

Implementing the American Fisheries Act of 1998:

Current and Future Actions
by the
North Pacific Fishery Management Council

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The Council manages the federal groundfish, halibut, and crab fisheries in the federal waters off Alaska under authority of the Magnuson-Stevens Act (MSA), and in conjunction with other applicable laws including the National Environmental Policy Act (NEPA), the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), and the recently enacted American Fisheries Act (AFA or Act). This paper summarizes the major provisions of the AFA with a focus on actions being taken by the Council to implement those provisions.

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I. Introduction

From the perspective of the NPFMC, the American Fisheries Act (AFA) represents the biggest task we've had before us since the last reauthorization of the Magnuson-Stevens Act (MSA) in 1996. As with a lot of the fishing industry, the Council has been dividing the majority of its time lately between this Act and Steller sea lion issues, and likely will do so throughout this year and into the next. Indeed, this Act mandates several Council actions and allows for many more, most of which have to go through our extensive regulatory and analytical process. While the Act resolves several longstanding fishery policy issues, it creates a myriad of new and challenging policy and implementation issues for the Council.

The focus of this paper will be on actions that are being taken by the Council to implement specific provisions of the Act, or actions that are intended to address the indirect impacts of the Act's provisions on other segments of the fishing and processing industry. A brief discussion of the origins of the Act is provided for context, including a summary of the major provisions of the Act.

As most involved with fisheries issues are aware, the allocation of pollock between the inshore and offshore sectors of the industry has been a primary issue before our Council since 1989. In the most recent iteration of this allocation, commonly referred to as I/O3, our Council made a revision in the allocations in June of 1998, at about the same time as Senator Stevens and others were working on SB 1221, later to be known as the American Fisheries Act, which was aimed at correcting perceived shortcomings of the Anti-reflagging Act by revising U.S. ownership requirements and/or disqualifying certain vessels from the fisheries.

Following the Council's June 1998 decision, these issues became intertwined in the resolution of SB 1221, and ultimately that bill became the delicate balance of ownership provisions, pollock allocations, vessel retirement and buyout, co-ops, and sideboards known as the American Fisheries Act. Further details on the original development of the AFA are beyond the scope of this paper and are probably better addressed by others participating in this symposium. This paper will briefly cover some of the major aspects of the Act and then focus on the areas in which the Council is directly involved. While the provisions of the Act relate specifically to the Bering Sea/Aleutian Islands (BSAI) pollock fisheries, there are a series of implications for other BSAI fisheries, as well as for fisheries in the Gulf of Alaska (GOA). This is primarily where the Council comes into the picture in terms of developing amendments to our fishery management plans (FMPs) and regulations which address these ancillary impacts.

II. Major Provisions of the AFA

The following is a summary of the major provisions of the Act, which is followed by a more detailed discussion of sideboards, excessive shares, and other issues for which the Council is taking actions.

Ownership Requirements

Essentially the Act requires a 75% minimum US ownership for a vessel to be eligible to participate in the fisheries off Alaska, with certain exemptions for processing vessels already in operation. It also establishes maximum size and horsepower limits for replacement vessels eligible under this Act. The burden of monitoring and enforcing the US ownership standards are, fortunately, not on Council, but on the Secretary of Transportation and the Administrator of the Maritime Administration. As such this paper will not elaborate on this aspect of the Act, recognizing however that this is a major focus of the Act and is an area where there may well be further interest from the legal perspective.

Allocation Percentages by Sector

The Act specifies the allocation of the directed pollock fishery annual Total Allowable Catch quota (TAC), and this is one of the provisions of the Act which the Council cannot alter. Ten percent of the annual TAC (which currently totals about 1 million metric tons) is allocated off the top to the Community Development Quota (CDQ) program, which is an increase from the Council's previous allocation of 7.5%. The remaining TAC is divided among the inshore component, the offshore component, and the mothership component at 50%, 40%, and 10% respectively. The Council's June 1998 action had divided the allocation, after CDQ reductions, at 39% for the inshore sector and 61% for the offshore sector (including motherships).

These allocations are effected by the National Marine Fisheries Service (NMFS) through the annual specifications process, and the Council's Fishery Management Plan (FMP) is being amended to reflect the allocations as specified in the Act. These will remain in place through the year 2004, at which time the Council has the latitude to review and either alter or extend those allocation percentages. The only other latitude the Council has with respect to these allocations is to review the CDQ allocation after 2001, if the Council finds that the CDQ program has been adversely affected by any provisions of the Act. The expiration of these allocations is far enough in the future such that this is not an issue which is on the Council's radar screen yet.

Buyout Provisions and Eligible Participants

This is another area where the Council has no direct involvement, or any authority to alter the Act's provisions, but it is briefly covered here for background purposes. The Act specifies by name 20 catcher processors (offshore sector), owned by nine different companies, that are eligible to continue participating in the pollock fisheries. The Act also specifically retires nine catcher processors from further participation in this or any other US fishery, and permanently extinguishes the catch history

of those nine vessels with respect to any future management actions where such catch history might otherwise be relevant. Additionally the Act lists seven catcher vessels which remain eligible to fish and deliver a suballocation within the offshore sector allocation. A total of \$90 million in direct loan obligations was provided by the Act to compensate the owners of the nine retired vessels, to be repaid by the inshore sector via a fee system amounting to .6 cents for each pound of pollock harvested under their directed fishing allowance.

The Act further specifies three motherships which are eligible to process the mothership allocation under the Act, and lists 19 catcher vessels which are eligible to fish and deliver that sector's allocation (2 others not specified are eligible through landings history). For the inshore sector, the Act does not list the eligible plants and catcher vessels by name; rather, it stipulates the landing/processing history necessary for eligibility. For catcher vessels that is >250 mt delivered onshore in 1996, or 1997, or 1998 through September 1, or >40 mt for vessels under 60'. We estimate there are 113 catcher vessels eligible in the mothership and inshore categories (92 for inshore delivery, 7 for mothership delivery, and 14 which qualify for both). This is one of the things the Council staff and NMFS must know exactly, and their specific catch histories, to do the analysis and implementation for the co-op structures and their sideboard limits.

A shoreside processor must have processed >2,000 metric tons in both 1996 and 1997 to be eligible, except that processors who did less than 2,000 mt in both 1996 and 1997 would also be eligible, but restricted from processing more than 2,000 mt in any future year under the Act. We estimate that eight plants, owned by 7 companies fall under these definitions. Defining a company as an AFA processor, as opposed to individual plants, may have major implications as is explored further under the sections of this paper dealing with processor sideboards and excessive shares. For example, while only eight specific plants met the processing minimums, more than eight plants may be classified as 'AFA eligible' due to their ownership by one of the seven companies.

