential to affect the data available in the 5-year review. It is currently the intent of the analysts to treat disclosure of CAS information independently from data in any of the Annual Cooperative Reports. However, because this is a sensitive and unsettled issue the 5-year review will describe the interpretation of the disclosure rules as they exist at the time of publication of the review.

### **2.2. Review of EDRs**

This section would provide a summary of EDR data and report yearly fleet-wide averages and trends for selected EDR elements. The review would also provide a qualitative summary of at least some of the analyses in which the AM80 EDRs have been used, as well as an assessment of the accuracy and usability of these data.

### **2.3. Review of Annual Cooperative Reports**

This section would summarize information provided in the Annual AM80 Cooperative Reports. The review would encompass the “confidential reports” submitted to NFMS Regional Administrator that include vessel-by-vessel data and the public versions that have been voluntarily supplied to the Council. It is envisioned that the summary would be qualitative in nature, and in particular would assess actual usage of these reports in the management of the AM80 fisheries.

## **3. Rationalization and Elimination of the Race for Fish**

This section of the 5-year review will focus on the rationalization impacts of the AM80. In general AM80 has led to the rationalization and the elimination of the race-for-fish in fisheries for which AM80 vessels have an exclusive allocation. Conversely, the separate allocation of

yellowfin sole for the vessels in the BSAI TLA Sector has led to a new “race-for-sole” between AFA-CPs and new mothership operations.

### **3.1. Rationalization and Consolidation Effects in the AM80 Sector**

In this section, the 5-year review will summarize the transition from a race for fish during the years prior to implementation of AM80; to partial rationalization from 2008 – 2010; and to full rationalization beginning in 2011.

#### **3.1.1. Numbers of Vessels and Owners Participating in the AM80 Fisheries**

In this section, the review will summarize the number of Non-AFA Trawl CP participating in the AM80 fisheries from 2002 – 2012. The review will also track ownership interests and consolidation of operations. Data from permits and the CAS along with interviews of current and past owners will be utilized.

#### **3.1.2. Outcomes for Owners and Crew no Longer Participating in the AM80 Fisheries**

In this section, the review will summarize, to the extent information are readily available, the outcomes for owners, operators and crew-members of vessels that left the fishery during the consolidation. Data from permits and the CAS, along with interviews of past owners and crewmembers, will be utilized.

#### **3.1.3. Capacity and Utilization of Capacity**

In this section, the review will assess the capacity and utilization of AM80 vessels from 2002 – 2012. The focus here will be on the potential capacity to harvest and process fishery resources compared to the actual utilization of that capacity. While there are many potential ways to measure capacity and utilization, the quantitative assessment in the 5-year review proposes to focus on the number of weeks that AM80 vessels reported harvests during the year. Other more qualitative measures will also be explored.

#### **3.1.4. Excess Capacity**

In this section the review will examine the question of excess capacity from the regulatory perspective. The Council’s AM80 motion and implementing regulations at § 679.92(a) state that a single person may not individually or collectively hold or use more than 30 percent of the AM80 Quota Shares (QS) units initially assigned to the AM80 sector. Persons that were initially allocated more than the QS use cap limit are grandfathered in and need not sell their excess QS. Similarly there is an ITAC use cap that limits a single vessel from harvesting more than 20 percent of the combined ITACs of the AM80 groundfish species in a given year.

The 5-year review will examine initial allocations of AM80 QS to persons as well as the QS ownership amounts reported at the beginning of the year. These data are available from NMFS at <http://alaskafisheries.noaa.gov/sustainablefisheries/amds/80/default.htm>. The 5-year review will also examine the question of whether any individual vessel has reached the 20-percent ITAC use cap using CAS data. However, because of disclosure rules it is unlikely that the 5-year review will be able to report actual amounts that have been attained, instead the assessment will be qualitative in nature.

#### **3.1.5. Other Impacts of Rationalization**

In this section, the 5-year review will utilize interviews with owners and operators to summarize other impacts of rationalization. Potential areas of interest include changes in harvesting strategies of vessels and cooperatives as well as the decision processes utilized

to determine harvest strategies. For example, one of the questions that would be addressed in this section would be whether operations have changed their approach to harvesting flathead sole; another might be how the operations determine when to switch from harvesting rock sole with roe to fishing for another species.

