



## Pacific Fishery Management Council

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Dorothy M. Lowman, Chair | Donald O. McIsaac, Executive Director

March 28, 2014

Mr. Dave Whaley  
Legislative Staff  
House Committee on Natural Resources  
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs  
1324 Longworth House Office Building  
Washington DC 2015

Dear Mr. Whaley:

Thank you for the opportunity to address the additional questions that Committee members had following the Committee on Natural Resources legislative hearing on Friday, February 28, 2014 on the discussion draft titled H.R. *"Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act."*

My responses to the submitted questions are attached. Please feel free to contact me or Council staff if we can be of further assistance.

Best regards,

A handwritten signature in black ink that reads "Dorothy M. Lowman". The signature is fluid and cursive, with a long horizontal line extending to the right.

Dorothy Lowman  
Chair  
Pacific Fishery Management Council

**Committee on Natural Resources**  
**1324 Longworth House Office Building**  
**February 28, 2014**  
**9:30 a.m.**

**Legislative Hearing on**

H.R. \_\_\_\_\_ *“Strengthening Fishing Communities  
and Increasing Flexibility in Fisheries Management Act”*

**Questions from Republican Members**

**Dorothy Lowman, Pacific Council**

**Question:** You note that there is a duplicative aspect to the Magnuson and NEPA statutes and you note that the Magnuson Act already includes a “mandated transparent and participatory process” which is one of the key aspects of NEPA. Are there provisions within NEPA that are not also included in the Magnuson Act that the Committee should consider putting in the Act to make Magnuson more consistent with NEPA?

**Response:** We thank the Committee for recognizing that the mandate for NEPA streamlining and process efficiencies in the current MSA remains unfulfilled. However, in order to assure consistency with NEPA, we believe that there are other aspects of NEPA that should be explicitly recognized in the Act. In particular, we recommend including language specifically requiring a reasonable range of alternatives and thorough assessment of environmental impacts prior to final Council decision-making to help assure that process efficiencies are achieved while also maintaining robust compliance with the essence of NEPA. We understand the Council Coordination Committee (CCC) is preparing specific language suggestions that can accomplish this goal, and are happy to forward any forthcoming recommendation after the May 13-15, 2014 CCC meeting.

**Question:** You note that the Council recommends a change to the rebuilding provisions currently in the Act and note that one possible change could be to change the word “possible” to “practicable”. Mr. Rees believes that change this would give Councils the ability to “put off rebuilding indefinitely”. What would be your response to this claim?

**Response:** In suggesting that changing the requirement to rebuild as soon as practicable rather than the current “as soon as possible” language, it was not our intent that Councils be able to put off rebuilding indefinitely. In fact, Congress has used the term “practicable” deliberately and effectively when they amended the Act in 1996 with respect to National Standard 9 and associated requirements for conservation and management measures to minimize bycatch and associated mortality to the maximum extent practicable. In the Congressional record there is recognition that this term was chosen deliberately and requires an analysis of the costs associated with the action but does not allow Councils to ignore their responsibility relative to minimizing bycatch. Similarly, we believe that such a change would not allow Councils to ignore their responsibility to develop reasonable and effective rebuilding plans within the maximum time

allowed in the Discussion Draft (tied to scientific advice on the mean generation time of the fish stock involved), but would allow the Council to exercise flexibility within that timeframe to account for the needs of communities. It may, however, be useful to include discussion in the Congressional record as was done in 1996 to provide clarity with respect to Congressional intent with the use of the word “practicable.”

**Question:** The Discussion Draft includes language that would allow a Council to terminate a rebuilding plan if, after a new stock assessment is completed, it is determined that the stock was not overfished. Some have argued that this provision would give Councils unlimited authority to negate rebuilding plans whenever they want. This provision was included in the Discussion Draft specifically due to a situation in the Pacific Region where NOAA determined that a fishery was overfished, later determined that it had not really been overfished, but told the Council that the rebuilding plan had to remain in effect once it had been adopted. Is that correct? Do you view that provision as giving Councils unlimited authority to negate rebuilding plans?