Fishery Cooperatives

A critical aspect of the Act is contained in the provisions for the creation of pollock 'co-ops', or what some refer to as quasi-IFQs. While such co-ops were not prohibited prior to the Act, there are specific provisions outlined in the Act, particularly for the structure and participation among co-ops involving catcher vessels and the inshore sector processing plants. This discussion will not delve into the details of the co-ops, other than to provide some additional information regarding the Council's role as it relates to co-op structure and development.

Protection for other Fisheries - Sideboard Provisions

One of the most significant provisions of the Act, and the most open-ended in terms of Council actions, pertains to the development of measures to protect other (non-pollock) fisheries from any adverse impacts as a result of the Act. Such adverse impacts could result from the exclusive rights to harvest and process pollock, coupled with the opportunity to develop co-ops, which could allow co-op harvesters and processors to maximize opportunities in non-pollock fisheries. Section 211 of

the Act provides generic direction to the Council to develop “measures it deems necessary” to protect other fisheries from adverse impacts of the Act or fishery cooperatives. This would include harvesters and processors of Bering Sea non-pollock groundfish and crab, as well as non-pollock groundfish and pollock harvested or processed in the Gulf of Alaska. The sideboard provisions are where the Council has the most immediate burden. Council staff is currently in the midst of an extensive analysis of sideboard provisions to be reviewed by the Council this April, with final action by the Council in June for implementation in 2000. Sections IV, V, and VI below contain further detail on this aspect of the Act.

Excessive Shares

Another significant task for the Council is contained in provisions of the Act relating to the establishment of excessive share limits on harvesters and processors in Bering Sea/Aleutian Islands (BSAI) fisheries, for pollock as well as other groundfish species and crab. The Act specifies pollock excessive share limits for harvest of BSAI pollock (at 17.5%), but does not specify the limits for other species, or for pollock processing; rather, it mandates that the Council establish such caps, which could presumably remain in effect beyond the 2004 expiration date for other, specific provisions of the Act. With regard to at least some of the excessive share provisions, as well as for some of the sideboard provisions, the Act specifies a ‘10% ownership rule’, whereby any entity in which 10% or more of the interest is owned or controlled by another entity shall be considered to be the same entity. Application of this ownership standard will have significant implications for harvesters and processors, as well as for fishery managers implementing and monitoring these provisions. These are discussed further in Sections VI and VII.

Council Latitude - Mandate vs Guidance?

As will be evidenced in the ensuing discussions, various sections of the Act contain quite specific language regarding how that section will be applied and implemented. In some cases, for example, the Act specifies the vessels and the years of catch history which are to be used in calculating sideboard allowances, and as mentioned above, other provisions are specific with regard to definitions of ownership linkages for determining entities subject to sideboard limits or excessive share caps. Notwithstanding this specificity, some provisions of the Act are not as clear, or they specifically leave discretion to the Council. As such, there is considerable work to be done by the Council in terms of defining the ultimate configuration of the fisheries within the auspices of the Act.

Following is a more detailed discussion of the specific measures being developed by the Council to conform with the Act. We are in the middle of an extensive analysis of many of these issues, particularly the sideboard provisions for which there are a variety of alternatives and options in terms of the specific sideboard allocations and in-season management responses. This analysis will be reviewed by the Council this April with a final decision in June, for implementation in January of 2000. Other Council actions, such as establishment of excessive share caps for harvesting and processing, are on a more extended timeline and will require the attention of the Council throughout the next several months.

III. Cooperative Agreements and the Council's Role

For 1999, the catcher/processors and catcher vessels delivering to catcher/processors have developed a co-op and others have, or will be, presenting the details on that. The Act did specify certain minimum provisions to be contained in the co-op agreements, such as a list of parties to the contract, list of vessels to be used, and the amounts of pollock and other species to be harvested (Section 210). It also specified that such contract would be filed with the Council and Secretary at least 30 days prior to the start of fishing under such contract. Finally, it provides that the Council and Secretary would make available to the public the information listed above, as well as catch and bycatch from the co-op fishery on a vessel-by-vessel basis. While the Act did not specify a formal review and approval role for the Council, the agency sought, and the Council provided, comments on the 1999 co-op agreements after they were submitted in late December, but prior to the start of the fisheries. For year 2000 co-op agreements (which will likely include the mothership and inshore sector co-ops) the Council is considering some additional stipulations for co-op agreements including (1) limiting such agreements to specified duration (1-6 years for example); (2) prohibiting linkages of co-op membership to delivery of non-pollock species; and, (3) requiring contracts to be submitted by December 1 in order to allow Council review and discussion during their annual December plenary session. These issues should be resolved by the Council this summer, in anticipation of industry co-op negotiations this fall. Additionally, the Council has requested NMFS to provide a year-end report which will assess the effectiveness of the 1999 co-ops for a variety of parameters including, catch, bycatch, utilization and recovery rates, monitoring considerations, and impacts to other fisheries. This type of information will also feed into a report to Congress which is scheduled for late year 2000.

Another significant issue the Council will be considering has to do with the specific structure of co-ops within the inshore sector. The Act (Section 210(b)) provides for processor-specific co-ops, under which 80% of the qualified catcher vessels for a processor must participate in order for a co-op to be valid, and under which those vessels would be prohibited from delivering to any other processor. Vessels are tied to specific processors based on where they primarily delivered in the previous year, and the catch history that is brought into that co-op is based on the relative harvest of those vessels in 1995, 1996, and 1997. At the request of a group of independent catcher vessels, the Council has requested an analysis of the economic and policy issues associated with co-op structure among the inshore sector catcher vessels and processors. This would pertain to co-ops formed within the mothership sector as well, though the Act implies a single co-op for that sector across all eligible vessels. This report will be reviewed by the Council later this year, and it is unclear at this time whether action would be taken to change the structure as indicated by the Act, or whether such a change could be in place for year 2000.

The Council is also establishing an industry Committee, at the industry's request, to begin discussion and development of co-ops for the GOA. While co-ops are not prohibited in the GOA, Council involvement will be necessary as any co-op developed must include considerations of eligible participants (something the AFA did for the BSAI), as well as necessary sideboard provisions for non-co-op fisheries.

IV. Catcher/Processor Sideboards

As mentioned earlier, Section 211 of the Act titled 'Protection for Other Fisheries' is where the majority of the Council's follow-up responsibilities are contained. Some of these 'sideboard' provisions are quite specific while others are general and allow considerable latitude by the Council. Even in the case of specific provisions many of those are subject to some interpretation, and thus the Council is looking at a fairly wide range of options. For reference, Attachment 1 is an excerpt from the Council's recent newsletter which reflects the range of alternatives and options which are being considered by the Council for the various sideboard provisions. These pertain to harvest by catcher/processors and catcher vessels as well as to processing by shoreside plants and motherships. This paper will highlight those measures, starting with the catcher/processor sideboards which are relatively straightforward.