### **3.2. Creation of a Race for Yellowfin Sole in the BSAI TLA Sector**

Implementation of AM80 coupled with TACs in excess of 125,000 mt mean that sideboards on yellowfin sole harvests of AFA-CVs and AFA CPs have not been enforced since 2008. Elimination of the sideboards allows the AFA vessels to expand their operations in the yellowfin sole fishery if desired. In addition, at least one company with multiple AM80 CPs has developed a mothership operation that operates in the BSAI TLA sector. Apparently the operation utilizes non-AFA CVs with valid trawl licenses and endorsements to harvest yellowfin sole. The harvests are delivered to the mothership (which is also an AM80 CP, but only when it is harvesting the fish). Because the harvests are made by CVs the harvests are assigned to the BSAI TLA sector.

The 5-year review will provide additional details on these operations, including total yellowfin sole harvests in the target fishery for BSAI yellowfin sole, as well as total halibut and crab bycatch in the target fishery for yellowfin sole.

In any case, the fact that neither the AFA-CPs, or the mothership operation have an exclusive privilege to harvest a predetermined quantity means that the various operations must engage in a race-for-fish, if they want to maximize their revenues from the fishery.

#### **3.2.1. Numbers of vessels and owners participating in the fishery**

This section will summarize the number of non-AM80 vessels that were actively targeting yellowfin sole from 2002 – 2012. The report will also provide a qualitative summary of the other activities in which the active vessels are engaged. As indicated in earlier sections there may be issues with confidentiality in this assessment.

It should be noted that the total catch of yellowfin sole by vessels in the BSAI TLA sector includes incidental harvests of vessels targeting Pacific cod and pollock. There do not appear to be any constraints on reporting total catch of yellowfin sole in the BSAI TLA, but the number of vessels that either targeted yellowfin sole or had incidental harvests of yellowfin sole in the BSAI TLA is likely to be quite high, and is unlikely to be a meaningful measure of capacity.

### **4. Safety in AM80 Fisheries**

The 5-year review will examine the question of fishing vessel safety. The U.S. Coast Guard maintains the Online Incident Investigation Report that provides information regarding maritime incidents investigated by the U.S. Coast Guard under Part D of Title 46 of the U.S. Code. These published reports are limited to reportable marine casualties, as defined in Section 4.05 of Title 46 of the Code of Federal Regulations, that were closed after October 2002. It is believed that the 5-year review can provide a review of incidents from these data that are related to AM80 fisheries. In addition the 5-year review will utilize interviews with owners and operators of AM80 vessels to generate a qualitative assessment of changes in fishing vessel safety that may have occurred under AM80.

### **5. Maintain a Healthy Marine Ecosystem**

This section will discuss gear changes and experimental research into bycatch reductions that have been facilitated by the reduction and elimination of the race for fish following implementation of AM80.

## **6. Attainment of the Optimum Yield and the Ability to Account for Variations and Contingencies**

This section will examine the AM80 fisheries through the lens of National Standard 1 that requires FMPs to achieve optimum yield of fishery resources; and National Standard 6 that requires FMPs to account for variations and contingencies in the use of fishery resources. Information will be developed to compare total harvests from 2002 – 2012 by sector and species (AM80, BSAI TLA and CDQ) to the ABC, TAC, and to each sector apportionment.

In addition, this section will include a discussion of the flatfish flexibility plan that the Council approved in June 2013, along with the potential implications of the plan to aid in achieving optimum yield.

### **6.1. Yellowfin Sole Apportionments and Harvests**

The section would summarize AM80 and BSAI TLA Sector as well as CDQ harvests of yellowfin sole over the 10-year period from 2003 – 2012, consistent with current guidance on the disclosure of CAS data. The section would also include a summary of any rollovers of yellowfin sole from the BSAI TLA Sector to the AM80 Sector.

### **6.2. Harvests of Other Allocated AM80 Species**

This section would summarize AM80 Sector and CDQ harvests of Atka mackerel, Pacific Ocean perch, flathead sole, and rock sole. Total harvests would be compared to ABCs, TACs, while AM80 Sector harvests would be compared to the ITACs, and CDQ harvests would be compared to the CDQ apportionment. The section would also include a summary of rollovers if any have occurred.

### **6.3. Pacific Cod Apportionments**

This section would summarize Pacific cod harvests by sector across each of the Pacific Cod apportionments including the CDQ and fixed gear sectors. Attainment percentages would be calculated and the section would include a summary of rollovers. It should be noted that Amendment 85 to the BSAI FMP altered that allocation percentages of Pacific cod to the various sectors,<sup>3</sup> and included a specific allocation to the AM80 sector. Some of the changes in harvest amounts of Pacific cod after 2007 can be attributed to Amendment 85, but AM80 has also had impacts.

