


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: April 9, 1996

SUBJECT: Magnuson Act Reauthorization

ESTIMATED TIME 1 HOUR

ACTION REQUIRED

Status report on Magnuson Act reauthorization.

BACKGROUND

Item C-7(a) summarizes and compares provisions of H.R. 39 and S. 39, the two primary vehicles for amendments to the Magnuson Act. H.R. 39 passed the House on October 18, 1995. S. 39 passed the Senate Commerce Committee on March 28, 1996. I have heard that the Senate may get to the bill this spring or early summer. I have keyed the summary to the March 19 draft of S. 39, and added new information from the March 26th staff draft, and amendments made in Committee. I will prepare a new summary once I have the latest version of S. 39 which should be available later this week.

Ten amendment areas which could most impact our Council are summarized under the following issues in C-7(a):

- Bycatch:** Broad authority to address bycatch and waste concerns.
- Conflict of Interest:** New recusal mechanism and procedures to ensure conflicts of interest do not occur at voting time.
- Council Procedures:** No agenda changes within 14 days of meeting.
- CDQs:** New mandates and limitations. A 3% fee.
- Fees:** Broad new fee authorities for IFQs, buyback, loan programs, bycatch, CDQs.
- Overfishing:** New constraints on setting of ABC and TAC; they no longer can exceed MSY. Rebuilding schedules cannot exceed 10 years except under extraordinary circumstances.
- N. Pacific Loan Prog.:** By 1997 we need loan guarantee program to help entry level and small boat fishermen purchase IFQs.
- N. Pac. Fish. Conserv.:** New initiatives to reduce bycatch, establish fees and IBQs, total catch measurement, reductions in waste, establish human consumption standards.
- ITQs:** Moratorium on new programs until after FY2000. A 3% fee, lien registry, loan guarantees for small boaters and entry level fishermen, etc.
- State Jurisdiction:** Provisions to extend jurisdiction into EEZ for Alaska only.

**North Pacific Fishery Management Council
Comparison of H.R. 39¹ and S. 39²
to Amend the Magnuson Fishery Conservation and Management Act**

Issue	H.R. 39	S. 39
Bycatch	<p>Defines as fish harvested but not sold or kept for personal use, including economic and regulatory discards. Defines economic and regulatory discards. (p. 5) New national standard #8 to minimize bycatch (p. 12). Adds reference in policy section. (p. 3) Fishery management plans (FMP) shall require bycatch data from fisheries, must include measures to minimize bycatch and minimize mortality caused by economic and regulatory discards. (pp. 5,12, 21, 22) Adds discretionary provision on assessing impacts of fisheries on non-targeted stocks and ecosystem. (p. 23) Adds discretionary provision to allow incentives and harvest preferences within gear groups to avoid bycatch, and to specify allowable gear groups, and to identify allowable gear groups and process for evaluating new gear technology, and to reserve portion of ABC for research (p. 24). Adds study on bycatch contributions to charitable organizations. (pp. 71-72) Defines "efficiency" as, among other things, utilization that yields the minimum practicable bycatch. (p. 7a) Import restrictions on fish from countries that do not have fish excluder devices similar to rules of U.S. (Hayes amendment in October 1995)</p>	<p>Same definitions as H.R. 39 but also refers to recreational bycatches. Under Act's Purpose #6, says fisheries development should occur in a non-wasteful manner. Adds policy to minimize [mortality of] bycatch. Requires Secretary of State to seek international agreements for other nations to take bycatch reduction steps similar to U.S. efforts and start reporting annually by 1/1/97 on progress. Ties import prohibitions in Section 205 to foreign nations' efforts to reduce bycatch. Adds new national standard #9, to [avoid] [<i>minimize</i>] bycatch and minimize mortality of bycatch to extent practicable. FMPs must assess amounts of bycatch and minimize [<i>bycatch and bycatch</i>] mortality [caused by economic and regulatory discards and must;] to the extent practicable, if it cannot be avoided. Applies to [<i>catch and release</i>] recreational fisheries also. May include harvest preferences and incentives (pp. 3-5, 8, 10-11, 20-22, 32-33)</p> <p>(See also "North Pacific Fisheries Conservation")</p>
Voting Member Qualifications	<p>Adds academic training, marine conservation advocacy and affiliation with non-user groups as selection criteria. (p. 13)</p>	<p>No change.</p>