For Atka mackerel the Act is very specific about the percentages, by area, that these vessels will be allowed to harvest. For non-pollock groundfish and prohibited species catch (PSC such as halibut and crab), the Act essentially specifies that the 20 listed catcher/processors are to be restricted to the relative amounts that were harvested by those vessels, as well as the nine vessels retired through the buyout provisions, as were harvested in 1995, 1996, and 1997. While that appears quite straightforward, there are a couple of twists that could significantly impact the actual implementation of these sideboards. One question raised is whether the catch history (sideboards) in those non-pollock groundfish fisheries would include 'bycatch' amounts (harvested while pollock directed fishing), or just that amount that was taken in target fisheries for those species. For 1999 the Council included only their catch in non-pollock targets, but will be considering in June how to treat the year 2000 fisheries. Another issue is whether to include the catch of the nine retired vessels in the calculation of their sideboard limits (noting that these sideboards are caps, not allocations or guarantees). For 1999 that catch was included, but this is another policy issue with which the Council will grapple with regard to the year 2000 fisheries.

Finally, the last critical question involves what will happen when this sector hits a sideboard cap. Will it close fishing for that particular species only, or will it close that sector to all fishing, including pollock, given that further catch of a particular species could occur while pollock fishing? This is a significant policy call for the Council, given that the latter alternative could result in that sector not being able to fully realize its pollock allocation, while the former could result in harvest of sideboard species beyond the actual sideboard cap. For 1999 the pollock directed fishery will be allowed to continue, while for 2000 and beyond this issue is still open for Council resolution.

Other sideboard provisions for this sector are very clear and include restrictions on processing of crab, harvesting of fish from the GOA, and on processing of certain fish in certain areas of the GOA.

V. Harvester Sideboards

Sideboard options for the catcher vessel fleet are much more complex, partially due to less specific direction in the Act and partially due to the more varied constituencies and varied fishing patterns of that sector. The Act contains only a general provision that the Council will, by July of 1999, “*submit measures to prevent the catcher vessels eligible under Section 208...from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the Council as a result of fishery cooperatives in the directed pollock fishery...*” This gives rise to a series of questions such as - What is traditional? At what level do we aggregate sideboards, given that there are several subsectors, and potentially several co-ops, within this group? How do we isolate the results of fishery cooperatives in the application of sideboard limits?

It is these questions, as well as requests by the industry to the Council, which give rise to the myriad of alternatives and options which can be found in Attachment 1. In the case of the catcher vessels there are also crab fishery sideboards which have to be considered in addition to groundfish and PSC. Speaking to groundfish first, there are similar questions as with the catcher/processors above, such as whether attainment of a sideboard cap closes all fishing, or only directed fishing for the non-pollock species in question, or what years should be included to define ‘traditional harvest levels’ and whether that should include catch in pollock targets and well as non-pollock targets, as well as whether that catch history should be calculated as a percentage of the TAC or as a percentage of the actual overall catch (which is not always equal to TAC).

Further, there are the questions of whether sideboard caps should be applied at all to vessels which do not choose to join a co-op, or whether sideboards should apply only during certain times of the fishing year, or applied differentially to certain vessels depending on peculiar operating characteristics. Finally, it still is to be determined at what level of aggregation the caps would apply - (1) to all catcher vessels, regardless of delivery sector; (2) to three categories of catcher vessels - offshore, inshore, and mothership; or, (3) at the level of each co-op, or processing company to which these vessels deliver. A common cap to all has as its primary flaw the ‘tragedy of the commons’ - one group of vessels may be at the mercy of another group’s sideboard species catch. These are significant policy and operational issues and will obviously affect how these co-ops operate and the extent to which they protect other fisheries from the impacts of operational advantages which may result from co-op participation in pollock. How the Council answers these questions will likely influence a vessel owner’s decision of whether or not to even join a co-op.

Regarding protection of the crab fisheries, one of the primary concerns is that AFA qualified catcher vessels who join a co-op would now be able to time their pollock fishery such that they could maximize their participation in crab fisheries in which they previously had sporadic or low-level participation. Options to mitigate that possibility include restricting these vessels to ‘traditional’ harvest levels (using 1995, 1996, and 1997), at either an aggregate level or possibly at the individual vessel level, for each species of crab. Another set of options will examine exclusion of AFA vessels from certain crab fisheries (via license and endorsement restrictions through the vessel licensing program) based on recent participation and other criteria. As with groundfish, these options might

apply to all AFA eligible vessels, or only to those which join a co-op, and the endorsement restrictions could be applied only for the duration of the AFA (through 2004), or permanently.

There are other provisions of the Act which pertain to crab fishery protections, including Section 211 (c)(2)(C), which generally directs the Council to eliminate latent capacity in the crab fisheries. In October 1998 the Council took action to require recent participation (in 1996, 1997, or 1998 through February 7) in the BSAI crab fisheries in order to retain license privileges earned under their original license limitation program. This reduced the eligible fleet from 365 to 297 vessels overall.

This is a very brief overview of the various harvest sideboard measures being developed by the Council and I would refer you to Attachment 1 for specific details. As I mentioned before, we are currently finishing up an analysis of all of these alternatives and options for Council review in April.

VI. Processor Sideboards

The considerations of processing sideboards, and particularly the next section on excessive shares, raise some unique and interesting issues with regard to ownership, corporate structures, and other 'legal' aspects of the Act. In addition to the protective measures relative to harvest vessels, Section 211(c)(1)(B) requires the Council to submit by July of 1999 "*measures to protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of this Act or fishery cooperatives in the directed pollock fishery*". Although this is quite general guidance, another section of the Act (Section 211(c)(2)(A)) does provide specific measures relative to processing of crab by motherships and shoreside processors (offshore sector AFA processors are not involved in crab processing). This section states that "*the owners of shoreside processors and motherships will be prohibited, in the aggregate, from processing more than the percentage of total catch of each species of crab than they did, on average, in 1995, 1996, and 1997...*" This section includes application of 'the 10% rule', whereby any entity in which 10% or more of the interest is owned or controlled by another entity shall be considered to be the same entity.

