

# North Pacific Fishery Management Council

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Tom Melius  
Oceans & Fisheries Subcommittee  
Senate Commerce Committee  
428 Senate Hart Building  
Washington, DC 20510

Dave Whaley  
Committee on Resources  
U.S. House of Representatives  
1324 Longworth Building  
Washington, DC 20515

Dear Tom and Dave:

I'm sure you both took copious notes at the meeting this week, but thought I would provide a summary of the Chairmen's comments and positions on several aspects of the proposed Magnuson Act amendments contained in S. 39 and H.R. 39. I have keyed it by issue as listed in the comparative summary that was in your notebooks.

Bycatch. This language is generally acceptable. The South Atlantic Council did note, however, that it is currently developing a finfish bycatch reduction amendment to the South Atlantic Shrimp FMP. They oppose language in H.R. 39 that would delay these bycatch measures. They also feel that recreational catch and release fisheries should be given consideration in defining bycatch.

Voting Member Qualifications. As stated previously, Council Chairmen feel existing language in the Act is sufficient. The current Act does not preclude the interest groups identified in H.R. 39 from consideration for Council seats. Adding specific interest groups to be considered for balanced membership may be perceived as a mandate to cover all those interest groups when filling Council seats. This could lead to fewer appointments of those participating directly in the fisheries who have the most experience and expertise and whose viewpoints are critical to fishery management. The Chairmen would prefer the Senate's version, which is no change. The Chairmen do appreciate that the House language does not require a certain percentage of seats to go to the newly identified fields, as was the case in earlier draft legislation.

Conflict of Interest. Although Council Chairmen understand there is a public perception of conflict of interest, they continue to believe it is not a problem. However, they also understand that the integrity of the process must not be in doubt. The Chairmen could not come up with any better language than they had in their earlier comments, but continued to stress that it will be very difficult on the Council decision process to require real-time decisions by NOAA-GC or other official about whether a Council member should be able to vote on a particular motion or amendment. In general, the Council Chairmen still would prefer that any challenges to a member's vote be investigated after the fact to avoid delays in Council action. NOAA General Counsel noted that it would be difficult to develop objective criteria to determine whether someone was "significantly affected."

Mid-Atlantic Council Membership. Council Chairmen support the addition of North Carolina membership to the Mid-Atlantic Council, increasing the membership by two.

Council Member Compensation. Council Chairmen oppose a reduction in the level of Council member compensation, particularly in light of the additional preparatory work and other duties outside Council meetings. In the case of working fishermen, whose participation is critical, this is particularly sensitive. It is not merely a matter of dollars and cents. Rather, the Chairmen feel reducing the level of compensation sends the wrong message to appointed members and to others regarding the importance of the Council process and the job being performed. The Chairmen recommend that the current pay level be assigned an equivalent GS-15 level (for example, step 10), and then be allowed to fluctuate with future changes to the federal pay schedule.

### Council Procedures

Qualifications of Testifiers. Council Chairmen oppose the requirement that written and oral statements shall include qualifications and interest of testifiers. They feel this will send a message that some testimony should hold greater weight than others depending on the qualifications of the testifier. While the proposed requirements may not be all that onerous, the Chairmen feel it is not all that necessary as an amendment to the Act. Most Council members are aware of the background of those that testify, and if not, can ask. Also, most Councils use a sign-up sheet or cards that request name and affiliation of testifiers.

21-day Advance Notice of Agenda Changes. Council Chairmen oppose this recommendation because it could significantly impact their ability to address critical issues quickly. Councils now notify the public in a timely manner on any final action or controversial issues. They are very aware that a final decision could be technically flawed if insufficient notification is given. Therefore the staffs do their utmost to notify industry sectors if the agenda changes or a particularly contentious issue is placed on the agenda. The Chairmen also noted that oftentimes it is a request from NMFS that will come in at the last minute for consideration by the Council. This new requirement would not allow that. The Councils can only recall a handful of instances when someone felt they were not aware of items on the agenda, and even fewer really substantive complaints. Therefore this new provision for 21-day notice seems unnecessary.

Reports as Part of Minutes. Requiring all reports received for or during a Council meeting to be part of the Council meeting minutes would be cumbersome and expensive. If the intent is that the Council will maintain copies of all reports for public scrutiny, but not necessarily send them out with every copy of the minutes, then the new language is acceptable. All Councils keep complete records of meeting materials available for public reading.

Habitat. Council Chairmen reiterated their previous comments indicating that budget and staff constraints would make this requirement cumbersome, if not impossible. Chairmen do not oppose tasking the Secretary of Commerce to describe essential habitat in consultation with the Councils. Suggested language changes would be on p. 29, line 19 of H.R. 39: "(A) establish guidelines and assist the Councils . . .", and on p. 30, line 1: "(2) The Secretary, in consultation with the Councils, and in cooperation with the Secretary of the Interior . . ."

