

DRAFT POSITION PAPER TO DEVELOP A LETTER

Regional Fishery Management Council Coordination Committee

The Legislative Committee of the CCC used the June 20, 2014 letter to Senator Begich and Representative Hastings from the CCC to draft the following letter for review and approval by the CCC at the Feb/March meeting for immediate distribution as needed.

Dear _____:

On behalf of the Council Coordination Committee (CCC), I offer the following comments on the reauthorization of the Magnuson-Stevens Act (MSA). These comments were developed during the CCC's most recent meeting on February 28 – March 1, 2017, and outline the effects of the proposed changes on the ability of the Councils to fulfill their responsibilities under the MSA. The CCC's Legislative Committee reviewed previous CCC and Council comments, as well as, H.R. 200 – “The Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act” introduced on January 3, 2017 by Congressman Young (R-Alaska) and referred to the House Natural Resources Committee.

Although our discussions were informed by draft legislation, most of our comments are general in nature and do not include recommendations for specific legislative language. Due to both time limitations and differences in perspectives, we have not developed consensus positions on all of the topics that are being considered as part of MSA reauthorization. The following sections summarize the CCC's consensus positions on a number of high-priority topics.

Management Flexibility

Rebuilding Plans

In general, the CCC supports the addition of measures that would increase flexibility with respect to stock rebuilding for certain types of fisheries. We acknowledge that rebuilding often comes with necessary and unavoidable social and economic consequences, but we believe that targeted changes to the law would enable the development of rebuilding plans that more effectively address the biological imperative to rebuild overfished while mitigating the social and economic impacts.

We agree that exceptions to rebuilding requirements should be limited in scope and carefully defined. Ideally, such exceptions would be codified in the MSA along with guidance regarding applicable circumstances in National Standard guidelines.

Management of Mixed Stocks

Some of the Act's more prescriptive management requirements pose particular challenges for the management of mixed stock fisheries and may be incompatible with ecosystem approaches. While the current National Standard guidelines allow for a mixed-stock exception to the “overfished” definition, the statutory basis for this is unclear and would benefit from clarification in the reauthorized Act.

Transboundary Stocks

The CCC supports the addition of language that would allow the Councils to develop annual and in-season quota trading programs for transboundary stocks. The CCC also recognizes the potential for increased enforcement from recommendations of the Presidential Task Force Combating Illegal, Unreported, and Unregulated (IUU) Fishing however we are awaiting implementation of regulations to determine their effectiveness.

Data Limited Fisheries

The CCC supports further consideration of exemptions, or alternatives to, the existing ACL requirements for data-limited species. The ad hoc methods used to establish ACLs for data-limited species often result in quotas that are less predictable, resulting in a loss of stability and yield in some of our most important fisheries. While ACLs and AMs have been effective management tools for some fisheries, they may not be the best tools for managing incidental or small-scale, data-limited fisheries. In these situations, Councils should have discretion to determine alternative control mechanisms for data-limited stocks.

Definition of “Overfished”

The CCC agrees that an alternative term could be useful for describing fisheries that are depleted as a result of non-fishing factors, unknown reasons, or a combination of fishing and other factors. The current MSY-based definition can be problematic when applied to data-limited fisheries or mixed-stock complexes. Furthermore, the term “overfished” can unfairly implicate fishermen for depleted conditions resulting from pollution, coastal development, offshore activities, natural ecosystem fluctuations, and other factors. Not all of the Councils agree that “depleted” is an appropriate term to replace “overfished” with. Some have noted that “depleted” has specific meanings in a number of other statutes, including the Endangered Species Act and the Marine Mammal Protection Act, and that care should be taken to avoid conflict or ambiguity if a change in terminology is implemented.

Transparency

The CCC supports a transparent public process, including webcasts and recordings of all Council and SSC meetings, to the extent practicable. However, budget problems are very real, and written transcripts are costly. Video recordings of large meetings may not add substantive content, as they will not capture presentations and motions, which are the most critical visual aspects of meetings. Streaming video may also degrade the quality of webcast audio. While the technology for webcasts is rapidly evolving, live broadcasts generally require strong Internet connections to be effective. In the context of Council meetings, which are often held in remote locations near fishing ports, the Councils have little ability to predict or control the quality and cost of the Internet connection.

We recommend that Congress require each Council to develop a policy in its Standard Operating Procedures that describes how it makes each type of Council meeting

accessible to the public, and that Congress require the use of webcasts “to the extent practicable”.