Given this guidance, and the fact that shoreside co-ops will not even be in place until next year and we have less than a year under our belts with offshore co-ops, the Council is in a somewhat difficult situation with regard to developing measures under this section as they pertain to groundfish. However, based on input from both AFA and non-AFA processors, coupled with a preliminary analysis of this issue from Council staff, the Council developed two basic alternatives for addressing potential impacts to non-AFA processors: (1) establishing limits, based on processing activity in 1995, 1996, and 1997, to what AFA-eligible processors can do in the future in terms of processing of other groundfish and crab (the species included in these limitations would be BSAI non-pollock groundfish, BSAI crab, and GOA groundfish including pollock); and, (2) restricting vessels used for processing in the inshore sector to a single geographic location (this measure would prevent a vessel from moving around in order to take advantage of additional processing opportunities in non-pollock fisheries, for example).

While the Act specifies that the sideboard limits for crab processing will be aggregated across all processing facilities, using the 10% ownership rule, such an application may be less than ideal from the perspective of processors, fishermen, and fishery managers. From a processor perspective, having a common cap could allow for a few facilities or companies to co-op the overall processing allowance. Additionally, it may be difficult, without very close coordination among plants, for any particular facility to know when the collective cap has been reached and refuse further deliveries from catcher vessels. From a management perspective it will be extremely difficult to track the processing levels of each facility on a real-time basis, and notify the plants that further processing of a particular species is prohibited. It may be more feasible, and more functional for the processors, to break the processing sideboards down to an individual plant level, or at least to a company (or 'entity') level so that each plant or company would be able to adhere to its own separate sideboard processing limit.

The analysis being prepared by Council staff is looking at the various ways to calculate and implement these sideboards, including the critical issue of plant vs company vs aggregate application. A further complication for the Council and staff is the issue of ownership vis-a-vis the 10% rule stipulated in the Act. If the sideboard limits are applied at an aggregate level, across all AFA-qualified companies and plants, the issue is less critical, but nevertheless relevant. If applied at a plant, or particularly at a company or entity level, the 10% ownership rule becomes very critical as the processing history for all ownership related facilities has to be included in calculation of the sideboard, and then has to be applied to all facilities in aggregate which belong to a particular company or entity.

A simple example of the significance of this provision is shown in the figures below. Figure 1 illustrates the generally accepted concept of an entity in terms of ownership. Figure 2 illustrates how application of the AFA criteria would classify the 4 companies, and all of their associated facilities, as one entity for purposes of the cap. Again, the basic message we are trying to convey is that the definition of processing (or harvesting) entity will have significant implications on which actual facilities would be limited as a result of an entity reaching its cap. This issue is even more critical to the provisions relating to excessive shares which are discussed next, because these share caps will likely have to be applied at the company or entity level in order to have any practical effect. One of the biggest challenges facing Council staff is determining these ownership linkages for purposes of applying the sideboard limits and, later, the excessive share caps. Fortunately, as mentioned earlier, it is someone else's responsibility to actually monitor these ownership linkages and enforce the caps.

Figure 1: Four Processing Companies

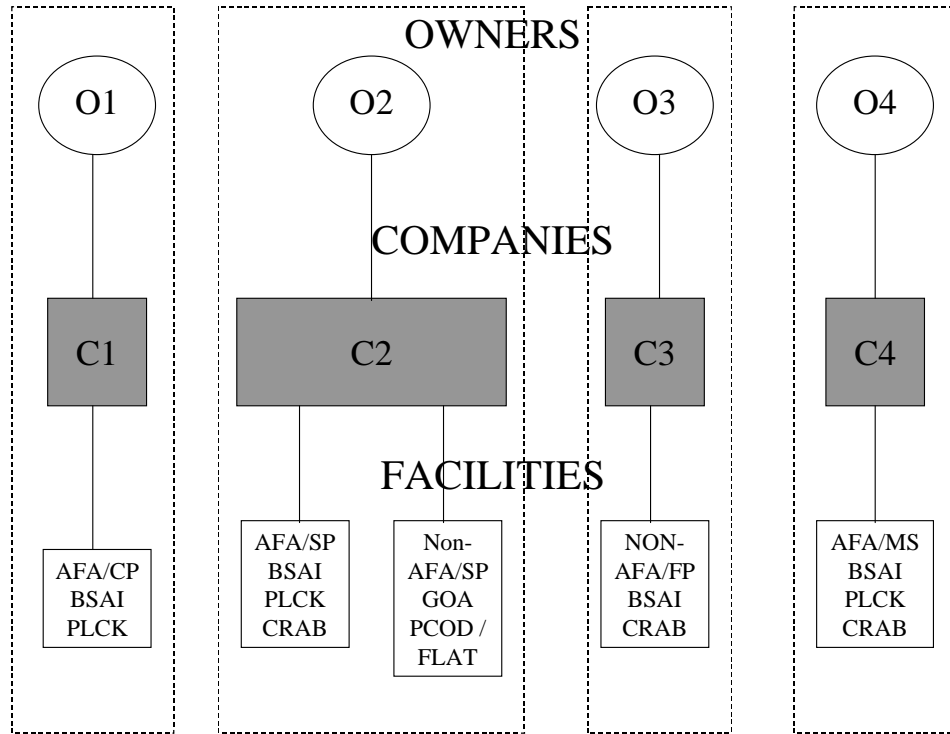
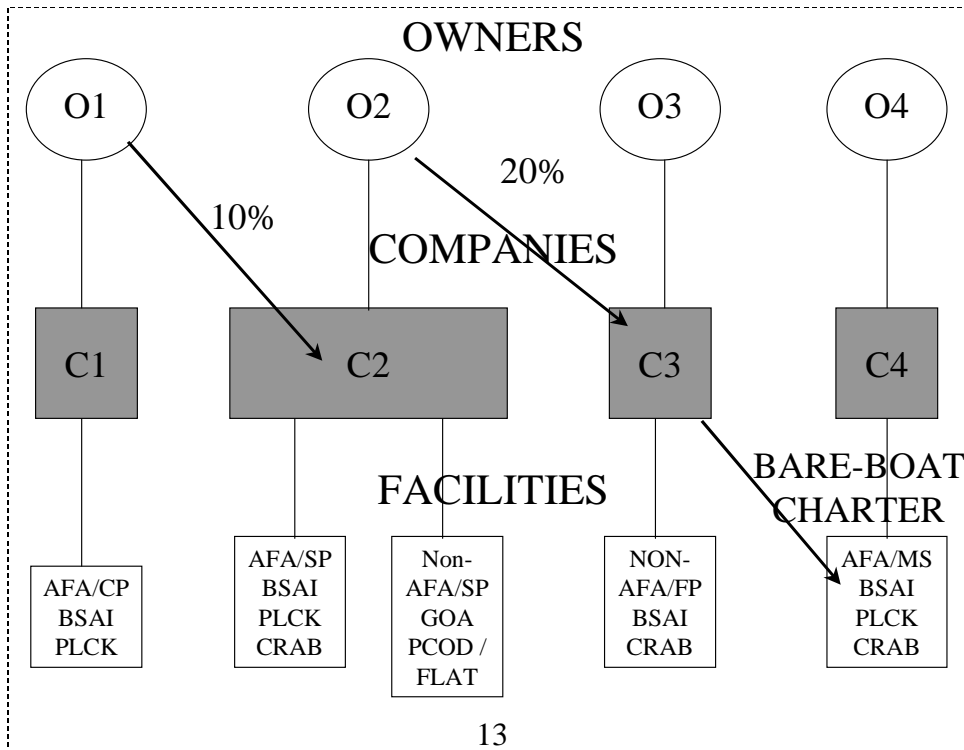