¹All page references are to May 20, 1995, 1:23 p.m. draft of H.R. 39. Summary above includes final amendments made on October 18, 1995 to House bill. A small "a" next to a page number indicates where the amended language was added in the May 20 draft.

²All page references are to Staff Working Re-draft of S.39, dated March 19, 1996. Words in brackets and/or italicized reflect changes made in a staff redraft on March 26 or by Senate Committee on March 28.

Issue**H.R. 39****S. 39**

Conflict of Interest	Secretary of Commerce (SOC) shall remove any appointed member who violates new provisions. SOC to establish rules within 1 year prohibiting affected individuals from voting if interest significantly affected. National Oceanic and Atmospheric Administration general counsel to determine when a violation would occur. "Significantly affected" means a financial interest shared only by a minority of persons within the same sector or gear group. (pp. 13, 17-20)	Appointed member shall not vote if there is a significant and predictable effect on financial interest. "Significant and predictable" means there is a close causal link between decision and an expected and disproportionate benefit shared only by minority of persons within same sector. Designated official with conflict of interest experience to determine if a violation would occur. Majority of Council must concur with choice of designated official. SOC to issue regulations on recusal within one year. SOC shall remove any member who violates new provisions. (pp. 25, 28-31)
Mid-Atlantic Council Membership	Adds North Carolina and boosts membership by two, to 21. (pp. 12-13)	Similar to H.R.39. (p. 22)
Council Member Compensation	Reduce to GS 15-1 effective 1-1-96. (pp. 13-14)	Reduce to GS 15-7. (p. 25)
Council Member Terms		Changes limit on reappointments from "three consecutive" to "three full consecutive" terms. (p. 23)
Council Procedures	Written and oral statements shall include qualifications and interest of testifiers. Detailed minutes must be kept and all reports are part of minutes. (p. 16) Two or more members may add agenda items 21 days before meeting; two or more members need to sign request. Any voting member may request a roll call vote. (pp. 14, 16-17)	Same as H.R. 39, except that published agenda cannot be modified without public notice or within 14 days of meeting date. Gives flexibility to have administrative record kept either at office of Secretary or Council, as appropriate. (pp. 25, 27-28)

**Community
Development Quotas**

Establishes CDQ authority for Bering Sea. (pp. 43-44) Incorporates references to coastal communities in OY definition. (p. 5a) "Efficiency" defined to, among other things, provide maximum economic opportunity for coastal fleets and communities. (p. 7a) Adds new FMP requirement to provide for sustained participation by coastal communities and their fleets. (p. 22a) Economic analyses shall consider cost/benefits which accrue to local community fleets and communities. (p. 38a)

Fishing community defined [*identifies vessel owners, operators, crew and processors related to community*]. New national standard #8 requires that measures take into account the importance of fisheries to fishing communities. (pp. 6, 21) Fishery Impact Statement must describe impacts on fishing communities. (p. 31) North Pacific Council must establish CDQ program for Bering Sea and Western Pacific Council may establish CDQ program. (p. 61-63)

[Amendments on March 28:

1. *SOC must collect annual fee of up to 3% of the ex-vessel value of CDQ fish harvested to recover the costs of management and enforcement. The SOC must reduce the 3% fee for a particular vessel by the amount of excess fees that vessel must pay for observer coverage in the CDQ fishery which exceeds the normal coverage required in similar, but non-CDQ fisheries.*
2. *North Pacific Council cannot recommend any new CDQ programs beyond October 1, 1995. The language would require pollock CDQs to be renewed past 1998, not to exceed 7.5%.*
3. *The 7.5% of all groundfish and crab in BSAI approved for CDQs in June 1995 cannot be increased during FY 1996-2000.*
4. *Other than provided above for the North Pacific and Western Pacific Councils, no new CDQ programs can be recommended by any Council after the date these amendments to Magnuson Act are enacted.]*

