

DRAFT: April ~~8~~11, 2017

The Honorable Jaime Herrera-Beutler  
House of Representatives  
ADDRESS  
Washington, DC 20515

Dear Congresswoman Herrera-Beutler:

Thank you for your interest in the Pacific Fishery Management Council's (Council's) comments and perspectives on the Magnuson-Stevens Fishery Conservation and Management Act (MSA) reauthorization bill, HR 200, Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act.

The Council and its Legislative Committee discussed the bill at their April 2017 meeting. The bill is very similar to HR 1335 (114th Congress) and HR 4742 (113th Congress), which the Council has commented on in the past. At the time When the Council commented on those bills, the Magnuson-Stevens Act National Standard 1 Guidelines (NSIGs), were undergoing revisions. Since that timethen, the NSIGs have been finalized, and have addressed some of those several issues of concern to the Council. ,and+Therefore the Council feelsbelieves some of the provisions in HR 200 are not strictly necessary to achieve the desired results. However, provisions that are not in statute can be changed or challenged in court, and having them put in statute provides better legal protection.

In general, the Council believes that the MSA has worked well to ensure a science-based management process that ensures long-term sustainable harvests while preventing overfishing and rebuilding depleted stocks. The Council believes large-scale changes to the MSA are not warranted, and any changes made to the Act should be carefully considered. Legislation should be in the form of intended outcomes, rather than prescriptive management or scientific parameters, and should allow for flexibility in achieving intended objectives while being specific enough to avoid lengthy, complex implementing regulations or "guidelines."

Comments on specific sections of HR 200 are listed below:

#### **Section 4 - Flexibility in Stock Rebuilding**

HR 200 proposes to:

- Replace the term "possible" with "practicable".
- Replace the 10-year rebuilding requirement with a timeframe reflecting life history, plus one mean generation, with exceptions.
- Allow consideration of environmental conditions and use of alternative rebuilding strategies.
- Allow Councils to terminate rebuilding plans if an overfished determination was found to be in error.
- Extend the time for emergency interim rebuilding measures from a maximum of one year to a maximum of two years.

The Council believes the first two issues would result in more consistent application of rebuilding timeframes and better balance between conservation and economic objectives of rebuilding strategies; however, the Council does not believe broad exceptions that might be exercised frequently or that might weaken incentives to conserve stocks are in the best interests of sustainable fishery management.

The next ~~three-two~~ bullets address important issues; however, those same issues are addressed in the final National Standard 1 Guidelines, (NS1Gs) and so including them in HR 200 is not imperative. If they are included, the provisions should be made consistent with the NS1Gs to avoid confusion and inconsistencies.

The last bullet addresses a potential discontinuity between the time allowed to adopt a rebuilding plan (two years) and the time interim measures could be in place (one year). The Council believes this would potentially reduce Council and NOAA workload, reduce the risk of multiple changes to rebuilding measures over a short period, and allow better planning for both stakeholders and staff.

The Council does have concerns about a proposed requirement for Councils to *specify schedules for reviewing rebuilding targets*. The Pacific Council already specifies such schedules, and the NS1Gs provide guidance for these processes. A rigid schedule could be counterproductive to Council management.

## **Section 5 - Annual Catch Limits (ACLs)**

Section 5 includes provisions to modify and provide flexibility in establishing ACLs:

- Allows ACLs to consider ecosystem and economic impacts
- Creates exemptions for species with short life span
- Allows ACLs for multi-species complexes and multiple years
- ACLs not required for ecosystem component species

The Council believes these factors are appropriate considerations, but notes that the NS1Gs allow consideration of ecological, economic, and social factors, as well as values associated with determining the greatest benefit to the Nation, which are important considerations in specifying optimum yield. The NS1Gs state that these considerations may be considered in the ACL framework. The NS1Gs also address ACL exceptions for ecosystem component species and other stocks that are identified in one FMP but are managed primarily under another,

- Section 5 also allows Councils, when setting ACLs, to take into account management measures under international agreements in which the U.S. participates
- and, in the case of an ACL developed by a Council for a species, ~~allows-requires~~ Councils to take into account fishing activities for that species outside the U.S. EEZ and the life-history characteristics of the species that are not subject to the jurisdiction of the Council.

The first provision addresses ACLs for species managed under international agreements, for which the MSA already provides an exception. However, assuming a Council chooses to create an ACL, or if an agreement is established after an ACL has already been set, Pacific Council is unsure if this provision is relevant to its management and operations. In any event, the this provision appears to allow consideration of international management measures factors; however, the Pacific Council believes consideration of those measures that aren't are not otherwise prohibited. The second provision, regarding a stock that is transboundary in nature but is not necessarily covered by an international agreement, appears to require consideration of all mortality sources when setting an ACL. The Pacific Council believes this is already addressed in the NS1Gs, which require all sources of mortality should be accounted for in the evaluation of stock status, and that management activities of other countries having an impact on the FMP's management measures should be discussed.

