

North Pacific Fishery Management Council

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September 3, 2014

Senator Mark Begich
United States Senate
111 Russell Senate Office Building
Washington, D.C. 20510-0201

Dear Senator Begich:

On behalf of the North Pacific Fishery Management Council (Council), I am writing to provide comments On the July 18, 2014 working draft bill titled "Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2014". In May of this year, our Council provided extensive comments on an earlier draft bill and I would like to begin by first noting that this current (July 18) draft represents a very straightforward, streamlined, and reasoned approach to MSA reauthorization relative to the previous draft. This current draft appears to be very responsive to the earlier comments provided by the Council and numerous other agencies and organizations. We congratulate you and your staff on an excellent next step in the reauthorization process.

While our comments on this draft are quite limited, and in many cases are simply seeking further clarification, I have listed each major provision in an ATTACHMENT to this letter in order to summarize our understanding of the intent and effect, and to provide brief comments (*in italics*) where appropriate. This ATTACHMENT is divided into three parts: (1) substantive changes from the earlier draft; (2) items that are the same as, or similar to, the earlier draft; and, (3) other issues. Because our full Council has not reviewed the current draft, I will limit my specific comments to those issues which were the subject of our previous comments (which were reviewed by the Council at our June meeting), or which do not appear to be controversial based upon on-going MSA discussions by our Council or long-standing Council positions on MSA reauthorization.

Again, thank you for the opportunity to provide comments on this important draft legislation. Our full Council will review these comments, and any other recent draft legislation, at our October 2014 meeting and may develop additional comments at that time for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Chris Oliver". The signature is written in a cursive, flowing style.

Chris Oliver
Executive Director

ATTACHMENT (dated September 3, 2014): Section by section summary and North Pacific Fishery Management Council comments on July 18, 2014 working draft “Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2014”

Substantive changes from the earlier draft bill

1. **Sustainability certification by NOAA is removed; only a sustainability standard is included (pp. 22-23).** In effect, fish is sustainably caught if it is harvested under an FMP, or equivalent state or tribal measures (or international treaty), if it is not overfished or otherwise depleted, and overfishing or other depletion is not occurring. A fishery subject to a rebuilding plan can be included if it meets the above criteria and the SOC determines that the rebuilding plan is working. *Meeting this standard does not appear to result in any specific action. The voluntary sustainability labeling authority that was in the first draft is removed. In our previous comments the NPFMC expressed concern with the NOAA certification program (in terms of what benefits would result to Alaska-based fisheries). The approach in the current draft appears to address concerns over potential adverse effects to North Pacific fisheries contained in the earlier approach, and appears to still provide the generally intended benefits to all federal fisheries envisioned in the earlier draft.*
2. **Fisheries Disaster Relief, Section 312 (a)(pp. 30 – 31).** Adds a time limit to the determination of a commercial fishery failure by the SOC: “The Secretary shall make a decision regarding a request under paragraph (1) not later than 90 days after the date the Secretary receives a complete estimate of the economic impact of the fishery resource disaster from the affected State tribal government, or fishing community.” Adds ‘tribes’ to the description of entities that can be provided funds (currently, states and communities).
3. **Section 313 (North Pacific Research) (pp. 31 -32).** Is amended to explicitly allow for electronic monitoring (EM) to be covered by the fee system set up to fund NPFMC observers. *This was also in the first draft. NOAA GC has already concluded that EM is included under Section 313 and the fees can cover EM; this makes it explicit, and is consistent with stated Council policy.*
4. **North Pacific Bycatch Report (p. 32-33).** Amends Section 313 to add a new section (l): “Not later than 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2014, the Secretary shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House or Representatives which examines agency actions since 2007 to reduce bycatch in fisheries of the North Pacific managed under this Act, including a review of regulatory actions that create incentives for individual vessels to avoid bycatch.” *This is a new section and would appear to create a welcome opportunity to provide Congress (and the public) with specific information regarding the Council’s and NOAA’s significant achievements in addressing North Pacific bycatch issues.*
5. **Review of allocations among mixed use (commercial, recreational, charter) fisheries. (pp. 33 – 34).** Adds a new section 313A, which requires the Gulf of Mexico Council and South Atlantic Council to review allocations among these sectors no later than once every 8 years. *The first Senate draft included this requirement for all councils; this version specifies only these two. The draft continues to include direction to study allocations in mixed use fisheries by the National Academy of Sciences (NAS), in order to provide guidance on criteria to be used and to identify sources of information to support the use of such criteria. The SOC has 60 days to enter into contract with NAS, and NAS then has one year to produce the report to Congress.*