**Western Pacific
Demonstration Projects**

Authorizes grants for indigenous fishing programs as recommended by WPFMC. (pp. 63-65)

Issue**H.R. 39****S. 39****Fees**

Adds discretionary provision to require observer fees for any observer program, not to exceed actual costs of program. (pp. 24a) Also see fees under ITQs. (p. 50-52)

Requires fees to be assessed for IFQs (pp. 43-44) and allows fees to be assessed for industry share of buyback programs (pp. 77-78). (also see broad new fee authorities under IFQs, CDQ, North Pacific Loan Program, North Pacific Fisheries Conservation, and sustainable fisheries/buyback programs). Fees may be used to guarantee loans for ITQs for small vessels and entry level fishermen (p. 35), except in case of North Pacific Council which must establish such a loan program (see North Pacific Loan Program below). Also amends Merchant Marine Act. (pp. 106-108)

Overfishing

Includes definition of overfishing which is same as 602 rules. Definition of OY is changed for overfished stocks (p. 5) MSY is the maximum value for OY. (p. 5a) Defines rebuilding as measures needed to restore ability of a stock to produce maximum sustainable yield on a continuing basis. FMPs must include definition of overfishing and rebuilding programs for overfished stocks. SOC to notify councils if overfishing is occurring and will intervene if council fails to act within 1 year Requires rebuilding schedule not to exceed 10 years except under extraordinary circumstances. (pp. 6, 21, 31-35, 33a)

Optimum yield definition is changed to account for protection of marine ecosystems and to provide for rebuilding of overfished stocks to produce MSY. Defines overfishing as in H.R. 39. National standard 1 is revised to address rebuilding. SOC to report annually to Congress and councils identifying overfished stocks. FMPs must have clear criteria for determining overfishing. Requires councils to prepare plans or plan amendments to prevent overfishing. Rebuilding schedules may not exceed 10 years except under extraordinary circumstances. SOC will act if council fails to do so in 1 year. (pp. 6-7, 31-32, 44-47)

Review of Regulations

Establishes 75-day time limit on SOC review of regulatory amendments. Public comment period ranges from 15 to 45 days. SOC may publish a final regulation on the subject matter or decline to publish a final regulation, and must provide to council in writing an explanation of the reasons for the action. (pp. 35-37)

Establishes 65- to 110-day time limit on SOC review of all regulations proposed by councils. FMPs and amendments require 95 days. Requires SOC to return disapproved regulations to councils with written explanation of deficiencies and recommendations for correction, and councils may submit revised regulations. SOC must consult with councils before revising any proposed regulations. Only the Councils can initiate an IFQ system. (pp. 40-43) Also notes that regulations may be submitted with FMP submission or later. (p. 33) Regulatory amendments now will have a mandated schedule for review by SOC.

All Secretarial plans must be submitted to appropriate Councils for review and comment. (pp. 50-51)

Issue**H.R. 39****S. 39****Habitat**

Add habitat reference to findings and purposes of Act. (pp. 1-2) Defines "essential fishery habitat." (p. 6) Councils must notify SOC if any state or federal action impacts essential fish habitat. Federal agencies must respond within 15 days. FMPs must include description of essential habitat (p. 21) and must include measures necessary to minimize adverse impacts of fishing on habitat. (p. 21a) SOC to identify essential habitat and must comment on any federal actions which may impact essential habitat. (pp. 2, 3, 5, 14-15, 21, 29-31)