Figure 2: One Entity with 10 % Ownership Rule



VII. Excessive Shares

Section 210(e) of the Act specifies that no particular individual, company, or entity may harvest more than 17.5% of the total BSAI pollock TAC. That limitation is effective through force of the statute and implementing regulations published by NMFS. Additional provisions of the Act refer to required Council actions to establish additional harvest and processing excessive share caps for BSAI groundfish and crab, though with no time certain requirements. Section 210(e) further states that the Council is directed to recommend to the Secretary measures to establish a processing cap for BSAI pollock not to exceed 17.5%, though entities may be grandfathered up to that amount. This section stipulates application of the 10% ownership rule for purposes of these pollock harvesting and processing caps. Section 211(c)(2)(B) directs the Council to recommend to the Secretary measures to prevent any individual or entity from harvesting or processing an excessive share of crab or groundfish from the BSAI, but does not stipulate a specific percentage in this instance. For reference, Attachment 2 is an excerpt containing the full text of the provisions of the Act which are specific to the issue of processing limitations.

At its February 1999 meeting the Council reviewed an initial analysis of this issue, discussed options for addressing it, and developed guidelines for the staff analysis. However, because other requirements of the Act do contain time certain deadlines for Council action, the issue of excessive share development has been postponed by the Council until later this year. We will begin specific analysis of excessive share alternatives this summer and into this fall for Council review in December. The Council's initial suite of alternatives covers all of the required provisions of the Act and are detailed in Attachment 1. Essentially we will be looking at processing caps for BSAI pollock over a range of percentages up to 17.5%. For other groundfish and crab we will be looking at percentages ranging up to 40%, or simply using the average processing (or harvesting) that occurred over 1995, 1996, and 1997. Application of the 10% ownership rule will be used throughout this analysis, making resolution of ownership linkages paramount to development of this amendment. While sideboard limits may well be applied at an aggregate level (across both companies and sectors), excessive share caps by definition would need to be applied at a company or entity level in order to have meaningful effect.

VIII. Report to Congress

Section 213(d) directs the Council to submit, by October 1, 2000, “*a report to the Secretary and Congress on the implementation and effects of this Act, including the effects on fishery conservation and management, on bycatch levels, on fishing communities, on business and employment practices of participants in any fishery cooperatives, on CDQ program, on any fisheries outside the authority of the Council, and such other matters as the Council deems appropriate*”. Given the deadline for this report, we will have to begin compiling this information next summer. While we will have nearly two years of experience relative to the offshore co-ops, we will have but a half year of experience with regard to shoreside co-ops, mothership co-ops, and catcher vessel sideboard measures. We also will be faced with the task of trying to identify changes occurring in the fisheries that are specifically attributable to the AFA provisions, as opposed to other possible sources. Finally, the breadth of information required by this provision goes beyond that which is typically collected by the Council, NMFS, or other agencies.

Notwithstanding the daunting nature of this task, we certainly will attempt to address the direction of Congress to the best of our ability, and have put some of the wheels in motion which will be necessary to compile the required information. We have not completely resolved how this report will be structured or how we will get all of the necessary information, due to the press of immediate tasks required by the Act. The sideboard amendments constitute the Council’s immediate tasks, while development of the excessive share caps will be a focus for the latter half of this year. The report to Congress will likely be a major focus for the Council and staff during year 2000. In addition to the required provisions of the Act, it is important to keep in mind that the Act also allows, even expects, the Council to initiate additional management measures as the Council deems necessary to address unanticipated or unresolved issues which may arise. Therefore, there are potential Council actions which have not yet been conceived which will arise as new fisheries dynamics unfold in the next year or two.

IX. Specific Issues Challenging Analysis and Implementation

This section provides some additional perspectives on several of the issues which were raised in the previous descriptions of Council actions. These are issues which raise significant analytical, implementation, or legal challenges to the Council process.

Ownership Linkages

Ownership issues, particularly application of the 10% rule contained in the Act, pose significant analytical and implementation challenges, as well as significant implications for the industry. From the analysts' perspective, defining the specific entities which result from application of the 10% rule is necessary in order to provide the Council with the necessary harvest and processing data to enable an informed decision on the various alternatives being considered. As many of you are probably aware, discerning these ownership linkages (and the term 'control' as opposed to direct ownership) is not necessarily an easy task. From an implementation perspective, in-season monitoring of sideboard limits or excessive share caps will necessitate definitive knowledge of these linkages in order to effect those limits and attendant closures to harvesting or processing. From an industry perspective, the potential application of the 10% rule has serious operational implications and will define how and when their operations are limited, including whether a particular company or plant is operating under a common cap with other harvesters or processors, or whether it is master of its own domain. In the latter case, it will define which plants, vessels, or facilities are included in that domain.

Confidentiality Constraints

This has turned out to be a particularly vexing issue in terms of our ability to present information to the Council and the public which will enable them to make a fully informed decision with regard to many of the measures we are developing in response to the Act. While Council and NMFS staff have access to these data for analyses, there are confidentiality regulations, at both the State and Federal level, which preclude us from releasing individual vessel catch histories or company level catch and processing histories to the public (and even to the Council). The Act does specify the release of individual vessel and company information in terms of catch and bycatch of pollock and other species caught while fishing under the co-ops. The Act also allows the Council to develop regulations which allow the release of heretofore confidential data for the purpose of implementing bycatch reduction measures under the MSA. The Act also directs the Council to develop the necessary infrastructure and allocations to implement the co-ops envisioned by the Act, which requires that individual vessel catch histories would be compiled for purposes of carrying that catch history into the pollock co-ops and sideboards limits. Finally, the Act directs the Council to develop excessive share caps, which will require disclosure of existing share levels by company in order for the Council to make an informed decision as to the appropriate level of such caps for the future.