6. **Electronic Monitoring (p. 38).** The integrated data collection section and Sections 201 and 202 on EM and cost efficiencies from the first draft appear to be consolidated into one section (Sec 201) and the timelines to comply have been extended (previously there was one year for assessment and one more year to implement). This section expresses the sense of Congress that EM can be a complement to, or replacement for, observers, and improve the amount and accuracy of fisheries dependent data. No later than 2 years after enactment, the Councils (in consult with NOAA) must assess fishery dependent data needs and if necessary to meet those needs, develop recommendations for integrated data collection which includes EM. No later than one year after receiving those assessments, the SOC must review them for compliance and develop a plan for implementation. Elements of the plan are detailed in the legislation. Not later than 4 years after enactment, the councils must amend their FMPs to implement this section; within 5 years, they must be in effect, with regular review required. *The net, intended affect appears to be the same as with the earlier draft bill, but this version consolidates the requirements into one section, eliminates the redundancies from the first draft, and includes realistic, attainable timelines. However, there are some aspects of this section that remain unclear. Criteria for determining whether integrated data collection is necessary are not clearly specified; therefore, it would appear to be a judgement call for the Council(s). It is also not clear what is intended by the term "needs of the fisheries" (species specific vs groundfish complexes for example). And it is not clear whether it requires a Council to re-assess data needs of each existing fishery that is being monitored, or only those for which a monitoring system is not already in place. A significant concern remains that completing assessments for each fishery could divert and delay currently ongoing efforts for specific EM applications in each region (as well as delay progress on many other unrelated Council management priorities).*

The SOC must also establish **a system, or systems, of fees**, which may vary by fishery, management area, or observer coverage level, to pay for the cost of implementing each relevant integrated data collection program implemented under this subsection. *Amendments to Section 313 (North Pacific Fisheries Conservation) make it clear that 313 fees outlined for observers and electronic monitoring for the NPFMC cover any integrated data collection program that the Council approves under Section 201. In effect, the authority for fees under Section 313 and the new Section 201 appear to be the same for the NPFMC and are not additive.*

7. **Section 204, Improving Science (p. 53).** Requires the SOC, in consultation with the SSCs, within one year, to provide a report to Congress on ways to facilitate greater incorporation of data, analysis, stock assessments, and surveys from **nongovernmental sources**, including fishermen, fishing communities, universities, and research institutions, into fisheries management decisions. *The first draft included a new Section 404(f) which required the SOC, in consultation with the SSC(s), to develop and publish guidelines to meet the same intent. Any information meeting the guidelines would be considered 'best scientific information available', and the SOC and Councils would have to use all data that meet the guidelines or explain in the rulemaking process why the data were not used. NPFMC comment included removal of this section and alternatively, requiring preparation of a report rather than NOAA guidelines and development of plans to address deficiencies where necessary. The second draft is revised as such.*
8. **Section 206. Seafood Marketing (p. 58).** Not later than one year after enactment, the Secretary of Commerce shall analyze the likely costs and benefits of establishing and administering a seafood marketing program to facilitate fuller realization of the commercial and economic value of U.S. fishery resources, including any recommendations the SOC deems appropriate.

