

**American Fisheries Act: Management Measures to Protect West Coast Groundfish Fisheries**

**I. Introduction**

Purpose of Council Action

The American Fisheries Act of 1998<sup>1</sup> (AFA) provides the Council the opportunity to recommend management measures to protect fisheries under the Council's jurisdiction from harm caused by the AFA or cooperatives under the AFA. These recommendations are due to the Secretary of Commerce by July 1, 2000.

The AFA provides certain vessels and processors with greater operational flexibility. The concern is that AFA vessels and/or processors will use this advantage to move into West Coast groundfish fisheries, increase effort, and cause harm to current participants.

Goal

Recommend management measures to control increases in effort in West Coast fisheries – i.e., protect against harm to current participants as a result of the AFA or cooperatives under the AFA.

Objective

Determine criteria that will be developed into management recommendations for excluding vessels and processors from West Coast groundfish fisheries.

Key Points

- The restrictions must have clear link to protecting against harm caused by the AFA.
- The Council is not specifying vessels, processors, or companies by name. The Council is setting criteria which will be used to determine future participation of AFA vessels and/or processors.
- The Council needs to clearly explain how the proposed qualifying criteria will protect West Coast groundfish participants from harm caused by the AFA.
- The Council needs to explain why the qualifying criteria are the most appropriate "sideboards" for excluding "spill-over vessels."
- The AFA eligibility requirements for pollock harvesters and processors is scheduled to sunset on December 31, 2004. The Council's recommendations should specify that restrictions are permanent (i.e., extend beyond the duration of the AFA) or expire on December 31, 2004.

Definitions<sup>2</sup>

AFA vessel.

A catcher vessel, catcher processor, or mothership that, because it is named in the AFA or meets qualifications in the AFA, is guaranteed a portion of the directed pollock fishery quota.

AFA processor.

<sup>1</sup>The AFA was signed into law October 23, 1998 as part of Public Law 105-277 -- Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999.

<sup>2</sup>These are not legal definitions, they are brief approximations to provide context for the Council.

A processing company that, because it meets qualifications in the AFA, is guaranteed a portion of the directed pollock fishery quota.

#### AFA cooperative

A cooperative arrangement between vessels and processors for optimally using the portion of the directed pollock quota allocated to their sector. For example, an inshore cooperative formed by catcher vessels and shorebased processors would share a portion of the inshore sector's pollock allocation. Similarly, an offshore cooperative formed by catcher processors would share a portion of the offshore allocation of the pollock quota.

#### “Spill-over vessel.”

An AFA vessel that possesses a limited entry permit for West Coast groundfish.

#### Benefits to vessels (C/V, C/P, and M/S).

The AFA formalized the ability to form cooperatives and allocated a portion of the directed pollock fishery quota to each sector in the fishery. Vessels that join cooperatives, or lease their portion of their sector's pollock allocation, gain the advantage of arranging fishing schedules to increase average revenue. This operational advantage could harm West Coast groundfish fisheries, as these vessels would be able to increase their participation in these fisheries.

#### Benefits to processors.

It is harder to pinpoint an operational advantage that provides the opportunity for AFA processing companies to enter West Coast groundfish fisheries and displace traditional West Coast processors. It might be possible that, as a result of the AFA, a shorebased processing company in Alaska could build a new processing facility on the West Coast. It might also be possible for an AFA processing company to buy an existing West Coast facility and expand the range of species the facility processes. Both of these could be seen as an encroachment on (and harm to) current West Coast processing facilities.

#### Duration

Sideboards could be implemented for one of two periods.

1. Permanent, extending beyond the December 31, 2004 expiration of AFA eligibility provisions.
2. In effect as long as the AFA, i.e., December 31, 2004, unless extended by the Council.

## **II. Harvester Protections**

Goal – Protect West Coast groundfish fisheries from the operational advantage provided to AFA vessels. “Spill-over vessels” that do not meet qualifying criteria will be EXCLUDED from the fishery.

The proposed options seek to restrict harvesters that benefit from the AFA (AFA vessels) from participating in West Coast groundfish fisheries if they did substantially participate in the past. It has been proposed that this be done by restricting the participation of the vessel or the permit.