In Section 2 Findings, inserts language about consequences of habitat losses, need to protect essential fish habitats, and adds new finding (#9) specific to habitat. Adds new purpose (#7) on protecting essential habitat. Defines essential fish habitat [*includes waters and substrate*]. FMPs must summarize habitat information and identify federal actions necessary to protect habitat, [*and must minimize where practicable adverse effects on habitat caused by fishing*]. Within 6 months, SOC shall provide guidelines by which to identify essential fish habitat and must comment on federal actions which impact essential habitat. SOC must provide information also. (pp. 3, 4, 5, 31, 53-55)

Emergency Actions

Emergency regulations in effect for 180 days and may be extended additional 180 days and removes regional director from unanimous vote requirement. Requires benefit-cost analysis for 180-day extension. (pp. 39-40)

Similar to H.R. 39. ~~except SOC may close or restrict a fishery covered by an FMP, to prevent overfishing or reduce bycatch, without opportunity for notice and comment, if council guidelines are followed. Unlike H.R. 39, regional director is not removed from unanimous vote. A benefit-cost analysis is not required for an extension, but Council must be actively preparing FMP amendment.~~ (pp. 55-57)

Transshipment Permits

SOC may issue a transshipment permit to a foreign vessel for transporting fish products at sea. (pp. 6-9)

Similar to H.R. 39. (pp. 11-13) Also see Prohibited Acts section below.

North Pacific Loan Program

Not included.

By 1/1/97, NPFMC must recommend loan guarantee program based on fees from the sablefish/halibut program to help entry level and small boat fishermen purchase Category [B], C or D IFQs. Defines "small boat" and "entry level". (p. 39)

Issue

H.R. 39

S. 39

North Pacific Fisheries Conservation

North Pacific Fishery Management Council must submit measures to ensure total catch measurement by 1-1-97. (p. 23)

[More than one observer will be required on a processor or fishing vessel if deemed necessary for monitoring.] (p. 72) NPFMC will recommend for a period of no less than four years, a bycatch reduction program, and will also seek to reduce regulatory discards. Fees [up to 1% exvessel value] may be collected to provide incentives to reduce bycatch and bycatch rates. Funds collected may be given to State of Alaska for management and enforcement [of fisheries from which fees derived]. Provides for non-transferable, annual IBQs for regulatory discards. (p. 72-73). NPFMC must also establish programs for total catch measurement (by 6/1/97), weight measurement (by 1/1/98), and [report on] full retention and utilization of economic discards (by 9/30/2000[6/1/1999]). Also [will minimize processing waste by] [report on] setting human consumption standards. (pp. 73-74) [Observer data on a vessel's bycatch may be released to public.]

PFMC Tribal Member

No change.

Adds 14th member, representing Indian tribes, to PFMC. Shall be from a tribe with federally recognized fishing rights from WA, OR, CA or ID. Nominations from tribes. Seat to rotate among tribes. (pp. 22-24)

Pacific Region Stock Assessment

Establishes review group and assessment program for Pacific Council groundfish that may use private U.S. vessels and may offset costs by setting aside portion of TAC for research purposes. (pp. 37-38)

No change.

Contracting Authority

No change.

[Programs can be sole-sourced to State, Council or Marine Fisheries Commission if allowed by statute or customary practice.]

Individual Quotas

Adds extensive requirements on ITQ systems, including Secretarial guidelines, a national review panel, lien registry, 7-year sunset, and fee system. Fees on current ITQ programs are exempt for 5 years. (pp. 45-57) Current programs also are exempt from certain other requirements. Limited access plans also must be approved by relevant advisory committee appointed under laws implementing relevant international fishery agreements. (pp. 27-28) Must have comprehensive observer coverage on fish processing vessels for 24 hour-a-day monitoring. (p. 47a) Only Council can change Council-originated plans. Only Secretary can change Secretary-originated plans. (p. 50a) In October 1995, Miller (California) amended H.R. 39 to disallow transfer, sale or lease of IFQs; only fishing participants can hold them; use or lose provision; allow for auctions and bids; sets three priorities for reallocating IQs; hardship exemptions. (p. 50a) By September 30, 1997, Secretary must submit review of IQ programs established before June 1, 1995. (p. 55)