- Allow Councils to establish ACLs for multi-species stock complexes and allow Councils to set ACLs for up to three years

The Council requests clarification on how this might apply to monitored stocks rather than actively managed stocks.

### **Section 6 - Distinguishing between “Overfished” and “Depleted”**

- This section replaces the term “overfished” with “depleted” and defines the term “depleted” based on biomass rather than fishing rate. It also requires the U.S. Secretary of Commerce (Secretary), when issuing the annual report on the status of fisheries, to note if a stock was depleted as a result of something other than fishing.

The Council believes this distinction is appropriate ~~because~~ since fishing may not be the primary factor resulting in a status change for a stock. The NS1Gs make a distinction between overfished (a quantity) and overfishing (a rate), but ambiguity still exists in the MSA. We note that it may be difficult for the Secretary to determine if a stock was depleted due to factors other than fishing. Instead, we recommend the Secretary report on all factors contributing to a stock's change in status.

### **Section 7 - Transparency and Public Process**

This section would:

- Require the Councils' Scientific and Statistical Committees (SSCs) to develop the scientific advice for the Councils in a transparent manner and to allow for public involvement in the process.

The Pacific Council and its SSC already have a public, transparent process; this would not affect the Council.

- Require that each Council, to the extent practicable, provide a webcast, an audio recording, or a live broadcast of each Council meeting and for the Council Coordination Committee meetings. In addition, the bill would require audio, video, searchable audio, or written transcript for each Council and SSC meeting on the Council's website not more than 30

days after the conclusion of the meeting. The bill would require that the Secretary maintain these audios, videos, and transcripts and make them available to the public.

The Pacific Council already provides a live webcast of its meetings, and recordings are available online. The Council does not support adding additional broadcast requirements, especially prescriptive timelines (we have two Council meetings less than 30 days apart, and producing an official meeting record in that time would detract from higher priority activities). The Council is particularly concerned about the workload associated with the SSC requirement. The SSC provisions seem unnecessary since the SSC is an advisory body to the Council, while the Council makes the final decisions. In addition, minutes of SSC meetings are included as part of the Council's administrative record and are available online. No further administrative record should be necessary.

Section 7 provides detailed requirements for Fishery Impact Statements:

- Require that each FMP, plan amendment, or proposed regulation contain a fishery impact statement (FIS), which is required to assess, specify, and analyze the likely effects and impacts of the proposed action on the quality of the human environment.
- A "substantially complete" FIS must be available not less than 14 days before the beginning of the meeting at which the Council makes its final decision on the proposal.
- The availability of this FIS must be announced by the same methods currently used by Councils to disseminate public information and relevant government agencies and the public must be invited to comment on the FIS.
- A completed FIS must accompany the transmittal of a FMP or plan amendment as well as the transmittal of proposed regulations.
- The Councils, subject to approval by the Secretary, must establish criteria to determine actions or classes of actions of minor significance for which the preparation of a FIS is unnecessary and categorically excluded from the requirements of developing a FIS.

The language in HR 200 mirrors the approach outlined in a white paper prepared by the Council Coordination Committee, which recommends integrating the policy objectives and key requirements of National Environmental Policy Act (NEPA) directly into the MSA, including the requirement to prepare "a detailed statement" on "the environmental impact of the proposed action." The Council developed the proposed procedures as an approach to address the requirements in the existing MSA section 304(i)(1)(B) ENVIRONMENTAL REVIEW PROCESS; the Council does not believe what has been called for in the Act has been accomplished. The Council believes the objective of these changes is not to circumvent the intent of NEPA, but to incorporate important aspects of the NEPA analysis and process directly into the MSA.

Developing compliance procedures will require substantial effort from Council and NOAA staff, and will likely result in FIS that are similar in scope and content to NEPA analyses and documents. The primary benefit to ~~the regulatory implementation~~this process would be to reduce or eliminate NMFS review of NEPA documents ~~that occurs~~ after a Council takes final action and before the ~~Council transmits~~ regulations are transmitted to NMFS, thus starting the MSA review period. However, HR 200 does not preclude a similar lengthy review period for the FIS ~~, and w~~Wwithout

an explicit time limit for transmittal after Council final action, there ~~would be~~ no guarantee that the intended benefits of this provision would be realized. Shortening the review period would also benefit the Council process by encouraging earlier Secretarial review of the “substantially complete” FIS provided to the Council prior to final action. A substantially complete FIS would provide an opportunity for more informed public comment and Council decision making. This language could result in a more efficient fishery regulatory process, while ensuring that the NEPA objectives of informed decision making and public comment opportunity are fully met.

### **Section 9 - Reports on Fee Program Collections**

- This section requires the Secretary to report annually (to Congress and the Councils) on the amount collected from each fishery under a fee program, and detail how the funds were spent.

A similar report is already prepared by NMFS, but has not included it in its periodic Report to Congress.

### **Section 10 - Cooperative Research and Management**

- This section requires the Secretary, in consultation with Councils, to publish a plan for cooperative research within one year (with updates every five years). Priority would be given to expanded use of electronic monitoring and other technologies.

