

North Pacific Fishery Management Council

Dan Hull, Chairman
Chris Oliver, Executive Director



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

Telephone (907) 271-2809

Fax (907) 271-2817

Visit our website: <http://www.npfmc.org>

DRAFT NPFMC COMMENTS ON PROPOSED MSA REAUTHORIZATION May 2017

Dear Congressman Young? :

Pursuant to requests from your office (T) to provide comment on HR200 – “Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act” – I am responding on behalf of the North Pacific Fishery Management Council (NPFMC). We previously commented on HR1335 (April 2015 letter) which contained many of the provisions currently in HR200; therefore, our comments on HR200 will reflect similar positions on many of these issues, as adjusted by discussions occurring at the Council Coordination Committee over the past two years, and by recent discussions of the NPFMC.

A primary focus for pending reauthorization appears to be flexibility in the ACL and stock rebuilding requirements implemented through the 2006 reauthorization. Generally, the NPFMC believes that the current MSA provides a very successful framework for sustainable fisheries management, and major changes are not necessary at this time. However, we also recognize the potential benefits of increased flexibility in some circumstances, and amending the Act to provide for such flexibility could provide all of the Councils additional opportunities to optimize their fishery management programs, with appropriate cautionary notes. Following are our comments on the specific provisions of HR200 which appear to be of relevance to the NPFMC (we are not providing comments on sections of HR200 which specifically apply to other regions of the U.S.):

Section 4- Flexibility in Rebuilding Fish Stocks

Regarding potential changes and increased flexibility for stock rebuilding plans, our Council believes that further flexibility, particularly in cases where the 10 year rule does not make sense due to the particular aspects of the stock in question, would appropriately increase the ability to maximize harvest opportunities while still effecting rebuilding of fish stocks. In some cases the somewhat arbitrary 10 year requirement can result in overly restrictive management measures, with unnecessary, negative economic impacts, with little or no conservation gain. Allowing for rebuilding to occur in as short a time as “practicable”, as opposed to as short a time as “possible”, appears to be an appropriate mechanism for additional flexibility. The use of alternative rebuilding strategies such as harvest control rules and fishing mortality targets is consistent with this increased flexibility. Finally, allowing the Councils’ Scientific and Statistical Committees (SSCs) to determine whether a rebuilding plan is no longer necessary seems an appropriate role for the SSCs.

Section 5- Modifications to the ACL requirement

Regarding annual catch limits (ACLs), ACLs have been used in the North Pacific for over 30 years, and we believe that such limits are a cornerstone of sustainable fisheries management. We also believe there are situations where some flexibility in the establishment of ACLs is warranted, particularly in the case of data poor stocks. Consideration of the economic needs of fishing communities is critical in the ACL setting

process, and while the current MSA allows for such consideration, we recognize the desire for a more explicit allowance for these considerations. We must be careful however, not to jeopardize long term fisheries sustainability, and associated community vitality and resiliency, for the sake of short term preservation of all economic activity associated with a fishery. Accounting for uncertainty, articulating policies for acceptable risk, and establishing the necessary precautionary buffers, are all explicit outcomes of the ACL process, and we believe that the Councils' SSCs are the appropriate gatekeepers to establish the upper limits of 'safe' fishing mortality, which we believe to be at the Acceptable Biological Catch (ABC) level, which is consistent with the provisions of HR200.

We believe that authorization for multi-species stock complexes and multiyear ACLs, as well as the provisions regarding ecosystem component species, will also provide the Councils greater flexibility to apply ACLs consistent with other aspects of management for a given species. We note one potential problem with the wording in this section, which defines 'ecosystem component' with reference to 'non-target stock', which could be confusing for the North Pacific given how targets and non-targets are defined in our regulations (i.e., based on catch composition after the fact). In effect, all major stocks may be non-targets at certain times, while ACLs must be set prior to the fishing year. While this would not likely change how we set ACLs in the North Pacific, clarification may be achieved by deleting the words "in a fishery" to accomplish the apparent intent.

Section 6- Distinguishing between overfished and depleted

Associated with the rebuilding issue is the definition of 'overfished'. In the North Pacific the example of Pribilof Island Blue King Crab, a fishery for which there has been no allowable fishing for decades, and a species which is only occasionally taken as bycatch in other fisheries, highlights the need to differentiate stocks for which an "overfished" status has no relation to fishing activities. Replacing the term "overfished" with the term "depleted" may be an effective way to address this problem. However, while the distinction makes sense, the legislation does not explicitly exempt such a situation from development of a rebuilding plan; therefore, you may wish to consider adding such an exemption in cases where fishery management actions would not effect, or substantially affect, stock rebuilding.

