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Donald K. Hansen, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, Oregon 97220-1384

RE: *Groundfish Management/Amendment 15 – American Fisheries Act*

Dear Chairman Hansen:

This letter presents comments from Mark I, Inc. with respect to the preliminary range of Amendment 15 alternatives adopted by the Pacific Fishery Management Council (PFMC) at its April 2007 meeting. Mark I believes that focusing the analysis on potential adverse impacts to the Pacific whiting fishery from American Fisheries Act (AFA) vessels rather than on all new entrants to the fishery will not result in sustainable and effective solutions.

As a preliminary procedural matter, it is highly questionable whether the Council has the statutory authority at this time to proceed under subsection 211(c)(3)(A) of the AFA. The subsection states:

By not later than July 1, 2000, the Pacific Fishery Management 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.

(Emphasis added). Subsection 211(c)(3)(B) then mandates that “[i]f the Pacific Council does not recommend such conservation and management measures by such date [July 1, 2000],” the Secretary may, but is not required to, implement management measures “by regulation.” The Secretary is not given a definite deadline by which to act, but the deadline for the Council could not be clearer, and by implication the Secretary is to act in a timely fashion if the Council’s deadline passes. Not by any measure does the Council have the statutory authority under the AFA to take up the issue seven years after the deadline.



The information currently before the Council does suggest that an overcapacity problem exists in the Pacific whiting fishery, but it is inappropriate to lay that problem solely at the feet of the AFA. The facts do not support the contention that AFA vessels are the sole cause of all problems in the fishery. NMFS recognized the wider scope of the problem in the emergency rule published on May 17, 2007 and prohibited all new entrants in to the fishery, not just new AFA entrants. *See 72 Fed. Reg. 27759-27765.* Part of NMFS' stated rationale for the emergency rule was that it will provide stability in the fishery while allowing the Council to complete action on managing the fishery over the long term, including conservation and management measures to deal with otherwise unlimited entry into the fishery. As the emergency rule illustrates, analyzing alternatives related only to AFA participants is unlikely to result in rationalization of the fishery or long-term solutions.

Mark I believes that a full rule-making process under the Magnuson-Stevens Act is the appropriate mechanism for looking at rationalization and any measures that would limit participation in the fishery. Mark I supports the Washington Department of Fish and Wildlife's proposal to address issues related to new entrants through a comprehensive process that allows continued participation by vessels that have participated to date, and that thoroughly analyzes the effects of each alternative on those participants.

Rationalization of the whiting fishery needs to be considered without further delay. However, the issue needs to be analyzed and debated within the normal rulemaking process. We urge the Council to refocus the issues before it so that it can develop a full range of management alternatives that can be the basis for a fair process under the Magnuson-Stevens Act.

Sincerely,

Linda R. Larson

LRL:rhc

cc: Robert Lohn
Frank Lockhart
Chris Garbrick
Eileen Cooney