### **6.4. Harvests of flatfish species that are not specifically allocated to the AM80 sector**

This section would summarize total and targeted harvests and attainment levels of flatfish species that are not specifically allocated to the AM80 sector, but which no other trawl sector may target for lack of PSC apportionments. The following species would be examined in this section: 1) arrowtooth flounder; 2) Kamchatka flounder; 3) Alaska plaice; 4) other flatfish; and 5) Greenland turbot.

### **6.5. Sideboards on Expansion in the Gulf of Alaska**

This section will summarize harvests of the AM80 vessels in the Gulf of Alaska (GOA) using CAS data. Currently the intent of the analysts is that information reported in cooperative reports will have no bearing on the disclosure of CAS data used in the 5-year review.

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<sup>3</sup> Amendment 85 was approved by the Council at its April 2006 meeting. The Final Rule implementing the Amendment was published on September 4, 2007.

## **6.6. A Summary of the Flatfish Flexibility Plan**

The flatfish flexibility plan was approved by the Council in June of 2012. The amendment addresses concerns that the attainment of the OY for three species of flatfish—rock sole, yellowfin sole, and flathead—could be improved if NMFS implemented the proposed amendment. The 5-year review will provide a qualitative summary of the amendment.

## **7. Retention and Utilization of Harvested Resources**

This section of the report will summarize total, retained, and discarded catch in the AM80 target fisheries by year from 2002 – 2012. The report will include data on incidental catches of other groundfish with the AM80 target fisheries. The report will also summarize the production by product type and 1<sup>st</sup> wholesale values as a means measuring the utilization of harvested resources. The overall value generated per ton of groundfish harvest by fishery (and over all fisheries) will provide measures of the “efficient use of fishery resources” relative to National Standard 5.

### **7.1. Groundfish Retention Standards**

The 5-year review will include summaries of groundfish retention as measured by the formula used to assess attainment of GRS requirements. These data are reported in the Annual AM80 Cooperative Reports that are voluntarily provided to the Council. In the years prior to formation of the second cooperative (2008 – 2010) calculations of GRS equivalents for the AM80 limited access fleet will be estimated by the analysts, although confidentiality restrictions may preclude release of the estimates.

## **8. Bycatch of halibut and crab in the AM80 and BSAI TLA Sectors**

This section of the AM80 5-year review will summarize PSC of halibut and crab in the AM80 fisheries from 2002 – 2012. It is anticipated that at a minimum total PSC, and PSC rates as a percentage of target catches will be reported for each target fishery. For crab, total PSC and rates will be reported in the various crab bycatch management zone. The review will also include a summary of PSC limits, rollovers of PSC limits, and overall usage of PSC limits. The 5-year report will also include estimates of the 1<sup>st</sup> wholesale value of groundfish products per unit of PSC in each of the AM80 target fisheries.

As mentioned in earlier discussions regarding confidentiality, it may not be possible to report all PSCs in the BSAI TLA Sector in the yellowfin sole target fishery. For yellowfin sole fisheries, it does appear that the 5-year review will be able to provide information for the two sectors combined, but it may not be able to report totals for the BSAI TLA and the AM80 Sectors individually.

## **9. Maximization of Benefits Generated by the AM80 Fishery**

This section will summarize measures of benefits generated by the AM80 fisheries. It is anticipated that calculations of net revenues to AM80 vessels can be provided for the years 2008 - 2012. These would be developed for the fleet as a whole using EDR data and estimates of total 1<sup>st</sup> wholesale value developed in Section 7. Whether or not the 5-year review can provide these estimates will depend of the review of EDR data (see Section 2) and the analyst’s assessment usability and accuracy of the cost data. Concerns and caveats regarding these estimates will be clearly stated.

The section will also report estimates of total employment and payments to labor on AM80 vessels from 2002 - 2012. These estimates will utilize observer reports of crew complements, EDR data and interviews with vessel owners and operators.

## **10. Community Impacts of AM80**

This section will describe in general terms the community impacts of the AM80 fisheries in Dutch Harbor—the community out of which the vessels operate during the fishing year; and in Seattle—the community in which most of the vessels undertake maintenance and shipyard work and the community in which most of the company are based. Additionally, the 5-year review will assess whether other communities in Alaska or the Lower 48 States are affected by activities of the AM80 or the BSAI TLA Sectors. It is known, for example, that the owners of one of the AM80 companies are based Rockland, ME, and that Adak has been utilized by vessels from one or both of these sectors.

