

AMERICAN FISHERIES ACT MANAGEMENT MEASURES

American Fisheries Act Processor Licensing Option

At its April meeting the Council adopted for analysis a proposal that would require a federal groundfish processing license and restrict the issuance of licenses for facilities owned by American Fisheries Act (AFA) on-shore processors. There are nine areas in which some clarification is needed either through Council action at this meeting or by sending options out for public comment. **Clarification on the first of these issues, in particular, will allow staff to provide a more concise analysis in the draft. Additionally, the Council should consider adopting a control date for the processor provisions.**

1. The language on point three of the proposal is somewhat unclear. There are at least three possible interpretations of the language that are provided here as options for Council consideration.
 1. Define "AFA processor" as any company that is part of an on-shore cooperative in Alaska under the American Fisheries Act.
 2. Require that, in order to process Pacific groundfish (including whiting), a processing facility must obtain a permit from NMFS. Permits will not be required for facilities that process less than 10,000 pounds per year.
 3. ~~No permit may be issued to a facility or company identified as an AFA processor unless that facility or company has engaged in processing Pacific groundfish (including whiting) prior to April 7, 2000.~~
 - a. *Groundfish processing permits may not be issued to (1) facilities that begin processing groundfish after the control date, or (2) AFA processors that begin processing groundfish on the West Coast after the control date.*
 - b. *Groundfish processing permits may not be issued to facilities owned by an AFA processor unless that ownership was established prior to the control date and the facility had processed groundfish prior to the control date (AFA companies will not be allowed to acquire additional West Coast facilities).*
 - c. *Groundfish processing permits may not be issued to AFA companies that did not own a facility processing West Coast groundfish prior to the control date (AFA companies that already own some West Coast facilities will be allowed to acquire additional West Coast facilities).*
 4. The permit requirement will continue until changed by the Council. The prohibition on AFA processors will expire on December 31, 2004, unless Congress extends the life of on-shore processor cooperatives, in which case the prohibition will be automatically extended.
2. Does the Council want the federal licensing requirement to be more restrictive than the current groundfish fishery management plan (FMP) definition of processors?

<u>Include</u>	<u>Current Option</u>
Live fish buyers	Yes
Include processors that are first buyers	Yes
Include processors that are 2 nd , 3 rd , 4 th . . . buyers	Yes
Include processors not in a West Coast state	Yes
Include buying stations	No

3. How restrictive should the ownership rule be (currently not defined)?
 - Any percent ownership
 - 10% limited ownership (similar to Alaska)
 - Full (100%) ownership
4. How should leasing be addressed (currently not addressed)?
 - Include as the equivalent of ownership
 - Exclude as a form of ownership

5. How should forms of control other than ownership and leasing be addressed? Should the following count or not count as methods of control that are equivalent to ownership?

Ability of an AFA company to direct operations?
Ownership by controlling officers in an AFA company (e.g., CEO)?

6. If a West Coast company owns "part of" an AFA company is it considered an AFA company and subject to the West Coast restriction (as opposed to an AFA company owning "part of" a West Coast company)?

7. Who carries the burden to demonstrate AFA (non-AFA) ownership?

The applying entity?
The government?

8. If the company must show non-AFA ownership, how often?

9. If the logic of restricting AFA on-shore processors from owning West Coast on-shore processing facilities is the competitive advantage the AFA profits provide, why are companies that own

catcher-processor vessels or
catcher vessels

not restricted from owning West Coast

on-shore processor facilities
catcher-processor vessels
catcher vessels

for the same reason?

Vessel Qualification Criteria

The Council should consider adopting a control date for AFA permits. The control date would put permit owners and buyers on notice that participation in West Coast fisheries by AFA vessels and the West Coast groundfish permits held by those vessels may be subject to new restrictions. In particular, permits may be invalidated for segments of the groundfish fishery in which they had not previously participated at a sufficiently high level (as determined by landings during a qualifying period). The three segments of the fishery would be at-sea whiting, shoreside whiting, and shoreside groundfish other than whiting. The permits of vessels not meeting the qualifying criteria in at least one of these fisheries would be revoked for the duration of the AFA provisions. The AFA provisions are expected to expire December 31, 2004. On the basis of the qualifying criteria options adopted for analysis, and assuming the most restrictive options are adopted (500 mt or 10 deliveries) it is believed that only one catcher vessel currently has a permit and would not qualify to participate in at least one sector (i.e. has a permit that would be temporarily revoked). Other vessels and their permits may be restricted to certain sectors.

The Council should consider the status of permits that have been leased for use on AFA vessels. Will the leased permits be restricted if the AFA vessels on which they have been used are restricted.

The Council should consider adopting a control date for motherships. There is currently no West Coast license required for motherships and previous control dates do not apply to motherships. Mothership owners and potential buyers should be put on notice that their participation in West Coast fisheries may be restricted.

PFMC
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