

Date: Thu, 02 Feb 2006 22:09:50 -0800
From: Don McIsaac donald.mcisaac@noaa.gov
To: Spring, Margaret (Commerce) Margaret_Spring@commerce.senate.gov
Subject: Re: FW: final language--AFA vessel rebuild/replacement

Margaret-

This email contains a response to your request for a perspective from the Pacific Council on the referenced language in the Coast Guard authorization bill. Given the time constraint that does not offer the optimal development of a response via our Council meeting process, I offer the following perspective that I feel reflects what the full Council would say on this matter. I have contacted a number of Council Members to get to this opinion, including the Chairman and Vice-Chairman.

Let me start with a little background, then describe a current concern that prompts a recommendation for an additional concept beyond those contained in the current bill.

Background

- When Congress passed the American Fisheries Act in 1998, Congress directed the Pacific Council to develop conservation and management measures to protect west coast groundfish fisheries from potential harm caused by the AFA.
- In September 1999, the Pacific Council initiated Amendment 15 to the groundfish FMP to address this concern.
- However, because of competing workload and because of no threatened imminent harm, the Pacific Council tabled action on Amendment 15 in 2001 or 2002 until an undefined later time.

Current Concern

- Currently, it appears that the owners of a large catcher/processor vessel with no history in the West Coast groundfish fishery may be intending to acquire the permits required to enter the catcher/processor sector of the West Coast whiting fishery.
- If this were to occur, it would be very disruptive to the existing whiting cooperative that has so responsibly fished cleanly with regard to the incidental catch of depleted rockfish species and salmon; these boats would likely abandon the cooperative and once again participate in a derby-style race for fish.
- This in turn would almost inevitably lead to higher bycatch of the depleted rockfish that have stringent quotas (canary, widow, and darkblotched rockfish) and salmon, which would consequently shut other fisheries down, including shore based whiting, non-whiting groundfish, and even recreational fisheries.
- This is a catastrophic scenario that has generated great concern on the West Coast given the razor-thin margins of incidental take of depleted species in the various groundfish fisheries and the recent Ninth Circuit Court decision on minimizing those incidental takes.

Recommendation for an Additional Legislative Concept

- If there is to be serious consideration for the proposed AFA language as part of the Coast Guard authorization, the Pacific Council feels that there should also be an inclusion of a provision to protect West Coast groundfish fisheries from the impacts of AFA-privileged vessels moving south.
- This recommendation is consistent with the original AFA intent in 1998 that called for such protective measures to be developed by the Pacific Council; the timing of the current urgent concern unfortunately now mandates direct legislative action.
- The concept would be to prohibit AFA qualified catcher/processor vessels (original or replacement vessels) without West Coast landing history prior to June 29, 2000 from participating in the West Coast Pacific Whiting fishery.
 - June 29, 2000 is a control date adopted by the Pacific Council when deliberating AFA impact protection under Amendment 15; see Federal Register Vol. 65, No. 178, September 13, 2000.

Please don't hesitate to contact me if you have any questions on this matter. Should this matter still be ripe for consideration for Pacific Council input after our March Council meeting, please let me know.

Thanks,
Don

SEC. ____ . VESSEL SIZE LIMITS.

(a) LENGTH, TONNAGE AND HORSEPOWER. -- Section 12102 (c)(5) of title 46, United States Code, is amended by –

- (1) striking the period at the end of paragraph (B) and inserting “; or”;
- (2) inserting the following new paragraph at the end thereof:

“(C) the vessel is either a rebuilt vessel or a replacement vessel under Section 208 (g) of the American Fisheries Act and is eligible for a fishery endorsement under section 12108 of this title.”;

- (3) inserting “and” at the end of paragraph (A)(i);
- (4) striking “and” at the end of paragraph (A)(ii) and inserting “or”; and
- (5) striking paragraph (A)(iii).

(b) CONFORMING AMENDMENTS. –

(1) Section 208(g) of Title II of Division C of Public Law 105-277 is amended to read as follows:

“(g) VESSEL REBUILDING AND REPLACEMENT. – (1) For purposes of improving vessel safety, enhancing utilization of the fishery resource, and increasing operational efficiencies, including fuel efficiency, and except as provided in paragraph (4) of this subsection, the owner of a vessel eligible under subsections (a), (b), (c), (d), or (e) may rebuild or replace that vessel with a vessel documented with a fishery endorsement under section 12108 of title 46, United States Code, which shall be eligible in the same manner under that subsection as the eligible vessel, and shall not be subject to any limitations

on lengthening contained in Part 679 of title 50 of the Code of Federal Regulations.

