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March 5, 2001

PFMC

Dr. Donald O. McIsaac, Executive Director  
Pacific Fishery Management Council  
2130 SW Fifth Avenue, Suite 224  
Portland, Oregon 97201

Re: Los Angeles Commercial Fishermen's Association:  
**Response to Your Request for Further Information**

Dear Dr. McIsaac:

This will respond to your request by telephone late this afternoon for information on three points of interest to Council members in reviewing the request of Los Angeles Commercial Fishermen (LACFA) for a place on the Council's April agenda. I understand that you will provide for distribution of this information to the Council.

**Question # 1: What changes affecting the LACFA and the Huntington Flats issue have occurred since the Council action in October 1997?**

A key change since 1997 has been the new knowledge about depletion of groundfish stocks and the resulting new economic pressures on the fishing fleet. Closures, quota reductions, and other restrictions are hammering sport and commercial fishers. This is unavoidable if stocks are to be rebuilt. But at a time like this, the Council should make every possible effort to preserve fishing operations that don't have to be sacrificed in order to rebuild stocks. The LACFA fleet is unusual in that it takes modest landings of non-depleted stocks, fishes close to home with a clean gear, free from marine mammal conflicts and bycatch wastage, and fills a primarily local niche market. The Council should reconsider its proposed regulatory extinction of this fleet in light of these changed circumstances.

A related change is the new information about depletion of many rockfish species not now being fished by LACFA vessels. The NMFS rationale for closing Huntington Flats includes the expectation that some of the vessels will move into deeper waters to fish. Those that do will have as their principal available species the rockfish now known to be in need of *less, not more* fishing pressure.

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Another change has been the increased reliance of the LACFA vessels on groundfish landings. Data we have submitted to NMFS on seven of the most active boats showed groundfish landings ranging between 11 and 67 percent of total landings during 1997-1999. At the high end, this is a significant change from data presented to the Council in 1997, when the boats were more dependent on state-managed species. The new data shows that these boats are a vital part of the small vessel component of the Pacific fleet managed by the Council.

Another new item of relevant information concerns the cooperative and harmonious conditions which have prevailed at Huntington Flats in the four and a half years the LACFA vessels have fished there under federal court order. Previously expressed concerns about gear conflicts and area competition with recreational fishers have not proved to be true. The fishers have worked it out amicably among themselves.

Still another change is the December 2000 entry of a consent decree in U. S. District Court for Northern California under which the California Department of Fish and Game is permanently enjoined from enforcing the state's initiative-based set net ban in federal waters at Huntington Flats. The court order is based on the preemptive effect of existing federal regulation which allows set nets. The court order has resolved the dispute and will remain controlling unless NMFS modifies the existing federal regulation.

A particularly important change since the Council's 1997 decision has been publication of NMFS's Environmental Assessment, Initial Regulatory Flexibility Analysis and statement of rationale in support of the proposed rule. This material has proved to be deeply flawed, both legally and factually. It is quite evident that NMFS struggled long and hard -- and unsuccessfully -- to come up with legally defensible reasons for closing Huntington Flats to set net gear. We believe the explanations do not even come close to meeting the tests of Magnuson-Stevens, NEPA, or Regulatory Flexibility Act. Quite simply, the Council should reconsider its recommendation of this regulation in light of these realities before the decision is allowed to become final and subject to judicial review.

**Question # 2: What are LACFA's expectations regarding catch of state-managed species?**

LACFA anticipates continuing its current pattern of landings from Huntington Flats, which are a mix of state and federal-managed species, varying with the season and from one vessel to another. As noted, the overall proportion of groundfish

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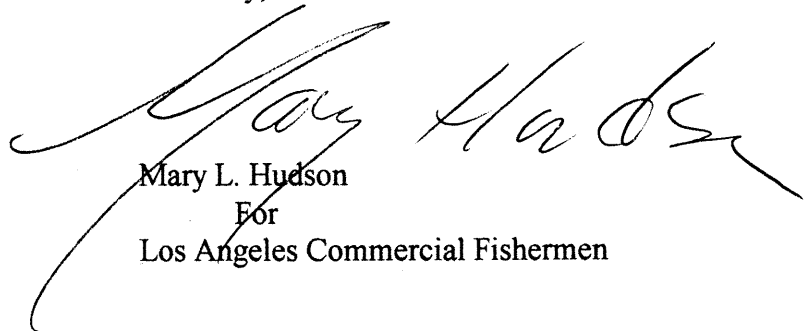
landings has increased in recent years so that groundfish are a very significant component of set net landings from Huntington Flats, and there are indications that the trend will continue. Like most small boats, these boats fish for state or federal-managed species depending upon seasons and market conditions. That flexibility is needed for economic survival, and the federal judge reviewing LACFA's case against CDFG specifically found that a predominance of state-managed species does not remove these fishers from the coverage of the Magnuson-Stevens Act.

**Question # 3: What does LACFA want the Council to do?**

At the April meeting, LACFA intends to request that the Council reconsider and withdraw its recommendation that NMFS modify existing regulations to prohibit use of set net fishing gear to take groundfish at Huntington Flats in the EEZ. NMFS' action to institute rule-making responded to the Council's 1997 closure recommendation. If the Council withdraws that recommendation, LACFA will request that NMFS discontinue the on-going rule-making in so far as it affects Huntington Flats. Because the proposed rule rests on a very weak foundation, we are optimistic about the prospects for NMFS to abandon this effort if the council withdraws its recommendation. Our request would not affect pending proposals to close three other areas off central California in order to reduce entanglement and drowning of protected birds and marine mammals.

Thank you for the opportunity to present these points. I understand the tremendous pressure the Council is under at meetings and the preciousness of hearing time. If the LACFA matter can be agendized for April, I anticipate keeping our oral presentation very brief, with the only presenter being myself. Our written submittal would be more extensive, but could be available for early circulation on very short notice.

Sincerely,



Mary L. Hudson  
For  
Los Angeles Commercial Fishermen