Defines individual fishing quotas (IFQ). Moratorium through FY 2000 on Council recommending or Secretary approving new IFQ programs. Any plan submitted after 1/4/95 shall be repealed. Can still amend or terminate IFQ plans from before 1/4/95. SOC must [*consult with Councils and National Academy of Sciences and then*] report on current IFQ program impacts by 6/1/99. Will use two review groups and hold public hearings to develop national policy. If SOC has failed to develop a national policy on IFQs by 2001, any Council submission of such a program will require a two-thirds majority vote. SOC must collect fee from each IFQ holder up to [~~4~~] [3] percent annually of the value of the fish harvested (exempts surf clams, quahog, wreckfish, until 1/1/2000). (pp. 6, 34-39, 43-44) Secretary must establish lien registry [*within 6 months*] for limited access permits and IFQs, and may collect a half percent fee (based on value of permit or IFQ) to do so. (pp. 58-61) IFQs shall be considered permits for purposes of enforcement sanctions. (p. 35) Up to 25% of fees collected for administering permits may be used to guarantee loans for IFQ purchases by first-time and small boat fishermen. (p. 35) [*A reallocation of existing IFQs is not required by these Magnuson Act amendments.*]

Fishery Impact Statements

FIS needs to be sent to Governors and House and Senate Committees. (pp. 24-25)

Must describe impact on fishing communities (p. 31).

Negotiated Measures

No change.

Councils may establish negotiation panels to assist in developing management measures. Establishes process for appointing panels and operating procedures for panels. Their report must be published in FR for public comment. (pp. 57-58) [*Councils do not have to include report in FMPs.*]

Issue	H.R. 39	S. 39
Gear Evaluation	Adds discretionary FMP provision for identifying and evaluating new gear technologies. (p. 24)	Within 18 months SOC shall publish a list of all fishing technologies employed. No person may employ a technology not on the list without advance notice. Councils may ask the SOC to prohibit unlisted technologies by emergency regulation. (pp. 52-53)
Pacific Insular Area	Amended in October 1995 to be similar to Senate bill.	New finding (#10) and policy (#7) in Section 2. Defines "Pacific Insular Area." Establishes rules for allowing foreign fishing and sustainable fisheries fund. (pp. 3,4, 7, 13-20) Also see cooperative enforcement agreements. (p. 71)
Sustainable Fisheries/ Capacity Reduction Programs	Extensive provisions on voluntary fishing capacity reduction program funded by industry and fees not to exceed 5% of annual harvest value. 15-year limitation. Deposited in Fisheries Compensation and Restoration Fund. (pp. 57-64)	SOC may develop a fishing capacity reduction program and sustainable development strategy for overfished fisheries or commercial fishery failure. Strategy to address fishery recovery effort, economic assistance to communities, alternative economic opportunities, long-term objectives for the fishery. SOC may implement a buy-out program for fishing vessels or permits. Non-federal share may come from industry fee not to exceed 5 percent annually of the value of fish harvested. (pp. 75-81) Imposing a fee requires a referendum. Amends Merchant Marine Act. (pp. 99-108)
Disaster Relief	No change.	SOC to determine if there is a commercial fishery failure due to natural causes, man-made causes beyond the control of fishery managers or undetermined causes. SOC authorized to make money available to states, communities or SOC for assessing the effects of the failure, restoring the fishery and assisting a community. Federal share not to exceed 75 percent. (pp. 81-83)
Monitoring and Research	Young (Alaska) amended H.R. 39 in October 1995 to allow for resource assessments using U.S. vessels and using part of the TAC. (p. 69a)	SOC to develop proposal for a standardized fish vessel registration and data collection system on a regional basis for public comment and then congressional transmittal. SOC to promulgate regulations for fishing vessels required to carry observers and to establish observer training programs. (pp. 83-93) SOC must develop a strategic fisheries research plan within 1 year and update it every 3 years. (pp. 93-95) [<i>Private vessels can be used in research.</i>]