Section 7 - Transparency and Public Process

Regarding the requirements to provide website access to audio, video, or written transcripts of all Council and SSC meetings, this is already provided by the NPFMC for meetings of the Council, including live webcast and full searchable audio transcripts. While SSC meetings are not live webcast or recorded, they are open to all public and very detailed meeting minutes are developed and are accessible on our website. Requiring live webcast or full audio transcriptions of SSC meetings would impose a significant cost to the Council, with both monetary and personnel commitments, with little or no marginal benefit to the public.

Regarding the revised fishery impact statements, and the associated incorporation of NEPA requirements into MSA, this section represents a unique opportunity to streamline our regulatory process, but also represents some potential challenges which could complicate our process, and which should be carefully weighed before adopting in legislation. This section reflects a long-standing intent of the NPFMC, and the broader Council Coordination Committee (CCC), to streamline regulatory processes, eliminate redundancy, and make the Magnuson-Stevens Act the single guiding Act for fisheries actions. In fact the language of this section mirrors language developed by the NEPA workgroup of the CCC in 2015. However, as constructed, it may only effect a marginal improvement to the regulatory process, and could, at least in the near term, complicate our regulatory process, and associated legal processes, for the following reasons:

*Proposed new requirements do not alter the current breadth and scope of environmental, economic, and social impact analysis requirements, so we would not anticipate any decrease in the overall resources necessary to satisfy the new requirements.

*Councils, subject to approval by the Secretary, will be required to “prepare procedures” to comply with the new fishery impact statement requirements (paragraph 6) – as with many recent MSA amendments, this means development of potentially complex, controversial, interpretive regulations, or at least ‘guidelines’, which would in essence be subject to approval by NMFS and NOAA GC.

*Presently the onus for completion of NEPA requirements technically lies with NMFS (even though our current process attempts to incorporate most of that within the Council process). Under this revised process all of the onus for compliance with the new provisions will lie with the Councils under the MSA process, except for NMFS’ final review and approval authority. Shifting this responsibility could require substantial realignment of resources.

*We have become quite proficient at the NEPA process (albeit cumbersome), and we have an established track record with regard to litigation of fisheries actions under NEPA. While this section could streamline the process in the longer term, it could also create grounds for a new body of litigation and case law on fisheries management actions, based on an as-yet-unwritten set of implementing regulations (pursuant to paragraph (6)), and/or attempting to extend previous NEPA case law to the new MSA process. For example, the term “substantially complete”, in reference to a draft fishery impact statement, will likely be a subjective determination unless further defined.

*To the extent Councils are experiencing timing/delay issues between the time of final Council action and actual transmittal of the package for Secretarial review, this legislation will not directly address or rectify that problem; i.e., even under this legislation, determination of ‘adequacy’ of the amendment package for transmittal will still be determined by the agency. It is possible this could be addressed through the “procedures” envisioned under paragraph (6), but there is no guarantee of that.

In summary, while this section does accomplish the goal of incorporating NEPA intent into the MSA (without diminishing the intent of NEPA or environmental impact analyses), the potential benefit to our process should be carefully weighed against the potential downsides. At least in the near-term, all of the Councils and NMFS would have to spend substantial time and resources developing and negotiating implementing regulations pursuant to paragraph (6) and possibly paragraph (5) (which ultimately have to be approved by the Secretary). Deletion or modification of paragraph (6) may be one option to address these concerns, as the language of the legislation (in paragraph 2) appears to actually be quite sufficiently clear on the nature and extent of analyses required under the revised procedure (i.e. how we fully capture NEPA intent for content).

Section 9 – Report on fee

Requiring the Secretary to report annually, to both Congress and the Councils, on the amount collected from each fishery subject to fees, is consistent with information requests previously made by the NPFMC to NMFS. This information will greatly assist the Councils, and NMFS, with information to effectively and fairly develop, implement, and review fee programs in the future.

Section 10 – Cooperative Research and Management

As in our previous comments on this issue, the NPFMC believes that an explicit plan for cooperative research will benefit both the industry and the management process in more effectively managing our fisheries. In the current budget climate, with reduced stock assessment surveys already being planned by NMFS, such cooperative research will be even more critical. We also believe that prioritization of the expanded use of electronic monitoring (EM) is consistent with efforts already well underway in the North Pacific.

Section 13 - North Pacific Management Clarification

Section 306(a)(3)(C) contains provisions related to State jurisdiction to manage fishing activity in the absence of a federal fishery management plan. Removal of the August 1, 1996 date in this paragraph would close a potential loophole which could theoretically allow unrestricted fishing for salmon in EEZ areas off Alaska by vessels not registered with the State of Alaska. The Council strongly believes this change, thereby allowing regulation of fishing in these areas by the State of Alaska, as essential to the responsible and effective management and enforcement of these fisheries.