(2) The North Pacific Council may recommend for approval by the Secretary such conservation and management measures in accordance with the Magnuson-Stevens Act as it may deem necessary to ensure that provisions of this subsection do not diminish the effectiveness of fishery management plans of the Bering Sea and Aleutian Islands Management Area or the Gulf of Alaska.

(3) Notwithstanding the requirements of section 12102 (c) (1), (2) and (3) of title 46, United States Code, a vessel that is eligible under paragraph (1) of this subsection and that qualifies to be documented with a fishery endorsement pursuant to Section 203(g) or Section 213(g) of Title II of Division C of Public Law 105-277 may be replaced with a replacement vessel under paragraph (1), provided that the vessel that is replaced is validly documented with a fishery endorsement pursuant to Section 203(g) or Section 213(g) of Title II of Division C of Public Law 105-277 before the replacement vessel is documented with a fishery endorsement under section 12108 of title 46, United States Code, and provided further that the replacement vessel and its owner and mortgagee are subject to the same limitations under Section 203 (g) or Section 213 (g) of Title II of Division C of Public Law 105-277 applicable to the vessel that has been replaced and that vessel's owner or mortgagee.

(4) A replacement vessel for a catcher vessel eligible under subsections (a), (b) or (c) of this subsection that exceeds the registered length, gross tonnage or shaft horsepower of that catcher vessel, or a catcher vessel eligible under subsections (a), (b) or (c) of this subsection that is rebuilt to increase its registered length, gross tonnage or shaft horsepower, shall be 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.

(5) Any vessel that is replaced under the authority of this subsection shall thereafter be ineligible for a fishery endorsement under section 12108 of title 46, United States Code, unless that vessel is also a replacement vessel under paragraph (1) of this subsection.”

(2) Section 203 (g) of Title II of Division C of Public Law 105-277 is amended by striking “with paragraphs (2), (5), and (6) of”.

(3) Section 210(b) of Title II of Division C of Public Law 105-277 is amended by adding paragraph (b)(7) below:

“(b)(7) FISHERY COOPERATIVE EXIT PROVISIONS – The owner of a catcher vessel eligible under section 208(a), which is participating in a fishery cooperative, may elect to retire the eligible catcher vessel from the fisheries, consistent with the terms and conditions of its fishery cooperative contract. For purposes of determining aggregate percentage of directed fishing allowances under paragraph (1), the retiring vessel’s harvest totals during 1995,

1996, and 1997 as reflected in current regulation shall be assigned for all purposes under this title, in the manner specified by the owner of the retiring vessel, to or among other catcher vessel(s) participating in the fishery cooperative provided that such vessel or vessels remain in the fishery cooperative for at least one year after the retiring vessel has left the directed pollock fishery. A vessel that is retired pursuant to this paragraph shall be permanently ineligible for a fishery endorsement and, other than as specified in this paragraph, any claim (including relating to catch history) associated with such vessel that could qualify any owner of such vessel for any present or future permit in any fishery within the exclusive economic zone of the United States shall be extinguished, unless such retired vessel is thereafter designated to replace a vessel to be retired pursuant to this paragraph – PROVIDED that nothing in this paragraph shall cause a retiring vessel that has participated, as determined by the Secretary, during either 2002, 2003, or 2004 in a federal fishery not under the authority of the North Pacific Council, to be ineligible for a fishery endorsement or any permit necessary to continue to participate in such fishery.”

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1/24/06

SECTION –BY-SECTION ANALYSIS OF AMENDMENT RE: VESSEL SIZE LIMITS FOR FISHING INDUSTRY VESSELS

The proposed amendment modifies the vessel documentation laws to allow certain fishing industry vessels that are rebuilt, or that replace existing vessels, to be documented with a fishery endorsement notwithstanding current limits on vessel size. The changes allow vessel owners in the rationalized Bering Sea/Aleutian Islands (BS/AI) pollock fishery to build a new replacement vessel, or rebuild an existing vessel, at the owner's discretion, that exceed the limitations on length, tonnage and horsepower for new fishing industry vessels contained in the vessel documentation laws or the limitations on vessel lengthening contained in the License Limitation Program.

