

NMFS REPORT ON NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)
ANALYSIS NEEDS FOR AMENDMENT 15 TO THE FMP – IMPLEMENTING THE
AMERICAN FISHERIES ACT (AFA) FOR WEST COAST GROUND FISH FISHERIES

NMFS conducted an internal scoping meeting prior to the Council's May 23, 2007 briefing book deadline to assess whether restricting participation in the non-tribal Pacific whiting fishery under implementation of the AFA for West Coast groundfish fisheries should be analyzed via an Environmental Impact Statement (EIS) or an Environmental Assessment (EA). Staff discussed a potential Purpose and Need statement for this action, the potential action alternatives, and the potential effects that such a program could have on various environmental resources within the West Coast Exclusive Economic Zone, the "action area." Based on that meeting, NMFS is recommending that the action alternatives be analyzed under NEPA via an EA, accompanied by appropriate analyses under other applicable laws, including among others, the Magnuson-Stevens Fishery Conservation and Management Act, the Regulatory Flexibility Act.

One of the first steps in the NEPA public process is to identify a Purpose and Need for the action under discussion. Because this action is driven by legislative requirements, the Council should develop a Purpose and Need statement based on those requirements. The AFA's original direction to the Pacific Council for the shoreside sector and for catcher vessels in the mothership fishery was that the Council:

... "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 cooperatives in the directed pollock fishery." (Section 211(c) (3)(A).)

The AFA also authorizes the NMFS, as the representative of the Secretary of Commerce, 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." (Section 211(c)(3)(B).)

The AFA's original direction for considering the effects of the AFA on catcher/processors and motherships was:

The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) and motherships eligible under section 208(d) are hereby prohibited from harvesting fish in any fishery under the authority of any regional fishery management council established under section 302(a) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)) other than the North Pacific Council, except for the Pacific whiting fishery, and from processing fish in any fishery under the authority of any such regional fishery management council other than the North Pacific Council, except in the Pacific whiting fishery, unless the catcher/processor or mothership is authorized to harvest or process fish under a

fishery management plan recommended by the regional fishery management council of jurisdiction and approved by the Secretary. (Section 211(b)(5).)

These separate directives for catcher vessels in the shoreside and mothership sectors and for catcher/processors and motherships mean that the Council needs to determine in its Purpose and Need statement whether Amendment 15 is intended just to address the mandates of the AFA, or whether the Council wishes Amendment 15 to address participation in the whiting fisheries more generally. If the Council intends just to address the mandates of the AFA, then the universe of vessels it will be addressing is: “AFA-permitted” for the shoreside sector and catcher vessels in the mothership fleet, meaning those vessels that currently hold AFA permits, and “AFA-qualified” for the catcher/processor sector and for motherships, meaning those vessels explicitly named as receiving benefits in the act.* The Council also needs to explicitly decide whether it intends to address the AFA authorization under Section 211(c)(3)(B) to place restrictions on vessels within pollock cooperatives that prevent those vessels from harvesting groundfish other than whiting.

At its April 2007 meeting, the Council had provided two initial action alternatives to status quo, as follows:

- *In order to protect traditional participants in the Pacific Coast whiting fishery from potential harm from the participation of AFA-qualified vessels in the fishery, AFA-qualified vessels are prohibited from participating in the shoreside, catcher-processor, and mothership sectors of the Pacific whiting fishery, unless those vessels have significant historic participation in those sectors between January 1, 1994 and January 1, 2006.*
- *In order to protect traditional participants in the Pacific Coast whiting fishery from potential harm from the participation of AFA-qualified vessels in the fishery, AFA-qualified vessels are prohibited from participating in the shoreside, catcher-processor, and mothership sectors of the Pacific whiting fishery, unless those vessels have significant historic participation in those sectors between January 1, 1994 and January 1, 2007.*

For both of these action alternatives, “significant historic participation” was to be considered as having alternative definitions for each of the three non-tribal whiting sectors:

For catcher/processors vessels:

- a. having caught and processed at least 1,000 metric tons (mt) of whiting in any one qualifying year; [or]*