This section will also provide estimates of fishery business taxes paid to the State of Alaska by AM80 vessels

### **10.1. Economic Impact Model Results**

This section will summarize estimated economic impacts (multiplier effects) of the AM80 fleet from a soon to be released report funded by the AFSC. Investigators included Dr. Ed Waters an independent consultant from Beaverton OR, Dr. Chang K Seung of AFSC, and Marcus Hartley of Northern Economics. The paper uses EDR from the 2008 – 2010 fisheries in conjunction with a previously developed input/output model to assess direct and multiplier impacts of the AM80 fleet in Alaska, the Pacific Northwest and in the rest of the US.



## Amendment 80 – Council Motion (Final Action) – June 10, 2006

The Council adopts the following components and options for analysis as a Preferred Alternative:

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

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

**Component 2** CDQ allocations for each primary target (Component 1) species in the program shall be removed from the TACs prior to allocation to sectors at percentage amounts equal to 10%

For Amendment 80 species, the reserves would be set at 10% of the TAC and all would be allocated to the CDQ reserves.

CDQ allocations for secondary groundfish species (except Pacific cod) taken incidental in the primary trawl target fisheries shall be removed from the TACs prior to allocation to sectors at percentage amounts equal to 10%.

**Component 3** Identifies the sector allocation calculation (after deductions for CDQs, ICAs, and other existing fishery allocations, i.e., Atka mackerel jig) for the Non-AFA Trawl CP sector. The remaining portion of the primary species TAC included in this program would be allocated to the BSAI trawl limited access fishery.

For purpose of allocation to the Non-AFA Trawl CP sector, each primary species allocation is:

Yellowfin Sole	<u>ITAC (mt)</u>	<u>H&amp;G/Limited Access</u>
	< = 87,500	93% / 7%
	87,500 – 95,000	87.5% / 12.5%
	95,000 – 102,500	82% / 18%
	102,500 – 110,000	76.5% / 23.5%
	110,000 – 117,500	71% / 29%
	117,500 – 125,000	65.5% / 34.5%
	>125,000	60% / 40%

AFA Yellowfin sole sideboards are removed when the Yellowfin sole ITAC is 125,000 mt or greater. Rock Sole 100%

Flathead Sole 100%

Atka Mackerel	98% in 541/EBS and 542, in the first year of the program, decreasing by 2% increments over 4-yr period to 90%. 100% in 543.
AI POP	95% in 541 and 542 in the first year of the program, decreasing to 90% in the second year of the program. 98% in 543.

Allocations would be managed as a hard cap for the H&G sector, and for the Non H&G sector, an ICA would be taken off the top to accommodate incidental bycatch by the non-H&G sector. AFA vessel sideboard amounts will be determined after CDQ reserve amounts are deducted from TAC.

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

Target species, PSC, and ICA rollover: any unharvested portion of the Amendment 80 target species or unharvested portion of PSC or ICA in the limited access fishery that is projected to remain unused shall be rolled over to vessels that are members of Amendment 80 cooperatives.

Any roll over of halibut PSC to the Non-AFA Trawl CP sector shall be discounted by 5%. That is, if 100 mt of halibut is available for roll over, then 95 mt of halibut would be re-allocated to the Non-AFA Trawl CP sector. Once the initial allocation has been determined, the Non-AFA Trawl CP sector may re-allocate the PSC among the target species.

NMFS shall perform a review on or before May 1 and August 1 each year, and at such other times after August 1 as it deems appropriate. In making its determination, NMFS shall consider current catch and PSC usage, historic catch and PSC usage, harvest capacity and stated harvest intent, as well as other relevant information.

**Component 4** Elements of Component 4 were integrated in Component 3 with selection of percentages.

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

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

**Component 6** PSC allowances of halibut and crab to the Non-AFA Trawl CP Sector. The halibut and crab PSC levels shall be reviewed by the Council during the fifth year of the program and adjusted as necessary (through the normal amendment process).

***Halibut PSC***

BSAI Trawl limited access sector: 875 mt

Non-AFA Trawl CP sector: 2525 mt initial allocation with a 50 mt reduction in the second, third, fourth and fifth year after program implementation. In the sixth year and

subsequent years, the allocation would be 2325mt unless adjusted. In the third year only, the 50 mt reduction would be reallocation to the CDQ/PSQ reserve program.

*Crab PSC*

Allocation of crab PSC to the non-AFA Trawl CP sector shall be based on the % of historic usage of crab PSC in all groundfish fisheries from 2000-2002 for red king crab (62.48%) and from 1995 to 2002 for opilio (61.44%) and bairdi (zone 1: 52.64% and zone 2: 29.59%) (resulting percentages are reported in the far right column in Table 3-43 May 5, 2006 EA/RIR/IRFA). The initial allocation will be reduced by 5% per year starting in the second year until the Non-AFA Trawl CP sector is at 80% of their initial allocation. Trawl limited access sectors shall receive an allowance of the sum of the combined AFA CV/CP sideboards. (Note – basing usage on a % of annual PSC limits, results in a calculation that is crab abundance based.)