**Response:** There was a case with widow rockfish in the Pacific Council area, whereby a new stock assessment showed a stock status below the overfished level and the Pacific Council developed a rebuilding plan that restricted fisheries so as to rebuild the stock to the maximum sustained yield biomass. During a subsequent stock assessment, the best available science was revised and showed that the widow rockfish stock had never fallen to the overfished level threshold. Based on discussions at the Pacific Council table that included policy and legal NOAA representatives, the Pacific Council continued with the rebuilding plan and associated fishery restrictions through the balance of the rebuilding plan, until they were officially rebuilt in 2012.

The Discussion Draft language could be subject to different interpretations, and in our view does not specifically address what happens when a new stock assessment shows a stock was NEVER overfished. We recommend language be explicit in specifying that stocks later determined never depleted (overfished) should not be held to rebuilding provisions. The current draft could be read to say that you could suspend the rebuilding plan once the stock is not technically depleted even though it is not fully rebuilt. In these cases, the Pacific Council is in favor of continuing rebuilding plans until the stock reaches its maximum sustained yield biomass level, which is typically significantly higher than the depleted threshold.

**Question:** There has been much discussion about how well the council process works including providing a transparent public process. Do you believe that process should also be used when restrictions to fisheries which are managed under fishery management plans are required as a result of the Endangered Species Act?

**Response:** We believe that involving the Council, with its transparent public process and advisory body expertise, when developing management responses to ESA-related issues leads to better decision-making. The Pacific Council is currently comfortable with the kind of ESA integration with MSA that has recently been occurring in the Pacific Council forum for Pacific salmon in terms of enhanced transparency of the scientific and policy basis for determining appropriate fishery restrictions. This process has included the Council making recommendations

that the Secretary has taken seriously. However, it is not clear that this is currently the practice in other Councils.

**Question:** You note that your Council has created an ecosystem fishery management plan and have already implemented protections for forage fish. Do you believe it is necessary to mandate that all Councils create ecosystem plans and protect forage fish?

**Response:** While we think that creating ecosystem plans should be encouraged and that forage fish are an important part of the ecosystem, the Pacific Council has not taken the position that it is necessary have a mandate in the Act requiring such action.

### **Question from The Honorable Joe Garcia**

**Question:** Ms. Lowman: We have heard a great deal about the importance of socioeconomic considerations in the reauthorization of this Act. Assessing the impacts of fisheries management decisions on fishermen and their communities requires the collection and analysis of very specific economic data – data that would be shielded by very strict confidentiality rules under this draft legislation. Would this limited access to data inhibit the councils and others from evaluating economic impacts? Could these restrictions also hamper attempts to institute cooperative research and management programs?

**Response:** Under the interpretation of current confidentiality requirements of MSA, we are sometimes challenged in fully analyzing the impacts of management alternatives. Therefore, we do not wish to see further tightening of confidentiality rules but instead recommend improving access to currently confidential harvest or processing information for purposes of enhanced socioeconomic analysis. There are instances where the Pacific Council has struggled with balancing the needs of fishing communities with proper conservation of fish stocks, and assessing how much an additional increment of conservation affects community business activity cannot be determined because the necessary socioeconomic data is not available.

Additionally, interpretation of current confidentiality requirements have also challenged the development of cooperative partnerships. On the west coast, as part of the trawl groundfish catch share program, a number of voluntary industry partnerships have developed to collectively better manage the constraining species held in order to most effectively access healthy target stocks. Cooperative or risk pool members' and managers' ability to voluntarily share data among fishery participants in order to facilitate these co-management partnerships have been hindered at times by agency concerns that requests by fishermen to share their own data would violate confidentiality rules. For this reason, further tightening of confidentiality rules under MSA could inadvertently hamper important co-management arrangements.