Section 14- Ensuring consistent management for fisheries throughout their range

This section refers to the relationship between MSA and other statutes including the Endangered Species Act, National Marine Sanctuaries Act, and Antiquities Act. While we may infer the intent of this new section (and agree with that intent as it relates to prioritizing the authority of the MSA relative to those other statutes in the case of conflict), we do not fully understand the actual effect of this section. For example, many fisheries regulations stemming from section 7 ESA consultations are already implemented through the MSA (Steller sea lion protective measures for example). Pending further clarity of the intent and effect, the NPFMC may provide additional comment at the appropriate time.

Section 15- Limitation on harvest in North Pacific Pollock Fishery

This section would provide allowance for the NPFMC to change the pollock harvest cap as stipulated in the American Fisheries Act (currently 17.5%), but not to exceed 24%. NMFS has raised the issue of whether the NPFMC or NMFS might already have the authority under the American Fisheries Act to revisit the harvest cap. The NPFMC has taken no position on this provision at this time, but may in the future upon a better understanding of the intent, need, and potential impacts of such action.

Section 16- Recreational Fishing Data

This section appears to allow for grant funding to help support recreational fisheries monitoring programs undertaken by the State, which the MSA authorizes as a suitable replacement for a federal registry program. In the North Pacific, this could apply to ADF&G's charter logbook and recreational harvest survey program to monitor recreational harvest of halibut. Because the State received a one-time grant several years ago to modify the logbooks, but no longer receives federal funding in support of the continued operation of this program, the NPFMC believes this would facilitate improved management of our recreational halibut fisheries. Other provisions of this section could generally benefit the NPFMC's consideration of recreational fisheries data.

Sections 19/20 – Fishery resource disasters

The Council believes that this section provides useful clarification of the resource disaster declaration process.

Section 22 – Subsistence fishing

The Council believes that providing a definition for subsistence fishing is a useful addition to the MSA, and understanding that this section does not direct appointment of a subsistence seat, believes that it is a useful clarification to the MSA Council member appointment qualifications.

Section 24 – Arctic CDQ

The Council does not have a position on this provisions of HR200, but notes that it may be useful to the Council if Congress provided more specificity with regard to eligible villages.

Section 26 – LAPP program review requirements

This section appears to modify existing review requirements in order to provide greater specificity as to the aspects that must be included in a program review. The NPFMC typically includes these in various program reviews, but this section does provide useful clarity.

Section 27 – Healthy fisheries through better science

Stock assessments provide the fundamental information necessary to successfully manage sustainable fisheries. As such, the NPFMC believes the requirements for the Secretary to develop plans and schedules for stock assessment will enhance fisheries management nationally. However, we have some serious concerns with the provision to incorporate information from a wide variety of non-governmental sources, and potentially require that information to be considered ‘best information available’. We are concerned that complying with this provision will increase burdens on our staff and our Scientific and Statistical Committee, and invite potential litigation. The implementing guidelines for when such information would be utilized will be critical to its veracity and usefulness to managers. A cost comparison report on monitoring programs (for example, human observers versus electronic monitoring) would be extremely beneficial to development of such monitoring programs.

Section 29 – Alternative fishery management measures

Alternative management measures for recreational fisheries (or other fisheries, such as subsistence) such as extraction rates, mortality targets, and harvest control rules could provide additional tools and flexibility to fisheries managers in all U.S. regions. It is unclear, however, whether such alternative measures are intended to be *in lieu of* annual catch limit (ACL) requirements, or in some other context.

General comments

I would like to close by reiterating some general thoughts regarding the reauthorization process, which we have previously provided relative to HR1335 as well as other draft MSA reauthorization bills introduced in 2014 and 2015. These represent some general tenets which we believe should be considered relative to any change in the MSA:

- Avoid across the board mandates which could negatively affect one region in order to address a problem in another region. Make provisions region-specific where necessary, or couch them as optional tools in the management toolbox rather than mandates.

- Legislation should allow for flexibility in achieving conservation objectives, but be specific enough to avoid lengthy, complex implementing regulations or 'guidelines'.
- Legislation should be in the form of intended outcomes, rather than prescriptive management or scientific parameters.
- Legislation should avoid unrealistic/expensive analytical mandates relative to implementing fishery closures or other management actions.
- Legislation should avoid constraints that limit the flexibility of Councils and NMFS to respond to changing climates and shifting ecosystems.
- Avoid unfunded mandates, and/or ensure that Councils and NMFS have the resources to respond to provisions of legislation.
- Preservation and enhancement of stock assessments and surveys should be among the highest priorities when considering any changes to the Act.

Once again, thank you for the opportunity to review HR200, and to provide these comments to you on behalf of the North Pacific Fishery Management Council. We look forward to our continued dialogue on these critically important issues.

Sincerely,

A handwritten signature in blue ink that reads "Dan Hull".

Dan Hull
Chairman

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