While the Act implies release of some of the above information, it does not explicitly provide regulatory authority to do so, which is something the Council and NMFS will need to develop.

Further, while the release of Federal data will certainly assist in this process, much of the data (specifically for catcher vessel deliveries onshore) is contained in the State of Alaska fish ticket data base, which does not appear to be subject to the provisions of the Act and would require regulatory change by the State legislature. Nevertheless we are compiling the relevant information, though some of it will have to be aggregated in the analysis for public review, or at a minimum coded such that the specific data is not directly attributable to individual vessels and companies.

Catch history determinations

Somewhat related to confidentiality is the issue of catch history determinations necessary to establish the amounts of pollock which go into each of the potential co-ops, at the processor level, which will be set up within the inshore sector. Depending on the level at which sideboards are managed, it may also be necessary to establish individual vessel catch histories for other groundfish as well. While the catch history of a particular vessel does not necessarily mean that vessel will be allocated such within a co-op, it will undoubtedly be of interest to the internal negotiations within each co-op. Given that the collective catch history of the participating vessels will determine the overall amount for each co-op relative to other co-ops within that sector, these catch histories will also be of crucial interest to the overall co-op.

It is likely that NMFS will set up a system which allows for vessels to review and appeal the catch history determinations from our data bases, much like the application and appeals process set up for IFQ determinations in sablefish and halibut and a similar process envisioned for the implementation of the groundfish and crab license limitation program. It is premature to attempt to define the exact nature of this process at this time, but I note that it is one of the more significant issues for resolution.

Closing Thoughts

This paper comprises but a brief discussion of the issues and tasks facing the Council over the next several months. I fully recognize that I have not covered every issue, nor have I really covered any of the issues in their entirety. In closing, I will include one quote from case law - this is from U.S. District Court Judge J. Kelleher during American Petroleum Institute v. Knecht, (Central District California 1978):

“...under our...Federal System, the Congress is constitutionally empowered to launch programs, the scope, impact, consequences, and workability of which are largely unknown, at least to the Congress, at the time of enactment; the Federal Bureaucracy is legally permitted to execute the Congressional mandate with a high degree of befuddlement, as long as it acts no more befuddled than the Congress must reasonably have anticipated...”

Given the industry representation involved in the formulation of the AFA, it is obvious that Congress was aware of the scope of their actions and most of the impacts of the AFA were reasonably anticipated by Congress. Undoubtedly Congress anticipated some befuddlement on the part of the

Council - indeed this is why the Act contains the various mandates for specific Council actions to address these impacts, or allows the Council latitude and authority to develop measures in response to unforeseen effects. Certainly the Council and NMFS, with input from the affected industry, collectively constitute the federal bureaucracy which must execute the mandates of the AFA. The Council's challenge is not so much to interpret basic provisions of the Act - those are quite clear for the most part - rather their task is to find a way to implement the provisions of the Act in a way that balances the competing interests of a complex, interrelated fishing and processing industry.

ATTACHMENT 1

LIST OF COUNCIL ALTERNATIVES AND OPTIONS FOR AFA SIDEBOARD AMENDMENTS

Council's February Actions for Catcher Processor Sideboards

For the year 2000 and beyond, the Council initiated an analysis for the 20 + 9 vessels listed in the AFA of their bycatch in both the directed pollock and non-pollock fisheries (95, 96, 97) and associated PSC levels. The catch histories of the 20 listed vessels and the 9 vessels which are removed from the fishery and the catch in the pollock and non-pollock target fisheries will be treated separately. This will allow the Council to include either all catch or only catch in the non-pollock target fisheries (for either the 20 or 29 vessels) in the caps set for 2000 and beyond.

Sub-options:

1. The caps would close both the pollock and non-pollock groundfish fisheries when reached.
2. The caps would close only the non-pollock groundfish fisheries when reached (only pelagic pollock fisheries would remain open).

Include a review of vessel specific PSC rates in addition to average PSC bycatch ratio for the 20 +9 AFA catcher/processors relative to non-AFA vessels.

Add to Table 6.9 a fourth column which illustrates a retrospective analysis of PSC needs of the 20 + 9 AFA catcher/processors using a performance-based pelagic definition.

Include discussion paper establishing chinook PSC sideboard for co-op pools in pollock, on a pro-rata basis, based on final Council action on chinook bycatch caps. (Note: The chinook bycatch option was included in the AP minutes only under catcher vessel sideboards. For consistency, staff has also included this option under the catcher/processor sideboard section).

Council's February Actions for Catcher Vessel Sideboards

Crab Sideboards

Participation in a co-op is defined as ANY use of a vessel's catch history by a co-op, whether by direct harvest, lease, sale, or stacking of quota.

Initiate analysis of the following options to mitigate impact of possible spillover effects of AFA on other fisheries:

Options For Section 208 Vessels:

1. No crossover allowed into any crab fisheries.
2. No crossover allowed in the Tanner crab fishery only (opilio and bairdi).
3. No crossover allowed into opilio unless vessel fished opilio in 1996 or 1997.
4. No crossovers at the endorsement level.
5. Allow crossovers only into red king crab fisheries only (excludes brown and blue king crab).

Sub-options:

- a. Vessels which qualified based on bycatch of bairdi in red king crab would be restricted to bycatch of bairdi in the red king crab fishery (applied to #2 & #4 above).
- b. Only Section 208 catcher vessels that join a co-op (applies to #1-5 above and #6 below).
- c. Allow crossovers for vessels with crab landings in each of the three years (1995, 96, and 97) (applies to #1 and #2 above).
- d. Prohibit any vessel participating in an AFA co-op from lease, transfer, or sale of any license limitation program (LLP) permit.

Duration sub-options:

- a. Permanent based on participation in co-op
- b. Only for year vessel is involved in co-op.
- c. Duration of AFA

6. Measures which would restrict pollock co-op vessels to their:

Option a. Aggregate traditional harvest including a restriction to the percentage of crab harvest in all species between 1995, 96, and 97.

Option b. Average catch history 1995, 96, and 97 on a species-by-species and vessel-by-vessel basis.

Option c. No sale, lease, or stacking of vessel catch history in any crab fishery.

Scallop Sideboards

1. Participation in a co-op is defined as any use of a vessel's catch history by a co-op, whether by direct harvest, lease, sale, or stacking of quota.
2. Measures which would restrict pollock co-op vessels to their aggregate traditional harvest in the scallop fishery in the years:

Option a. 1996 and 97.

Option b. 1997 only

Sub-options:

- a. Based on percentage of statewide catch

- b. Based on percentage of PSC cap.

Groundfish Sideboards

BSAI

Participation in a co-op is defined as ANY use of a vessel's catch history by a co-op, whether by direct harvest, lease, sale, or stacking of quota.