If Amendment 85 is implemented prior to Amendment 80, the Non-AFA Trawl CP sector would receive an allocation of PSC in accordance with Amendment 85. Upon implementation of Amendment 80, no allocation of PSC will be made to the Non-AFA Trawl CP sector under Amendment 85. ).

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

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

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

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

Restrict LLPs that are used for eligibility in Amendment 80 (either to be included in the Non-AFA CP sector or to be used in Amendment 80 cooperative formation) from being used outside of the Amendment 80 sector, except that any eligible vessel which is authorized to fish Pollock under the AFA would still be authorized to fish under the statute.

Only history from eligible vessels will be credited in the program. The catch history credited to an eligible vessel will be catch history of that vessel. The catch history credited to an eligible vessel for the first license assigned to that vessel will only be the catch history of the eligible vessel. In the event of the actual total loss or constructive total loss of a vessel, or permanent inability of a vessel to be used in the Program as documented by the vessel owner and NMFS either before or after the qualifying period, the vessel owner may transfer the catch history of the vessel that meets the non-AFA and catch criteria of Component 7 from that vessel to the LLP license that was originally issued for that vessel. Any such license assigned to an eligible vessel will be credited with the catch history during the Component 10 period of the eligible non-AFA trawl CP from which the license arose, except that no history can be assigned to more than one vessel at a given time. Once the catch history has been assigned to the license, that license must be used on an eligible Non-AFA Trawl CP vessel.

**Component 8** Component 8 establishes the number of vessels required before the cooperative is allowed to operate. No later than November 1 of each year, an application must be filed with NOAA fisheries by the cooperative with a membership list for the year.

In order to operate as a cooperative, membership must be comprised of at least three separate entities (using the 10% AFA rule) and must be:

- Option 8.2 At least 30% of the eligible vessels, including LLP licenses with associated catch history for an eligible vessel that has been transferred to that LLP license under Component 7.

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

Option 9.1 Catch history is based on total catch

Assign PSC within the sector to allocated target species and Pacific cod based on the average use of PSC in each target species from the years 1998-2004, expressed as a percent of the total PSC allocation to the sector.

Each eligible vessel will then receive an allocation percent of PSC for catch of allocated target species and Pacific cod equal to its proportion of the catch history of the allocated fishery.

This PSC allocation will not change from year to year (i.e., will not fluctuate annually with the TAC).

**Component 10** Determines which years of catch history are used for establishing cooperative allocations. The allocation of groundfish between the cooperative and those eligible participants who elect not to join a cooperative is proportional to the catch history of groundfish of the eligible license holders included in each pool. Applicable PSC limits are allocated between the cooperative and non-cooperative pool in same proportions as those species that have associated PSC limits. The catch history as determined by the option selected under this component would be indicated on the Sector Eligibility Endorsement, which indicates the license holder's membership in the Non-AFA Trawl CP sector. The aggregate histories would then be applied to the cooperative and the non-cooperative pool.

Notwithstanding the qualifying history of the vessel, a qualified vessel that has not fished after 1997 will receive an allocation under the program of no less than:

0.5 percent of the yellowfin sole catch history

0.5 percent of the rock sole catch history

0.1 percent of the flathead sole catch history

For all other qualified vessels, the allocation will be based on 1998 – 2004, but each vessel drops its two lowest annual catches by species during this period.

For AI POP, all vessels will receive their allocation equally in 541, 542 and 543.

Each vessel will receive its historic share of the sector's Atka mackerel allocation based on component 10 (all areas combined). Vessels less than 200' in length having less than 2% of the sector's Atka mackerel history ("Non-mackerel vessels") will receive their allocation distributed by area according to each individual vessel's catch distribution during the component 10 years. The remainder of EBS/541, 542 and 543 sector allocation after "Non-mackerel vessels" have been removed will be allocated to vessels that are greater than 200' in length or have more than 2% of the sector's Atka mackerel allocation ("mackerel vessels"). Mackerel vessels will receive their respective percentages (adjusted to 100%) equally in each area.

In the event that the Non-AFA Trawl CP sector receives an exclusive allocation of Pacific cod, that allocation will be divided between cooperatives and the sector's limited access fishery in the same manner (and based on the same history) as the division of the other allocated species within the sector.