NEPA Compliance

Ensuring NEPA compliance for marine fishery management actions has been costly and time-consuming for Council and NMFS staff and has limited the Councils’ abilities to pursue other regulatory activities. In addition, the CCC notes that there have been instances where compliance with NEPA has hindered adequate compliance with MSA in terms of providing comprehensive analysis to Councils prior to their taking final action due to the difficulty and time required to complete NEPA analyses. Although the 2007 MSA reauthorization attempted to align the requirements of the two laws more closely through the addition of Section 304(i), the CCC does not believe what has been called for in the Act has been accomplished.

Catch Share Programs

The CCC agrees that Councils should maintain the maximum flexibility possible to develop effective management tools, including catch share programs. Adding excessive requirements for conducting a referendum is likely to increase the administrative burden for the Councils and may reduce the Councils’ ability to implement the appropriate management program for their fisheries that could include new catch share measures.

Collection and Use of Fishery Data

In general, the CCC believes that Councils should be granted a reasonable degree of flexibility in the development and implementation of monitoring programs (electronic and otherwise) so that those programs may be tailored appropriately for each fishery and the needs of each region.

Electronic Monitoring

Our ability to manage fisheries effectively depends on having access to timely and accurate data. The CCC believes the development of electronic monitoring technologies and the utilization of other emerging technologies could be beneficial to U.S. fisheries – in terms of data collection, and in terms of the potential to reduce the cost to fishermen and governmental entities. New technologies may be an additional method of collecting and analyzing timely fisheries data at a reduced cost. However, introducing additional national-level regulations to govern the use of electronic monitoring beyond the current constraints of the Act (e.g., the National Standards) may be counterproductive due to a number of factors, including funding and resource constraints, variability among fisheries, and the rapid evolution of technology. In addition, the costs of new technologies should be taken into account when implementing new programs or technologies.

Recreational Fisheries

Data quality and availability continue to be among the greatest challenges for the

management of recreational fisheries. Given the importance of accountability, effective monitoring is critical for the successful management of recreational fisheries. While NOAA's Marine Recreational Information Program (MRIP) has provided some improved statistical methodologies to reduce sampling bias, the program has only been partially implemented, and it has done little to increase the precision of catch estimates. Addressing this problem will require increased sampling rates, which can only occur with increased funding. The Councils are examining additional technologies that should be encouraged to get better data.

Other Federal Statutes

The CCC recommends an amendment to the MSA that ensures all federal fishery regulations to be promulgated under the Council process established under MSA section 302. Under the MSA, the Councils are charged with managing, conserving, and utilizing the Nation's fishery resources as well as protecting essential fisheries habitat, minimizing bycatch, and protecting listed species within the United States Exclusive Economic Zone. This is done through a transparent public process that requires decisions be based on the best scientific information available.

If changes to Council-managed fisheries (for example changes to the level, timing, method, allowable gear or areas for harvesting management unit species) are required under other statutory authorities such as the Antiquities Act of 1906, the Endangered Species Act of 1973, the Marine Mammal Protection Act of 1972, or the National Marine Sanctuaries Act of 1972, such restrictions or modifications to those fisheries should be debated and developed under the existing MSA process. In addition, all actions by the Councils are currently subject to review by the Secretary of Commerce to determine consistency with MSA and all other applicable laws. This current review ensures that Council actions – including those that could be made as a result of requirements of other statutes – will continue to be consistent with all relevant laws. Making modifications to fisheries through the MSA process would ensure a transparent, public, and science-based process.

Policy Directives

The CCC remains concerned that important policy directives issued by NMFS (e.g., forage fish, allocation review, and EBFM) frequently do not take into consideration the need for additional staffing and resources that Councils may need to implement them. The demands on Councils to fulfill existing regulatory and management requirements are significant, and these should be met before any new mandates are required.

General comments

I would like to close by reiterating some general thoughts regarding the reauthorization process. These represent some general tenets that we believe should be considered relative to any change in the MSA:

- Avoid across the board mandates that could negatively affect one region to address a problem in another region. In addition, modifications to the Act should be national in

scope with reasonable flexibility to address region-specific issues. Modifications to the Act which are specific to one region or one Council undermine the national scope of the Act and should be carefully considered especially with respect to how these modifications might affect operations in other regions.

- 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.

Thank you for the opportunity to provide these comments on MSA reauthorization. Please don't hesitate to contact me if you have any questions or would like clarification on any of the comments above. We appreciate your continued interest in the perspectives of the regional fishery management councils, and we look forward to future involvement in the MSA reauthorization process.

Sincerely,

Dr. John F. Quinn, Chairman