Current Vessel Size Limitations

The vessel documentation laws were amended in 1998 by the American Fisheries Act (AFA) to prohibit a new vessel from receiving a fishery endorsement if it is greater than 165 feet in registered length, of more than 750 gross tons under regulatory measurement (or 1,900 gross tons under international measurement), or if it has engines capable of producing a total of more than 3000 shaft horsepower. The size limitations were intended to provide a mechanism to limit fishing power, particularly in open access fisheries. Vessels were allowed to exceed these thresholds if they were properly documented on September 25, 1997.

Uncertain whether a buyback program and the formation of fishing cooperatives also authorized by the AFA to address then-chronic overcapitalization in the BS/AI pollock fishery would succeed, Congress included an additional measure that limited the ability to replace these vessels if they exceeded the size limits. The AFA has proven to be an unqualified success having resolved overcapitalization and having rationalized the fishery. This success has made the limitations on replacement vessels unnecessary and counterproductive as they prevent improvements in vessel safety and efficiency.

Proposed Amendment Subsection (a) – Length, Tonnage and Horsepower

Paragraphs (1) and (2) of the proposed amendment add a new exception to the length, tonnage and horsepower limitations in the documentation laws to allow those vessels that are in the limited access fisheries under the AFA to be replaced or rebuilt for the purpose of improving vessel safety, enhancing utilization of the resource and increasing fuel efficiency and other operational efficiencies.

Paragraphs (3) – (5) of the proposed amendment delete a troublesome provision in the documentation laws that read literally could result in the permanent loss of a vessel's fishery privileges for even the most technical documentation invalidity, including clerical errors by the Coast Guard.

Proposed Amendment Subsection (b) – Conforming Amendments

Paragraph (1) includes a conforming amendment to the American Fisheries Act that replaces current paragraph (g) of AFA Section 208 with a new paragraph (g).

- **Paragraph (1) of new Sec. 208(g)** confirms that for purposes of improving vessel safety, enhancing utilization of the fishery resource, and increasing fuel and other operational efficiencies, a rebuilt or replacement vessel may continue to participate in BS/AI pollock fishery in the same manner as the original vessel notwithstanding the vessel size thresholds in the vessel documentation laws or under the license limitation program.
- **Paragraph (2) of new Sec. 208(g)** expressly authorizes the North Pacific Council to recommend for approval by the Secretary such conservation and management measures as it may deem necessary to ensure that the provisions of this subsection do not diminish the effectiveness of the fishery management plans for the BS/AI or Gulf of Alaska management areas.
- **Paragraph (3) of new Sec. 208(g)** -- Under current law, vessels that are documented under the ownership grandfather provisions of the AFA may be rebuilt without loss of the grandfather. This paragraph provides that a replacement vessel for the originally grandfathered vessel enjoys the same grandfather protections and limitations as the vessel it replaced.
- **Paragraph (4) of new Sec. 208(g)** provides that AFA catcher vessels that are replaced by a new vessel exceeding the length, tonnage or horsepower size thresholds of the vessel it replaces, or that is rebuilt in such a manner as to exceed those size thresholds, is prohibited from harvesting fish in any fishery under the authority of any regional fishery management council other than the North Pacific Council, except for the Pacific whiting fishery.
- **Paragraph (5) of new Sec. 208(g)** provides that any vessel that is replaced by a different vessel under this authority becomes ineligible for a fishery endorsement, unless the vessel itself is also a replacement vessel.

Paragraph (2) contains a technical conforming change to Section 203(g) of the AFA in order to eliminate certain cross cites to paragraphs of the original Section 208 (g) that are no longer in the new amended Section 208(g).

Paragraph (3) amends Section 210(b) of the AFA relating to catcher vessels delivering onshore to provide a mechanism for a vessel in a fishery cooperative to retire from the fishery and to assign its harvest totals to or among other catcher vessels in the same cooperative. Vessels ultimately retired under this authority are permanently ineligible for a fishery endorsement, except for those that may have participated in a federal fishery under the authority of a council other than the North Pacific Council during 2002, 2003 or 2004.