* Federal regulations for fisheries off Alaska (50 CFR 679) divide AFA-permitted vessels into three categories:
1. Those vessels explicitly named in the AFA as qualifying for participation in the Bering Sea pollock fishery – §679.4(l)(2)(i), §679.4(l)(3)(i)(A)(1), §679.4(l)(3)(i)(B)(1), §679.4(l)(3)(i)(C)(1), and §679.4(l)(4);
2. “Unlisted” vessels, which are vessels that were not explicitly named within the AFA, but which met minimum landing requirements within the same class as those vessels named within the AFA – §679.4(l)(2)(ii), §679.4(l)(3)(i)(A)(2), §679.4(l)(3)(i)(B)(2), and §679.4(l)(3)(i)(C)(2); and
3. Replacement vessels, which are vessels that may replace either of the above two types of vessels, provided the initially-permitted vessel was totally lost or suffered a constructive total loss – §679.4(l)(7).

- b. *having caught and processed at least 1,000 mt of whiting in any one qualifying year subsequent to December 31, 1996.*

For motherships:

- a. *having received at least 1,000 mt of whiting in any one qualifying year;*
[or]
- b. *having received at least 1,000 mt of whiting in any one qualifying year subsequent to December 31, 1996.*

For catcher vessels participating in the shore-based or mothership fishery:

- a. *having landed at least 500 mt of whiting in any one qualifying year; [or]*
- b. *having landed at least 1,000 mt of whiting in any one qualifying year.*

In addition to these alternatives, NMFS recommends the Council consider expanding its range of alternatives in order to more fully address the purpose and need for the action. NMFS specifically recommends that the Council consider alternatives that would:

- *limit participation in the whiting fishery sectors only to those vessels that would qualify for participation in the 2007 fishery under the emergency rule;*
- *limit the participation of AFA vessels in the whiting fishery to the average annual aggregate historic participation of those vessels now registered for use with AFA permits vessels from 1994-1999 (the start of the limited entry program through to the passage of the AFA,) based on number of vessels (e.g., if an average of 5 AFA-permitted vessels participated in the whiting fishery annually from 1994-1999, the date from which limited entry was implemented to which the AFA was implemented, then no more than 5 AFA-permitted vessels may participate in the whiting fishery in future years.)*

In addition to addressing participation in the whiting fishery, NMFS believes that the Council needs to specifically address that portion of the AFA that authorizes regulations 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 [AFA] processors eligible to process Pacific groundfish.*” Under Federal regulations at 50 CFR 660.306(a)(12), it is unlawful to “*Transfer fish to another vessel at sea unless a vessel is participating in the primary whiting fishery as part of the mothership or catcher-processor sectors, as described at §660.373(a).*” If the Council believes that current Federal regulations are adequate to address the AFA provision that concerns non-whiting groundfish, then it should make a statement to that effect, providing the reasoning for its decision, in the section of its EA entitled “*Alternatives Considered but Rejected for Further Analysis.*” If the Council does not believe that current Federal regulations address this provision, then it should modify its action alternatives to include considerations for non-whiting groundfish.

With regard to the physical, biological, and socio-economic resources that Amendment 15 could potentially affect, NMFS believes that the effects of such a program on following resources should be analyzed within the EA:

- *Salmonids Listed as Threatened or Endangered under the Endangered Species Act (ESA)*
- Low potential for significant impact. The bycatch of listed salmonids in the whiting fishery has been regularly analyzed in a Section 7 Biological Opinion and in supplemental opinions. NMFS has concluded in those opinions that the effects of the

whiting fishery to ESA-listed sockeye, coho, chum, and steelhead were negligible. Of the listed Chinook ESUs, NMFS concluded that four (Snake River fall Chinook, Lower Columbia River Chinook, Upper Willamette Chinook, and Puget Sound Chinook) were the ones most likely to be subject to measurable impacts. This action would not affect overall groundfish harvest levels. If the Council were to choose an alternative that restricted the number of vessels participating in the fishery, rather than simply restricting the number of AFA-vessels that could participate in the fishery, this action would have a low potential for a positive impact, because it would slow the race for fish in this fishery and allow participants to more carefully avoid salmon bycatch. If the status quo alternative is chosen, salmon bycatch could potentially increase modestly over time, concurrent with expected increases in the fishery's vessel capacity over time.

