North Pacific Fishery Management Council

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Senator Mark Begich
United States Senate
111 Russell Senate Office Building
Washington, DC 20510-0201

RE: Implementing legislation for the North Pacific Fisheries Convention

Dear Senator Begich:

On behalf of the North Pacific Fishery Management Council (Council), and consistent with your office's solicitation of Council input, I am writing to make you aware of significant concerns we have regarding the draft legislation dated June 17, 2014, "North Pacific Fisheries Convention Implementation Act". I will provide specific, section-by-section comments below, but want to begin by summarizing our primary concern, which is the potential application of Commission regulatory decisions beyond Convention waters, into U.S. EEZ waters managed by the Council, and into Alaska State waters. While currently there are, to my knowledge, no U.S. commercial fishing interests in the fisheries subject to the North Pacific Fisheries Commission (Commission), our Council has nevertheless participated directly in the development of this Commission, as a member of the delegation at the invitation of the U.S. Department of State. Based on that participation and ongoing Convention discussions, we have developed some basic expectations with regard to the implementing legislation, and particularly the relationship between Convention fisheries and U.S. domestic fisheries. One of the issues for which we have consistently expressed concern is the possibility of Commission regulatory actions for Convention waters creating an expectation of similar management actions in domestic waters, which may be wholly inappropriate depending on the specific characteristics of particular fisheries, and for which existing domestic authorities apply. The current draft legislation takes this concern to a heightened level by appearing to actually allow for Secretarial (Secretary of Commerce) implementation of Commission actions in our domestic waters. This is counter to the very premise of an international Convention, whose authority should be strictly limited to Convention waters, as per the existing treaty. It may be that this language is an artifact from other RFMO legislation, where straddling stocks may have warranted such language, but it does not appear to be necessary or appropriate in this case.

Section 5(a), titled 'Rulemaking Authority of the Secretary', refers to "*management measures adopted by the Commission that would govern fisheries resources under the authority of a Regional Fishery Management Council"*, and goes on to state that *the Secretary may promulgate….such regulations in accordance with the procedures established by the Magnuson-Steven Act…"* Given the clear boundaries of the Convention area, it is unclear in the first place how the Commission could possibly adopt any management measures which would govern fisheries resources under the authority of a Council (i.e., in the U.S. EEZ). Secondly, the intended effect of this paragraph is unclear in terms of Secretarial authority to implement measures, consistent with measures adopted by the Commission, in U.S. waters. We strongly recommend deletion of this section, or further clarity on the specific intent and effect, and/or a clear rationale for this potential for pre-emption.

Similar concerns exist with regard to Section 8(e), which would apply regulations adopted by the Commission within the boundaries of any State bordering on the Convention area (which, based on the Convention area's adjacency to the U.S. EEZ off Alaska, Washington, Oregon, Hawaii, and California, is interpreted to mean that such measures would apply within waters of those States). As with Section 5(a), we believe that such a provision is entirely outside the bounds of any Convention applicable to international Convention waters, and strongly recommend deletion of this Section.

In general we believe that any measures adopted by the Commission should be strictly limited to Convention waters. One example has to do with 'Vulnerable Marine Ecosystems' (VMEs) and a recent report from NOAA's Alaska Fisheries Science Center which recommends very specific provisions for where fishing can and cannot occur, and includes additional indicator species (such as sponges) which are over and above those negotiated when the treaty was completed. Not only does this have potentially significant implications for development of measures by the Commission within Convention waters, but any extension of these recommendations to domestic waters via Secretarial authority would be wholly inappropriate.

Additional comments on various sections of the draft legislation are listed below:

Section 3(a) – Appointment of U.S. Commissioner

The legislation envisions a single U.S. Commissioner, to be appointed by the President. While we understand that each country has only one vote, other domestic implementing legislation for RFMOs, with similar voting schemes, allow for multiple Commissioners, each with expertise in the various U.S. regions or management areas, who reach consensus for that single vote within the terms and process of the U.S. delegation for those Conventions. This particular treaty covers almost all high seas in the North Pacific Ocean, spanning from Alaska to California, including the high seas waters off of Hawaii. Therefore, we strongly recommend consideration of a similar approach for this legislation and suggest inclusion of Commissioner status for each of the three relevant Fishery Management Councils (Pacific, Western Pacific, and North Pacific), either the Council Chair or his/her designee. The Councils, in partnership with NOAA, are the nexus between domestic and international conservation and management policies and practices, and promoting consistency between domestic and international waters.