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

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

Suboption 11.2.2 Persons (individuals or entities) that exceed the cap in the initial allocation would be grandfathered based on catch history held at the time of final Council action.

Option 11.3 No vessel shall harvest more than 20% of the entire Non-AFA Trawl CP sector allocation.

Suboption 11.3.1 Vessels that are initially allocated a percentage of the sector allocation that is greater than the vessel use cap shall be grandfathered at their initial allocation based on catch history held at the time of final Council action.

If a buyback program proceeds, any person or vessel that exceeds a cap due to the buyback removing catch history would be grandfathered in at that new level.

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

Option 12.3 In the BSAI, Pacific cod will be managed under existing sector apportionments, with rollovers, until new Pacific cod sector allocations are implemented. Pacific cod will be allocated between the cooperative and non-cooperative sub-sectors based on the same formula as Component 10.

In the BSAI, management of unallocated species should

remain status quo. Option 12.4 GOA sideboard provisions

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

Suboption 12.4.1 Vessels associated with LLPs that have Gulf weekly participation of greater than 10 weeks in the flatfish fishery during the years defined in Component 10 will be eligible to participate in the GOA flatfish fisheries.

Suboption 12.4.2 Non-AFA trawl CP vessel(s) that fished 80% of their weeks in the GOA flatfish fisheries from January 1, 2000 through December 31, 2003 will be exempt from GOA halibut sideboards in the GOA. Vessel(s) exempted from Amendment 80 halibut sideboards in the GOA and may participate fully in the GOA open-access flatfish fisheries. Vessel(s) will be prohibited from directed fishing for all other sideboarded species in the GOA (rockfish, Pacific cod, and Pollock). The history of this vessel will not contribute to the Non-AFA Trawl CP sideboards and its catch will not be subtracted from these sideboards.

Suboption 12.4.2.1 Vessel(s) exempted from Amendment 80 GOA sideboards may lease their BSAI Amendment 80 history.

Suboption 12.4.3 Gulf-wide halibut sideboards for the deep and shallow complex fisheries would be established by season based on the actual usage of the Amendment 80 qualified non-AFA trawl sector for the years defined in Component 10. That calculation results in the following percentages, less the percentage attributed to GOA PSC sideboard exempt vessel:

GOA Halibut PSC Sideboard Limits for Non-AFA Trawl CP Sector (as percent of GOA total sideboard limit, ie, 2,000mt in 2006)						
	Season 1	Season 2	Season 3	Season 4	Season 5	Total
Deep Water Trawl Fisheries	2.84%	11.92%	11.60%	n/a	Combined w/shallow water	26.36
Shallow Water Trawl Fisheries	0.85%	1.92%	2.06%	1.73%	5.15%	11.71%

Note: The F/V Golden Fleece data still needs to be deducted from the above table.

Suboption 12.4.4 GOA Pollock, Pacific cod, and directed rockfish species (POP, NR and PSR) sideboards for the Amendment 80 qualified non-AFA trawl CP sector would be established using the years defined in Component 10, where catch is defined as retained catch by Gulf area as a percentage of total retained catch of all sectors in that area.

Suboption 12.4.5 While the CGOA rockfish demonstration program is in place, the CGOA rockfish demonstration program takes precedence. The demonstration program would remove the need for catch sideboards for the CGOA directed rockfish species. The Amendment 80 CPs deep halibut mortality sideboard cap for the

3rd seasonal allowance (in July) will be revised by the amount of the deep complex halibut mortality allocated to the rockfish demonstration program for the Amendment 80 qualified non-AFA trawl CP sector while the demonstration program is in effect.

- Suboption 12.4.6 Sideboards apply to vessels (actual boats) and LLPs used to generate harvest shares that resulted in allocating a percentage of the Amendment 80 species TACs to the non-AFA trawl CP sector. The intent is to prevent double-dipping with respect to GOA history related to sideboards.
- Suboption 12.4.7 On completion of a comprehensive rationalization program in the GOA, any sideboards from the BSAI Amendment 80 plan amendment will be superseded by the allocations in the GOA rationalization program.
- Suboption 12.4.8 GOA PSC and groundfish sideboard limits will be established. An aggregate sideboard limit for each sideboarded species will be established for all vessels subject to sideboards