- *Overfished Groundfish* – Low potential for significant impact. This action is not expected to affect the overall harvest levels of groundfish, but it could reduce capacity and participation in the whiting fishery, which could in turn have a beneficial effect on overfished groundfish species by reducing interactions with the overfished species most commonly taken as bycatch in that fishery: canary, darkblotched, and widow rockfish, and Pacific ocean perch.
- *Groundfish Species at Healthy and Precautionary Levels of Abundance* -- Low potential for significant impact. This action is not expected to affect the overall harvest levels of groundfish, but it could reduce capacity and participation in the whiting fishery, which could in turn have a beneficial effect on groundfish species by reducing interactions with the healthy and precautionary species most commonly taken as bycatch in that fishery, particularly yellowtail rockfish.
- *Community Economic Impacts* – Low to moderate potential for significant impact. This action would not affect overall harvest levels of whiting, nor would it prevent any community from receiving deliveries of whiting. Depending on the alternative chosen, a community that has been receiving whiting from vessels that only participated in a particular sector of the whiting fishery in 2006 may have to make new arrangements for receiving whiting from vessels with more historic participation for the fishing years 2008 and beyond. In 2006, NMFS completed an Environmental Impact Statement (EIS) for Amendment 16-4 to the FMP and the 2007-2008 Groundfish Specifications and Management Measures. That EIS included a comprehensive analysis of West Coast groundfish fishing communities and their engagement in various groundfish fisheries, including the Pacific whiting fishery. Appendix A to the EIS evaluated fishing communities for their engagement in the groundfish fishery, their dependence on groundfish resources, and for their vulnerability to changes in availability of groundfish harvest. Port cities that Appendix A identified as both having some history of whiting landings and a relatively higher engagement in the groundfish fishery are: Astoria, Coos Bay, Crescent City, Eureka, Ilwaco, Newport, and Westport.
- *Environmental Justice* – Low potential for significant impact. This action does not target low income or minority communities; it would affect all population segments equally. Members of low income communities and minorities generally participate in the whiting

fisheries as workers in either at-sea or shore-based processing plants. This action would not re-allocate whiting between the fishery sectors, so job opportunities for low income and minority participants would be expected to remain the same between sectors. Because some communities would need to adjust to having their processing plants purchase fish from different vessels, there could be a temporary lull in job opportunities for shore-based plant workers in communities dependent on deliveries from vessels that only participated in the fishery in 2006 – depending on the alternative chosen. This action does not affect tribal fisheries, nor treaty rights to or allocations of groundfish.

- *Safety of Human Life at Sea* – Depending on how the action alternatives would be implemented, specifically on whether vessel substitutions are allowed, this action has a low potential for significant impact. If vessels that are permitted to participate in this fishery in 2008 and beyond are not allowed to be replaced by more sound vessels, vessel owners may choose to fish with their less sound, yet permitted, vessels. This issue could be fixed via regulation, but needs attention to ensure that impacts do not occur.
- *Cumulative Impacts* - This action would not affect the overall harvest levels of West Coast groundfish. Depending on the alternative chosen, it could prohibit vessels that had only participated in the fishery in 2006 (and in no year prior to 2006) from participating in the fishery in 2008 and beyond. Other alternatives either do not prohibit expansion into the fishery by non-AFA vessels, or only prohibit fishery participation by vessels with no history in the fishery. The cumulative impacts of this action on the biological environment, if any, are expected to be negligible, unmeasurable, and insignificant. The cumulative impacts of this action on the socio-economic environment are also expected to be insignificant, because no alternative chosen would remove the ability of a fishing community or processing plant to participate in the whiting fishery, and the only vessels that would be prohibited from participating in the fishery would be those with no significant dependence on the fishery, or no participation in the fishery at all.