

OREGON DEPARTMENT OF FISH AND WILDLIFE'S COMMENTS REGARDING  
AMENDMENT 15 PROTECTION FROM ADVERSE AMERICAN FISHERIES ACT (AFA)  
IMPACTS

The Oregon Department of Fish and Wildlife (ODFW) supports immediate completion of Amendment 15 to the West Coast Groundfish Fishery Management Plan, affording protection from AFA designated vessels that have not previously participated in the traditional shoreside Pacific whiting fishery. Delaying the protection required by AFA in this amendment will result in immediate adverse impacts to the shoreside Pacific whiting fishery, as well as other Pacific Coast groundfish fisheries. The Council stated their intent in the advanced notice of proposed rulemaking (FR Vol. 64, No. 226, Wednesday, November 24, 1999).

The American Fisheries Act (AFA) was enacted in 1998 to reduce the harvest capacity in the Alaska pollock fishery by retiring nine Bering Sea catcher/processors. It also defined conditions for creating fishery cooperatives in the pollock fleet. Vessels that participate in such cooperatives are likely to have increased flexibility in arranging their fishing schedules (vs. vessels that participate in a "derby" style fishery); this allows them to consider entering additional fisheries (including the Pacific Coast Groundfish Fishery) that occur during the traditional Alaska pollock season.

Under the requirements of the 1998 Act, (PL 105-277, Section 211 (c))

*(3) Fisheries other than North Pacific:*

*A) By not later than July 1, 2000, the Pacific Fishery Management Council established under section 302(a)(1)(F) of the Magnuson-Stevens Act (16 U.S.C. 1852 (a)(1)(F)) shall recommend for approval by the Secretary conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by this Act or by any fishery cooperative in the directed pollock fishery.*

*B) If the Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation implement adequate measures including, but not limited to, restrictions on vessels which harvest pollock under a fishery cooperative which will prevent such vessels from harvesting Pacific groundfish, and restrictions on the number of processors eligible to process Pacific groundfish.*

In the years subsequent to enacting AFA, the Council developed alternatives to afford the groundfish fishery the protection required by AFA (1999 – 2001). This process was abandoned late in 2001. A brief history is relevant:

- **Late 1999** - the Pacific Fishery Management Council adopted participation requirements and unanimously voted to initiate the development of recommendations to restrict AFA

qualified vessels from participating in the Pacific Coast groundfish fishery (FR Vol. 64, No. 226, Wed, Nov 24, 1999, Advanced Notice of Proposed Rulemaking).

- **April 2000** - the Council reviewed alternatives for providing protection to Pacific Coast groundfish fisheries and its participants from AFA qualified vessels and processors that failed to meet minimum participation requirements in the Pacific Coast groundfish fisheries. In addition, the Council considered whether to restrict, suspend, or void permits registered to AFA-qualified vessels if the vessels did not meet the participation requirements.
- **September 2000** - the PFMC, as authorized by the AFA, considered management measures to recommend to the Secretary of Commerce to protect the Pacific Coast groundfish fisheries from adverse impacts caused by the AFA (FR Vol. 65, No. 178, Wed, Sept 13, 2000, Advanced Notice of Proposed Rulemaking). The intended effect of this action was to discourage speculative entry or increased effort in the Pacific Coast groundfish fisheries by entities eligible for AFA.
- **September 2001** – The Council selected a preferred alternative that restricted participation by AFA vessels that did not meet qualifying requirements and restricting the use of limited entry permits held by those vessels. It was believed this would provide the greatest protection against harm resulting from increased effort shift by AFA vessels. Restricting both the vessel and the limited entry permit associated with that vessel reduced the likelihood that an AFA beneficiary would be able to participate in West Coast groundfish fishery to the detriment of the current fishery participants.

Subsequent to this, in March of 2002, the Council voted not to continue to work on the AFA sideboard process, but voted to support a risk assessment at the November 2002 meeting to assess the potential harm of continued no action or of allowing NMFS to address the restrictions at that time. This delay was due to a workload concern in dealing with an urgent need to address overfished species rebuilding impacts on the entire fleet.

An assessment was not conducted in November of 2002, but the Council did not have information that indicated a shift in effort into Pacific Coast fisheries from AFA vessels until the 2006 Pacific whiting season. At that time, three new AFA participant vessels with no previous record of landings in the shoreside fishery prior to AFA, participated in the shoreside fishery. A single AFA vessel, which did not have Pacific coast whiting fishery participation prior to AFA, but which had participated in this fisheries since 2001, also continued to participate in 2006.

During 2006, these four large AFA qualified vessels, without participation in the shoreside whiting fishery prior to AFA, fished in the shoreside whiting EFP fishery out of a total of 37 participating vessels. These new participants had a combined total whiting catch of 15,928 mt (17.3%) of the 91,995 mt taken in the northern (Oregon and Washington) fishery. The average catch per trip by these vessels ranged from 147-218 mt compared to the average for the traditional fleet of 76 mt. This effort alone contributed to the shoreside fishery closing 7-10 days earlier than the previous year, even though the fish landed were reportedly smaller than in the past year, which should have extended the season. As AFA qualified effort increases in this fishery, the season will likely erode from a currently multiple-week-long fishery to a few days: a derby style fishery. The current management process has no way to effectively structure this type of fishery or time to react to high catches of bycatch, and the fishery has the potential to collapse (as well as to impact other groundfish fisheries).