At the March 2000 meeting, the Council discussed whether restrictions should apply to an AFA vessel or the limited entry permit possessed by an AFA vessel. At issue is the ability of an AFA vessel with a limited entry groundfish permit to sell or transfer the permit if the vessel was excluded from West Coast fisheries. If restrictions are not placed on the permit, the vessel could sell the permit to a non-AFA vessel or transfer to newly built boat. If this results in another vessel entering the fishery, effort increases, causing harm.

There are three ways the Council could exclude non-qualified AFA vessels ("spill-over vessels"):

1. Vessel – restrict the vessel, but not the permit. If an AFA vessel does not meet the participation requirements for the West Coast, it is excluded. This means it could not purchase a limited entry permit, and if it currently owns a permit it may sell the permit.

If a vessel met the participation requirements in one sector (e.g., delivering whiting to motherships) it could continue to participate in that sector, but could not participate in other sectors (e.g., non-whiting groundfish).

Because no restrictions are placed on the permit, the permit could be sold or transferred to a non-AFA vessel. This could potentially increase effort in the fishery.

2. Permit – restrict the permit, but not the vessels. If an AFA vessel does not meet the participation requirements its permit becomes invalid; or if it only met certain participation requirements, the permit would become restricted to the specific sector in which the vessel qualified.

Restrictions stay with the permit. That is, the permit may be sold or transferred to a non-AFA vessel, but the restrictions still hold. However, AFA vessels could expand their participation by purchasing a permit from another vessel.

Restricting permits without applying restrictions directly to AFA vessels may not protect West Coast groundfish fisheries from vessels using their operational advantage to displace traditional participants. It provides a financial penalty to AFA vessels that own limited entry permits, but does not exclude them from the fishery.

3. Combination – restrict both vessel and permit. An AFA vessel that does not qualify is excluded from the fishery. Any permit the vessel possesses is subject to the restrictions described in (2) above. The vessel would not be allowed to purchase another limited entry permit.

This combination of vessel and permit restrictions excluded an AFA vessel if it did not have enough participation, and invalidates the vessel's limited entry permit (if it has one).

### Determining the Qualifying Criteria

In September 1999 and March 2000, the Council put forward various criterion for AFA vessels to qualify for future participation in West Coast groundfish fisheries. These criteria are based on past participation and attempt to show a dependence on the fishery.

The Council needs to refine these criteria. Specifically, the Council needs to decide on the appropriate qualifying years and determine if catch history is based on landed tons or number of deliveries.

More importantly, the Council needs to:

- clearly explain how these criteria protect West Coast groundfish participants from harm caused by the AFA; and
- explain why the qualifying criteria are the most appropriate measures (sideboards) for excluding "spill-over vessels."

The proposed criteria are:

**Catch history** based on:

- a. minimum tonnage requirements, i.e., 50 metric tons; **or**
- b. number of deliveries, i.e., 30 deliveries.

**Qualifying window periods:**

- a. 1994, 1995, 1996, 1997; **or**
- b. 1994, 1995, 1996, 1997, 1998, 1999 through 9/16/1999.

Options for excluding "spill-over vessels."

I. Whiting fishery

A. AFA catcher vessels (delivering to motherships) that do not meet the following minimum requirements will be excluded. **The Council needs to select A.i, A.ii, or A.iii.**

- A.i. harvested 50 mt whiting during:
  - a. 1994, 1995, 1996, 1997; **or**
  - b. 1994, 1995, 1996, 1997, 1998, 1999 through 9/16/1999; or
- A.ii. made 30 deliveries during:
  - a. 1994, 1995, 1996, 1997; **or**
  - b. 1994, 1995, 1996, 1997, 1998, 1999 through 9/16/1999; or
- A.iii. made 10 deliveries during 1997.

B. AFA catcher vessels landing shorebased that do not meet the following minimum requirements will be excluded. **The Council needs to select B.i, B.ii, or B.iii.**

- B.i. harvested 50 mt whiting during:
  - a. 1994, 1995, 1996, 1997; **or**
  - b. 1994, 1995, 1996, 1997, 1998, 1999 through 9/16/1999; or
- B.ii. made 30 deliveries during:
  - a. 1994, 1995, 1996, 1997; **or**
  - b. 1994, 1995, 1996, 1997, 1998, 1999 through 9/16/1999; or
- B.iii. made 10 deliveries during 1997.

II. Groundfish fishery

A. AFA catcher vessels without shorebased landings of groundfish (other than whiting) during the qualifying period will be excluded. **The Council needs to select A.i or A.ii.**

- A.i. 1994, 1995, 1996, 1997; **or**
- A.ii. 1994, 1995, 1996, 1997, 1998, 1999 through 9/16/1999.