To Whom do Restrictions Apply

Restrictions should apply to all non-pollock FMP fisheries.

Sideboards apply to all Section 208 eligible vessels.

Sub-options:

- a. Applies to Section 208 vessels only if they join a co-op.
- b. Create sub-sideboard cap for catcher vessels with average pollock landings from 1995-97, which were less than:
 1. 1,000 mt
 2. 3,000 mt
 3. 5,000 mt

When the CV Restrictions Should Apply

1. Harvest levels should be restricted only during the same time periods as the normal open access pollock fishery

Sub-options:

- a. Use 1998 open access season dates by sector as a base reference
 - b. Use 1999 sea lion modified season dates.
2. Exempt those CVs that fish for motherships from BSAI groundfish sideboards prior to February 1 each year.
 3. Exempt each CV sector from BSAI groundfish sideboards for the number of days in excess of 5 that each CV sector's pollock season is closed by regulation during the month of February.
 4. Limit fishing to the season (or quarter - or half year) in which the catch history was earned.
 5. At all times during the fishing year.

6. AFA qualified pollock catcher vessels, that during pollock A season historically had a majority of their catch in pollock, would be limited prior to March 1 of each year to the collective share of the cod fishery that these same vessels collectively harvested historically (1995, 96, 97) prior to March 1.
 1. Apply and monitor by vessel class and sector
 2. Apply and monitor by individual co-op.(This would effectively subdivide the P. cod cap between AFA vessels that harvested mostly pollock during the A season and those that did not).

Nature of CV Restrictions

Absolute harvest amounts expressed in percentage of TAC in metric tons.

Determination of “Traditional Harvest Level”

1. The definition of “traditional” in non-pollock fisheries will be determined by catch history:
 - a. On basis of percentage of groundfish harvest in non-pollock fisheries by species by fishery.
 - b. On basis of percentage of total groundfish harvest by species by fishery.
 - c. On basis of percent of TAC in non-pollock fishery by species by fishery.

Option A: Apply one time frame equally to all groundfish targets

Sub-option 1: Use average catch history in the years 1995, 96, and 97.

Sub-option 2: Use catch history based on years 1992-97.

Pollock: Initiate qualitative discussion on ability for Secretary to use the best 2 out of 3 years to determine overall denominator for total pollock pool and numerator for each co-op.

Determination of “Aggregate”

Option A: Apply and monitor by the vessel class and sector.

Option B: Apply and monitor by individual co-op.

Compensation

Further address in a discussion paper, options for compensation to inshore catcher vessels with catch history delivering to catcher processors that is no longer available to them under AFA. Additionally, examine inserting a clause replacing language in §210(b)(1) to add an option for determining catch history for catcher vessels on the basis of the best two of three years in 1995, 1996, 1997.

As provided by Section 213(c)(3) of AFA, the AP recommends the following change to Section 210(b)(1)(B) to allow a catcher vessel with catch history, based on deliveries to catcher processors that is otherwise lost under AFA, to bring that catch history to the inshore sector cooperative while sharing the burden among all members of the inshore sector.

“ . . . the Secretary shall allow only such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) to harvest the aggregate percentage of the directed fishing allowance under Section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent to the aggregate total amount of pollock harvested by such catcher vessels (and by such catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) in the directed pollock fishery for processing by the inshore component, together with the amount harvested by such vessels for processing by catcher/processors in the offshore component during 1995, 1996 and 1997, relative to the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component together with the aggregate total amount harvested by all catcher vessels (excluding those eligible under 208(b)) for processing by catcher/processors in the offshore component during such years and shall prevent such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) from harvesting in the aggregate in excess of such percentage of such directed fishing allowance.”

The analysis should breakout the 37 vessels by:

- a. deliveries of 250 tons
- b. deliveries of 500 tons
- c. deliveries of over 1,000 tons

(Vessels that do not meet these harvest requirements may not be eligible for compensation in the inshore sector.)

Management of Non-Pollock fisheries

Vessels limited to target fishing for non-pollock species during those times when the open access target fishery for the non-pollock species is open.

Assigning PSC Caps for Co-op Catcher Vessels in Non-Pollock Fisheries

Determine PSC caps based on catch history ratios (1995, 1996, and 1997) rather than VIP rates.

- a. A review of vessel specific PSC rates for eligible vessels, compared to non-eligible vessels.
 - b. Average bycatch rates of eligible vessels, compared to non-eligible vessels.
 - c. A retrospective analysis of PSC needs for eligible vessels using a performance-based pelagic pollock definition.
1. PSC and non-pollock groundfish caps would apply to all fisheries as true caps (i.e., when reached these vessels would stop fishing for all groundfish species).
 2. The caps would only close the non-pollock target fisheries.

Include discussion paper establishing chinook PSC sideboard for co-op pools and/or sectors in pollock, on a pro-rata basis, based on final Council action on chinook bycatch caps.

GOA

1. Apply the following sideboards to AFA Section 208 eligible catcher vessels.
Sub-option: Applies only to vessels participating in a co-op.
2. Any non-pollock catch limitations for AFA Section 208 vessels are aggregate caps not quotas or allocations.
3. Vessel catch history consists of the years 1995, 96 and 97.
Sub-option: Fishery is released seasonally by quarter proportionally to when caught during qualifying years.
4. Gulf of Alaska flatfish sideboards to be halibut bycatch driven. Historic target catch should be multiplied by the average halibut bycatch rate and current mortality rate to determine the halibut mortality available to AFA vessels. These amounts should be separated between deepwater and shallow water complexes.
5. Non-flatfish Gulf of Alaska target fishery: Target catch of each non-flatfish species available to AFA Section 208 vessels should be limited to the average catch, by target species, based on the average catch history.

Council's February Actions Mitigating Impacts on Non-Pollock Processors

Processor Sideboards

(For review in April 1999) an analysis be initiated examining options to mitigate potential adverse impacts from AFA on non-pollock processors including:

1. Restricting vessels used for processing in the inshore sector to a single geographic location.
2. Measures to restrict pollock processor activity in non-pollock fisheries to no more than historic levels including options using years 1995, 96 and 97.

In order to further the analysis mandated by the AFA:

1. Analysis should evaluate impacts at both the facility and corporate level throughout the BSAI and GOA.
2. Crab sideboard limits should include all Council alternatives.

The analysis should consider the following:

1. list the adverse effects that the measures are aimed at protecting,
2. quantify how the measures will protect the non-eligible processor from the adverse effects, and

3. consider whether adverse effects have a high probability of occurring as opposed to being just perceived as a possibility of occurrence,

before any protective measures are implemented.