9. **Ecosystem Management sections (303B and 304 from first draft) are removed.** A new section in the first draft would have provided discretionary authority for Councils to develop and submit Fishery Ecosystem Plans and amendments to the Secretary, and also provided for SOC authority to do so. It also added ‘fishery ecosystem plan’ each place it says fishery management plan (Section 304, Action by the Secretary). *The effect would have been to make fishery ecosystem plans the same status as FMPs, including the same review and approval process required for FMPs (and amendments) including review under NEPA and other applicable laws and inclusion of implementing regulations. The Council recommended amending this language, and removing the part stating that FEPs are to be submitted to and approved by the Secretary, so that an FEP would remain an overarching strategic planning document, rather than a regulatory implementation vehicle. Removal of these sections does not preclude Councils from developing FEPs.*
10. **Forage fish definitions and requirements to develop ACLs for forage fish are removed.** *The Council previously supported removal of this language.*
11. **Definitions of bycatch, target fish, and non-target fish are removed.** The Council had previously recommended removing the bycatch definition and modifying the non-target definition. *These changes to the current draft address the Council’s concerns in these regards*

Minor changes from the earlier draft bill

12. **Subsistence.**

- Adds a finding that subsistence fishing is an important part of many communities (Section 2)
- Adds recognition and consideration of subsistence most places it references commercial and recreational fishing, including Section 303, required provisions for contents of fishery management plans. *Could require Councils to amend FMPs to fully describe subsistence fisheries and potential impacts of FMPs on subsistence fisheries. The NPFMC already includes subsistence impacts in any relevant amendments to FMPs.*
- Adds a definition of ‘subsistence fishing’ that is very detailed (Section 3).
 - *Consider whether it needs to include the words ‘non-commercial’ such that the proposed definition would be revised as follows: “The term subsistence fishing means fishing in which the fish harvested are intended for noncommercial, customary and traditional uses...” This would be consistent with the State of Alaska definition.*
 - *Uncertain whether the subsistence definition intended to omit the use of resources for shelter, fuel, tools, or transportation. Both the State of Alaska definition (AS 16.05) and the federal definition in ANILCA include those types of uses as subsistence. If a revision is made to include those uses, it could be as follows: “...including for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making or selling of...”*
- Makes it clear (Section 302(b)) that the criteria for being appointed as a Council member includes those that are knowledgeable or have expertise in commercial, recreational, or subsistence fishing. Does not change voting Council membership requirements.

13. **Tribal Governments.**

- Adds ‘tribal’ as an entity recognized in the Findings, Purposes, and Policy (Section 2) to participate in and advise on development of FMPs.
- Under Section 302(i), Council Procedural Matters, adds ‘tribal authority/government’ to the entities which may provide confidentially protected information/statistics to the Council relative to development of FMPs.