Issue

H.R. 39

S. 39

Stock Recovery Financing	No change.	Amends Merchant Marine Act to authorize SOC to guarantee obligations which aid in refinancing existing obligations for fishing vessels or facilities necessary because of fishery recovery efforts. (pp. 99-108)
Highly Migratory Species (HMS)	SOC shall appoint plan development teams for each SOC FMP for HMS in Atlantic and Gulf. (pp. 25-27)	SOC will prepare plan for Atlantic HMS and appoint advisory panel. (p. 26, 47-50) SOC shall manage if HMS within authority of more than 1 council in Atlantic, Gulf, Caribbean areas. (p. 23) Modifies OY reference in Section 102. (p. 10)
Driftnets	Modifies and updates section 206(e) on SOC reports to Congress. (pp. 11-12)	Modifies section 206(e). (p. 21) Modifies definition to be in metric system. (p. 6)
National Standard 5	No change.	Amends national standard 5 to require that measures consider (rather than promote) efficiency. (p. 21)
Safety	FMPs must take into account safety of human life at sea. (p. 22)	FMPs must consider safety of life at sea. (p. 32) [Added as National Standard by amendment in Committee.]
Atlantic Herring and Mackerel	No foreign allocations can be made until FMP is implemented, and Council approval is required. (pp. 9-10)	No change.
Incidental Catch in Gulf and South Atlantic	Eliminates time limit of 3 years on incidental research program and makes other changes. (pp. 28-29)	SOC must report on shrimp fishery bycatch research (pp. 95-98) Establishes advisory panel. (p. 26)
Gulf of Mexico Fisheries	Provisions on fishing assessments and monitoring. (pp. 67-71)	[No change.] [Provisions for red snapper research.]
Prohibited Acts	Prohibits failure to disclose financial information and addresses transshipments, and several other actions. (pp. 41a-43) Prohibits sales of undersized lobsters. (p. 43a)	Modifies prohibitions concerning observers, driftnets, minimum lobster size, and transshipments. Prohibits failure to disclose financial information. (pp. 66-69)

Issue	H.R. 39	S. 39
Enforcement	No change.	Requires annual report on the adequacy of federal enforcement resources and recommendations to improve enforcement. Expands authority of SOC to use fines for payment of storage costs and to pay for rewards. (pp. 70-72) Relates U.S. jurisdiction over vessels to comport with Maritime Drug Enforcement Act. (p. 9)
Observers and Rights of Observers	Adds new section 315 concerning rights of observers. (p. 45) Also adds FMP requirements on observer safety, and if observers are required, for discretionary observer fees. (p. 24a) May have 1 or more observers. (p. 23)	Establishes guidelines for carrying observers and training, status of observers. (pp. 91-93)
State Jurisdiction	Requires additional data on fish harvested by U.S. vessels in internal waters joint ventures (p. 40) Adds authority for extension of Alaska state jurisdiction into federal waters under specific conditions (p. 41).	Similar to H.R. 39. Allows State of Alaska to manage beyond three miles unless or until Council FMP established. Adds internal waters reporting requirements.
Civil Penalties	Secretary may also consider facts established on violator's ability to pay. (p. 64)	Revises procedure for judicial review. Expands use of permit sanctions. Fines to be deposited in fund and may be used for buyout programs (pp. 69-70).
Recreational Fishing	No change.	Commercial fishing clearly defined and excludes recreational fishing. Defines recreational fishing. (p. 5, 8) Also, Secretary will report on whether recreational vessels should be included in national fishing vessel registration and data collection system. (p. 88) Requires FMPs to address recreational bycatch mortality. (p. 32)
Russia-U.S. Interactions	No change.	Defines "special areas". (p. 8)
Ecosystems Management Research	Incorporates references to ecosystem protection into OY definition. (p. 5a)	SOC must establish panel to recommend ecosystem principles in fishery management. Must report within two years to Congress. (pp. 98-99) Ecosystems incorporated in setting of OY. (p. 7)
Buy America	Traficant (Ohio) amended H.R. 39 in October 1995 to promote buy-American-equipment when using funds made available under Act.	