Section 3(d) – Establishment of Advisory Committee

While recognizing the need for a manageable number of Advisory Committee members, we believe that the composition of this Committee should be expanded to specifically include membership by commercial fishing interests (one from each relevant Council region) and conservation groups, as is typical for most RFMO delegations. Barring Commissioner status for each Council, as recommended above, we strongly support specific inclusion of Council representation on the Advisory Committee.

Section 3(e) – Memorandum of Understanding

The intent of this Section is unclear, and as written would appear to establish policy and procedures well beyond the scope of fisheries resources in this Convention area. Understandably, the legislation calls for development of an MOU between the three relevant Councils and the Secretaries of State and Commerce, relative to fisheries resources in the Convention area; however, Section 3(e)(1) refers to participation (generally) in U.S. delegations to international fishery organizations in the Pacific Ocean, including government-to-government consultations. The North Pacific Council (as well as the Pacific and Western Pacific) are engaged in various other international fishery organizations, including the Western and Central Pacific Fisheries Convention (WCPFC), for which there are specific MOUs already in place which specify our participation in that forum. Additionally, the North Pacific Council has long been

involved in the Intergovernmental Consultative Committee (ICC) bilateral forum between the U.S. and Russia. That process has its own long-standing participatory structure, which includes the Bering Sea Fisheries Advisory Body. We do not believe that this legislation to implement the NPFC should subsume, or affect, the participation of Councils in these other processes; therefore, it is unclear as to why the legislation contemplates an MOU for such purposes. Council involvement in the NPFC should be clearly spelled out in this legislation, but it should not affect participation in other forums.

Section 3(e)(2) refers to *"providing formal recommendations to the Secretary and the Secretary of State regarding necessary measures for both domestic and foreign vessels fishing for fisheries resources"*. Presumably this is referring to fisheries resources within the Convention area only, but this should be clarified. Even so, it is unclear what the intent of this paragraph is, if the Councils are participating directly as part of the NPFC delegation (either as Commissioners or Advisors).

Section 3(e)(4) implies that each Council would recommend domestic fishing regulations that are consistent with actions of the Commission. While it may be possible that each Council would find this to be the case, there is an existing authority and process (under the Magnuson-Stevens Act) for the Councils to develop and recommend domestic management measures. It is not appropriate for the NPFC implementing legislation to presuppose that a Council would adopt Commission regulations in domestic waters, and to commit them to such a process through an MOU.

Section 6 (a)(2)

We would suggest inclusion of State enforcement agencies along with other Federal departments or agencies, in the context of cooperative enforcement efforts, as State enforcement agencies are often active partners with Federal enforcement agencies in the investigation and prosecution of IUU activities. We also support inclusion of States within the confidentiality provisions of Sections 6(b) and 6(f), for similar reasons that we support inclusion of Council staff in Section 6(f) (see below).

Section 6 (b)(4) Enforcement

This section allows the Commission, or a Council *"with authority over the relevant fisheries"*, to enact a fee collection of up to 3% of the ex-vessel value of fish harvested by vessels of the U.S. to cover cost of management and enforcement. The intent and effect of this section is unclear in several ways – (1) it is unclear how any Council would have authority over fisheries resources in the Convention area; (2) it is unclear which harvested fish would be subject to the fee (those caught in Convention waters or domestic waters?); and (3) it is unclear which vessels would be subject to the fee (those operating only in Convention waters, or domestic waters as well?). We recommend providing clarity as to the intent and effect of this paragraph.

Section 6(f) Confidentiality

This Section would restrict access to confidential information, except to the Commission or to State or Marine Fisheries Commission employees under a confidentiality agreement. However, unlike the MSA, this legislation does not extend that access to Council employees. We recommend adding Council employees to the list of those with access to confidential information, as such information may be critical to Council participation or input to the Commission.

In closing, I would like to acknowledge the general importance of this implementing legislation, and your hard work in seeing it effected, but would like to once again point out that there are currently no U.S. commercial fisheries interests occurring in the Convention area; therefore, it would be particularly inappropriate (and ironic) for implementing Convention legislation to allow for promulgation of

Commission regulations in U.S. EEZ or State waters. While the proposed legislation has been characterized as a "minimalist approach" to implementation of this Convention, as drafted it would appear to have major implications for our domestic fisheries and could potentially undermine our existing authorities to manage domestic marine resources. We believe strongly that this would be an inappropriate, and precedent setting, use of legislation to implement U.S. participation in an international fisheries Convention. Thank you for considering these comments as you continue to finalize this important legislation.

Sincerely,

Eric A. Olson
Chairman

cc: Senator Lisa Murkowski
Congressman Don Young
Senator Maria Cantwell
Senator Patty Murray
Senator Jeff Merkley
Senator Ron Wyden
Mr. David Balton, U.S. Department of State
Ms. Eileen Sobeck, NOAA Fisheries