### ***Other Elements of Amendment 80***

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

- The cooperative program developed in Amendment 80 would not supersede pollock and Pacific cod IR/IU programs.
- The Groundfish Retention Standards (GRS) (Amendment 79) would be applied to the cooperative as an aggregate on an annual basis and on those vessels who did not join a cooperative as individuals.
- Non-AFA Trawl CP sector participants that did not elect to join a cooperative would be subject to all current regulations including all restrictions of the LLP and the GRS if approved.
- All qualified license holders participating in the fisheries of the Non-AFA Trawl CP sector for Amendment 80 species would need to have trawl and catcher processor endorsements with general licenses for BSAI and the additional sector eligibility endorsement. Length limits within the license would also be enforced such that any replacement vessel entering the fishery would not exceed the Maximum Length Overall (MLOA) specified on the license.
- Permanent transfers of an eligible vessel, its associated catch history, and its permit would be allowed. Eligible vessels, their associated catch history, and a sector eligibility endorsement would not be separable or divisible. In the event of the actual total loss or constructive total loss of a vessel, or permanent inability of a vessel to be used in the Program, catch history would be attached to the license that



arose from the vessel and would not be separable or divisible. All transfers must be reported to NOAA fisheries in order to track who owns the sector eligibility permit and harvest privileges of a vessel. The purchaser must be eligible to own a fishing vessel under MarAd regulations or any person who is currently eligible to own a vessel.

- Annual allocations to the cooperative will be transferable among Non-AFA Trawl CP cooperative members. Such transfers will not need NOAA Fisheries approval.
- Annual allocations to the cooperative will be transferable among Non-AFA Trawl CP cooperatives. Inter-cooperative transfers must be approved by NOAA Fisheries.
- Any non-trawl or non-BSAI catches by qualified license holders that are considered part of the Non-AFA Trawl CP sector will not be included in the defined cooperative program. In addition, these non-trawl or non-BSAI catches allocated to the Non-AFA Trawl CP sector would not necessarily be excluded from other rationalization programs.
- Catch history used for allocation and eligibility purposes will be legal and documented catch.
- Disposition of groundfish species not allocated to the Non-AFA Trawl CP sector will not change as a result of the cooperative program developed in Amendment 80.
- Bycatch limits for non-specified species or marine resources would not be established. However, if the Council deems that bycatch is unreasonable, specific regulations to minimize impacts would be considered.
- AFA Halibut PSC Sideboard limits will be fixed at the 2006/2007 level. (The intent is to fix the AFA halibut sideboard amounts, in metric tons at the level listed in the 2006/2007 NMFS reports.)
- The allocation of halibut PSC between the AFA trawl CP and trawl CV sector under Amendment 85 will incorporate the reallocation of halibut PSC to the Amendment 80 sector.
- The cooperative(s) would need to show evidence of binding private contracts and remedies for violations of contractual agreements would need to be provided to NOAA Fisheries. The cooperative would need to demonstrate adequate mechanism for monitoring and reporting prohibited species and groundfish catch. Participants in the cooperative would need to agree to abide by all cooperative rules and requirements.
- Specific requirements for reporting, monitoring and enforcement, and observer protocols will be developed in regulations for participants in the Non-AFA Trawl CP sector. These monitoring and enforcement provisions are described in Section 3.3.7 of the April 2006 EA/RIR/IRFA. Revisions to 3.3.7 have been described in March 27, 2006 letter from NMFS to the Council. Modifications to the monitoring and enforcement requirements described in the current version of the EA/RIR/IRFA necessary to accommodate changes in GOA sideboard provisions, or other issues, will be incorporated in the Secretarial review draft of the EA/RIR/IRFA.
- A socioeconomic data collection program as described in section 3.2.12.15 of the May 5, 2006 draft EA/RIR/IRFA for Amendment 80 will be implemented for the non-AFA

trawl CP sector. The program will collect economic data from the non-AFA trawl CP sector similar to the types of cost, revenue, ownership, and employment data included in the draft Cost, Earnings and Employment Survey in Appendix 3 of the May 5, 2006, draft EA/RIR/IRFA prepared for Amendment 80.