North Pacific Fishery Management Council

Richard B. Lauber, Chairman
Clarence G. Pautzke, Executive Director



605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Telephone: (907) 271-2809

Fax (907) 271-2817

April 11, 1996

Trevor McCabe
Senate Subcommittee on Oceans & Sciences
254 Russell Senate Office Building
Washington, DC 10510

Dear Trevor:

Here are my comments on S. 39. All page numbers refer to the March 26 (6:58 p.m.) draft. I am directing my comments mainly to some of the niggling little operational details, not the major new policy thrusts of the bill. I'll leave that to the Council if they care to comment.

Council Procedures

Of the new provisions on pp. 31-33, the 14-day restriction on agenda changes is of most concern. Relaxing that to apply only to final actions would allow the Councils continued flexibility to respond to changes in scheduling and unforeseen circumstances, for instance, when an analyst does not have his study ready. It is our practice to notify the industry very quickly if there is a major change on the agenda. We will continue that practice. We are very aware that a final decision could be technically flawed if insufficient notification is given.

Conflict of Interest

This issue has been one of the hardest to resolve, but I think you have arrived at some of the best language I have seen so far. Most likely the Council Chairs continue to oppose mandatory recusal. But if there are to be such rules, they stressed the following points in early 1995:

1. A Council member may not vote on any FMP, FMP amendment, or regulation proposal which would disproportionately advantage that Council member beyond other individuals participating in a particular fishery.
2. Upon request of any Council member, a Council shall make a determination whether an individual may have a disproportionate interest in the decision.
3. Council may authorize participation if the need for the individual's participation outweighs the potential disproportionate interest.
4. Any interested person with a substantial grievance may submit a request to the Assistant Administrator, within 15 days after the vote, to review the interest in question and the Council action. The Assistant Administrator shall be required to act not later than 30 days after receiving the grievance.

Trevor McCabe
April 11, 1996
Page 2

Of the approaches I've seen, the language in S. 39 seems to track most closely with the above points. Phrases such as "significant and predictable," "expected and disproportionate", and "minority of persons within the same fishery and gear type", will help to limit the need for recusal, and to me the provisions seem preferable to the House provisions.

OY-MSY

Both H.R 39 and S. 39 would require OY not to exceed MSY. OY would be a reduction from, rather than modification of, MSY, for relevant economic, social, or ecological factors. MSY also would be the benchmark for rebuilding stocks that are classified as overfished.

I'm not sure this provision will achieve your goal of conserving the nation's fish stocks. It may compel stock assessment scientists to spend precious time attempting to estimate MSY, when their efforts could be better spent applying the most recent state-of-the-art assessment methods. The relationship between stock size and recruitment, which is the basis for calculating MSY, is so highly variable in many cases as to disallow calculation of a statistically sound MSY. In North Pacific groundfish fisheries, for instance, we annually set harvest levels for over thirty species complexes in the Gulf of Alaska and Bering Sea and Aleutians. The plan teams write exhaustive stock assessment reports that are peer reviewed by our SSC. The Council follows the SSC advice each December in setting harvest levels. Those assessments include overfishing definitions and acceptable biological catches (ABC), but for all but pollock in the Bering Sea and Pacific ocean perch in the Gulf of Alaska, the scientists conclude there are insufficient data to determine MSY. I am very confident that we are getting the best science possible for conserving stocks, but except for two species, none of it rests on a consideration of MSY.

It is very possible that using MSY as the sole benchmark for conservation could backfire on us. Many legislators may feel that they have shored up the Magnuson Act and saved the fishery, but if data are so limiting as to preclude calculation of MSY, it will be ignored as a benchmark. I believe that we need to firmly bind ourselves to using good science and we need the scientists to tell us the stock yield to the fishery that will provide for a long term viable resource, even if it does not equate to MSY. And these estimates need to be thoroughly reviewed and highly recommended by a Council's science advisors, the SSC.