NOAA GC has provided an opinion that the Council is restricted under the Act from allowing additional pollock processors except when the TAC increase by 10 percent over 1997 levels, or one of the processors suffers a total or constructive loss (Section 208(f)(2)). The discussion provided by NOAA GC will be included in the amendment package.

Other Actions Under This Section

Initiate a data gathering program to identify the benefits and impacts of AFA. Information tracked should examine state and federal fisheries and include:

- ownership patterns
- processor activity
- product forms
- ex-vessel price
- employment changes
- market share

Excessive Shares

1. Initiate an analysis (for review in December 1999) of excessive share caps on AFA processors of 10%, 12%, 15% and 17.5% for BSAI pollock.
2. Non-pollock BSAI groundfish and BSAI crab fisheries should also be examined. A sub-option should also be examined which allows differential caps between pollock and non-pollock processors:

Option a: range of 10%, 17.5%, and 40%

Option b: the 1995-1997 average

Excessive share caps should:

- a. Use the 10% ownership rule.
- b. Provide grandfather options for existing processors in excess of the 17.5% share.
- c. Be applied by species groups (pollock, other groundfish, and crab) and FMP area (BSAI).

Other AFA Actions Taken at the February Meeting

1999 Co-op Agreements

Request that NMFS prepare a preliminary report on the 1999 co-ops for the October 1999 Council meeting and a final report for the February 2000 meeting. The report should specifically assess:

1. The effectiveness of pollock co-ops in reducing bycatch (all species).
2. The effectiveness of management measures to protect other fisheries from adverse impacts caused by the AFA or pollock co-ops.
3. A discussion of how transfers within co-ops may affect issues 1 and 2 above.
4. Utilization and recovery rates by species and product categories.
5. Method of monitoring and enforcement.

The report should include the most specific catch and bycatch information available on an individual vessel level to help the co-op and the Council realize the public disclosure requirements for such information envisioned in Section 210(a)(1)(A) of the AFA.

Confidential Catch & Bycatch

As described in NMFS' January 28, 1999, discussion paper, the Council requests NMFS to begin to develop the regulatory infrastructure to provide disclosure of:

1. Vessel identification.
2. Harvest amounts by species including prohibited species and harvest rates of species.

Further, the Council initiated an analysis to consider use of a dual form of fish tickets to be used by NMFS and ADF&G that would not fall under the State of Alaska's confidentiality regulations.

The Council requests that ADF&G initiate efforts to change AS 16.05.815 to allow for the release of confidential data as provided by Section 210(a)(1)(B) and Section 211(d) of the AFA.

The Council urges NMFS to make testing of its new system to capture catch delivery information from shoreline operation a top priority for implementation this summer. The Council will write a letter to the Secretary of Commerce highlighting NMFS's need to budget additional staff and resources to improve our catch and bycatch reporting systems in order to aid the Council's ability to comply with the bycatch reduction mandates that were included in the Magnuson-Stevens Act.

Co-op Discussion Paper

Initiate a qualitative analysis of the economic and policy issues associated with formation of processor/catcher vessel (and mothership/catcher vessel) cooperatives under the AFA, including the

alternatives outlined in the independent catcher vessel proposal with a preliminary report to the Council in June 1999 and a final report in September 1999.

ATTACHMENT 2

AFA PROVISIONS REGARDING PROCESSING LIMITATIONS

Under 'Eligible Shoreside Processors'

(2) Upon recommendation by the North Pacific Council, the Secretary may approve measures to allow catcher vessels eligible under subsection (a) to deliver pollock harvested from the directed fishing allowance under section 206(b)(1) to shoreside processors not eligible under paragraph (1) if the total allowable catch for pollock in the Bering Sea and Aleutian Islands Management Area increases by more than 10 percent above the total allowable catch in such fishery in 1997, or in the event of the actual total loss or constructive total loss of a shoreside processor eligible under paragraph (1)(A).

Under 'Fishery Cooperative Limitations'

(e) EXCESSIVE SHARES.—

(1) HARVESTING.—No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

(2) PROCESSING.—Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the North Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

(3) REVIEW BY MARITIME ADMINISTRATION.—At the request of the North Pacific Council or the Secretary, any individual or entity believed by such Council or the Secretary to have exceeded the percentage in either paragraph (1) or (2) shall submit such information to the Administrator of the Maritime Administration as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either such percentage. The Administrator shall make a finding as soon as practicable upon such request and shall submit such finding to the North Pacific Council and the Secretary. For the purposes of this subsection, any entity in which 10 percent or more

of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

Under ‘Protections for Other Fisheries’

(a) GENERAL.—The North Pacific Council shall recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.

(c) CATCHER VESSEL AND SHORESIDE PROCESSOR RESTRICTIONS.—

(1) REQUIRED COUNCIL RECOMMENDATIONS.—By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to—

(A) prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery; and

(B) protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of this Act or fishery cooperatives in the directed pollock fishery.

If the North 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 North Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation restrict or change the authority in section 210(b) to the extent the Secretary deems appropriate, including by preventing fishery cooperatives from being formed pursuant to such section and by providing greater flexibility with respect to the shoreside processor or shoreside processors to which catcher vessels in a fishery cooperative under section 210(b) may deliver pollock.

(2) BERING SEA CRAB AND GROUND FISH.—

(A) Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, 1997. For the purposes of this subparagraph, the term “facilities” means any processing plant, catcher/processor, mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.

(B) Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from harvesting or processing an excessive share of crab or of groundfish in fisheries in the Bering Sea and Aleutian Islands Management Area.

The above provisions of the AFA can be summarized as follows:

1. The Council cannot alter the list of eligible processors, unless the TAC increases or an eligible plant is lost.
2. Harvesting excessive share caps for BSAI pollock of 17.5% are in place from 1999 through 2004. Processing excessive share caps for BSAI pollock (at or below 17.5%) have to be established by the Council, though with no time certain - both harvesting and processing caps appear to be independent of co-op involvement.
3. By July 1999 the Council must recommend measures to “protect processors not eligible to participate in the (BSAI) directed pollock fishery from adverse effects of the AFA or fishery cooperatives...”
4. The Council must have in place by January 2000 measures to prevent AFA motherships and AFA shoreside processors from processing, in aggregate, a greater percentage of the total catch of BSAI crab than they processed in 1995-1997 (on average).
5. The Council must submit measures to establish excessive share caps for harvesting and processing of all groundfish and crab in the BSAI, though under no time certain.
6. The Council can develop any other measures it deems necessary (at any time) to protect other fisheries and participants under its jurisdiction from adverse impacts caused by the AFA or co-ops in the directed pollock fishery.