The AFA provides that the Council shall take action to protect the west coast groundfish fisheries from potential impacts. It did not require that these impacts be documented or even realized prior to the Council taking protective actions, but required that the Council take action to prevent likely or potential impacts. It is clearly a mandate that is preventative in nature. Therefore, ODFW contends that action to protect the west coast shoreside whiting fishery at this time is appropriate. Action is clearly justified and prudent due to the effort shift from AFA vessels during the 2006 season, and would exceed the requirements in the AFA for action by the Council or NMFS to take protective measures.

Some conditions which have driven this effort shift and conservation and fishery management concerns related to it include:

\* Shortly after the AFA was enacted, the North Pacific Fishery Management Council lengthened the Bering Sea pollock B Season. If the Bering Sea Fishery was still a derby fishery, it is not likely that these vessels would travel to participate in the shoreside whiting season on the West Coast (which runs from June 15<sup>th</sup>). With the advent of the dedicated access pollock fishery and longer seasons, vessels have the time to harvest their quota when convenient and most profitable. This shift allows the large AFA vessels to come down to fish the Pacific whiting shoreside and mothership fisheries and have plenty of time to return to AK to harvest their quota of pollock in the B Season (i.e., no more derby fishery start for the B Season).

\* A limited entry control date of November 6, 2003 was set by the Council for the limited entry groundfish trawl fishery ITQ program. Recently permit speculation and vessel participation has been driven by those who did not meet the control date/participation requirements.

\* Price for shoreside Pacific whiting has increased significantly in 2006, attracting more vessels. In 2004 the price was .04/lb, in 2005 it was .055/lb and in 2006 .06/lb. For this high volume fishery, such price increases are a significant incentive for additional participants.

The current profile of the shoreside fishery has allowed for excellent harvest and bycatch tracking and peer pressure to enhance self-regulation of bycatch avoidance. Larger vessels not involved otherwise in west coast groundfish fisheries will have a greater likelihood of landing and less of an incentive to avoid great quantities of bycatch species when fishing in the shoreside fishery.

A primary concern of lack of action on AFA sideboards is one of conservation, particularly that of depleted rockfish species. As an example of recent federal action taken in 2005, a catcher/processor vessel speculated on participating in the open access dogfish fishery. Due to the fishing capacity of that vessel and the threat of large impacts to depleted species by that vessel, an emergency rule was enacted to cap the bycatch of the open access fishery. In a similar nature, large AFA vessels that have little experience in the shoreside whiting fishery have an even higher potential to adversely impact depleted species. New entrants with high volume vessels that are not as aware of the strategies/locations to avoid high bycatch areas add to the potential to accelerate attainment of or potentially significantly exceed the hard bycatch caps for the entire whiting fishery.

As the shoreside whiting fishery season erodes to that of a derby fishery, the incentive for bycatch reduction is likely removed. Vessels will be encouraged to prosecute the fishery as

quickly as possible, with little regard to the encountered bycatch. Once the whiting allocation is achieved, some vessels return to Alaska, and many vessels revert to the traditional west coast groundfish fishery, shifting the overall concentration of effort, and thus also increasing bycatch in the traditional groundfish fishery. Additionally, the incentive to avoid salmon bycatch in the whiting fishery diminishes as the race for fish increases. In 2005, an emergency rule was enacted to restrict the whiting fishery to waters seaward of 100-fathoms due to salmon interactions, recognizing that fishing in deeper depths potentially increases bycatch of depleted darkblotched rockfish.

In addition to potential impact to resources, impact to traditional fishery participants and the existing fishery is a concern. The fishing capacity of a large vessel far out-competes that of a smaller vessel. Additionally, there is the potential for small boat markets to be replaced by larger boats, as some processors prefer accepting one large delivery versus several smaller deliveries. One traditional shoreside fishery participant reported a 25% decline in deliveries, translating into a loss of \$100,000 ex-vessel value in 2006 due to the shortened season. Another shoreside vessel that participated in the fishery for 16 years, experienced a 30% loss of revenue in 2006 vs. comparable seasons. The 2006 shoreside Pacific whiting fishery had a value to coastal communities of approximately \$32,500,000.

The Council repeatedly did not address the AFA sideboard requirement after 2002, due to workload priorities and assertions that there was no significant effort shift demonstrated. Clearly that effort shift occurred in 2006 and the original obligation for the Council and/or NMFS to take action (see law cited above) to protect fisheries under PFMC jurisdiction from impacts caused by any fishery cooperatives in the directed pollock fishery is of an urgent nature at this time.

There is evidence of continued spillover by the AK dedicated access pollock fishery in to the west cost shoreside fishery. Protections required by the AFA continue to be absent and are of great urgency to implement.

**ODFW recommendations:**

- 1. Move forward as soon as possible with the Amendment 15 process for establishing AFA sideboards for implementation no later than the 2008 Pacific whiting season.**
- 2. National Marine Fisheries Service enact a temporary or emergency rule, in place for the 2007 shoreside whiting fishery, to prohibit participation in the shoreside whiting fishery of AFA vessels that did not participate in that fishery prior to 2006.**