### **Questions for the record from Congresswoman Hanabusa**

**Question:** I understand that regional fishery management council budgets have fluctuated significantly since 2012. What is the current budgetary situation for the councils and how do you see this affecting your operations?

**Answer:** The current budget situation (FY 2014) for Regional Fishery Management Councils (RFMC) remains unclear, pending Congressional approval of a spending plan submitted by the National Marine Fisheries Service (NMFS). On February 25, 2014 the Council Coordinating Committee requested NMFS reconsider its initial plan to reduce funding from what had been expected (see attached letter), but were informed on March 18, 2014 that while calculation corrections would be made to allocations, the policy decision had been made to forward a spending plan to Congress that called for \$1M less funding to the Regional Fishery Management Councils (RFMCs) than expected.

From the Pacific Council perspective, we feel it is important to receive adequate funding to accomplish the important obligations under the MSA. The amount to be received under the NMFS proposed spending plan is inadequate for the kind of operational activity needed at the Pacific Council. We feel the FY 2012 level of funding--which was stable at the 2011 level is the minimally adequate level that should be allocated by the NMFS for FY 2014, given the circumstances at hand. We also note that the total funding provided to the NMFS in FY 2014 is greater than FY 2012.

The effect of any funding shortage on Council operations will be determined after a final Congressional decision is made and the Pacific Council's Budget Committee considers alternatives. As the MSA reauthorization process proceeds, a new way of providing the proper appropriation to RFMC should be considered.



## Regional Fishery Management Councils Coordination Committee

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February 25, 2014

Ms. Eileen Sobeck  
Assistant Administrator  
National Marine Fisheries Service  
1315 East West Highway  
Silver Spring, MD 20910



Re: FY 2014 Funding Allocation to Regional Fishery Management Councils

Dear Ms. Sobeck,



Thank you for the presentation of Mr. Paul Doremus February 19, 2014 on the status of FY 2014 National Marine Fisheries Service (NMFS) budget and current thinking on the allocation to Regional Fishery Management Councils (RFMC) at this time. As we understand the current state of spending plan development at this time, key information is as follows in terms of spendable dollars.



New England  
Fishery Management Council

<u>Funding Category</u>	<u>FY 2012</u>	<u>FY 2014</u>
NMFS Total Budget	\$895.0 M	\$992.3 M (\$917.3 absent the \$75 M Disaster Fund)
NMFS ORF Budget	\$804.7 M	\$812.6 M
RFMC Allocation (all PPAs)	\$28.2 M	\$26.5 M



MID-ATLANTIC FISHERY MANAGEMENT COUNCIL



Preparatory to this meeting, the RFMC were under the impression that a reasonable allocation in terms of spendable dollars would be approximately at the FY 2012 level and that agency management and administration user-costs would not be charged to RFMC in FY 2014, contingent to an in-depth discussion of the relevant issues at this meeting that was to be preparatory to FY 2015 decision-making. There are several components and ramifications of the described approach to resolve agency management and administration user-cost charges that remain unclear at this point.

The RFMC view the best barometer of Congressional intent for an RFMC allocation of traditional line items to be the Regional Councils and Commissions line item, which was \$31.8 M in FY 2012 and \$32.0 M in FY 2014. Given this, the key partnership role the RFMC play in the NMFS core mission, and the status of the NMFS budget, the RFMC request that you reconsider the current state of spending planning to reflect an allocation of \$28.2 M in spendable dollars, reflecting stability with the FY 2012 status of funding.

On behalf of the eight RFMC,

A handwritten signature in black ink, appearing to read 'R B R J', with a horizontal line extending from the first 'R'.

Rick Robbins  
2014 CCC Chairman

cc: RFMC Chairs, Vice Chairs, and Executive Directors  
Paul Doremus  
Sam Rauch  
Alan Risenhoover  
Emily Manashes