III. Excluding Limited Entry Permits

Limited entry permits on AFA vessels will be retired or restricted based on catch history during the qualifying period. **The Council needs to select A.i, A.ii, or A.iii.**

- A.i. harvested 50 mt of groundfish during:
  - a. 1994, 1995, 1996, 1997; **or**
  - b. 1994, 1995, 1996, 1997, 1998, 1999 through 9/16/1999; or

- A.ii. made 30 deliveries of groundfish during:
- a. 1994, 1995, 1996, 1997; **or**
  - b. 1994, 1995, 1996, 1997, 1998, 1999 through 9/16/1999; or
- A.iii. made 10 deliveries of groundfish during 1997.

If no deliveries made during qualifying period, the permit will be retired. If only offshore landing during qualifying period, the permit is only valid for offshore. If only shorebased landing during qualifying period, the permit is only valid for shorebased deliveries.

### **III. Catcher Processor and Mothership Protections**

Goal – Protect current whiting fishery catcher processors and motherships from new entry of AFA catcher processors and motherships into the fishery. “Spill-over vessels” that don’t meet criteria will be EXCLUDED from the fishery.

The previous discussion about restricting 1) vessels, or 2) permits, or 3) vessels and permits also applies to catcher processors and motherships. That is, the Council needs to decide whether restrictions are placed on vessels; on the vessel's limited entry permit; or on both the vessel and the vessel's limited entry permit.

#### Determining the Qualifying Criteria

Two measures have been recommended that apply to catcher processors and motherships. **The Council needs to affirm that these are the appropriate criteria.**

As stated for catcher vessels, the Council needs to

- clearly explain how the criteria for catcher processors and motherships protect West Coast groundfish participants from harm caused by the AFA; and
- explain why the qualifying criteria are the most appropriate measures (sideboards) for excluding "spill-over vessels."

#### Catcher Processors

Catcher processors that were not licensed to harvest groundfish in 1997 through 9/16/1999 are excluded from the whiting fishery (both as catcher processor and mothership).

#### Motherships and Catcher Processors acting as Motherships

Motherships (and catcher processors acting as motherships) that did not receive at least 1000 mt of whiting during the regular (directed) whiting season in 1998 or 1999 are excluded.

### **IV. Processor Protections**

Goal – Protect current whiting and non-whiting groundfish processors from harm caused by the AFA or cooperatives under the AFA. AFA processing facilities that do not meet the criteria will be EXCLUDED from the fishery.

The proposed processor restrictions seek to protect existing processing facilities by preventing AFA processors from entering the fishery and increasing processing capacity.

Staff is defining an AFA processing facility as a facility on the West Coast that is owned by a company that owns a facility in Alaska that benefitted from the AFA (i.e., an AFA processor). "Facility" includes receiving stations.

The extent of what the Council can do to protect against harm from AFA processors is to restrict participation of an AFA facility. That is, based on the qualifying criteria, an AFA facility will be excluded from or restricted in:

- 1) processing shore based whiting during the whiting season; or
- 2) processing groundfish

The proposed qualifying criteria (below) would be used to determine if the facility was a substantial participant prior to passage of the AFA.<sup>3</sup>

As noted previously, it is difficult to pinpoint an operational advantage that provides for AFA processing companies to enter West Coast groundfish fisheries and displace traditional West Coast processors. It might be possible that, as a result of the AFA, a shorebased processing company in Alaska could build a new processing facility on the West Coast. It might also be possible for an AFA processing company to buy an existing West Coast facility and expand the range of species the facility processes. Both of these could be seen as an encroachment on (and harm to) current West Coast processing facilities.

#### Questions about Processor Restrictions

Several questions should be addressed before developing recommended management measures to restrict processor participation in West Coast groundfish fisheries.

- What, specifically, is the Council trying to accomplish by creating processor restrictions?

For example, existing facilities (even if owned by AFA qualified [Alaskan] companies) could continue to operate. However, AFA processors could not buy into existing facilities nor build new facilities.

Conversely, it was also suggested that an AFA facility could buy into (or outright) an existing processor, but could not build new facilities on the West Coast.