- Does not create a tribal consultation requirement for Councils. This responsibility continues to lie with NOAA under Executive Order 13175.
14. **New depleted and depletion definitions (p. 5).** Creates a definition of depleted/depletion similar to the definition of ‘overfishing’ (the stock is a size that jeopardizes the capacity of the fishery to produce the maximum sustainable yield on a continuing basis) without attributing the cause of the low stock size to fishing. *While a different definition is warranted, this bill does not provide for differential application of rebuilding requirements for ‘depleted’ vs ‘overfished’ stocks; therefore, no practical effect other than noting the difference in an annual report required by the SOC. Could consider an exemption for stocks meeting this definition (i.e., where fishing is not the cause).*
15. **Transparency (p. 12).** Requires that both the Council and SSC, where practicable, provide a video or audio webcast of each Council and SSC meeting (excluding executive sessions) on the Council website, no later than 30 days after the end of the meeting. *This would be a new requirement for our SSC, with attendant staffing and cost implications, as currently only the Council meeting is audio webcast. Could consider not making this a requirement for SSC meetings, if detailed minutes are provided (as is currently the case for North Pacific Council SSC meetings).*
16. **Annual Catch Limits/Stock Assessments/Improving Science (p. 14)**
- Requirement to set ACLs are in 303(a)(17). New provisions in 303(d) state that ACLs are not required for species that have a life cycle of ≤ 18 months, or a species in a fishery in which all spawning and recruitment occurs beyond state and EEZ waters unless the SOC has determined the fishery is subject to overfishing.
 - **A new Section 404(e) (p. 50 - 55)** requires the SOC to develop and publish in the Federal Register, a plan to conduct stock assessments for all stocks of fish for which an FMP is in effect under the MSA, within one year. For stocks with previous assessments, require updates/new assessments once every 8 years, or on a different schedule justified by the SOC. For ‘economically important’ stocks without previous assessments, an assessment must be done no later than 3 years after the stock assessment plan is published. It also allows the SOC to determine that a stock assessment is not necessary, without providing criteria.
17. **NEPA/MSA reconciliation (p. 16).** Adds a requirement for SOC (within 90 days of enactment) to publish proposed rulemaking to update and revise procedures under the 2006 Section 304(i) mandate to reconcile MSA and NEPA process. This provision directs the SOC to follow through on the 2006 mandate. *The agency has developed a policy directive (National Environmental Policy Act Compliance for Council-Initiated Fishery Management Actions under the Magnuson-Stevens Act) currently out for public comment that they may assert will fulfill that mandate. Therefore, this added provision may have no practical effect. An alternative approach recommended by the Council Coordination Committee would incorporate key NEPA provisions directly into the MSA, thereby reconciling the two Acts and consolidating all public process and analytical requirements within the MSA.*
18. **Cost Recovery Fees (p. 16 – 17).** The SOC authority to collect a fee to recover agency costs related to management, data collection, and enforcement is currently limited to LAPPs and CDQ. This new section extends cost recovery to ‘management programs that allocate a percentage of the TAC to individuals who have formed a sector’ (Section 304(d)(2)(A)(iii)). The amendments also specify that only net incremental costs attributable to these programs can be recovered, and that the SOC must first prepare an analysis that identifies the costs to be recovered. *May need legal review to determine which sectors would fall under this new authority, for example, a voluntary cooperative (e.g., FLL). The way we commonly define a sector is any gear or operating*

type that receives an exclusive allocation of the TAC, even if the fishery operates under limited access. This language may be unnecessarily broad. Regarding the requirement for the SOC to identify incremental costs to be recovered, the Council has long supported this approach.

19. Rebuilding Plans (pp. 17-19)

- Changes the title in Section 304(e) to ‘Rebuilding overfished and otherwise depleted fisheries’, to differentiate between species that are overfished (low stock size due to fishing) and species that are depleted (stock size is low without necessarily attributing that status to fishing). *Does not appear to change the requirements for rebuilding plans if the fishery is overfished versus depleted. Therefore the differentiation in terminology does not have any practical effect. See comment above – consider exemption for stocks that are depleted with no fishing effect.*
- **Changes the provisions for rebuilding timeframes** to as short as possible but not to exceed: 1) 10 years, except in cases where biology of the stock or environmental conditions dictate otherwise (status quo) or 2) the sum of minimum time required to rebuild an affected stock of fish and the mean generation time, if those values are the best scientific information available (Section 304(e)(4)). *Council supported similar provisions in House bill.*

- 20. Arctic Community Development Quota (p. 32).** Amends Section 313(k) to create a CDQ Program ($\geq 10\%$ of TACs) for coastal villages north and east of the Bering Strait, in the event that the NPFMC amends its Arctic FMP to allow commercial fishing in the Arctic EEZ.

Other/new issues

Amendments to State Jurisdiction (Section 306) are not included. Both the State and the NPFMC requested that the changes below be included in any MSA reauthorization. It relates to state jurisdiction and would fix a small loophole in federal waters off Alaska related to the Salmon FMP. The revisions would essentially ensure all vessels fishing salmon in the EEZ would be under state jurisdiction, as intended by the Council, regardless of whether they ever entered state waters. The risk of someone taking advantage of this loophole is very small, but it is important to close the possibility entirely if we have the opportunity. Suggested language would read as follows:

SEC. 306. STATE JURISDICTION

(a) In General —

(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there ~~is was~~ no fishery management plan in place ~~on August 1, 1996~~, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate ~~while when~~ a fishery management plan under this Act is approved and implemented for such fishery.

Capital construction fund. This draft makes numerous adjustments to the Capital Construction fund language, including adding processing facilities as ‘qualified fisheries facilities’. *The Council has not discussed nor taken any position on this section.*