Fishery Dependent Communities/Community Development Quotas. There was no particular Chairmen's recommendation on this language, but the Pacific Council has gone on record stating that though they believe that the needs of fishing communities are important, and will consider those needs when making management recommendations, the Pacific Council does not support the addition of a new national standard which requires that management measures take into account the importance of harvest to fishery dependent communities. They believe that would encourage additional allocation disputes on the west coast which would likely be unnecessary or inappropriate.

Fees. The language on pp. 21-23 of H.R. 39 as constructed would require any observer program in an FMP to be supported by a fee program. The North Pacific Council is reviewing its fee program and would not want to be locked into a requirement to have one. The Council Chairmen were told that this observer fee program was intended to be discretionary. Language in H.R. 39 should be changed to reflect that intent. This could be accomplished by adding "shall" at the beginning of paragraphs (A), (B) and (C) on p. 22 and "may" at the beginning of paragraph (D).

The Chairmen's comments on ITQ-associated fees are as follows: In general, Council Chairmen favored fees for specific limited entry type programs but stressed that fees in smaller fisheries could be overly burdensome to industry. It was stressed that if fees are to be imposed for a specific program, that that should be included at the inception of that program so that all involved are aware of the possibility. The South Atlantic Council suggested that fees should be charged based on production, not quota, so that fishermen are not encouraged to continue to fish the entire quota in order to cover fees.

Overfishing. Council Chairmen opposed legislating a time limit on rebuilding because the biology of each species is different. Therefore, in whatever language is passed, if there is a time limit, it is very important that the exemption clause on p. 33, lines 3-5 of H.R. 39, be included. The Chairmen also commented that because MSY is an antiquated concept and indeterminate for many species, it would be very difficult to use it as a rebuilding goal. It was suggested that throughout the text where there is a reference to MSY, that the following be added: "... or other sustainable level or measurable objective specified in an approved fishery management plan."

Review of Regulations. There are fundamental differences between the two bills. S. 39 would overhaul Section 304 as it applies to fishery management plans and amendments and proposed regulations that accompany those plans and amendments, but because it only applies to Section 303(c) amendments, S. 39 would not treat stand-alone regulatory amendments. It would shorten the plan review process by five days from the current Act, and final regulations accompanying a plan or plan amendment could be finalized in 60 to 105 days from plan receipt, depending on the length of public comment period chosen. Though the current Act allows the Secretary to approve implementing regulations anytime between day 60 and day 95, he usually waits until day 95. Therefore, I suspect the Secretary will mainly use the longer public comment period (60 days) allowed in S.39, and therefore the final regulations will be published on day 105 compared to the current Act requirements of day 110. Thus, S. 39 will shave only about five days off Secretarial review, if the Secretary always uses the longer comment period.

H.R. 39, in contrast to S. 39, retains the Act's current schedule for plan and plan amendment review, however, it adds a schedule for regulatory amendments. The Secretary would have to make a final decision by day 75 on regulatory amendments. The Chairmen have stated their desire for a 60-day time limit on regulatory amendments. Thus, H.R. 39 responds to that need, albeit with a 75-day limit to approve regulations.

The Chairmen still want a time limit on regulatory amendments, and recommend that you consider either moving the H.R. 39 language on regulatory amendments into the Senate bill, or expanding the application of S. 39's new Section 304(b) (pp.46-48) to regulatory amendments. This could be done by changing the language in line 23 on p. 46 in S. 39 to read: "... section 303(c), or of proposed amendments to existing regulations implementing a fishery management plan in effect under this Act, which does not have the effect of amending the plan, the Secretary shall immediately initiate ..." (the new language comes from lines 1-4, p. 37 of H.R. 39). This would give the Secretary a time limit on regulatory amendments, but also some flexibility in setting the length of the comment period depending on the significance of the proposed amendment.

The only other point is that S. 39, by completely overhauling Section 304, dropped, perhaps inadvertently, 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. We request this requirement be reinstated.

Emergency Actions. The Council Chairmen strongly favor H.R. 39 which removes the Regional Director from the unanimous vote requirement for emergency actions. Concern was expressed over a required cost-benefit analysis for extensions of emergency rules because it could delay the extension, thus leading to management problems.

Transshipment Permits. The Chairmen had no comment on this issue.

North Pacific Waste Reduction. The Chairmen had no comment on this issue.