- What is the Council's intention for current West Coast processors that never bought/processed whiting and are not AFA qualified? Because their processing history fails to meet the proposed qualifying criteria, these processors would be excluded from processing whiting in the future.
- What if an AFA processor purchases a plant without whiting history, this plant (now owned by an AFA processor) is restricted from participating in the whiting fishery. If this AFA facility is sold to another company (not an AFA company), can the facility then participate in whiting, or is the restriction permanent for that facility?
- What if an AFA company buys an existing facility, processing restrictions are placed on this facility based on processing history. Is the Council asking for an analysis of all West Coast processing facilities to see if they meet the qualifying criteria?

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<sup>3</sup>The Council put forward criteria for whiting processors, but not for non-whiting groundfish processors.

It is important to note that restricting new entry into the West Coast processing sector by processing companies that did not receive benefits from the AFA is beyond the scope of the protective measures allowed under the AFA.

### Determining the Qualifying Criteria

Two measures have been recommended that apply to processors, one applies to the whiting fishery, the second to the groundfish fishery. **The Council needs to affirm that these are the appropriate criteria.**

The Council needs to:

- clearly state the rationale for excluding AFA processor;
- show linkage between restrictions and processors that received benefits from the AFA;
- determine the qualifying criteria; and
- explain why these are the most appropriate criteria for protecting West Coast groundfish processors from harm caused by the AFA.

### Whiting Processors

An AFA facility that does not meet the following criteria MAY NOT receive unsorted whiting during the shore-based whiting season:

received at least 1000 mt of whiting during the regular whiting season in 1998 or 1999; or held state or federal authorization to receive or process unsorted whiting in 1998 or 1999.

Once during the year, a company that owns or controls a qualified processor or receiving station may substitute a facility owned or controlled by the same company.

### Groundfish (non-whiting) Processors

AFA facilities would be EXCLUDED from West Coast groundfish fisheries unless:

AFA facility has processing history in West Coast (non-whiting) groundfish fishery. Future participation is based on processing history.

### Conclusion

The Council has the opportunity to recommend management measures to protect fisheries under the Council's jurisdiction from harm caused by the AFA or cooperatives under the AFA. These recommendations are due to the Secretary of Commerce by July 1, 2000. Sideboards may be necessary because the AFA provides certain vessels and processors with greater operational flexibility. The concern is that AFA vessels and/or processors will use this advantage to move into West Coast groundfish fisheries, increase effort, and cause harm to current participants.

The goal is to produce a set of recommended management measures to control increases in effort in West Coast fisheries – i.e., protect against harm to current participants as a result of the AFA or cooperatives under the AFA.

In developing these management measures the Council will need to determine criteria for excluding vessels and processors from West Coast groundfish fisheries.

There are several key points that should drive this process:

- The restrictions must have clear link to protecting against harm caused by the AFA.
- The Council is not specifying vessels, processors, or companies by name. The Council is setting criteria to determine future participation of AFA vessels and/or processors.
- The Council needs to explain how the proposed qualifying criteria will protect groundfish participants from harm AFA.
- The Council needs to explain why the criteria are the best "sideboards."
- AFA eligibility requirements for harvesters and processors are scheduled to end on December 31, 2004. The Council's recommendations should specify the duration of the restrictions.

## Appendix

### **Background Information on Certain Dates Relevant to the AFA**

1. AFA is codified within Public Law 105-277 -- Titled: Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999 - Conference Report. Signed into law 10/23/1998.
2. In the AFA – these dates determine whether you are qualified to participate or not:
  - Inshore C/Vs and M/S C/Vs, effective date 1/1/00; qualifying harvest 1996 or 1997 or 1/1/98 - 9/1/98.
  - C/Ps and C/P C/Vs, effective date 1/1/99; qualifying harvest 1997.
  - M/Ss, effective 1/1/00; qualifying harvest 1997.
  - Processors, effective 1/1/00; qualifying processing history – greater than 2000 mt in 1996 and 1997; or less than 2000 mt in 1996 or 1997 (future processing limited to < 2000 mt).
3. The NPFMC uses these dates to determine future harvest amounts:

Generally, harvest or processing history in the years 1995, 1996, 1997 is used to determine future participation in non-pollock fisheries.

**What dates are more important to the Pacific Council? That is, where is the benefit? Was it when the Act was signed into law, the dates that determine future participation in BSAI pollock fisheries, or the dates used to determine catch/processing history used by the NPFMC?**