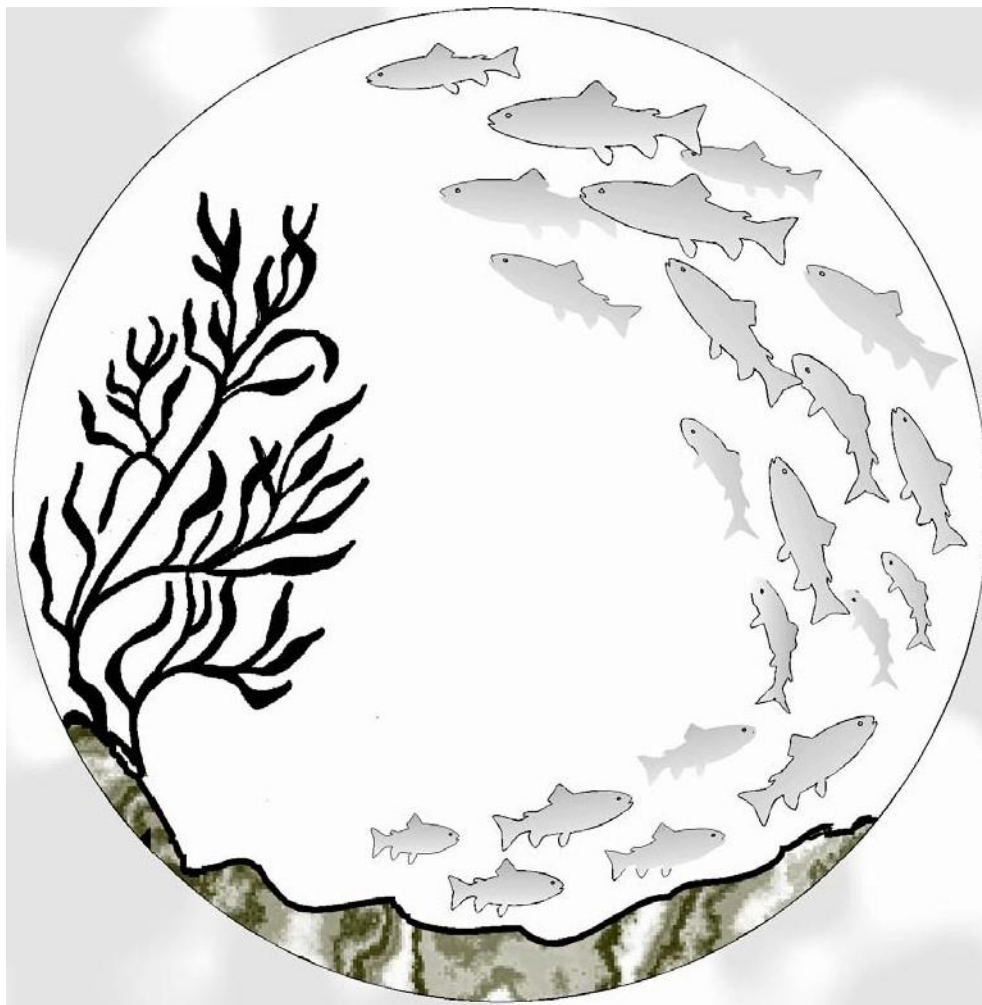
Data will be collected on a periodic basis. The purpose of the data collection program is to understand the economic effects of the Amendment 80 program on vessels or entities regulated by this action, and to inform future management actions. The data is needed to assess whether Amendment 80 addresses some goals in the problem statement to mitigate, to some degree, the costs associated with bycatch reduction. Data will be used by Council and agency staff, recognizing that confidentiality is of extreme importance.

Economic data collected under this program include employment data by vessel collected to determine the labor amounts and costs for the sector. In addition, revenue and cost data by vessel will be collected to evaluate trends in returns to the sector that may be compared with elements of the Amendment 80 program, such as bycatch reduction measures.

Attachment 2



# **Magnuson-Stevens Fishery Conservation and Management Act: Section 303A—Limited Access Privilege Programs**



U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service



P.L. 109-479, sec. 104(b), MSA § 303 note

16 U.S.C. 1853 note

**EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.**—The amendment made by subsection (a)(10)<sup>16</sup>—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

**109-479****SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.****16 U.S.C. 1853a**

(a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) **NO CREATION OF RIGHT, TITLE, OR INTEREST.**—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

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<sup>16</sup> Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

- (i) fishing safety;
- (ii) fishery conservation and management; and
- (iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

(A) the fishery has historically processed the fish outside of the United States; and

(B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

(I) be located within the management area of the relevant Council;

(II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and

(IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

(B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
- (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]<sup>17</sup> members contribute; and
- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

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<sup>17</sup> So in original.



(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the administrative and fiduciary soundness of the association; and
- (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

- (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
- (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

- (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
- (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

## (g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

## (i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUND FISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

MSA §§ 303A note, 304

**P.L. 109-479, sec. 106(e), MSA § 303A note**

**16 U.S.C. 1853a note**

**APPLICATION WITH AMERICAN FISHERIES ACT.**—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

**P.L. 104-297, sec. 108(i), MSA § 303 note**

**EXISTING QUOTA PLANS.**—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

## SEC. 304. ACTION BY THE SECRETARY

16 U.S.C. 1854

### 104-297

#### (a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.