Individual Quotas. Council Chairmen oppose a moratorium on new plans and a 7-year sunset. If any sunset is required, it should be more than 10 years. The possibility of a program being discontinued will make financing of IFQs difficult and interfere with the ability to make responsible business decisions. Limited entry/IQ programs in the process of being implemented (e.g., the Gulf of Mexico red snapper program) should not be delayed by new regulations. There also were comments opposing creating new guidelines within the Act for a particular program such as IFQs. Councils already have the authority to develop limited entry programs and should be allowed to tailor programs to their regional needs. The Chairmen believe that an additional advisory committee is not necessary because of current Council review panels and procedures. However, if such a committee is mandated, the Chairmen appreciate having all eight Councils represented. A lien registry is an important issue for the tracking of IQs. On p. 52, line 15, of H.R. 39, the intent of the word "offsetting" should be clearly spelled out to be that ITQ program fees will be needed to support the program and any new fees collected will not cause diminished funding of other programs.

PFMC Tribal Member. Council Chairmen had no opposition to this proposal. However, members of the Pacific Council pointed out that it was their intent that an extra seat be added to the Council to accommodate the tribal seat. At present, the language does not reflect the addition of the seat.

Pacific Region Stock Assessment. Council Chairmen did not have a recommendation.

Fishery Impact Statements. Council Chairmen did not have a recommendation.

Negotiated Measures. Council Chairmen feel the current practice of using advisory panels is sufficient. They specifically do not want to be compelled to adopt the consensus of any advisory panel. Councils already use a variety of panels and committees to develop solutions to fishery management problems. Therefore, the Chairmen believe this section should be omitted.

Gear Evaluation. Council Chairmen were unclear as to the intent of the proposal and are not sure that it is necessary. Councils already have the option of defining permissible gears in their plans and prohibiting all others. New technologies could be tested under an experimental fishing permit.

Sustainable Fisheries/Capacity Reduction Programs. The Chairmen received a copy of a letter dated June 16, 1995 from Peter Leipzig to congressional staff concerning buy-back language in the proposed amendments, but took no formal action on the letter or on draft language in either bill. Tom Melius, staff for the Senate Commerce Committee, indicated that the provisions in S.39 were drafted before the major change of direction by Congress. It is very doubtful now that such a program would be funded.

Disaster Relief. Council Chairmen had no recommendation on this issue.

Monitoring & Research. Council Chairmen had no recommendation on this issue.

Stock Recovery Financing. Council Chairmen had no recommendation on this issue.

Highly Migratory Species. The New England Council has concerns that measures in the House draft would negate measures in the swordfish plan. They recommend that H.R. 39 language on page 27, lines 15-17, be amended as follows: "(iv) establish regulations that, to the extent practicable, minimize the discarding of Atlantic highly migratory species which cannot be returned to the sea alive; and . . . ." The Mid-Atlantic Council will submit their comments directly to the Committee. The South Atlantic Council reiterated their desire that regulation of HMS be returned to the Councils.

Driftnets. Council Chairmen had no recommendation.

National Standard 5. Council Chairmen had no recommendation.

Safety. Council Chairmen had no recommendation.

Atlantic Herring and Mackerel. Council Chairmen had no recommendation.

Incidental Catch in Gulf and South Atlantic. Council Chairmen had no recommendation.

Gulf of Mexico Fisheries. Council Chairmen had no recommendation.

Prohibited Acts. Council Chairmen had no recommendation.

Enforcement. Council Chairmen had no recommendation.

Multi-Council Designation. Council Chairmen had no recommendation.

Observers and Rights of Observers. Council Chairmen had no recommendation.


State Jurisdiction. Council Chairmen have no opposition to this measure, and in fact several Councils would like the measure to apply across the board, not just to the State of Alaska.

Civil Penalties. There was some question as to the intent of this measure. There was no Council position, but members agreed that the important issue is that violators be charged and assessed regardless of their "ability to pay."

Term Limits. This issue is not included in reauthorization, but Chairmen are requesting a clarification of Congressional intent with regard to the interpretation of the three, 3-year term limit. Chairmen feel that when a member is appointed to fill the remainder of a term, that that member's "three 3-year terms" should begin with the first full three-year term, and not include the partial term served. This clarification could be accomplished by changing the second sentence of current Section 302(b)(3) to read: "No member appointed after January 1, 1986, may serve more than three consecutive [full] terms." Chairmen also asked NMFS for a clarification of an agency policy which appears to limit appointments to only two terms.

I believe that about covers the issues we discussed. If you have questions or need clarification, please give me a call. Thanks again for coming to our meeting.

Sincerely,

  
Clarence G. Pautzke  
Executive Director

cc: Regional Council Executive Directors