Therefore, I suggest that the OY definition in section (27)(B) and (C) on p. 8, be changed by adding the clause, "or other appropriate scientific measure of sustained yield from the fishery," after the comma in line 10 and after the period in lines 16 and 24. You could even tighten it further by requiring an SSC recommendation. This would go a long way toward allowing the Councils to incorporate environmental variability and current scientific thinking on fish stock management and conservation, rather than being wed to an archaic MSY principle which is seldom estimated and does not really seek to incorporate ecosystems management principles. Who knows, sometime we may want the flexibility to fish down certain species of flatfish to make way for populations of king crab, or somewhat reduce pollock abundance to provide more oily forage fish for birds or mammals, which would be ecosystem management in the truest sense of the word.

Review of Regulations

On pp. 40-41, paragraph (c) only refers to proposed regulations for implementing an FMP or plan amendment, but not to stand-alone regulatory amendments. I have heard that the thrust of paragraph (c)(2) is to include regulatory amendments in the Secretarial review schedule. If that is true, then possibly you would want to add "or regulatory" after the second "plan" in line 24 on p. 40. Then when Section 304(b)(1) refers back to Section 303(c) as indicated on line 14, p. 51, it will encompass regulatory amendments also. Another approach that has been suggested by the Chairs is to change line 14 on p. 51 to read "section 303(c), or of proposed amendments to existing regulations implementing a fishery management plan in effect under this Act, which do not have the

Trevor McCabe
April 11, 1996
Page 3

effect of amending the plan, the Secretary shall immediately initiate . . .". This new language is taken out of lines 21-24 on p. 36 of the May 20, 1995, 1:23 p.m. draft of H.R. 39.

Also, as was noted in that letter, S. 39 completely overhauls Section 304, and in so doing, and perhaps inadvertently, dropped a current requirement in the Act (Section 304(b)(1)(A)(ii)) that allows a proposed amendment to be implemented by default if the Secretary fails to act by the close of day 95. There are few other hammers in the Act to keep Secretarial review on track, and the Chairmen requested that the provision be reinstated. H.R. 39 retains that provision.

North Pacific Loan Program

I have no comments on the substance of this measure (pp.47-49), but rather the timing. January 1, 1997 is not far off. Our normal decision cycle is to take final action in June each year on these sorts of changes. Maybe it is no big problem to set up a loan guarantee program once you have fees from the sablefish and halibut IFQ program, but the Council has not established anything of this nature before, and giving us until the end of 1997, or at least until July 1, 1997 (we normally meet in mid-June), might be more realistic in setting up a program.

Also, it should be noted that the loan guarantee program will be based on fees collected from the IFQ fishery. Even if NMFS could get their fee system running for the 1997 fishery which begins March 15, and that could be very optimistic and depend heavily on the Council's involvement in arranging the program, fees of any magnitude will not start flowing in until the spring or summer of 1997. The loan program probably will not start providing benefits to entry level fishermen until late in 1997 or early 1998.

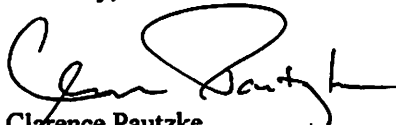
North Pacific Fisheries Conservation

Concerning catch enumeration (p. 89), I think the North Pacific Council may already have this provision covered because all catch is enumerated via the observer program and other reporting. However, if we are to do anything additional, it would be better to have the June 1 date changed to July 1, 1997, so it will be after the mid-June meeting. Concerning weight measurement (p. 90), we have already taken action for the pollock fishery. NMFS has told us that 1998 might be optimistic for having a weight measurement system deployed in the fleet. January 1, 1999 would give us and NMFS more flexibility.

Trevor, this completes my comments on some of the more operational features of S. 39. The North Pacific Council will meet next week and may have additional comments, particularly on the more heavy duty policy directions. I'll get those comments to you as soon as they are available.

Thanks for all your hard work, and for listening to us.

Sincerely,



Clarence Pautzke
Executive Director