

American Fisheries Act EA/RIR/RFA

1.0 INTRODUCTION AND BACKGROUND

1.1 Purpose and Need for Action

The American Fisheries Act of 1998 (AFA) mandates that, "the Pacific Fishery Management Council... shall recommend for approval by the U.S. Secretary of Commerce (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 cooperatives in the directed pollock fishery." If the Council does not recommend conservation or management measures to the Secretary, the AFA authorizes the Secretary to "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."

The AFA contains several provisions specific to the Bering Sea and Aleutian Islands (BSAI) pollock fishery and requirements for the Pacific Fishery Management Council (Council) to recommend measures to protect against adverse impacts resulting from the AFA. Among the provisions of the AFA that affect vessels and processors in North Pacific fisheries are (1) allocation of the walleye pollock directed fishery allowance among the catcher vessels of the inshore component, catcher-processors of the offshore component, and catcher vessels harvesting pollock for motherships in the offshore component; (2) declaration of eligible vessels and processors—specifically naming catcher vessels, catcher-processors, and motherships eligible to participate in the offshore component; and (3) specific eligibility requirements for catcher vessels and shoreside processors in the inshore component.

The AFA also contains guidelines for "cooperatives" within each component of the fishery. Through these cooperative arrangements, harvesters and processors may arrange fishing and processing to optimally utilize their respective allocations. The AFA anticipates that, because these AFA entities can arrange their pollock fishery opportunities, these entities may be empowered to increase their participation in non-pollock fisheries (including West Coast fisheries) where they had previously participated only marginally or not at all. At issue is the concern that traditional West Coast groundfish fishery participants could be displaced by AFA entities (catcher vessels, catcher-processors, and motherships) that do not have prior fishing history in West Coast groundfish fisheries. To prevent this harm, the AFA provides the Council the opportunity to recommend management measures to protect fisheries under its jurisdiction and participants in those fisheries.

Protective management measures may be necessary because participants in cooperatives are likely to have increased flexibility to arrange fishing schedules – optimizing participation in their current fisheries and enabling entry into other fisheries. Specifically, historic West Coast groundfish fishery participants could be harmed if AFA vessels participating in pollock fishing cooperatives rearrange their pollock fishing schedules to increase participation in non-pollock fisheries such as the West Coast groundfish fishery. To participate in most limited entry groundfish fisheries, vessels only need to purchase a general limited entry permit, and a permit is not required to participate in the open access fisheries. Because new limited entry permit holders and entrants into the open access fishery would have access rights that are equal to those who have historically participated in the fishery, entry by AFA entities may occur. Moreover, harm could also occur through the investment of funds derived by benefit of the AFA. That is, investment in the expansion of effort rather than direct transfer of vessels from AFA fisheries to West Coast fisheries. To prevent harm to current participants in West Coast fisheries, the Council is required to recommend protective management measures. Moreover, additional effort entering the groundfish fishery could exacerbate existing management problems and erode the effectiveness of measures recommended by the Council.

The AFA states:

SEC. 211. Protections for other fisheries; conservation measures.

(b) Catcher-processor restrictions.