This provision appears to set a time certain for developing a cooperative research and management plan that is already required in the MSA. The Council currently uses cooperative research and management where practicable. The reporting requirement could be accomplished through the Research and Data needs report, which is already required by the MSA with a five-year update schedule.

### **Section 14 - Ensuring Consistent Management for Fisheries**

- HR 200 clarifies that the MSA would be the controlling fishery management authority in the case of any conflict within a national marine sanctuary or an area designated under the Antiquities Act of 1906.

This provision is consistent with positions taken by the Council and the CCC.

- HR 200 requires that if any restrictions on the management of fish in the EEZ are required to implement a recovery plan under the Endangered Species Act (ESA), the restrictions would be implemented under the authorities, processes, and timelines of the MSA.

The Council is already required to comply with other applicable law, which includes the ESA, whether in a recovery plan, Section 7 consultation, or other section of the ESA. For example, ESA consultation standards are identified as management objectives for salmon management measures. It is unclear whether the intent of this provision is to have the Councils select the appropriate incidental catch rate for ESA-listed fish caught under MSA authority, or if recovery plan measures restricting fisheries could only be enacted through the MSA. The Council previously adopted a position advocating for an open and transparent process, with Council involvement, for the selection of ESA-related fishery impact rates by the National Marine Fisheries Service; this

occurred recently in the case of the appropriate ESA limit for Lower Columbia River Tule Fall Chinook and was broadly viewed as a very successful process.

### **Section 16 - Recreational Fishing Data**

- This section creates Federal-state partnerships to improve implementation of state data collection programs, requires biennial reports from the Secretary to Congress on these programs, creates Federal grants to states, and requires the National Academy of Science to evaluate these programs after one year.

The Council already partners with NMFS on state data collection programs. We are concerned about both the funding and workload impacts of this section on NMFS, especially given that NMFS' funding and staffing already constrain Council functions.

### **Sections 18 - Disaster Recovery Costs**

- This section would require the Secretary to publish the estimated cost of recovery from a fishery resource disaster within 30 days from the time the Secretary makes the disaster determination.

The Council believes the language that requires the Secretary to publish the estimated cost of recovery from a fishery resource disaster with 30 days of the disaster determination is impractical, and since the determination is based only on commercial ex-vessel value, may be misleading with regard to the extent of costs and effects on other fishery sectors and related industries. The term "cost of recovery" is also ambiguous. The time period should be lengthened if the provision is maintained.

### **Sections 19 - Fishery Resource Disasters**

- This section would require the Secretary to make a decision regarding a disaster assistance request submitted under the provisions of section 312(a) of the MSA within 90 days of receiving an estimate of the economic impact of the fishery resource disaster from the entity seeking the disaster declaration.

The Council is concerned this provision could have a substantial workload burden for NOAA staff. Currently, any representative of a fishing community can request a disaster declaration, so requiring an estimate of the economic impact of the disaster from the entity seeking a declaration could have negative consequences for those seeking help. In addition, Congress appropriates disaster relief funds; the Secretary does not determine funding levels.

### **Section 25 - Preference for Students in Water Resource Issues**

- HR 200 would identify a hiring preference for student working on information collection for marine recreational fisheries.

The Pacific Council is concerned that this preference could disadvantage [those who are not students, including](#) fishing industry participants [and professional researchers, who are](#) considering entering the fishery management or monitoring profession.

### **Section 26 – LAPP program review requirements**

- HR 200 identifies a timeline and content for review of limited access privilege programs. The requirements are duplicative of guidance provided in NMFS Policy Directive 01-119 and Procedural Directive 01-119-02, and comport with the existing Council catch share review process.

### **Section 27 - Healthy fisheries through better science**

- This section includes requirements for a great deal of new science and reporting.

The Council is concerned that these provisions would necessitate more staff time and funding, require use of particular sources of data *a priori*, establish time-consuming--and in some cases duplicative--reporting requirements on what and how data are or are not used, and decrease flexibility of individual Councils. For example, stock assessments would be required for every stock of fish that has not already been assessed, subject to appropriations. The MSA already requires the use of the best scientific information available, and the prescriptive nature of HR 200 provisions seem to duplicate existing Council processes and could divert staff efforts from other productive work.

### **Section 29 - Alternative Fishery Management Measures**

This section allows Councils to use alternative fishery management measures in a recreational fishery or for the recreational component of a mixed-use fishery including the use of extraction rates, fishing mortality targets, and harvest control rules in developing FMPs, plan amendments, or proposed regulations.

This provision does not add any new flexibility since Councils are already allowed to use these types of measures in recreational (and commercial) fisheries; i.e., there are no prohibitions on their use.

Thank you for your ~~consideration, etc.~~ request for comment and for your consideration of our responses. We would like to note that the Council will continue to deliberate this and other reauthorization bills in the future. We would be happy to answer any questions or provide further thoughts as reauthorization moves forward.

Sincerely,